

**IN THE INCOME-TAX APPELLATE TRIBUNAL “G” BENCH,  
MUMBAI**  
**BEFORE SHRI JUSTICE (RETD.) C. V. BHADANG, PRESIDENT  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.1210/MUM/2025  
(A.Y. 2017-18)**

<b>Wines 2000 and Company</b> Shop No. 5, Swami Jairamdas Arcade, RC Marg, Chembur, Mumbai -400 071, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, Circle - 27(3), Vashi, Navi Mumbai- 400051, Maharashtra
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACFW3455H</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Appellant by :	Shri M. Subramanian, AR
Respondent by :	Shri Swapnil Choudhary, (Sr. DR)

Date of Hearing	19.11.2025
Date of Pronouncement	23.12.2025

**आदेश / ORDER**

**PER PRABHASH SHANKAR [A.M.] :-**

The present appeal arising from the appellate order dated 27.01.2025 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to assessment order passed u/s. 147 r.w.s. 144 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 30.03.2022 for the Assessment Year [A.Y.] 2017-18.



2. The grounds of appeal are as under:

1. *On the facts and in the circumstances of the case and in law, the proceedings initiated by issuance of notice u/s 148 dated 31.03.2021 is invalid and bad in law.*
2. *On the facts and in the circumstances of the case and in law, the order passed u/s. 147 r.w.s.144 r.w.s. 144B of the IT Act is invalid and bad in law.*
3. *On the facts and in the circumstances of the case and in law, the learned A.O. erred in adopting the income of Rs. 1,38,53,344/- assessed vide order dated 18.12.2019 passed u/s 143(3) of the act as income under the impugned assessment order passed u/s. 147 r.w.s. 144 r.w.s. 144B of the Act, although the assessment order passed u/s 143(3) of the Act was pending in appeal.*
4. *On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in dismissing the appeal and that too without appreciating the facts fully and properly.*
5. *On the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in holding that the ITR filed by the assessee in the month of November 2021, which is much beyond the limit as mentioned in the notice issued u/s 148 cannot be considered and thus notice u/s 143(2) cannot be issued in this case, and the learned CIT (A) erred in approving the same by dismissing the appeal.*
6. *On the facts and in the circumstances of the case and in law, the learned C.I.T.(A) erred in dismissing the appeal thereby confirming the addition of Rs. 1,02,88,090/- made u/s 69A of the act.*
7. *On the facts and in the circumstances of the case and in law, the learned A.O. erred in invoking the provisions of section 115BBE of the act and the learned C.I.T.(A) erred in approving the same by dismissing the appeal.*
8. *On the facts and in the circumstances of the case and in law, the interest charged of Rs.5,56,385/- u/s 234A of the act is invalid and bad in law.*



9. *On the facts and in the circumstances of the case and in law, the interest charged of Rs.61,20,708/- u/s 234B of the act is invalid and bad in law.*

3. Brief facts of the case are that the assessee running a Wine shop filed original return declaring total income of Rs. 5,10,240/- and the assessment u/s 143(3) was completed. Subsequently, it was gathered by the AO that the assessee had made cash deposits in certain bank accounts during the relevant year. Perusal of the bank statements showed that the total amount deposited during demonetization period in these accounts was Rs. 1,28,88,090/-. On query, the assessee explained that the assessee's business during the year consideration was of wine shop with turnover of Rs. 10,92,65,282/-. Its sales were mainly over the counter only and most of the customers paid in cash. The assessee used to deposit the cash out of sale proceeds in its bank accounts. The AO observed that it could not be ascertained whether the notes deposited by the assessee during the demonetization period were old notes or new notes. Also, during the period of demonetization the assessee had deposited cash of Rs. 5,26,500/- on 10/11/2016 and after this the assessee deposited cash regularly. Thus, from the bank accounts it could be inferred that the assessee continued taking cash in old currency notes (SBN Notes) despite demonetization of the old currency whereas accepting of old notes was prohibited during demonetization. He



observed that the assessee failed to prove the nature and source of Cash deposit during the period to 09/11/2016 to 30/12/2016. Therefore, it was held that the amount of cash deposits of Rs. 1,28,88,090/- made in the aforesaid bank accounts of relevant to the assessee in during the period to 09/11/2016 to 30/12/2016, represented income from unexplained sources. Hence, the value of cash deposits amounting to Rs. Rs. 1,28,88,090 /- was treated as unexplained money u/s 69A of the Act and added to the total income of the assessee and charged to tax as per the provisions of 115BBE of the Act.

4. Aggrieved, the assessee preferred appeal before the Id.CIT(A) who noted that in this case the assessment was originally completed on 18/12/2019 under section 143(3) of the Act. From the assessment order, it was found that the assessee incurred expenditure totalling to Rs.1,33,43,104/- which were covered under section 40A(3) read with rule 6DD i.e. the assessee had incurred the aforesaid expenditure of Rs.1,33,43,104/- in cash other than by way account payee cheque drawn on a bank or account payee bank draft. Further, the AO in the order stated that no deduction was allowable in respect of the cash payments made by the assessee to the tune of Rs.1,33,43,104/- and accordingly, the above said cash expenditure was disallowed and added to the total income of the assessee.



4.1 He further noticed that the assessee had made total cash deposit amounting to Rs. 1,28,88,090/- during the demonetization period. But it could not provide any documentary evidence substantiating the fact that the deposit was not made in SBN notes. Also, in his reply assessee had stated that it had disclosed Rs. 26,00,000/- as its income under PMGKY 2016 scheme in March 2017 and paid the tax accordingly. Therefore, after allowing the credit of Rs. 26,00,000/- the unexplained amount comes out to be Rs. 1,02,88,090/- (Rs. 1,28,88,090 – Rs. 26,00,00) and same was added by the AO to the total income of the assessee for the said year. The operative part and the decision given by the Id.CIT(A) are reproduced as below:

“I have gone through the said submission filed by the appellant, assessment order and remand report passed by the AO, the same has been perused carefully by undersigned. It is stated by the appellant that one of the partner Shri Navinchandra Ganesh Hotkar had acted as an agent of assessee’s firm and paid cash payments to its supplier on its behalf. It is further stated that Rule 6DD provides the exceptions, that is the situations wherein cash payments above Rs.10,000/- can be allowed. It is evident that, the provisions of Rule (k) of Rule 6DD is not applicable in this case as the cash payments amounting to Rs.1,33,43,104/- made to suppliers, claimed to have been made through so called agent, who is one of the partner, is not qualified for exception for invoking disallowance u/s.40A(3) of the I.T. Act. Emphasis is here given on the fact that one of the partner Shri Navinchandra Ganesh Hotkar was acting as an agent of appellant firm was not placed before the AO during the course of assessment proceedings. Thus, although a partner is not considered to be a valid agent as per provisions of rule (k) of Rule 8DD, the claim of assessee is nothing but an afterthought. It is very clear that there was no business exigencies as stipulated in Rule 6DD, and appellant repeatedly failed to carry on its business within the four corners of laws, as evident from various defaults such as bank default on credit facility, payments default to



suppliers/creditors, cash payment to suppliers/creditors in violation to the provisions of Income tax Act and Rules.

Deposition of Specified currency notes during demonetization period etc. During the appeal proceedings, no supporting documents had been submitted by the appellant to verify the claim in spite of multiple opportunities being provided by this office as stated above in supra. In view of above facts and the considering the explanation of the appellant, it is clear that the appellant has failed to justify the transactions based on which addition was made to income during the assessment proceedings and remand report also. It is crystal clear evident that the appellant has failed to justify the source of cash deposits made to bank account during the demonetization period. The contention of the appellant remained unjustified and unsubstantiated. Hence, the Assessment Order is upheld the ground is noted as disallowed. In view of the above discussion, it is held that the source of cash deposit done by the appellant remain unexplained and needs to be taxed in the hands of appellant. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer.”

5. The ld.AR has filed a paper book containing 134 pages. It is submitted that the ld.CIT(A) did not take cognizance of various replies made during appeal proceedings. He has drawn attention to copies of written submission dated 13.5.2022, copy of application to file additional evidence under Rule 46A, copies of written submission dated 16.1.2023, 28.5.2024, additional grounds of appeal dated 30.4.2024, written submission dated 7.11.2024, 13.1.2025. It was submitted that against the original assessment orders dated 18.12.2019 appeal was filed before CIT(A) on 28.12.2019 which was pending. Meanwhile, the assessee chose to file application under VSVS 2024 which was accepted by the Department. Subsequent reopening was done in respect of cash deposits in bank account. The assessment was completed u/s 1487/144/144B at



total income of Rs 2,41,41,434/-. In the course of appeal, the assessee filed additional evidence and also remand report was called for but the addition was upheld without proper adjudication of the issues involved, additional ground and additional evidence. The assessee had contested the validity of assessment proceedings as the same was completed without issuance of notice u/s 143(2) of the Act.

6. On careful consideration of the above facts, we notice that the decision rendered by the Id.CIT(A) is not in consonance with the grounds of appeal before him which pertained to the cash deposits in the bank account and also the assessee raised additional ground of appeal challenging the validity of the reassessment order on the ground that no notice u/s 143(2) was issued, thus making the assessment order void ab initio.

6.1 However, the Id.CIT(A) as evident from the contents of his order reproduced in para 4.1 above, adjudicated the issue of addition u/s 40A(3) r.w. Rule 6DD which was not the subject matter of the instant appeal. Moreover, on the merits of the addition also, he upheld the addition made without making any reference to various submissions made before him by the assessee on various dates i.e. 16.01.2023, 28.05.2024, 7.11.2024 and 13.1.2025 as per Paper book



submitted before us. Besides, he did not adjudicate the additional ground as well without any justification or reasons brought on the records.

7. In view of the above discussion, we are of the considered view that the Id.CIT(A) has utterly failed to adjudicate the issues before him in clear violation of the provisions of section 250 of the Act .We find that the appellate order has been passed in a rather non-speaking manner as neither the issues involved have been duly considered as also the contents of the assessment order, submissions of the assessee or the grounds of appeal have been adjudicated clearly. No independent application of mind is discernible from the appellate order as the Id.CIT(A) has completely failed to evaluate the points of consideration so as to give his own decision on objective analysis of all relevant facts and circumstances of the case in utter disregard to the principles of natural justice and fair play.

7.1 In the light of above facts, we are of the considered opinion that the Id.CIT(A) has not decided the appeal on merits which is contrary to the mandate of section 250(6) of the Act which is reproduced here under for your ready reference:



*"(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."*

7.2 A bare perusal of above provision makes it clear that the CIT(A) is bound to dispose of the appeal before him on merits. Once an appeal is preferred before him, then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as per section 250(4) of the Act. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. The appellate order is therefore, deficient in this regard.

8. During the course of hearing, we proposed to send the appeal back to the file of the Id.CIT(A) in the light of above discussion that as the assessee was not provided adequate opportunity of being heard and granting fresh opportunity to the assessee to advance its arguments/submissions before the Id. CIT(A) so as to provide details in connection with the merits of the case and additional evidences, if any to support his contentions. Both the sides did not object to this proposition. Accordingly, in the substantial interest of justice, we set aside the appellate order and restore the entire matter back to the



ld.CIT(A) for passing the appellate order *de novo* after allowing adequate opportunity of hearing to the assessee.

9. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld.CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by him independently and in accordance with law.

10. In the result, the appeal is allowed for **statistical purposes.**

Order pronounced in the open court on 23/12/2025.

Sd/-

[Justice (Retd.) C. V. BHADANG]  
PRESIDENT

Sd/-

[PRABHASH SHANKAR]  
ACCOUNTANT MEMBER

Place: मुंबई/Mumbai  
दिनांक /Date 23.12.2025  
Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT



4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.

