

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW
BEFORE SH. KUL BHARAT, VICE PRESIDENT
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.130/LKW/2021

A.Y. 2017-18

Rakesh Kumar Jaiswal, 05/150 Obri Awas Vikas Colony Barabanki-225001, U.P.	vs.	Asstt. Commissioner of Income Tax, Range-5, Lucknow
PAN: AFZPJ9404M		
(Appellant)		(Respondent)

Assessee by:	Sh. Samrat Chandra, C.A.
Revenue by:	Sh. R.R.N. Shukla, Addl CIT DR
Date of hearing:	28.10.2025
Date of pronouncement:	13.01.2026

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the order of the Id. CIT(A)-2, Lucknow dated 29.07.2021 dismissing the appeals of the assessee against the orders passed under section 143(3) of the Income Tax Act for the assessment year 2017-18 by the ACIT, Range-5, Lucknow. The grounds of appeal are as under:-

- "1. Because without considering the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and in facts in sustaining the addition of Rs. 2,23,35,000/-being cash deposited during demonetisation out of cash balance as on 08/11/2016.*
- 2. Because without considering the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and in facts in sustaining the addition of Rs. 2,23,35,000/-by treating the same as unexplained credit u/s 68 of the Act.*
- 3. Because without considering the facts and in the circumstances of the case, the Ld. CIT(A) has erred in facts and in law by sustaining the addition on account of rejection of books of accounts of the assessee.*
- 4. Because without considering the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in disbelieving the Tax Audit Report.*
- 5. Because without considering the facts and in the circumstances of the case the Ld. CIT(A) has erred in law and in facts in sustaining addition of Rs.2,23,35,000/-even when only Rs.4,20,000/- were deposited in SBN out of opening cash balance and the remaining were in legal denominations of currency.*

6. That in any case and in any view of the matter, impugned addition/allowance assessment order are bad in law, illegal, unjustified, contrary to facts & law and based upon recording of incorrect facts and finding, without giving adequate opportunity of hearing, in violation of principles of natural justice and the same deserves to be quashed.

7. The humble assessee, craves for leave to add/amend any other ground with the prior permission of the Hon'ble Tribunal."

2. At the very outset, it is noted that the appeal is delayed by 66 days. The assessee has filed an application for condonation of delay under section 253(5) of the Income Tax Act wherein it has been stated that the order of the Id. CIT(A)-1 was received on 29.07.2020 and accordingly the limitation to file the instant appeal was due to expire on 29.09.2020. However, since 15.03.2020, the Hon'ble Supreme Court had extended the limitation for filing of appeals etc., in their order in *Suo Moto* case no. 3/2020, in view of the prevailing Covid Pandemic. It was prayed that in view of the order of the Hon'ble Supreme Court, the limitation in the said case was available on the date of the filing of the appeal and the objection noted by the Registry was not maintainable. On consideration of the petition and the order of the Hon'ble Supreme Court, it is held that the case is within limitation and therefore, the same is admitted for hearing.

3. The facts of the case are that the assessee filed a return of income for Rs. 32,57,230/-. The case was picked up for scrutiny on account of the fact that the assessee had made cash deposits of Rs. 2,23,35,000/- in his bank account during the period of demonetization which, was against the trend noticed by the Id. AO for preceding years. The Id. AO asked the assessee to furnish details of the sources of cash deposited alongwith supporting evidences and explanations. The assessee was also required to furnish summary of sales / receipts, purchases, stock and cash deposits in bank for the financial years 2015-16, 2016-17 and 2017-18. He also asked to furnish the month-wise increase of value and quantity of stock from 1st April, 2015 till 31st March, 2017. In short, the assessee was asked to furnish the reasons for the substantial increase in cash in hand as on 8.11.2016 as compared to the cash in hand as on 8.11.2015. The Id. AO records that the assessee did not respond to his notices and therefore, the Id. AO issued a show cause notice.

Subsequently, the assessee filed a reply which the ld. AO records as incomplete in that it did not contain any supportive documentary evidences or justification regarding cash deposit or sundry creditors. The ld. AO therefore, brought the entire amount of Rs. 2,23,35,000/- to tax after rejecting the books of accounts under section 145(3) and proceeded to levy the tax as per the provisions of section 115BBE, as he had made the addition under section 68 of the I.T. Act.

4. Aggrieved with the said order, the assessee went in appeal to the ld. CIT(A)-2, Lucknow. The ld. CIT(A)-2, Lucknow observed that during the course of appellate proceedings, it was submitted that the deposit made in the bank account were out of the sale receipts of the assessee and since the assessee was a retail vendor of Alcoholic Liquor, all the sales were in cash. It was submitted before her that the entire deposits had been considered in the declared turnover of Rs. 15.85 Crores and details of monthly sales and purchases made during the year under consideration were submitted in support of the contention. The ld. CIT(A) noted that even before her, no documentary evidences or cogent evidences were presented and even the complete audit report under section 44AB had not been submitted. Therefore, since there were no supporting evidences to back up the submissions of the assessee, the ld. CIT(A) dismissed the appeals.

5. Aggrieved with the said order, the assessee has come in appeal before us. Sh. Samrat Chandra, C.A. (hereinafter referred to as the ld. AR) submitted that the deposits in the bank account during the demonetization period were entirely out of cash sales and the cash deposited was not deposited in specified bank notes, which demonstrated that it was on account of sales made during the period. The ld. AR submitted that the cash sales had not been verified by the ld. AO. He further submitted that the assessee was running a Liquor shop on all sales from the same took place in cash. The ld. AR submitted that at the time of assessment and appeal proceedings, certificate from the bank was not available that the entire cash deposit was in the form of non SBN and only Rs. 7 Lacs of specified bank notes were deposited while the remaining amount was deposited in new currency. It was, therefore, prayed that the certificate from the bank, which had come into

existence after the appeal order, may kindly be admitted as additional evidence in the interest of justice, so that the assessee could demonstrate that the deposits in the bank account were out of cash sales of the period and not on account of any unexplained money lying with it. He requested that the matter may kindly be remanded back to the Id. AO so that the assessee may present its case before the Id. AO.

6. On the other hand, Sh. R.R.N. Shukla, Id. Addl CIT DR submitted that the assessee had ample opportunities to present details relating to the sale before the Id. AO and the Id. CIT(A) and had not availed them. Therefore, there was no justification for allowing the assessee another opportunity to re-argue his case. Accordingly, he agreed that the appeal may kindly be dismissed.

7. We have duly considered the facts and circumstances of the case and the arguments of both parties. We believe that the certificate from the bank, that Rs. 2,16,35,000/- of the Rs. 2,23,35,000/- that was deposited in the bank in the demonetization period was in the form of new currency, is a material piece of evidence to determine whether the deposits were made out of unexplained money lying with the assessee at the time of demonetization or out of cash sales made by him. We observe that the assessee had presented his details of monthly sales and purchases made during the year before the Id. CIT(A). However, the same not being backed by the sufficient evidences, had not been accepted by the Id. CIT(A). After considering the fact that the deposits have been made in new currency and are sought to be explained out of sales, we believe this in the interest of justice, to restore the matter back to the file of the Id. AO for examination as to whether the deposits in the bank account during the demonetization period were made out of cash sales of the assessee and whether those cash sales are duly accounted for in the turnover reported by the assessee at the end of the year. We hereby direct the assessee to present all the details that have been called for the by the Id. AO during the original assessment proceedings alongwith the books of accounts and audit report and such other evidences that he may wish to produce in support of his case

and we direct the ld. AO to frame a fresh assessment in accordance with law after considering all these evidences.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 13.01.2026 in the Open Court.

Sd/-

**[KUL BHARAT]
VICE PRESIDENT**

DATED:13/01/2026

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

By order
Sr. P.S.