

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'F' NEW DELHI)
BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER
ITA No. 3741/Del/2025 (A.Y. 2017-18)**

Deepsons (India) Pvt. Ltd. 31 st Floor, Community Centre, Wazirpur Industrial Area, Delhi PAN: AAACD3267B	Vs	Assistant Commissioner of Income Tax, Circle 7(1), Delhi
Appellant		Respondent
Assessee by	Sh. S. K. Gupta, CA	
Revenue by	Ms. Harpreet Kaur Hansra, Sr. DR	
Date of Hearing	17/12/2025	
Date of Pronouncement	23/01/2026	

ORDER

PER YOGESH KUMAR, U.S. JM:

The present appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals/ National Faceless Appeal Centre ('Ld. CIT(A)/NFAC' for short), New Delhi dated 30/04/2025 pertaining to Assessment Year 2017-18.

2. The grounds of Appeal of the Assessee are as under:-

"1. On the facts and circumstances of the case, the Ld CIT(A) has erred in law in upholding the additions of Rs. 4,21,34,712/- and Rs.56,65,000/-resulting into disturbing the trading results of the appellant ignoring the mandatory provisions of sec 145(1) of IT Act and in absence of any finding that the books of account not found to be reliable for computation of income and therefore such additions cannot be sustained in law.

2. Without prejudice to ground No. 1, the Ld CIT(A) has erred both on facts and in law in upholding the addition of Rs.4,21,34,712/-treating the difference between

turnover alleged to be available in CBEC data with turnover in books of account as under reported revenue ignoring the submission of appellant.

3. Without prejudice to ground No. 1, the Ld CIT(A) has erred both on facts and in law in upholding the addition of Rs.56,65,000/- u/s 68 r.w.s 115BBE of IT Act ignoring the fact that source of above cash deposits during demonetization are out of the earlier withdrawals/accruals of the business supported by the relevant evidences including cash book.

4. Without prejudice to ground No.3, the authorities below have erred both in facts and in law in invoking provisions of sec 115BBE of IT Act on the addition of Rs.56,65,000/- u/s 68 of IT Act without appreciating the fact that the above provision has prospective application w.e.f 01.04.2017 only and therefore, the above provision is not applicable to transaction on the prior dates.

5. The Ld. CIT(A) has erred both in law and in facts of the case in not allowing sufficient opportunity to the appellant to represent its case before himself to adjudicate on all ground of appeal.”

3. Brief facts of the case are that, the Assessee filed return of income declaring total income at Rs. 1,02,48,020/-. The case of the Assessee was selected for scrutiny through CASS and the statutory notices were issued. An assessment order came to be passed on 26/12/2019 by making an addition of Rs. 4,21,34,712/- on account of under reporting of revenue and also made addition of Rs. 56,65,000/- on account of cash deposit during the demonization to be taxed at special rate u/s 115BBE of the Act, accordingly, computed the income of the Assessee at

Rs. 5,80,47,732/-. Aggrieved by the assessment order dated 26/12/2019, Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 30/04/2025, dismissed the Appeal filed by the Assessee. As against the order of the Ld. CIT(A) dated 30/04/2025, the Assessee preferred the present Appeal on the grounds mentioned above.

4. The Ground No. 1 is general in nature which requires no adjudication. The Ld. Counsel for the Assessee arguing on the merits of the addition, on Ground No. 2, submitted that the basis for making the addition by the A.O. was the difference in Revenue shown in CBEC data and the revenue accounted for in regular books of accounts. The Ld. Counsel for the Assessee submitted that the Assessee has explained that the advances received from the customers is treated taxable services under Service Tax Act, but revenue from these activities is required to be booked as and when sale is actually executed through conveyance deed. The Assessee has also furnished a detailed re-conciliation chart of service shown as per the service tax return and the income booked in P & L account before the A.O. as well as the Ld. CIT(A).

5. The Ld. Counsel further submitted that the opinion of CBEC is also not credible and pointed out certain lacunas wherein the Code Number is also not mentioned. The Ld. Counsel further submitted that the A.O. has not even conducted any enquiry to verify the correctness of the information of CBEC. Thus relying on the decisions of Co-ordinate Bench of the Tribunal in the case of DM Estates (P) Ltd. Vs. DCIT in ITA No. 372/Bang/2019 dated 20/11/2019, wherein the Tribunal relied on decision of TUV India Pvt. Ltd. vs. DCIT 2019(8) TMI 1050 (Mum) and held that the Department require to hold necessary enquiry to verify the correctness of the information relied upon and the Assessee cannot be asked to impossible task as the Assessee has no excess to the information given to the Department for verifying the correctness or otherwise of the such information. Thus, sought for allowing Ground No. 2 of the Assessee.

6. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities sought for dismissal of the ground No. 1 of the Assessee.

7. We have heard both the parties and perused the material available on record. The Ld. A.O. while making the addition has relied on the CBEC data which has been reproduced at page No.

2 and 3 of the assessment order. The Assessee was show caused by the A.O. On receipt of the show cause notice, Assessee filed reply before the A.O. wherein contended that the information available regarding the quantum of service is Rs. 8,74,80,924/- is incorrect and contended that the revenue from operation as per P & L account was Rs. 4,53,46,212/- and provided the details to the A.O. The Ld. A.O. without making any enquiry straightaway rejected the claim of the Assessee. It is well settled law that, when an information is confronted to the Assessee and the Assessee disputes and provides contrary evidence, A.O. should conduct necessary enquiry to verify the correctness of the information relied by him. The said ratio has been reiterated by the Co-ordinate Bench of the Tribunal in the case of DM Estates (P) Ltd. Vs. DCIT (supra), in following manners:

“I have heard the rival submissions. It is clear from the orders of the Revenue authorities that the 26AS and income as reported in books of accounts. As far as the Assessee is concerned the receipts of impugned addition has been made purely on the basis of difference between income as reflected in Form rents as recorded in the books of accounts is in consonance with the agreement between the assessee and the lessee No defect whatsoever has been pointed out by the Revenue authorities in the books of the ITAT. Mumbai Bench in the case of TUV India (P) Ltd. (supra) The Tribunal on an identical addition accounts of the assessee. In such circumstances, the impugned addition cannot be sustained as held by made to the total

income on the basis of mismatch of receipts supra) Form 26AS and the receipts shows by the Assessee firstly held that the assessee has done all that it could do to discharge its onus/burden which lay under the provisions of the 1961 Act by all what reconciliation statements as well explaining the reasons for differential between the income as is reported in Form No. 26AS information as per the data base maintained by the Income-tax Department and the income as is reflected in its books of account. The assessee has discharged its primary onus/burden and the assessee could not be asked to do impossible. Secondly the Tribunal held that there could be differences in the accounting policy followed by the taxpayer and its clients who have deducted Income-tax at source on behalf of the taxpayer as well wrong mention/punching of the permanent account number of the tax payers by the clients while filing the TDS returns with the Department. One of the reasons for differential could be that the clients have deducted TDS on the gross amount inclusive of service tax while the income is reflected by the taxpayers exclusive of service tax. Thirdly, the tribunal held that the assessee has no control over the data base of the Income-tax Department as is reflected in Form No. 26AS and at best the assessee could do is to offer bona fide explanations for these differential which the assessee did in this case during the appellate/remand proceedings. Fourthly, it hold that the Income-tax Department has all the information and data base in its possession and control the learned Commissioner of Income-tax (Appeals)/Assessing Officer ought to have conducted necessary enquiries to unravel the truth but asking the assessee to do impossible is not warranted. The tribunal finally concluded that no additions to the income are warranted in the hands of the assessee owing to differential in income based on Form No. 26AS and the income as is reflected in the books of account maintained by the assessee.”

8. In the present case, the advances of Rs.4,56,05,472/- received from customers was treated as taxable services under

the Service Tax Act, but the revenue from these activities is required to be booked as and when the sale is actually executed through conveyance deed. There was sale of the plot booked for Rs.3,48,00,000/- as revenue in P&L account on the ground that on the above sale of plot which is outside the ambit of service tax Act having no impact on service tax liability computation. So far as the payments of Rs.3,60,000/- and Rs. 10,03,621/-, it was claimed that these are the expenses booked but those expenses are covered since under reverse charge under service tax Act, the same are required to be shown as chargeable services as per service tax returns on the ground that service tax liability on such services availed needs to be discharged by the recipient of such services, therefore, contended that those payments are not part of turnover. A detailed reconciliation chart of the services shown as per service tax returns and the income booked in P&L account has been placed before us in paper book at page 105 which was also filed both with the lower authorities. A detailed chart of flat booking for relevant financial year was also placed at pages 106-107 of the Paper book. Considering the above facts and circumstances, we find merit in Ground No. 2 of the Assessee, accordingly Ground No.2 of the Assessee is allowed.

9. Ground No 3 & 4 of the Assessee on the addition of Rs. 56,65,000/- u/s 68 r.w. Section 115BBE of the Act. The Ld. Counsel for the Assessee submitted that the source of the cash deposited during the demonetization are out of earlier withdrawals. The Assessee produced relevant evidence including cash book. However, the authorities below contrary to the settled position of law, made the addition accordingly, relied on following judicial precedents:

- i). CIT Vs Pashupati Nath Agro Food Products Pvt. Ltd. (Allahabad High Court) ITA No. 165 of 2010 dated 04.05.2017.
- ii) Sargam Cinema vs CIT 328 ITR 513(SC).
- iii) Vikram Plastics & Others [239 ITR 161] (Guj).
- iv) CIT Vs Rajni Kant Dave 281 ITR 6 (All);.
- v) Vatika Landbase Pvt Ltd 383 IT 320 dated 26.02.2016 (Del);.
- vi) PCIT vs R.G. Buildwell Engineers Ltd (2018) 259 Taxman 371 (Del) approved by Hon'ble Apex Court in (2018) 259 Taxman 370 (SC);
- vii) Yunus Haji Ibrahim Fazalwalavs ITO 2016 (2) TMI 1204 (Guj).
- viii) Pr CIT vs Forum Sales P Ltd 466 ITR 392 (Del).

10. The Ld. Counsel also submitted that and also invocation of provisions of Section 115BBE of the Act for the year under consideration i.e. A.Y 2017-18 is contrary to the ratio laid down by the Hon'ble High Court of Madras in the case of Smile Prime Findings Ltd. vs. ACIT in writ petition (MD) 2078 of 2020 and

1742/2020 dated 19/11/2024. Thus sought for deletion of addition by allowing Ground No. 2 & 3. The Ld. Department's Representative relying on the orders of the Lower Authorities sought for dismissal of the Ground No. 2 and 3 of the Assessee.

11. We have heard both the parties and perused the material available on record. During the year under consideration, the Assessee claimed that there was increase of investments in the form of real estate development from 32.30 crore to 31.71 crore during the year under consideration. The Assessee produced the cash book showing the cash withdrawals and cash deposits during the year under consideration. The Assessee deposited total cash of Rs. 1,25,32,000/- and made the cash withdrawal was Rs. 1,48,56,500/- even in the preceding assessment year the amount of cash withdrawals was Rs. 57,50,000/- and deposit of cash was Rs. 55,80,000/-. Assessee has also contended that the cash deposited from April to 08/11/2016 was Rs. 59,80,000/- which is Rs. 8,00,000/- per month and the reason for increasing cash deposit during the demonization was due to exceptional circumstances because of the demonization period that the Assessee had to make deposit of entire cash represented by demonetized currency. Therefore, contended that the cash

deposited during the demonization and other than demonization period cannot be compared. Further from the cash book it is found that as on the date of pronouncement of demonization, the Assessee had cash in hand of Rs. 74,93,435/- out of which, Rs. 56,65,000/- was deposited during the demonization period being the cash represented by demonetized currency. The said cash book is being a part of books account of the Assessee which has not been rejected by the A.O. The Co-ordinate Bench of the Tribunal in the case of Mrs. Nidhika Rehani in ITA No. 2236/Del/2023 vide order dated 17/09/2025 held that the cash balance as on the date of pronouncement of demonization. Further it was also held that the provision of Section 115BBE of the Act are applicable from 01/04/2018 and directed the A.O. not to invoke the Section 15BBE of the Act in following manners:-

“In view of the above discussion, out of INR 28 Lakhs deposits during demonetization period, in our considered opinion, INR 25,50,000/- could be held as cash deposit out of cash balance available in cash book on the date of demonetization. Accordingly, we uphold the addition of INR 2.50,00 Lakhs made by the AO. The Hon'ble Madras High Court in the case of S.M.I.L.E Microfinance Ltd. vs ACIT [2024] (11) TMI 1444-Madras High Court has held that the provisions of section 115BBE of the Act are applicable from 01.04.2018 and therefore, the AO is directed not to invoke the provision of section 115BBE of the Act. Accordingly,

ground of appeal No.2 raised by the assessee is partly allowed.”

12. In view of the above facts and circumstances and relying on the above ratio, the ground No. 3 & 4 of the Assessee are allowed.

13. In the result, Appeal of the Assessee is allowed.

Order pronounced in the open court on 23rd January , 2026

Sd/-

Sd/-

(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Date:-.23.12.2025
R.N, Sr.P.S*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI