

IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

BEFORE: DR. S. SEETHALAKSHMI, JUDICIAL MEMBER &
SHRI RATHOD KAMLESH JAYANTBHAI, ACCOUNTANT MEMBER

I.T.A. No.43/Jodh/2022
Assessment Year: 2017-18

Aayodhya Jajra C-40, Rajeev Nagar, Outside Mahamandir 3RD Pole, Jodhpur. [PAN:ACLPJ4396D] (Appellant)	Vs.	Commissioner of Income Tax(Appeals), National Faceless appeal Centre, Delhi (Respondent)
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Appellant by	Sh.K.K. Boob, Adv. & Sh. Yash Boob, C.A.
Respondent by	Shri A.S. Nehra, Sr. DR
Date of Hearing	19.03.2024
Date of Pronouncement	08.04.2024

ORDER

Per:DR. S. Seethalakshmi, JM:

This appeal filed by assessee is arising out of the order of the ld. CIT(A), National Faceless Appeal Centre, Delhi dated 27.12.2021[here in after “CIT(A)/NFAC”] for assessment year 2017-18, which in turn arise from the order dated 24.11.2019 passed under section 143(3) of the Income Tax Act, by the AO.

2.1 At the outset of hearing, the Bench observed that there is delay of 37 days in filing of the appeal by the assessee for which the ld. AR of the assessee filed an application for condonation of delay in filling the present appeal and the, the application reads as ;

“On the subject referred above, I am enclosing herewith following documents:-

(1) THAT Certified Copy of order of Commissioner of Income Tax (Appeal) order dated 27/12/2021 is enclosed herewith, plz accept the same.

(2) THAT Electronically Appeal in this case was filed on 18/02/2022 and physical appeal in this case was due to filed on 20/03/2022. But physical documents was filed on 06/04/2022, it means late by 17 days, plz note. Delay is not intentionally. Delay is beyond the control of the assessee.

Delay is due to following reasons

- (1) Due to death of Husband Shri Bal Kishan ji Jajra, she is fully disturbed
- (2) Due to Arrest and imprisonment of Real Son Shri Naresh Jajra, she is fully disturbed
- (3) Main accountant of the firm namely Shri Kamal ji Sharma is left the firm

Due to following aforesaid reasons, she is fully disturbed.

You are therefore requested to please accept my sincere apology, and condone the delay and accept the same and do the needful.”

2.2 The ld. AR of the assessee appearing in this appeal submitted that the assessee is serious on the duties and the delay of 37 days is on account of the fact the assessee has filed the appeal online on 18/02/2022 but the physical copy of was filed late. Moreover, the assessee lost her husband and she was mentally disturbed. Based on these set of fact and considering the various judicial precedent where in the courts has considered the explanation prevented the

assessee and thereby ignored the delay on account of the technicality of the reasons. Even the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) directed the other courts to consider the liber approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

2.3. During the course of hearing, the ld. DR objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the interest of justice.

2.4 We have heard both the parties and perused the materials available on record. The Bench Noted that the prayer of the assessee for condonation of delay of 37 days has merit and we concur with the submission of the assessee. Thus, the delay of 37 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

3. In this appeal, the assessee has raised following grounds: -

"1. That the learned Assessing Authority has erred and added the income of Rs. 11,00,000/- deposited into the bank in demonetization period, which is bad in law as well as facts of the case.

2. That although computerized books of accounts, maintained by the above named assessee was filed i.e. cash book, ledger, bank book, before assessing authority. But the Assessing Authority not go to the books of accounts even not a single entry was pointed out by Assessing Authority wrong or questioned. Hence, without seen the books of accounts, book can not be rejected, which is bad in law.

3. That even at the time of finalization of appeal order by NFAC, Delhi, not a single entry was pointed out wrong or questioned. Hence Authority of NFAC, Delhi, also not go to the books of accounts, hence without seen the books of accounts, genuineness of case not arise, which is not based on accounting principles and natural justice.

4. That even NFAC Delhi not given opportunity to the assessee for faceless hearing, only documents required, which is also bad in law as well as facts of the case.

5. That tax charged by AO under section 115BBE and interest charged by AL is also not judicious.”

4. Brief fact of the case is that the return of income for the assessment year 2017-18, in ITR-1 was e-filed on 27.03.2018 declaring total income of Rs. 4,10,500/- The case was selected for scrutiny under CASS. First notice u/s 143(2) of the Act was issued on 13.08.2018. There after the fresh notices u/s 142(1) of the Act were issued and the assessee was requested to furnish relevant details/information electronically through E-filing mode. The case was selected for scrutiny u/s 143(3) of the Act by CASS and type of scrutiny was “limited” and the issues identified for examination was per notice u/s 143(2) were “cash deposit during demonetisation period”. On the aspect of the proposition the assessee was confronted by the ld. AO on the cash deposit made by the assessee. The reply of the assessee and the contention of the ld. AO is reproduced herein below:-

S. No.	Assessee's Explanation	Remarks by AO
A	The source of cash deposit of Rs. 11,00,000/- comes out from cash in hand, complete copy of narration of each entry for AY. 2017-18 enclosed. Opening cash balance as on 01/04/2016 was Rs. 09,50,597/- and thereafter added the income as per details, cash	The contention of assessee is beyond any imagination. The assessee claims to earn this amount from menial tasks like tailoring and stitching which are generally not paid this much also the assessee claims to have accumulated his years of Income in his hand and has not

	<p>book, then out of cash in Hand, cash was deposited in demonetization period, when is verifiable from cash book also. Total of Rs. 11,00,000/ deposited during demonetization period in Bank of India Savings Bank account having A/C No. 661110110000147. The assessee had Rs. 11,00,000/- in his hands on 08.11.2016 when demonetisation has been declared. The assessee has deposited the above referred old notes out of the above amount lying with the assessee. The above referred amount was lying with the assessee out of his earnings from Cooking, Stitching and Tailoring etc mentioned as Income from other sources.</p>	<p>deposited this amount in bank where he could have earned interest. No prudent individual will hold the cash for such a period losing out to bank interest and also increasing the risk or safety of the same. The assessee vide the notice u/s 142(1) dated 05.10.2019 was provided opportunity to show cause in this regard.</p>
B	<p>The assessee vide his reply dated 18.11.2019 repeated the similar contention as earlier</p>	<p>The assessee has not provided any logical reasoning or evidence to explain the source of this amount as cash in hand also why the cash was not deposited in the bank. No satisfactory explanation provided by assessee as called for vide notice u/s 142(1) dated 05.10.2019 and 26- 09-2019 marked as "FINAL OPPORTUNITY". The assessee's claim that he had earn this amount from tailoring and stitching and accumulated he such amount every month for holding the same as "Cash in Hand is illogical and not acceptable as he has not Provided any satisfactory explanation of the same.</p>

The assessing officer not satisfied from the explanation of the assessee and the records produced by the assessee. The ld. AO noted that explanation of the assessee were not satisfactory and contradictory therefore, the assessee was issued another notice invoking the provision of section 145(3) of the Act in response to that notice the assessee submitted justification of cash balance cashbook. The assessee submitted that she is filing return since 1998 wherein

the nature of income is already shown as tailoring. This fact of filling the return and disclosing the nature of income is appearing from the ITR filed and same is already on record of the revenue. The assessee is having the source which the ld. AO is disputing merely on the reason that the assessee has deposited cash in the demonetisation period. The cash which the assessee is keeping on hand and because she is assessed to tax since 1998 and her ITR already filed by the assessee showing cash on hand and supported by cash book cannot be disputed. Even the opening balance cannot be added as income of the year under consideration. All the contention of the assessee not considered on merits and the ld. AO based on the cash book not accepting the source of income and considering the aspect of the matter that various other family members have also deposited heavy cash during the demonetisation and therefore on the similar line the deposit of cash of ₹11,00,000 in the hands of the assessee not considered as genuine and the same was treated as unexplained within the provision of section 68 of the Act.

5. Aggrieved from the order of the assessing officer, assessee preferred an appeal before the ld. CIT(A). Apropos to the grounds so raised by the assessee the relevant finding of the ld. CIT(A) is reiterated here in below:-

“6. The appellant has not been able to counter the facts mentioned in the Order. The appellant has not submitted any new facts before the undersigned. He hasn't bothered to answer the queries raised by the AO either before him or before the undersigned.

7. Few notable points as taken from the assessment Order alongwith the comments of the undersigned are as under:

1. The appellant has shown an opening balance of Rs 9,50,597/- as on 01.04.2016. this remains to be explained.

2. The AO has written in his Assessment Order that the appellant has been filing ITR 1 from AY 2010-11 to 2018-19. Who can file Return in ITR 1.

A resident individual having total income up to Rs 50 lakh from salary, one house property and income from other sources can file his return of income using Form ITR-1. It cannot be used by any taxpayer who is either a non-resident or has capital gains or has capital gain or profits/gains from business or profession.

If he has been filing return in ITR 1, it will be assumed that he doesn't have any income from business or profession. At least, prior to AY 17-18. Then, from where this cash balance came as on 01.04.2016 remains to be explained.

1. The appellant claims that he was keeping it in cash instead of depositing in bank account it remains to be seen that what are the entries in the bank accounts, Income tax act is all about preponderance of probabilities. What was his Income prior to AY-2016-17 and how much saving out of that income is possible? The appellant has failed to satisfy beyond doubt that he was having so much of cash as on 01.04.2016.

2. Even during the year, apart from mentioning that he named from stitching, cooking and tailoring, he hasn't brought any evidence which can be verified. For example, the name and addresses of the persons for whom he had worked, cash receipts, etc

The appellant has not been able to counter the facts mentioned in the Assessment Order. Instead it prefers to

1. That the assessee has not provided any supportive documents, evidence to prove correctness of this cash book especially of the cash in hand as on 01.04.2016.

2. The AO has brought a very Important and interesting fact on the record that the Appellant Family members who are residing at the same place had also made huge cash deposits during the demonization period the details of which are reproduced as below:

S. No.	Name and Address and PAN of the assessee	Income (Rs.) as per ITR, and ITR form	Cash deposit during demonetization
1.	Sh. Rajesh B, Jajra, C-40, Rajeev Nagar, outside Mahamandir IIRD pole, Jodhpur AAEHR 2635G	Rs. 4,32,900/-	Rs. 14,00,000/-
2.	Bal Kishan R. Jajra, C-40, Rajeev Nagar, outside	Rs. 6,21,790/-	Rs. 13,50,000/-

	Mahamandir IIRD Pole, Jodhpur AACHB8236K		
3.	Bhavna Devi Jajra, C-40, Rajeev Nagar, outside Mahamandir IIRD Pole, Jodhpur ADGPJ7302P	Rs. 4,04,780/-	Rs. 12,00,000/-

8. Considering all the facts, narrated above, it is fair to conclude that the appellant was taken aback from the news of demonetization. Whatever cash he and his family members had was deposited in the bank account. The narratives are an afterthought and an attempt to save his income from taxes, If entire deposits of the family are taken into consideration, it comes to Rs 50,50,000/- which is huge and is unlikely to be earned from tailoring, cooking etc. There is no evidence to suggest that any of this work was actually undertaken.

9. The issue being dealt with in this case has also been adjudicated by the Hon'ble Mumbai High Court in the case of Sadia Sheikh Vs The Commissioner of Income Tax, Karnataka (Central) in Tax Appeal No.19 of 2014 which was upheld by the Hon'ble Supreme Court [2021] Taxman 594 (SC)[15-12-2020). Wherein the Hon'ble High Court had stated that:

"22. Section 68 of the said Act, inter alia provides that where any sum is found credited in the books of assessee maintained for any previous year, and the assessee offer no explanation about nature and source thereof or explanation offered by him is, not found to be satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year."

In view of this, I do not find any infirmity in the decision of the A.O. and the appeal is dismissed."

6. As the assessee did not find any favour from the appeal so filed before Id. CIT(A), the assessee has preferred the present appeal on the grounds as reiterated in para 3 above. The Id. AR of the assessee also filed a detailed paper book in support of the contentions so raised. The index of the document submitted by the Id. AR of the assessee reads as under:-

S.No.	Particulars	Page No.
1.	Detailed reply	1-7
2.	Letter dated 12.06.2019 submitted before AO at the time of assessment for proof of submission of cash book from 01.11.2016-30.11.2016.	8-9

3.	Letter dated 18.06.2019 submitted before AO at the time of assessment for proof of submission of complete cash book and books from 01.04.2016 to 31.03.2016 with bank statements from 01.04.2016 to till date of assessment	10-11
4.	Cash book 01.04.2016 to 31.03.2016	12
5.	Cash book, bank statement and ledgers 01.04.2016 to 31.03.2016	13-25
6.	Chart from AY 1998-1999 to AY 2019-2020 showing complete details of business done and income arned from the beginning with details of income tax return's filed necessary details from proof of business income	26-27
7.	ITR AY 1998-1999 to AY 2008-2009 and AY 2019-2020	
	Ay 1998-1999	28-29
	AY 1999-2000	30-31
	AY 2000-2001	32-33
	AY 2001-2002	34-35
	AY 2002-2003	36-37
	AY 2003-2004	38-39
	AY 2004-2005	40-41
	AY 2005-2006	42-44
	AY 2006-2007	45-47
	AY 2007-2008	48-53
	AY 2008-2009	54-61
	AY 2019-2020	62-64
8.	Proof for cash deposited previously in AY 2015-16	65-67
9.	Bank pass book of Bhavna Ji Jajra for address proof	68
10.	DhakeshwariCottaon Mills Ltd. Vs. Commissioner of Income Tax, West Bangal on 29 October, 1954: Supreme Court	74-81
11.	Hon'ble'ble Supreme Court in Sumati Dayal (1995) 214 ITR 801 (SC)	82-87
12.	ITAT Allahabad Bench in Sudhir Kumar Tiwari vs. ITO	88-92
13.	ITAT Delhi bench in sheo Chand Yadav vs. ITO	93-96
14.	ITAT Pune Bench in Mrs. Usha narayan Chaware vs. ITO	97-101
15.	Order u/s 250 of income Tax Act	102-109
16.	AO order u/s 143(3) of Income Tax Act	110-116
17.	Power of Attorney in our favour	117

7. The Id. AR of the assessee in addition to the above paper book has filed the following written submission:-

“ (1) THAT Please refer our Form Number 36 filed Electronically on 18/02/2022 for filling the appeal AY 2017-2018 against the order under section 250 of Income Tax Act. 1961 along with statements of facts and grounds of appeal.

(2) THAT No order was passed by Assessing Authority under 144 of Income Tax Act. 1961. mentioned by Commissioner of Income Tax (Appeals)NFAC in his order page no i line no 5, meaning there by Commissioner of Income Tax (Appeals) NFAC not seen proper assessment order, hence appeal order passed by Commissioner of Income Tax (Appeals)NFAC is in wrong lime of action, hence whole order passed by Commissioner of income Tax (Appeals)NFAC is bad in the eyes of law, hence whole addition is liable to be deleted.

(3) THAT total old son cash deposited in Demonitisation Period Worth Rs. 11,00,000/- in Saving Bank Account with Bank of India, which is verifiable from Online Cash Transaction Reply and Return of Income Also. Online Reply for Cash Transaction 2016 was already filed Vide Transaction No. 3643916591, which is also verifiable from our reply dated 12/06/2019 filed at the time of regular assessment.

(4) THAT out of Cash in Hand including Income Upto 08 November 2016 Old Sbn Cash Deposited into the Bank. Complete books of accounts like as Cash Book, Ledger, Bank Book and other subsidiary books was produced before Assessing Authority including Cash Book. However Copy of Cash Book From 1 November 2016 to 30 November 2016 was filed at the time of Assessment, which is verifiable from our letter dated 12/06/2019 (Page no 8 &9) and again Complete Cash book From 01 April 2016 to 31 March 2017 with Bank Statement from 01/04/2014 to till date of assessment have already been filed, which is verifiable from our letter dated 18/10/2019 (page no 10-11), HENCE QUESTION OF SUPPORTIVE DOCUMENTS and EVIDENCE TO PROVE CORRECTNESS OF THIS CASH BOOK SPECIALLY OF THE CASH IN HAND AS ON 01-04-2016 NOT PROVIDED NOT ARISE BECAUSE BOOKS OF ACCOUNTS WERE PRODUCED AT THE TIME OF ASSESSMENT BUT the Assessing Authority fails to bring on record material and specific defects in the books of account of the assessee on the basis of which he has arrived at the conclusion with regard to correctness or completeness of the accounts of the assessee or the method of accounting employed by it, hence rejection of books under section 145(3) is bad in law as well as facts of the case. Hence facts mentioned by AO in his order page number 4 line number 15 (cash in hand as on 01/04/2016 is not provided) is not correct. Even the Assessing Authority has not seen computation of total income from Asst. Yr. 2008-2009 to 2012-2013 which is already on record that source of income is Rental Income also, which is verifiable from detailed chart (page no 26-27) but Assessing Authority has ignore this source of head, hence whole order passed by AD as well as CIT(A), NFAC is illegal, not as per facts of the case and bad in the eyes of law, hence whole addition is liable to be deleted.

(5) However copy of cash book from 1.11.2016 to 30.11.2016 enclosed (page no 12) & complete cash book, ledger, bank book from 01.4.2016 to 31.03.2017 is enclosed (page no 13-25) but Assessing Authority not gone through the Cash Book and books of accounts. Hence order passed by Learned Assessing Authority dated 24/11/2019 and appeal order dated 27.12.2021 passed by Commissioner of Income Tax (Appeals) National Faceless Appeal Centre is illegal, bad in law as well as facts of the case.

(6) THAT the above named assessee is an existing assessee of income Tax from last more than 25 Years

(7) That the assessee is a Senior Citizen and attained the age of 77 years.

(8) THAT the assessee is done the tailoring and stitching work in some previous years also and. business income was shown in business head which is verifiable from page no 26-27 but later on due to irregularity of business activities in whole year or whole day due to old age, so Income is shown in head other source of income. Whole receipts received from different petty persons in Cash only. Most important thing is here mentioned that the assessee is doing the work from home in petty and from different persons on cash basis not from shop in market, so question of name of the customers and address not possible to maintained and not required as per natural principles of Law.

(9) THAT Reliance can be placed on the decision of Hon'ble Bombay High Court- RB Jessaram Fatehchand (Sugar Deptt) V CIT (1970) 75 ITR 33 (Bombay HC): Not bound to maintain name and address of buyers in Cash Sale. In the case of cash transaction where delivery of goods is taken against cash payment, it is hardly necessary for the seller to bother about the name and address of the purchaser. It is also decided by court that there was no necessity whatsoever for the assessee to have maintained the address of cash customers, the failure to maintain the same or to supply them as and when called for cannot be regarded as a circumstances giving rise to a suspicion with regard to the genuiness of the transactions. Even decision held by ITAT (Delhi) in case of: Kishore Jeram Bhai Khaniya, Vs Income Tax Officer (ITAT Delhi) (ITA No. 1220/Del/2011) held that. Not liable to maintain address of cash buyers. It is but natural that if a customer makes cash purchase and lifts the goods, there is no duty cast upon the seller to insist for the address of the purchaser. Our case is smeller, the assessee has received cash amounts from different persons to whom work was done. Hence contents mentioned by Commissioner of Income Tax (Appeals)NFAC in his appeal order page no 6 para 7 sub para (2) is not judicious, against the natural principles of law and bad in the eyes of Law, hence whole additions deserves to be deleted.

(10) Whole receipts from this activities was credited in other income head and same was shown in return of income. It is the duty of the assessing authority to enquiry the same whether assessee has done the above activities or not, but the assessing authority fails do so, meaning thereby Assessing Authority had not made any further factual enquiry before rejecting the books of accounts. So procedure adopted by AO as well as CIT (A) is not as per law and very very excessive. It is not the intention of the assessee to file the Income Tax Return in Form no. 1, because earlier years (page no 26-27), your honour would find that retail trade business income was shown and filed the Income Tax Returns with Trading account, Profit and Loss account, Capital a/c and Balance Sheet, which is tabulated in (page

no 26-27). Assessing Authority not seen previous year income tax returns from Asst. Yr. 1998-1999 to 2008-2009 and AY 2019-2020 (12 years), previously assessee was filed ITR 4, ITR 2 and ITR 1 with Computation of total income, Trading account, Profit & loss a/c, Capital a/c and Balance Sheet then Why the Assessing Authority was mentioned in page no 4 para 7 line no.6 only from ALY 2010-11 to 2018-2019, it means Assessing Authority manipulated the facts deliberately.

(11) THAT I am Enclosing herewith detailed chart at (page no 26-27) showing the details of BUSINESS INCOME DONE AND INCOME EARNED PREVIOUSLY WITH INCOME TAX RETURNS COPY for AY 1998-1999 TO AY 2008-2009 AND AY 2019-2020 (12 YEARS). On going through the aforesaid chart, your honour would find that the assessee was having Business income. from AY 1998-1999 to AY 2008-2009 (For consecutive eleven years) and AY 2019- 2020 and Closing Cash Balance, Debtors, Creditors have already been shown in Income Tax Return also. Hence whole story was made by Assessing Authority and CIT (A) NFAC also.

(12) THAT Trading a/c, Profit and loss a/c, Capital a/c, Balance Sheet, Debtors and Creditors list have already been filed with return of income, which is verifiable from record also. Copy of Trading account, Profit and loss a/c, Capital a/c and Balance sheet is again enclosed from AY 1998-1999 to AY 2008-2009 and AY 2019-2020 also (Page no 28-64) The AO on the basis of assumptions and presumptions and making wrong allegations without bringing on material any record or evidence to justify such allegations treated the cash deposits as undisclosed income and passed the assessment order under 143(3) of Income Tax Act 1961 and even Commissioner of Income Tax (Appeals) National Faceless Appeal Centre was passed appeal order u/s 250 of Income Tax Act. 1961 by ignoring the actual genuine facts and without any legal ground, whole of the order passed by Assessing Authority and Commissioner of Income Tax (Appeals) National Faceless Appeal Centre is illegal, bad in law as well as facts of the case because the assessee was having the Business income from AY 1998-1999 to AY 2008- 2009 and AY 2019-2020 means Cash Balance was declared in respective Income Tax Returns.

(13) THAT from AY 2009-2010 to AY 2018-2019 no regular business income under retail/wholesale was earned but complete books of account like as Cash book, Ledger, Bank book, Journal and other subsidiary books is maintained day to day in computer system, and Books of accounts for AY 2017-2018 have already been submitted before Assessing Authority as well as complete cash book was submitted to Commissioner of Income Tax (Appeals) National Faceless Appeal Centre and same was checked but no pointed out any defects in books.

(14) It means Regular books of accounts have been maintained day to day by assessee since beginning, hence assessment on the basis of imagination, assumptions and presumptions as pointed by Assessing Authority at page no 2 para no 3 of Assessment Order is incorrect and bad in law means whole assessment order passed by learned Assessing Authority by malafide intention. AO also pointed out that the assessee cannot earn such amount from menial task like tailoring and stitching, your honour, it depends on case to case and there are many examples in India who does very well in such business and earn huge amount of income.

That The Karnataka High Court in the case of Karnataka State Forest Industries Corporation Ltd., Vs. CIT (1993) 201 ITR 674 (page no 69-73) has held that the Assessing Officer's powers under the Section are not arbitrary and he must exercise his discretion and judgment judicially. There must be something more than mere suspicion to support an assessment under Section 145(3). The rule of law on this subject has been fairly and rightly stated by the Supreme Court in the case of Dhakeswari Cotton Mills Ltd., v/s. CIT (1954) 26 ITR 775. (page no 74-81)

(15) THAT I am again enclosing herewith Cash Book, Ledger, Bank Book for Asst. Yr 2017-2018 (page no 13-25). On going through the cash book your honour would find that Complete Narration of each and every entry in Cash Book is available in Cash Book, So Question of Income source not arises. When complete books of accounts were produced at the time of assessment and same is examined by Assessing Authority, then Assessing Authority should bring on record material and specific defects in the books of accounts of the assessee on the basis of which he has arrived at the conclusion with regard to correctness or completeness of the accounts of the assessee or the method of accounting employed by it but AO fails to do it, hence without bringing the particular defects in Books of account Assessing Authority cannot reject the books of accounts u/s 145(3) of the Act and same facts were overlooked and not correctly examined by Commissioner of Income Tax (Appeals) National Faceless Appeal Centre.

(16) THAT Not a Single Entry is Pointed out by the Assessing Authority as well as CIT (Appeals) for Question. When Copy of Cash Book, Ledger, Bank Book were with Complete Narration is available on record then Question of Evidence to Prove Correctness of Cash Book especially of the Cash In Hand as on 01/04/2016 Not Arise. Books of accounts including Cash Book is Maintained Day To Day in Computer System and All Entries are Reflected in Books of accounts. When complete books of accounts were produced, it is the duty of Assessing Authority to find out defects in books or method of employed but Assessing Authority as well as CIT (Appeals) NFAC fails to do it, hence question of supporting satisfactory evidence not produced not arise as mentioned by AD in his order page no 4 is not correct and bad in law also, hence whole order passed by Assessing Authority & CIT (Appeals) NFAC is bad in law as well as not justifiable.

(17) THAT the Assessing Authority contention as mentioned on page no 2 para no 3 "That Increasing the risk or safety of cash or to earn Interest from bank" is Illogical Because Fund Planning is Depends Individual to Individual and Constitutional Right. SB Interest of RS 4176/- was received from bank deposit also which is shown in computation of total income.

(18) THAT The Hon'ble Supreme Court has held in several cases such as Sumati Dayal [1995] 214 ITR 801(SC) (Page no 82-87) that while deciding any issue surrounding circumstance/evidence and test of human probabilities should also be looked into. Cash was deposited into the bank from time to time out of income from last so many years which is verifiable from books of account regular maintained by the assessee, bank pass book and income tax record also, which means no ABNORMAL cash was deposited in demonitisation period and cash deposited in demonitisation period was out of past savings Cash balance as on 01.04.2016 and income related to current year only. In AY 2015-2016 a sum of RS

6,50,000 in three intervals was deposited in saving bank account also. Copy of bank a/c is enclosed. (Page no 65-67)

Explanation as Past Savings of HUF and Members, No other Deposits during Demonetization: ITAT deletes Income Tax Addition Sudhir Kumar Tiwari vs Income Tax Officer 2022 TAXSCAN (ITAT) 1464 (Page no 88-92)

The Income Tax Appellate Tribunal (ITAT), Allahabad Bench deleted income Tax Addition on the ground that the explanation was past savings of HUF and its members and no other deposits were made during demonetization. A Single Bench of the Tribunal consisting of Vijay Pal Rao, Judicial Member observed that "Accordingly, in the facts and circumstances of the case when the assessee has explained the source of Rs. 1,00,000/- as past savings of the assessee HUF and its members and there are no other deposits during the demonetization the addition made by the Assessing Officer is deleted."

(19) That The Delhi Bench of Income Tax Appellate Tribunal (ITAT), held that the assessee has successfully demonstrated source of cash deposit to its bank account during demonetization period thus no income tax addition can be made under Section 68 of income Tax Act, 1961. The Bench comprising of Chandra Mohan Garg, Judicial Member and Dr. B.R.R. Kumar, Accountant Member Hence Section 68 is not applicable in our case because source of cash deposited was declared out of past savings Cash balance as on 01.04.2016 and income related to current year only and tax on this income charged as per section 115BBE of Income Tax act 1961 is not applicable in our case. Hence procedure for double taxation of income adopted by Assessing Authority and Commissioner of Income Tax (Appeals) NFAC is not correct, illegal bad in law as well as facts of the case, when the assessee already offered for taxation income from other sources in her computation of total income, the same can not be again considered u/s. 68 of the Act also, such addition has resulted into double addition also. So provision of section 68 cannot be applied in relation to the cash deposited in to the bank shown by the assessee in its books of accounts.

(20) THAT The Delhi Bench of the Income Tax Appellate Tribunal (ITAT), while deleting the addition made by the Assessing officer (AO), determined that the cash deposited in bank accounts during the demonetization period was reflected in the books of account of the company. The tribunal after reviewing the facts observed that AO did not point out any defects in the books of account. The cash deposits during financial years 2015-16 and 2016-17 were almost same and there is only a minimal increase in cash deposits during the financial year 2016-17.

(21) THAT IN Sheo Chand Yadav vs Income Tax Officer 2023 TAXSCAN (ITAT) 2101 (Page no 93- 96)

The Delhi Bench of Income Tax Appellate Tribunal (ITAT) held that there is no vacillation to hold that the source of the cash deposited in the bank account has been undisputedly proved, hence deleted the addition made by the Assessing Officer (AO).

(22) THAT in Mrs. Usha Narayan Chaware vs ITO 2023 TAXSCAN (ITAT) 484 (Page no 97-101)

The Pune Bench of the Income Tax Appellate Tribunal (ITAT) has deleted the addition of cash deposits during demonetization on proper explanation as to utilization of the cash

deposit. The Tribunal of RS Syal, Vice President noted that "Once the availability of cash in hands was established and it was not shown by the AO that such cash was spent elsewhere, I am of the considered opinion that the explanation of the assessee as to its utilization has to be accepted."

Hence facts of our case is similar to above as source of cash deposited was declared out of past savings Cash balance as on 01.04.2016 and income related to current year only.

(23) THAT whole story was made by the assessing authority in page no 5 para no 9 of Assessment Order here to mention that other member of the assessee's family has done the same thing and had tried to evade taxes In this respect I am to state that AO list as per order two assessee's are HUF entity and other BHAVNA DEVI JAJRA has no direct connection with above named assessee. Bhavana jajra is not residing with the above assessee on same place actually address of bhavna jajra is B 3 Shakti Nagar Gali no 1 paota c road jodhpur which is verifiable from bank passbook enclosed at (page no 68). Hence CIT (Appeals) NFAC mentioned wrongly facts in his order page no 6 last para,

(24) THAT issue for penalty proceedings u/s 271AAC of Income Tax Act is also not attracted as the income referred has been already reflected in the income tax return filed and the relevant tax has been paid by the assessee voluntarily.

Hence addition made by AO on such recourse primarily hedged on surmises, conjecture, assumptions, presumptions and whims of the revenue authorities is clearly unwarranted and the additions so made is unsustainable in the eyes of law and thus deserves to be quashed."

8. The Id. AR of the assessee in support of the contention raised in the written submission vehemently argued that the assessee is regularly assessed to tax since 1998-99. Referring to page 28 and 30 wherein the copy of the ITR-2 for A. Y. 1998-99 & 1999-2000 placed on record. It is very much evident from the copy of the original return of income filed by the assessee in column no. 14 against the nature of income the assessee disclosed tailoring and clothing. From these meager income the assessee has acquired the property and therefore in the subsequent year the assessee also earns the rental income which is also not disputed and the same is received in cash. The Id. AR of the assessee submitted when the Id. AO invoked the provision of section 145(3) the assessment is

supposed to be completed u/s. 144 of the Act but here the same is passed u/s. 143(3) of the Act adding the whole sum of Rs. 11,00,000/-. The ld. AR of the assessee submitted that once the opening balance is carried out the same cannot be added in the hands of the assessee.

9. Per contra, the ld. DR relied on the orders of the ld. CIT(A) and that of the ld. AO. The ld. DR vehemently argued that the assessee has not filed any evidence in support of the claim of cash on hand. The ld. AO has rejected the cash book filed by the assessee. He also argued that the assessee has filed the ITR 1 wherein the cash balance is not disclosed by the assessee. The act of the assessee is not free from doubt as the other family members have also deposited heavy cash of SBN into their bank account and therefore, the assessee being the senior citizen lady deposited cash of Rs. 11 lac into the bank account and the source of the said cash is alleged to have been out of the opening balance of earlier year income. The assessee being 77 years old lady and cash being deposited in bank account was available. The plea of the assessee that she is engaged in the tailoring work is not placed / discussed with the ld. AO. The ld. DR referring to the chart of cash balance made available is of year 2015-2016, 2016-17 & 2017-18 no proof of the figure mentioned is submitted. The cash book furnished by the assessee is also not maintained day to day it is merely summary. The ld. DR referring to page 44 submitted that there is no calculation

to show how he can be relied from business income as there is no source from the business income or there is no business stock available. Even though there is demonisation the assessee seamlessly even after demonetisation having the cash income it self suggest that the accounts are fabricated.

10. We have heard both the parties and perused the materials available on record. For the year under consideration the assessee filed her return of income for the assessment year 2017-18, in ITR-1 and was e-filed on 27.03.2018 declaring total income of Rs. 4,10,500/- The case was selected for scrutiny under CASS. The case was selected for scrutiny u/s 143(3) of the Act by CASS and type of scrutiny was “limited” and the issues identified for examination was per notice u/s 143(2) were “cash deposit during demonetisation period”. The assessing officer did not satisfied from the explanation of the assessee and the records produced by the assessee. The ld. AO noted that explanation of the assessee were not satisfactory and contradictory therefore, the assessee was issued another notice invoking the provision of section 145(3) of the Act in response to that notice the assessee submitted justification of cash balance as supported by the cashbook. The assessee submitted that she is filing return since 1998 wherein the nature of income is already shown as tailoring. This fact of filling the return and disclosing the nature of income is appearing from the ITR filed and same is already on record of the revenue. The assessee is having the

source which the Id. AO is disputing merely on the reason that the assessee has deposited cash in the demonetisation period. The cash which the assessee is keeping on hand and because she is assessed to tax since 1998 and her ITR already filed by the assessee showing cash on hand and supported by cash book cannot be disputed. Even the opening balance cannot be added as income of the year under consideration. All the contention of the assessee not considered on merits and the Id. AO based on the cash book not accepting the source of income and considering the aspect of the matter that various other family members have also deposited heavy cash during the demonetisation and therefore on the similar line the deposit of cash of ₹11,00,000 in the hands of the assessee not considered as genuine and the same was treated as unexplained within the provision of section 68 of the Act. The bench noted that the assessee is regular in filling her return of income. The assessee in the return of income filed for A. Y. 98-99 [paper book page 28] wherein the source of income was shown at tailoring and clothing against the column no. 14 against the nature of business / profession and similar to A. Y. 1999-2000 page 32 of the paper book. Since then the assessee is having the income in cash. The assessee has filed the cash book wherein the opening balance of Rs. 9,50,597/- shown current year income of Rs. 4,30,498 in cash. It is well settled that credit found on the first day or carried forward from the preceding year cannot be added in this year. We get the support of this contention from the decision of the jurisdictional high

court in the case of Commissioner of Income-tax v. **Parmeshwar Bohra**, 131

Taxman 145 (Rajasthan) wherein the jurisdictional high court held that;

“7. It appears that the Tribunal has considered the issue regarding assessability of the capital while considering the assessee’s appeal ITA 71(JDP)/99 for the assessment year 1993-94 by order dated 6-12-2001 whereby the Tribunal held that it is not a case of introduction of cash credit but it is a case of unexplained investment under section 69 of the Act of 1961 and the appropriate previous year for inclusion is the relevant financial year and, *therefore, the opening capital account cannot be added as an unexplained investment under section 69 of the Act of 1961 for the assessment year 1993-94.* The Tribunal also held that the genuineness of the capital introduction has already been adjudicated upon by the assessing authority for the appropriate financial year relevant to assessment year 1992-93. The Tribunal also took note of the fact that the order passed by the assessing authority for the assessment year 1993-94 on the basis of notice under section 148 dated 17-6-1997 has already been quashed by the order dated 6-12-2001 in the same ITA No. 71 (JDP)/99. Therefore, on the basis of the above decision dated 6-12-2001, the appeal of the assessee was allowed by the Income Tax Appellate Tribunal. Nothing has come on record what happened to the order dated 6-12-2001 and whether the said order of the Tribunal was ever challenged by the revenue or not. When the revenue itself has accepted the order dated 6-12-2001 wherein it has been held by the Tribunal that it is a case of unexplained investment under section 69 of the Act of 1961 and the appropriate previous year for inclusion is the relevant financial year and its genuineness has already been adjudicated upon by the assessing authority for the appropriate financial year, *i.e., 1992-93 (sic)* then how the order of the assessing authority can be said to be erroneous or prejudicial to the interest of the revenue. Since the Income Tax Appellate Tribunal has decided the appeal on the basis of the decision dated 6-12-2001, therefore, there appears to be no illegality in the order passed by the Income Tax Appellate Tribunal.”

We note from the copy of cash book filed by the assessee that the assessee has out of the earlier year saving has shown opening cash of Rs. 9,50,597/- which is also supported by the various year accumulated income shown by the assessee since 1998. The assessee is having 77 years age and looking to the old age holding the cash out of the accumulated saving to the extent of Rs. 9,50,597/- cannot be doubted. Thus, respectfully following that decision of the jurisdictional high court and considering that aspect of the matter when the assessee has demonstrated that she is regularly filling the income and having the income in cash and there by holding opening cash of Rs. 9,50,597/-

along with that the assessee has deposited cash into her bank account for an amount of Rs. 11,00,000/- cannot be added as unexplained income under section 68 of the Act for the year under consideration and therefore, we direct to delete the addition made in hands of the assessee. In terms of this observation the appeal of the assessee is allowed.

In the result, the appeal of the assessee is allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(Rathod Kamlesh Jayantbhai)
Accountant Member

Sd/-

(DR. S. Seethalakshmi)
Judicial Member

Dated 08/04/2024

Santosh

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order