15363687] are abnormally high as compared to cash sales in October 2015 [Rs. 527717] and November 2015 [Rs. 520020]. [Para No 4.1 of the order enclosed at page no 4-5 of the paper book]	*applicant is regulating depositing cash in accounts which is evident from the fact that the case for A.Y. 12-13 has been selected based on cash deposit of Rs 3,02,06,000/- in HDFC limit. The same has been accepted by the department by accepting the returned income by passing order under section 147 on 14th December 2019. The copy of same is enclosed at page no 173 to 177.* *2. That the Ld. AO while drawing the allegation has failed to appreciate that the appellant has made purchased to the tune of Rs. 3,09,69,406/- in the month of October, 2016. The said purchases were made much before demonetization period and the assessee has duly paid VAT on such purchase. Therefore, the sale made by the appellant in the month of October &November 2016 duly stands justified.*
(i.i) Despite having huge cash in hand, the assessee deposited small parts of cash before and after demonetization in the bank account [Para No 4.2 of the order enclosed at page no 162 of the paper book]	*That the Ld AO has alleged that despite having huge cash in hand, the appellant deposited the same in small amounts. However, the Ld. AO failed to appreciate that the entire cash ultimately got deposited in bank even though gradually in parts.That the bank has to renew the limit every year and the limit of the appellant was pending for renewal. The bank was asking for a few formalities and in these circumstances, there was minor delay in deposit of the cash. Even otherwise, the AO cannot sit on the chair of the assessee to decide as to how the business is to be carried.*

(iii) Failure to furnish sale bills [Para No 5 of the order enclosed at page no 164 of the paper book]	*As regard the allegation of the Ld. AO that the appellant has failed to furnish the sale bills, in this regard it is most respectfully submitted that the appellant had duly furnished complete books of accounts during the course of assessment proceedings, which includes the copy of sale register. The said copy of sale register includes sale bill no, quantity, name of buyer, the copy of sale register is enclosed at page 1 to 46 of this reply.* *2. The Ld. AO has failed to appreciate that there are 50 sale bills and as such it was not possible to upload such voluminous sale bills on the online portal, therefore, the assessee has submitted sale register which contains party name, bill number, item name, quantity, price, taxable amount, sale tax and grand total, therefore, the observations of the AO that the sale bills were not uploaded seems to be incorrect.* *3. Furthermore, the appellant had also furnished the copy of VAT returnswhich duly substantiate the sales made during the year under consideration. The copy of VAT return is enclosed at page no 85-91 of the paper book.*
(iv) Assessee does not have too much space to stock a huge quantity of stock [Para No 5.1 of the order enclosed at	1. As regard the allegation in respect of space to accommodate huge quantity of stock, it is pertinent to bring to your kind attention that during the year under consideration the appellant had takena godown [located on tarn Taran Road, Kochhar rice Mill near Shani Dev Mandir] on rent. The rent expenses incurred during the year are duly reflecting in the audited profit and loss account enclosed at page no 26-27 of the paper book.

page no 164-165 of the paper book]	This clearly shows that the AO has made the addition on the basis of surmises and conjectures even without going through the Audit Report. 2. Besides the above, we are also enclosing herewith the ledger account of electricity expenses from which your goodself will find that the electricity expenses for the godown are duly debited in the profit and loss account. Refer Page no 50 of reply dated 22.02.2023. 3. It is pertinent to mention here that the same godown address has been mentioned in the copy of account duly submitted before the AO along with the copy of account of creditors. Refer Page No 68 to 72 of the PB. 4. Furthermore, we are also enclosing herewith the ledger account of rent paid of godown from which your goodself will find that the part of the payment of godown was made from banking channels and which proves that the Ld. AO has failed to go through the bank statement.
(v) Assessee was maintaining bank overdraft facility and was also paying a large amount of interest to the bank [Para No 5.2 of the order enclosed at page no 165 of the paper book]	The said allegation of the AO does not find any force as the total interest debited on account of CC limit is to the tune of Rs. 1233236/-. The Ld. AO has failed to appreciate that the assessee has also received interest to the tune of Rs. 323500/- and as such, the net amount debited in the profit and loss account works out to Rs. 909736/-.

b) On perusal of the aforesaid, your Honor will find that the Ld. AO failed to point out any defect in the documents submitted by the appellant. As such, the action of the Ld. CIT(A) confirming the addition made by the AO is bad in law particularly in view of the fact that the cash deposited by the appellant was duly part of the cash book furnished during the course of assessment proceedings. Furthermore, the appellant had duly explained the source of the cash deposited during the year under consideration. As such, the mere action of the AO to reject the books of accounts is bad in law in view of the following case laws: -

"i. Shri Jeen Mata Buildcon (P.) Ltd. V. Income-tax Officer [2022] 142 taxmann.com 544 (Jaipur - Trib.).

Section 145, read with sections 68 and 133, of the Income-tax Act, 1961 - Method of accounting - Estimation of income (Discrepancy in receipts as shown in 26AS) - Assessment year 2013-14 - Case of assessee-contractor was selected for scrutiny through CASS due to difference in turnover between Form 26AS and books of account - Assessing Officer completed assessment in case of assessee company by making various additions based on difference between declared amount and that in terms of Form 26AS - Commissioner (Appeals) confirmed findings of Assessing Officer - However, Assessing Officer had not found a single defect in assessee's books of account and enquiry made bv him under section 133(6), had been properly explained by assessee - Assessing Officer's contention that other party had booked expenses could not be reason to make additions since contract receipt was reflected in subsequent year in terms of assessee's regular method of *accounting - An addition based on amount in Form 26AS and that shown in books indicated that additions were made by following a pick and choose method - Further, information as per data base of revenue could not, by itself, be a legally sustainable basis for making addition to assessee's income -Grievance of revenue that assessee had not offered correct income was fully explained by assessee and not rejected by Assessing Officer - Whether therefore, Assessing Officer as well as Commissioner (Appeals) had erred in law in confirming disallowance.*

ii. Paramount Impex v. AC IT, Circle-J, Ludhiana [2020] 117 taxmann.com 802 (Chandigarh Trib.)

Section 145 of the Income-Tax Act, 1961 - Method of accounting - Rejection of Account (Non-maintenance of stock register) - Assessment year 2013-14 - Whether where assessee was dealing in a large number of small items and it was consistently following method of determining stock at end of year by physically verifying same, in view of fact that all purchase and sale vouchers and other records had been found to be in order, mere fact of non-maintenance of stock resister could not be basis for rejection of books of account if Revenue had found no other defect in books of assessee and there was no hindrance in determining true and correct profits earned by assessee.

iii. PCIT-3v. Swananda Properties (P.) Ltd. [2019] 111 taxmann.com 94 High Court of Bombay

"Section 145 of the Income-tax Act, 1961 - Method of accounting (Rejection of accounts) - Assessment year 2005-06 -Whether where revenue was not able to

show an defect in assessee's records or in books of account maintained by assessee, section 145 could not be invoked for rejecting books of account.”

iv. Agarwal Transport Service vs. DCIT [2017] 88 taxmann.com 660 (Jodhpur - Trib.)

Section 145 of the Income-tax Act, 1961 - Method of accounting - Rejection of accounts (Others) - Assessment year 2012-13 - Where Assessing Officer rejected books of account of assessee on ground that assessee had not submitted name and addresses of owner of trucks and their PAN, since assessee had submitted registration number of trucks along with all details of expenses and no defect as such had been pointed out in books of account maintained by assessee, AO was not Justified in invoking provision of section 145(3) [In favour of assessee.

v. Commissioner of Income Tax, Karnal vs. Om Overseas [2008] 173 Taxman 185 (Punjab & Haryana)

Section 145 of the Income-tax Act, 1961 - Method of accounting - Rejection of accounts - Assessment year 2001-02 -For relevant assessment year, assessee-firm declared gross profit rate (GPR) of 25.38 per cent as against 29.5 per cent declared in immediate preceding year - Assessing Officer was not satisfied with assessee's explanation regarding decline in GPR and, therefore, he rejected its books of account and applied GPR at 27per cent which resulted in certain addition - On appeal, Commissioner (Appeals) deleted addition holding that Assessing Officer made addition without pointing out any specific defect in books of account

- Tribunal upheld finding of Commissioner (Appeals) - Whether there was any perversity in order of Tribunal - Held, no".

7. The ld. counsel further argued in respect of **ground no. 6** and placed the broad submission which are extracted as below:-

" Submissions in respect of Ground No. 6

Ground No 6	*6. That the CIT(A) NFAC erred in confirming the action of the AO based upon surmises and conjecture without there being any evidence contrary to the contention of the assessee which is duly supported by documents.*

a) As already stated, that the Ld. AO has not referred to any documentary evidence to prove anything contrary to the submissions of the appellant. In such a case where there is no corroborative material. Addition made is mere suspicion and no reasonable belief can be formed and as such the same is liable to be deleted. In this regard, Reliance is being placed upon the following case laws: -

Sr. No	*Citation*	*Brief*
	Hon'ble Supreme Court of India in the case of Omar Salay Mohamed Sait vs. Commissioner of Income-tax reported at [1959] 37 ITR 151 (SC)[05-03-1959]	*"Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Order of - Assessment year 1948-49 - Whether Tribunal should not base its findings on suspicions, conjectures, or surmises nor should it act on evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of that sort, its findings, even though on questions of fact, will be liable to be set aside by Supreme Court - Held, yes"*
	[2022] 145 taxmann.com 549	*Section 145 of the Income-tax Act, 1961 - Method of accounting -*

	(Delhi) ***HIGH COURT OF DELHI*** ***Principal Commissioner of Income-tax*** ***v.*** ***ConwoodMedipharma (P.) Ltd.***	*Rejection of accounts (Concurrent findings of fact) - Assessee, engaged in business of equity trading, derivatives trading and real estate investment, filed Income-tax Returns ('ITR') declaring an income of Rs. 42.43 crores - On scrutiny, assessment order was passed making an addition of Rs. 10.21 crores on ground that there was difference between funds received and source of income as per books of account which was not disclosed by assessee in its return - Assessing Officer rejected books of account declared by assessee on ground that they were not reliable - Commissioner (Appeals) allowed appeal of assessee, holding that addition was not sustainable in view of documentary evidences already available on record - It was further held that Assessing Officer failed to make any sincere effort regarding aforesaid addition and same was made only on basis of doubt, suspicion, conjecture or surmises without affording proper opportunity of being heard to assessee which was in violation of principles of natural justice - Tribunal concurred with findings in order of Commissioner (Appeals) - On appeal, it was found that Tribunal and Commissioner (Appeals) had returned concurrent findings of fact and deleted addition made by Assessing Officer on account of difference in receipts shown in financial statements of assessee and credit entries appearing in bank account of assessee - Further, revenue had not placed any material on record to contradict aforesaid concurrent finding of facts returned by Tribunal and Commissioner (Appeals) - Whether therefore, said concurrent findings could not be interfered with - Held, yes [Paras 3, 4 and 5] [In favour of assessee]*
	Hon'ble Bench in the case of ACIT vs Joginder paul in ITA No. 734/Chd/2014/ reported at 38 ITR 0486.	*The discretion of not depositing the said cash in hand anytime earlier than these had been actually deposited in bank was with the appellant and mere suspicion on this account could not obliterate the fact of assessee having such cash in hand as on 31.03.2009. In the circumstances, there is no*

		reason to hold that the said cash deposits were from some other accounted income of the appellant and not from available cash in hand. The addition made is merely on suspicion ignoring all factual evidence in this regard and is therefore directed to be deleted."

The Assessing Officer has doubted the sales as made by the Assessee, merely on the basis of the higher number of sales bills as issued by the Assessee in span of few days. The said exercise as done by the Assessing Officer is merely on doubts/suspicion and it is a settled law that doubt and suspicion, howsoever, strong it may be, cannot take the shape of evidence. Reliance is being placed on the following judgments:-

i. Commissioner of Income Tax Vs. Ram Narain 224 ITR 180 (P&H)

ii. JCIT Vs. Gramophone Company of India Ltd. 265 ITR (Kol-Trib) 46 (AT)

iii. DCIT Vs. D.N. Kamani (HUF) 70 ITD (Patna-Trib) 77

iv. Elite Developers Vs.. Dy. Commissioner of Income Tax 73 ITD (Nagpur-Trib) 379

v. Monga Metals Pvt. Ltd. Vs. ACIT 67 TTJ (All) 247

vi. Daulat Ram Rawatmull 87 ITR 349 (SC)"

8. The ld. counsel further argued in respect of **ground no. 8**and placed the submission which is extracted as below:

" Submissions in respect of Ground No. 8

Ground No 8	*That the CIT(A) NFAC has erred in ignoring the past history of the appellant since, the cash deposit was not against the past history of the appellant.*

It is pertinent to mention here that the case of the appellant for Assessment Year 2012-13 was reopened by the Department u/s 147 on the basis of cash deposits to the tune of Rs. 3,02,06,000/- in HDFC Limit Account. The said case was assessed *as returned income and it was held that the cash was deposited out of sale proceeds. The copy of reasons recorded along with the closure order is enclosed at page 173 to 177 of the PB. This proves that the assessee was regularly depositing the cash in the bank account. Furthermore, during the last Financial Year i.e. FY 2015-16 also the assessee has deposited cash to the tune of Rs. 4,31,25,914/- Therefore, considering the nature of business of the assessee, it is established fact that the assessee was depositing cash out of proceeds realized in cash out of cash sales.*

1.	*Pr. CIT v. Akshit Kumar [2021] 124 taxmann.com 123/277 Taxman 423 (Delhi)*	*"Enquiry under section 133B which has been strongly relied upon by Revenue, was conducted in Financial Year 2016-17 i.e. post closure of the business. The ITAT has juxtaposed the same against the other relevant material on record. The crucial factor that prevailed upon the ITAT to decide the case in favour of the Assessee was the history of the case. The ITAT went by the trading account in the earlier years viz. opening stock, purchase and sales, closing stock, gross profits and assessment made by the Department in AY 2007-08 when assessment was framed under section 143(3)/147. The ITAT observed that since the entire books of account had been scrutinized and the Assessee's income had been accepted, it also means that the entire opening stock, sales and closing stock made during the year stood accepted. Additionally, in respect of AY 2012-13 also, Assessee's trading activities were*

		subjected to detailed scrutiny under section 143(3). In the said year, the AO had rejected the trading result and even enhanced the GP rate and made an addition in the trading account. The ITAT thus held that in respect of AY 2012-13 the opening and closing stock and trading accounts including sales has not been disturbed. In these circumstances, the ITAT observed that in the impugned AY 2014-15, the audited balance-sheet reflected an opening stock of Rs. 19,53,29,660/- which stood accepted by the Department either under the scrutiny proceedings or by not selecting the return for scrutiny or by not taking any action to disturb such returned income. In these circumstances, it was held that the quantum figure and the opening stock which stood accepted in the earlier years had to be taken as actual stock available with the Assessee. In view of these facts, the sales made by the Assessee out of its opening stock were not treated as unexplained income, to be taxed as income from other sources. It thus manifests that the ITAT has taken into consideration the entire material placed on record including the report of the AO. The ITAT has applied the rule of consistency and rejected the enqjiry made by the AO in the relevant assessment year. No doubt principles of res judicata are not applicable to the Income-Tax proceedings however, it is equally well

		settled law that rule of consistency is a well- established and recognised principle applicable to the Income-Tax proceedings. Pertinently, the Assessee had closed his business in July, 2015 after selling all the stocks and the survey carried out at a later stage would not have strong evidentiary value. Besides, all these aspects are completely factual in nature and we are unable to find any perversity in the impugned order. The factual findings recorded by the Income-Tax authorities, have been examined by the last fact-finding authority i.e. the IT AT. In absence of any perversity in the impugned order, court is not inclined to entertain the present appeal, which urges questions of law that are entirely resting on findings of fact. Therefore no question of law, much less substantial question of law, arises for consideration. Accordingly, the appeal stands dismissed."
2.	*NEENA PRAFUL SAWLANI VERSUS I.T.O., WARD 1 (3) (8) , SURAT 2022 (11) TMI 465 - ITAT SURAT*	*Unexplained investment u/s 69A - cash deposit by appellant in her two bank account - cash deposit in bank account during demonetization year - HELD THAT:- Keeping in view that despite furnishing complete details for previous and subsequent period of demonetization year, the assessee has discharged his onus by showing the magnitude of cash deposit, during demonetisation period was not at much variance, comparative to previous and subsequent period, therefore, the addition made by AO does not stand in judicial scrutiny and we direct to delete the addition made. Appeal of assessee is allowed.*

9. The ld. counsel further argued in respect of **ground no. 9** and placed the submission which is extracted as below:

"6. Submissions in respect of Ground No. 9

Ground No 9	*9. That the CIT(A) NFAC has erred in confirming the order of the AO ignoring the position of law that provisions of section 68 cannot be applied in respect of income from a source which has already been taxed which would amount to double taxation.*

a) To begin with, your Honor's kind attention is drawn towards section 68 f the income tax act 1961 which is reproduced hereunder: -

Cash credits.

47 68. 48Where any sum is found credited in the books49of an assessee maintained for any previous year, and the assessee offers no explanation49 about the nature and source thereof or the explanation offered by him is not, in the opinion of the 50[Assessing] Officer, satisfactory, the sum so credited may49 be charged to income-tax as the income of the assessee of that previous year :

51[51a[Provided that] where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a)the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

> *51b[Provided further] that nothing contained in the first proviso 51c[or second proviso] shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]*

b) On perusal of the text of section 68, it is evident that section 68 can only be invoked if the assessee is unable to explain the source of any sum found credited in the books of accounts. However, in the present case, the appellant had duly explained that the cash was deposited out of business receipts which were part of the audited results for the AY 2017-18. It is further pertinent to mention h ere that since the cash forms part of revenue receipts, as such, the appellant has duly paid tax on the same and any addition made in respect of such cash deposited would amount to double taxation which is against the principles of law. In this regard we are relying upon the following case laws: -

Sr. No	*Citation*	*Brief*
1.	***[2022] 138 taxmann.com 141 (Bangalore - Trib) Anantpur Kalpana vs ITO***	*INCOME TAX : Where Assessing Officer made addition under section 68 on account of cash deposited by assessee in its two bank account post demonetization, since said cash deposit was towards assessee's sale proceeds which was already offered to tax by assessee and admitted by revenue as revenue receipt, impugned addition made under section 68, resulting in double taxation, were liable to be deleted*
	[1996] 84 TAXMAN 146 (CAL.) HIGH COURT OF CALCUTTA CIT v. Associated	*Section 69A of the Income-tax Act, 1961 - Unexplained moneys - Assessment year 1979-80 - Assessing Officer treated high denomination notes worth Rs. 81,000 as unexplained money, disbelieving assessee's explanation as to how he came into possession of same and added same in income of assessee and also imposed penalty - Tribunal found that assessee had sufficient cash in hand and in books of account of assessee cash balance was usually more than*

	Transport (P.) Ltd.	*Rs. 81,000 - It, deleted addition and cancelled penalty - Whether finding of Tribunal being on basis of appreciation of facts against which no question of perversity had been raised, Tribunal was right in deleting addition and consequent penalty - Held, yes*

10. The ld. counsel further argued in respect of **ground no. 10** and placed the submission which is extracted as below:

"7. Submissions in respect of Ground No. 10

Ground No 10	*10. That the CIT(A) NFAS has erred in confirming the order of the AO ignoring the position of law that no addition u/s 68 can be made where books of account had been rejected by the AO u/s 145(3) and again relying upon the same books of accounts for the purpose of section 68.*

a) Alternatively, it is humbly submitted that when the A.O. has rejected the books of account under section 145(3) of the Act then the addition under section 68 of the Act was totally unjustified. That due to this addition the A.O. has resulted in unrealistic net profit rate i.e; 28%. That even if the AO was not satisfied about the correctness or completeness of the account then the assessment could have been framed in the manner provided under section 144 of the Act. It is also submitted that the A.O has rejected the books of account under section 145(3) of the Act only on the basis of surmises and conjectures and no defect were pointed out in purchase and sales, opening stock, closing stock, expenses as debited in the books *of account. Therefore, the making of addition on account of deposit of cash which was duly accounted for in the books of account was against the facts and circumstances of the case. The reliance was placed on the following case laws:*

Sr. No	*Citation*	*Brief*
1.	*[2016] 73 taxmann.com 100 (Karnataka) CIT, Belgaum v. Bahubali NeminathMuttin*	*Section 69B, read with section 145, of the Income-tax Act, 1961 - Undisclosed investments (Stocks) - Whether where books of account of assessee had been rejected by assessing authority, same books of account could not be relied upon in an addition on account of trade creditors and also for arriving at closing stock - Held, yes [Para 15] [In favour of assessee]*
2.	*[2014] 42 taxmann. com 349 (Punjab & Haryana) CIT, Patiala v. Dulla Ram, Labour Contractor, Kotkapura*	*Section 68 of the Income-tax Act, 1961 - Cash credits [Rejection of books of account, effect of] - Whether where books of account are rejected in their entirety, Assessing Officer cannot rely upon any entry in those books of account for making an addition to assessee's taxable income under section 68 - Held, yes [In favor of assessee]*

11. The ld. CIT DR vehemently argued and relied on the order of the ld. AO. Copy of the said order of para 6.1 is extracted as below:

> *"6.1 The above discussion clearly shows that the assessee had shown inflated cash sales to cover his unaccounted money. Total sale shown*