IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'B': NEW DELHI.

BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA No.610/Del/2025
(Assessment Year: 2017-18)

Gupta Subhash & Sons HUF, F – 1, Phase – 1, Ashok Vihar, Delhi – 110 052.	vs.	ITO, Ward 34(3), Delhi.

(PAN :AAEHG0625D)

(APPELLANT) (RESPONDENT)

ASSESSEE BY :Shri Lakshya Budhiraja, CA
Ms. Bhoomija Verma, CA
REVENUE BY : Shri Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing : 20.08.2025
Date of Order : 12.11.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short] dated 05.10.2023 for the Assessment Year 2017-18.

2. At the time of hearing, ld. AR of the assessee submitted that the assessee has filed the appeal with a delay of 423 days from the date of appellate order and in this regard, ld. AR submitted the written submissions and

affidavit in support. In the written submissions, the ld. AR submitted as under :-

> "1 . In continuation of the affidavit dated 30.01.2025 submitted by the Appellant on the portal and also with defect response dated 12.02.2025, the Appellant would like to substantiate further that the erstwhile counsel who represented the matter before CIT(A) only prepared the submission, uploaded it on the portal and did not follow up for the order since the order was pronounced much after the gap of 760 days after the submissions were uploaded at the portal which accounts for almost two years and one month.
>
> 2. During the first appeal proceedings the written submissions along with paper book were uploaded on 05.09.2021 and order was pronounced/uploaded on 05.10.2023 — a gap of 760 days after uploading of written submissions.
>
> 3. The Appellant had wind up his business, due to financially not viable and family disputes and was merely getting the return filed through an accountant for being compliant who was technologically challenged to figure out the complexities of online proceedings vis-à-vis online submission, adjournment and order under the tabs 'for your action' and 'for your information'.
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> 4. It is further submitted that the Appellant has been a compliant tax payer since its inception in 2013. Also, it is further submitted that none of the lower proceedings specifically the assessment proceedings and first appeal have not been decided ex-parte by the lower authorities.
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> 5. The exhaustive documents were submitted during assessment and during the first appeal It is further submitted that the written submissions with paper book relied upon were uploaded on the first notice itself and no adjournment was sought.
>
> 6. Since there was a time gap of more than two years in passing of the order after the written submission were uploaded and the erstwhile counsel did not keep a strict check at the portal tor disposal of matter, the Appellant was unaware about the order already passed by the CIT(A) and therefore this delay of 423 days

is Bonafide on the part of Appellant and prejudicial loss would be caused to the Appellant for the reasons not in the Appellant's hands.

7. Before closing it submitted that the 1d. CIT (A) issued two notices - one during the year 2022 and one another during the year 2023 in spite of the written submission already uploaded by the appellant. The Appellant came to know about the omission on the part of CIT(A) after it was apprised regarding the addition being confirmed in the first appeal.

8. It is therefore humbly requested that delay may kindly be condoned in the interest of Natural justice. The Appellant would like to rely on the following judicial pronouncements wherein the delay in filing the appeal was due to the counsel of the Appellant and there was a sufficient cause for the delay:

> The Hon'ble ITAT Mumbai in Earthmetal Electricals (P.) Ltd. v Income Tax Officer, Ward 9(1)(3) in ITA No. 239/Mum/2005 reported at [2005] 4 SOT 484 (Mum) held that the assessee cannot be held responsible for the where omission in filing the appeal occurred on part of tax consultant's state.
>
> "4 . Adverting to the facts of the present case it is seen that on account of some communication gap the appeal could not be filed in time because the chartered accountant appears to have misplaced the papers and the assessee did not enquire the fate of its appeal. In our opinion there is no mala fide imputable to the assessee. The delay in our considered opinion in filing the appeal is the result of some omission on the part of its Tax Consultant's staff. It must be remembered that in every cause of delay there can be some lapse of the litigant concerned. That alone is not enough to turn down the plea and to shut the doors against him. If the explanation does not smack of mala fide or it is not put forth as a part of dilatory strategy, the Courts must show utmost consideration to such litigant. As observed by the Hon'ble Supreme Court in the case of N. Balakrishnan (supra) the length of delay is immaterial. It is the acceptability of the explanation. That is the only criteria before condoning the delay. Therefore,

taking into consideration the overall circumstances we condone the delay in filing the appeal and proceed to decide it on merit."

(Emphasis supplied)

The Hon'ble Amritsar ITAT in Ram Lal & Sons Vs. Income Tax Officer in ITA No. 390/Asr/2005 reported at (2006) 99 TTJ (Asr) 63 held that assessee cannot be held responsible for delay occurred due to lapse on part of assessee's advocate.

"5..... Therefore, the submission of the assessee that delay occurred due to lapse on the part of their advocate, appears to be correct. The bona fide of the assessee is further established as the advocate representing the case was changed. Under these circumstances, the observations made by the learned CIT(A) that assessee might have asked the counsel not to file an appeal does not appeal to my mind, Relying on the judgment of Hon'ble Punjab & Haryana High Court in the case of Manoj Ahuja and Anr. v. IAC (supra), the decision of Cochin Bench in the case of C.G. Paul & Co. v ITO MANU/IN/O185/1994 : (1994) 49 TTJ (Coch) 692: (1994) 52 ITD 276 (Coch) where it has been held that a liberal View should be taken in a case where delay occurs due to lapse on the part of advocate chartered accountant and for promoting the cause of justice, I am of the view that the CIT(A) ought to have condoned the delay in filing the appeal. I, therefore, set aside the order of CIT(A) and direct him to treat the appeal on time. This ground of appeal is allowed"

(Emphasis supplied)

The Hon'ble Delhi High Court in Shiv Singh v N. P. C. C. Ltd reported at MANUDE/01 20/1998 substantial justice cannot be denied where delay is imputed to the counsel and not to the petitioner. The 'sufficient cause' depends upon the facts of the case and it is the court which has to be satisfied that there was a sufficient cause.

"37. Apart from the fact that the delay in this case cannot be imputed to the petitioner but to his Counsel, there is other

> consideration of denial of substantial justice if delay is not condoned in this case. As noticed below the learned Arbitrator has declined to award interest pendente lite covering a period of about 5 years under misconception and ignorance of law declared by the Supreme Court and that part of the award is patently wrong and contrary to law. The award to this extent, unless it is corrected ill result in substantial injustice and loss to the petitioner. In view of the legal position as noticed above to advance substantial justice, technical ground of delay should not be allowed to stand in its way.
>
> (Emphasis supplied)
>
> 9. In light of above facts & compliant nature of the Appellant and the judicial precedents relied upon, it is most humbly requested that delay in the Appellant's case may kindly be condoned to meet the substantial justice."

3. On the other hand, ld. DR of the Revenue objected to the above submissions and delay is considerable. It should not be condoned.

4. We have heard both the counsels on the issue of condonation of delay. We have also gone through the orders relied on by the ld. AR of the assessee. In our considered opinion, there was a reasonable cause for the delay in filing the appeal. Therefore, we condone the delay in filing the appeal before the Tribunal.

5. Brief facts of the case are, assessee filed its return of income on 05.10.2017 declaring total income of Rs.3,49,095/- which was processed under section 143(1) of the Income-tax Act, 1961 (for short 'the Act'). The case was selected for scrutiny through CASS. Notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. In response, ld.

AR submitted relevant information from time to time. The AO observed that as per the information available with the Department, the assessee has deposited cash of Rs.75,00,000/- in its bank account maintained with HDFC Bank. However, inspite of repeated directions, no satisfactory reply with nature and source of cash deposited as well as justification with regard to unusual drastically rise in the cash deposit was received from the assessee. He further observed that during the same period in FY 2015-16, cash deposit was made by the assessee of Rs.22,38,000/-. Based on the above information, the AO proceeded to make the difference of cash deposit made by the assessee during the year by reducing the amount of cash deposit made by the AO in the previous financial year and proceeded to make the addition u/s 69A of the Act to the extent of Rs.52,62,000/-.

6. Aggrieved with the above order, assessee preferred an appeal before the NFAC, Delhi and filed detailed submissions. After considering the details submitted by the assessee, he observed that in comparison to previous financial years, assessee has made huge cash deposit with reference to total sales i.e. 80.82%. Since the cash deposit during the year is abnormal compared to previous financial years, he rejected the submissions of the assessee and proceeded to sustain the addition made by the AO with the following observations :-

> "4.3.7 In this respect, it is also to be noted that, the appellant at no point of time in the appeal provided the books or the supporting evidences only relying on the AO's verification of the same. AO will not maintain an entire copy of complete books and supporting documents to provide the same to the appellate authority and it was the duty of the appellant to do the same on request of the appellate authority. Evidently, the appellant has not produced the same. Further, emphasizing the AO's verification, but countering AO findings that the cash sales are not supporting the deposits, are two contradictory positions adopted by the appellant.
>
> 4.3.8. The appellant has also argued that the AO could not make any separate addition for cash deposits when he has not rejected the books of accounts as per the Act. In the present case the net profit 'ratio as per the Form 3CD submitted by the assessee is 3.628%,0.89% and 1.48% for the for AY 2017-18 and AY 2016-17 and AY 2015-16 respectively. Thus, in view of the books now being found incorrect, even if the first AO or the first appellate authority proceeds to reject the books and estimate income, the income returned is not going to change much (9652421 - 5262000 = 4390421. 8% of 4390421 = 351233). Further, if average ratio of previous years taken will only reduce income which is not in purview of the AO. Therefore, rejection of books and estimation of income does not make any difference to the income returned by the appellant and remains only a technical/procedural aspect. The addition of the AO with respect to cash deposits is upheld."

7. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-

> "1. That the Commissioner of Income Tax (Appeal) (LD. CIT(A)) has erred in law and on facts by rejecting the appeal of the appellant purely on Conjectures and surmises, by erroneously citing non-discharge of burden by the appellant.
>
> 2. That the impugned addition of Rs.52,62,000 made by the AO and upheld by Ld. CIT(A) is in gross violation of the factual matrix of the case of the appellant vis-à-vis payment made to creditors leading to reduction in Creditors and capital over the years from the stressed sale made before demonetization.
>
> 3. That the Ld. CIT(A) has erroneously alleged that the appellant has non- submitted the complete books of accounts, when in fact, exhaustive General ground documents were submitted as requisitioned and books of accounts specifically were never requisitioned either during assessment or first review vide statutory notices issued during the pendency of both the proceedings.

4. That the action of the Ld. CIT(A) in confirming the impugned addition made by the AO has erred in recognizing that the AO has made the impugned addition solely on whims and fancies by cherry-picking what cash deposits are held legitimate and which ones are not. The AO has without any rhyme or reasons considered the cash deposit patter made during the prior previous year and has utilized the same pattern to consider only a portion of the demonetized cash deposit as legitimate while holding the remainder cash deposited to be illegitimate without any basis in law and in facts. The Ld. CIT(A)'s action of upholding the addition made by AO by blowing hot and cold at the same time is non-est in law.

5. That the Ld. CIT(A) has erred in confirming the order of the AO wherein, the AO erroneously accepted the cash deposit of Rs.22,38,000 during the prior previous year out of total cash deposit of Rs.75,00,000 during demonetization and proceeded to taint the net balance of cash deposit of Rs.52,62,000 with illegality, without any logical reasoning provided for rejecting such remaining cash deposits.

6. That the illegal action of Ld. CIT(A by confirming the addition made by the AO, amounts to double addition of income as the cash sales have already been offered for taxation in the total sales.

7. That the action of Ld. CIT(A) in upholding the addition made by the is against the principles of consistency, by accepting the sales including cash sales in previous years and the current year, while rejecting cash deposited only during the demonetization period from authentic sales, despite the explanations provided by the appellant."

8. At the time of hearing, ld. AR of the assessee submitted as under :-

"8.3 Coming to the cash sales made during the year under consideration, the Appellant had made:

S. No.	Description	Amount
1.	Total Sale of the Goods	Rs.96,51,421/-
2.	Non-cash Sale	Rs.21,21,618/-
3.	Cash Sale	Rs.75,29,803/-

Thus, the cash sales accounted for 78% of the total sales made during the year under consideration. The Appellant had further deposited the aforesaid amount received from cash sales along with the cash in hand into his bank account. The same as tabulated at Page 4 of the Ld. A.O.'s Order is reproduced herein below:

S. No.	Description	Amount
1.	Total cash deposit in Bank in F.Y. 2016-17	Rs.78,00,000
2.	Total cash deposit in Bank from 01.04.2016 to 08.11.2016 (pre-demonetization)	Rs.3,00,000
3.	**Total cash deposit in Bank from 09.11.2016 to 31.12.2016 (demonetization period)**	**Rs.75,00,000**

It is submitted that the Learned Assessing Officer proceeded to make a net addition of *Rs.*52,62,000/-, having accepted only *Rs.22,38,000/- of the total Rs.*75,00,000/- deposited by the Appellant during Assessment Year 2017-18, and that this adjustment was based solely on surmise and conjecture, in complete disregard of the explanations and evidence furnished by the Appellant.7.4. That during the assessment proceedings, the Appellant had duly submitted an exhaustive list of documents as already mentioned above, and re-appended to the Paper Book submitted before this Hon'ble Bench as well (from Pages 1 - 71). The same proves the genuineness of the cash sales made during the A.Y. 2017-18 and none of these evidences stand discussed or rejected by the Ld. A.O. at the time of passing the impugned order. Furthermore, as also evident from the documents submitted during the assessment, the source of the cash deposited during the demonetization period was entirely from the cash sales and cash in hand available in the books of accounts.

Furthermore, as also evident from the documents submitted during assessment, the source of the cash deposited during the demonetization period was entirely from the cash sales and cash in hand available in the books of accounts. The Ld. A.O. has therefore accepted the Appellant's total and cash sales for the year under review without question. Once those sales are admitted as genuine, the bank deposits of the cash proceeds must likewise be accepted. To uphold the sales but disallow the related deposits is inherently inconsistent and unsupported by any evidence suggesting the funds arose from

a source other than the accepted sales. It is further submitted that every sale, whether for cash or on credit, has been fully recorded under "Sales" in the Trading and Profit & Loss Account, and that the financial statements for the year ended 31 March 2017 were independently audited by a Chartered Accountant. Accordingly, the Ld. A.O.'s finding that the Appellant "could not satisfactorily explain the nature and source of the cash deposits" for AY 2017-18 is wholly without foundation, since all cash receipts arose from sales already offered to tax in the books. The observations of the Learned Assessing Officer at pages 1 and 2 of the assessment order are reproduced below for ease of reference:

> As per information available with the department, the assessee has deposited cash amounting to Rs.75,00,000/- into its bank account no.01562000026048 with HDFC Bank.
>
> Note : If digitally signed, the date of digital signature may be taken as date of document.
> CIVIC CENTRE, MINTO ROAD, MINTO ROAD, NEW DELHI, NEW DELHI, Delhi-110 002
> Email : DELHI.IT034,3@INCOMETAX.GOV.IN
>
> However, in spite repeated no satisfactory reply with nature and source of cash deposit as well as justification with regard to unusual drastically rise in the cash deposit has been received from the assessee. It is pertinent to mention here that during same period in the financial year 2015-16. the cash deposit was of Rs.22.38.000/- Hence , there is unusual, unexplained and drastically hike in the case deposit during demonetization period is hereby added to taxable income of the assessee u/s. 69A of the Income Tax Act. 1961
>
> (Addition : Rs.52,62,000/-)

The Ld. AO has therefore erred in failing to pass the order on merits and has passed only a nonspeaking order founded entirely on surmise and conjecture, without any real consideration of the Appellant's substantive evidence and submissions. Now in this respect it is further submitted that:

- **No enquiry was conducted by the Ld. A.O. under Sec.l42(2) of the Act to substantiate the finding and allegation that the source of cash deposited in the bank by the Appellant was ingenuine:**

8.4 That the Ld. AO has made the entire impugned addition merely on the basis of surmises and conjectures without conducting any specific enquiry whatsoever in this regard to substantiate his findings and alleging that the money deposited into the bank account was out of bogus sale while making the impugned addition u/s 69A r.w.s 115BBE of the Act. Furthermore, it is pertinent to note that the Ld. A.O., in making the addition, has not provided any specific rationale nor has he demonstrated any reasonableness in

evaluating the adequacy of the explanation and supporting documents regarding the disputed cash deposit. The deposit was necessitated by the demonetization announcement, which rendered currency notes of rupees five hundred and one thousand to become invalid as legal tender, thus requiring their deposit into a bank account. Simply asserting that the explanation or source of the cash deposit constitutes the undisclosed income of the Appellant and attributing it to demonetization lacks substantive evidence and relies solely on suspicion, conjecture, and unsubstantiated assumptions.

8.5 Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **Lalchand Bhagat Ambica Ram** v. **CIT, [1959] 37 ITR 288 (SC),** wherein under similar facts and circumstances the Hon'ble Court has held that:

15. It is in the light of these observations that we have to determine the question arising before us in the present appeals It is clear on the record that the appellant maintained its books of account according to the mercantile system and there were maintained in its cash books two accounts: one showing the cash balances from day to day and the other known as "Almirah account" wherein were kept large balances which were not required for the day-to-day working of the business. Even though the appellant kept large amounts in bank deposits and securities monies were required at short notice at different branches of the appellant.	In the present case, the Appellant has been maintaining duly audited books of accounts and cash books which were submitted before the Ld. A.O. and Ld. CIT(A) during the course of the assessment and appeal proceedings respectively.
15.... The Appellant had submitted a statement of the cash balance for the relevant year before the income-tax authorities. The entries in the statement showed that there was Rs.3,10,681-13-9 and it was highly probable that the high denomination notes of Rs.2,91,000 were included in this sum of Rs.3,10,681.	The Appellant herein had submitted the statement of cash sales/balance (cash books) reflecting the cash sales before the lower authorities. It is this cash, emanating from cash sales that was deposited in the bank account.
15. ... The books of account of the appellant were not challenged in any other manner except in regard to the interpolations relating to the number of high denomination notes of Rs.1,000 each obviously made by the	In the case at hand, neither the books of accounts were challenged nor the cash sales made during the year were rejected. Rather the cash deposited (arising from the

appellant in the accounts for the assessment year in question in the manner aforesaid and even in regard to these interpolations the explanation given by the appellant in regard to the same was accepted by the Tribunal.	cash sales and the cash in hand) during the demonetization period - that has been added back. The Appellant was not asked either during the assessment nor even during appellate proceeding for producing books of accounts.
16. If these were the materials on record which would lead to the inference that the appellant might be expected to have possessed as part of its cash balance at least Rs.1,50,000 in the shape of high denomination notes on January 12, 1946, when the Ordinance was promulgated_was there any material on record which would legitimately lead the Tribunal to come to the conclusion that the nature of the source from which the appellant derived the remaining 141 high denomination notes of Rs.1,000 each remained unexplained to its satisfaction. If the entries in the books of account in regard to the balance in Rokar and the balance in Almirah were held to be genuine, logically enough there was no escape from the conclusion that the appellant had offered reasonable explanation as to the source of the 291 high denomination notes of Rs.1,000 each which it encashed on January 19, 1946. It was not open to the Tribunal to accept the genuineness of these books of account and accept the explanation of the appellant in part as to Rs.1,50,000 and reject the same in regard to the sum of Rs.1,41,000. Consistently enough, the Tribunal ought to have accepted the explanation of the appellant in regard to the whole of the sum of Rs.2,91,000 and held that the appellant had satisfactorily explained the encashment of the 291 high denomination notes of Rs.1,000 each on January 19. 1946. The Tribunal, however, appears to have been influenced by the suspicions, conjectures and	In the present case, the veracity of the documents submitted evidencing the genuineness of the cash sales made during the year under consideration has not been doubted. Hence, the approach adopted by the lower authorities in making the addition of cash deposited by the Appellant (generated out of the cash sales) on one hand and not rejecting the documents submitted vis-a-vis the genuineness of the cash sales (which forms part of books of accounts) on the other hand is unreasonable and self-contradictory. Thus, the same amounts to double addition.

surmises which were freely indulged in by the Income-tax Officer and the Appellate Assistant Commissioner and arrived at its own conclusion, as it were, by a rule of thumb holding without any proper materials before it that the appellant might be expected to have possessed as part of its business. cash balance of at least Rs.1,50,000 in the shape of high denomination notes on January 12, 1946,—a mere conjecture or surmise for which there was no basis in the materials on record before it.	
21. Unless the Tribunal had at the back of its mind the various probabilities which had been referred to by the Income-tax Officer as above it could not have come to the conclusion it did that the balance of Rs.1.41,000 comprising of the remaining 141 high denomination notes of Rs. 1.000 each was not satisfactorily explained by the appellant. 22. If the entries in the books of account were genuine and the balance in Rokar and the balance in Almirah on January 12, 1946, aggregated to Rs.3,10,681-13-9 and if it was not improbable that a fairly good portion of the very large sums received by the appellant from time to time, say in excess of Rs. 10.000 at a time, consisted of high denomination notes, there was no basis for the conclusion that the appellant had satisfactorily explained the possession of Rs.1,50,000 in the high denomination notes of Rs. 1.000 each leaving the possession of the balance of 141 high denomination notes of Rs. 1.000 each unexplained. Either the Tribunal did not apply its mind to the situation or it arrived at the conclusion it did merely by applying the rule of thumb in which event the finding of fact reached by it was such as could not reasonably be entertained or the facts found were such as no person acting judicially and properly instructed as to the relevant law could have found or the Tribunal in arriving at its findings was influenced by irrelevant considerations or indulged in conjectures,	The lower authorities in the present case have accepted the cash sales, which was duly declared in the books of accounts by the Appellant. However, the cash deposited by the Appellant in his bank account emanating out of such sales has been added back. The said addition is made only on the basis of surmises and conjectures and no enquiry has been conducted by the Ld. A.O. for doubting the veracity/ genuineness of the cash sales made during the year.

surmises or suspicions in which event also its finding could not be sustained.	
23. ... The mere possibility of the appellant earning considerable amounts in the year under consideration was a pure conjecture on the part of the Income-tax Officer and the fact that the appellant indulged in speculation (in Kalai account) could not legitimately lead to the inference that the profit in a single transaction or in a chain of transactions could exceed the amounts, involved in the high denomination notes,—this also was a pure conjecture or surmise on the part of the Income-tax Officer.	In the present case also, the lower authorities have heavily relied on the fact that the cash sales during the year under consideration had substantially increased; however, no enquiry was conducted to conclude the in-genuineness of the said cash sales. Further, the lower authorities have also ignored the fact the Appellant had been disposing the stock purchased during the year in the same year itself.
27. It is, therefore, clear that the Tribunal in arriving at the conclusion it did in the present case indulged in suspicions, conjectures, and surmises and acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in other words, perverse and this court is entitled to interfere. 28. We are, therefore, of opinion that the High Court was clearly in error in answering the referred question in the affirmative. The proper answer should have been in the negative having regard to all the circumstances of the case which we have adverted to above.	Thus, in light of the similarity with the Judgement of the Hon'ble Supreme Court the present addition deserves to be deleted.

Further, ld. AR relied on the following decisions :-

(i) Hon'ble Supreme Court in the case of CIT vs. Orissa Corporation (P) Ltd. (1986) AIR 1849 (AIR);

(ii) ITAT, Kolkata Bench in M/s. SPML Infra Ltd. vs. DCIT, ITA No.1228/KOL/2018;

(iii) ITAT, Delhi Bench in ACIT vs. Sur Buildcom Pvt. Ltd., ITA No.6174/Del/2013;

(iv) ITAT Ahmedabad Bench in Shree Sanand Textile Industries Ltd. vs. DCIT (OSD), Circle 8, Ahmedabad – ITA No.995/Ahd/2014 & CO No.167/Ahd/2014;

(v) ITAT, Delhi Bench in ITO Karnal vs. JK Wood India Pvt. Ltd., ITA No.1550/Del/2020;

(vi) ITA, Delhi Bench in Harisons Diamond Pvt. Ltd. vs. ACIT, Delhi, ITA No.1426/Del/2021;

(vii) ITAT, Bangalore Bench in Anantpur Kalpana vs. ITO in ITA No.541/Bang/2021;

8.14 It is submitted that the Appellant's sole source of income is its fabric-trading business. Confronted with cut-throat competition in the imported fabrics segment and the attendant customs formalities, the Appellant in this A.Y. elected to source exclusively from domestic suppliers. This shift produced enhanced gross profit margins, owing to the elimination of direct trading or customs-related expenses that had been incurred in the previous years.(See the Audit Profit & Loss Account for the year ended March 31.2017, 2016 and 2015 at Pgs.2, 8 and 13 of the PB 1. respectively). The Ld. A.O. has previously accepted cash deposits of Rs.22,38,000 in the immediately preceding assessment year, yet in the current assessment year 2017-18 he has disallowed the remaining Rs.52,62,000/- treating it as "unexplained" despite the identical transactional pattern which was based domestically now due to business exigencies.

8.15 It is pertinent to pinpoint the observation listed in the CIT(A)'s Order, citing the lack of evidences, when in effect the same has been duly furnished. The same is reproduced below for ready reference:

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> 4.3.2 Further, not a single line is submitted by the appellant on why the cash sales were so abnormally high in the year, how they relate to the demonetization period Nature of business and how the cash sales arise is also not explained The appellant just goes on to submit case law after case law without establishing the facts. None of the case laws have similar facts and business circumstances being same as the appellant is not brought out Further, the next year A.Y. 2018-19, sales are 0 and the same trend of nil/loss/minimal sales in seen in all the succeeding years. The AO considering the trend has allowed the

amount of cash deposits in previous year as coming from cash sales, even though the turnover is less, thus allowing for any increase in cash sales for the year.

4.3.3 In this respect, what is clear is that there is money with the appellant and the appellant has not given any explanation of how the money came about and whether it is taxable income that has been brought to tax or not The AO has invoked section 69A of the IT Act in bringing the cash deposits to tax.

8.16 It is reiterated that the cash deposits in question are derived solely from genuine cash sales, fully substantiated by the exhaustive documentation furnished during the assessment proceedings. Notwithstanding receipt of all requested records, the Ld. A.O., without any objective basis, accepted only that portion of cash sales corresponding to the previous year's level and disallowed the remainder on mere whim and conjectures, bereft of forming a live link and causal nexus and/or conducting a proper investigation and enquiry under Sec. 142(2) of the Act. Further, in the event they were unsatisfied, neither the AO nor the CIT(A) exercised their statutory powers under sections 131 or 133(6) of the Act to summon further evidence or examine relevant witnesses, and no such evidence has been placed before the Appellant u/s 142(3) of the Act (case laws to the said effect have been explained in the earlier part of this submission). Instead, they brushed aside the Appellant's detailed submissions as substandard or as mere afterthoughts, effectively masking their own failure to conduct a proper enquiry.

8.17 The Ld. A.O. has therefore by his action of choosing to accept the part of cash sales as legitimate and rejecting the balance part is blowing hot and cold at the same time which invalid in the eyes of law as per the decision of Radhasaomi Satsang v Commissioner of Income Tax [1992] 60 Taxman 248 (SC) wherein it was held that without any change in facts, no change in opinion can be made. A review of Table 3 shows the department has annually accepted all of the Appellant's purchases without question. Only in the year under review (A.Y. 2017-18) were the bank deposits from sales of those purchases singled out for scrutiny, resulting in an unwarranted addition to the Appellant's income despite no queries ever having been raised during the previous years, about the underlying purchases, the corresponding sales or the customs duties paid thereon.

- The Learned CIT(A) erred in dismissing the Appellant's appeal by concluding that books are incorrect on surmises and conjectures and not proceeding to reject them and making addition on estimate basis would have resulted in reduction of income which being out of purview of AO - the same justified sustaining the addition - citing it to be a procedural aspect.

8.18 It is submitted that the Ld. CIT(A) confirmed the impugned addition by pointing to an alleged anomaly: namely, that the Appellant, who in prior

and subsequent years limited cash dealings—reported unusually high cash sales in A.Y. 2017-18. The CIT(A) also noted that the gross profit margin jumped from 1.48% and 0.89% in the two preceding years to 3.628% in the year under consideration. However, the CIT(A) failed to take into account the Appellant's explanation, which is being set out before this Hon'ble Bench as under:

a) **Severe Business Downturn** (F.Y. **2015-16 & 2016-17):** In the financial years 2015-16 and 2016-17, the Appellant was confronted with extraordinarily adverse market conditions that exacted a heavy toll on his trading operations, culminating in a pronounced deterioration of the business's financial health. The closing stock position is as follows:

TABLE 4

Sr No.	Contents	Figures
1.	Closing Stock as on 31.03.2013	Nil
2.	Closing Stock as on 31.03.2014	Nil
3.	Closing Stock as on 31.03.2015	2,34,64,224 (Stock in **transit)**
4.	Closing Stock as on 31.03.2016	Nil
5.	Closing Stock as on 31.03.2017	Nil

b) **Distress-Sale Strategy (F.Y. 2016-17):** This predicament necessitated a desperate strategy of distress sales during F.Y. 2016- 2017. Faced with mounting liabilities which was unusual to the Appellant's established practice of realising and clearing each year's stock within that same year, it became imperative to implement a distress-sale programme in F.Y. 2016-17. To generate immediate liquidity (to address the escalating burden of certain opening creditors). The Appellant disposed of inventory rapidly via both cheque and over-the-counter cash receipts.

c) **Shift in Commercial Focus & Its Impact on Gross Margins** : With this urgent objective in mind, the Appellant, driven by pressing business needs, shifted focus from maximising gross profit to prioritising stock liquidation and debt repayment, which in turn led to an increase in gross profit ratio. Thus, although cash sales were not part of the Appellant's usual business practice, the dire circumstances compelled him to resort to over-the-counter cash transactions during the festival season starting October 2016. It is respectfully submitted that the Ld. A.O. and the Ld.CIT(A) has therefore erred in confirming the addition of ?52,62,000, flagrantly disregarding the core facts of the Appellant's case - namely, that the cash generated from the impugned sales was applied directly to discharge trade creditors, as evidenced by

the substantial reduction in outstanding payables during the year under review as visible vide the table below. Consequently, this urgent strategy led to a **significant reduction in debt liability by Rs.1,02,73,252 during F.Y 2016-2017.** This was achieved as creditors were promptly repaid immediately following the sale of stock. See:

TABLE 5

Sr No.	Particulars	Opening value as on 01.04.2016	Addition/ Purchase during the year	Closing value as on 31.03.2017	Difference
1.	Uniexcel Polychem		86,12,054	15,63,054	70,49,000
2.	Uniclear Logistics	32,18,252			32,18,252
3.	Him Logistics Pvt Ltd	6000			6000
4.	Shaoxing County Honest Imp. & Exp. Co. Ltd	10,41,117.98		10,41,117.98	
				Grand Total	**1,02,73,252**

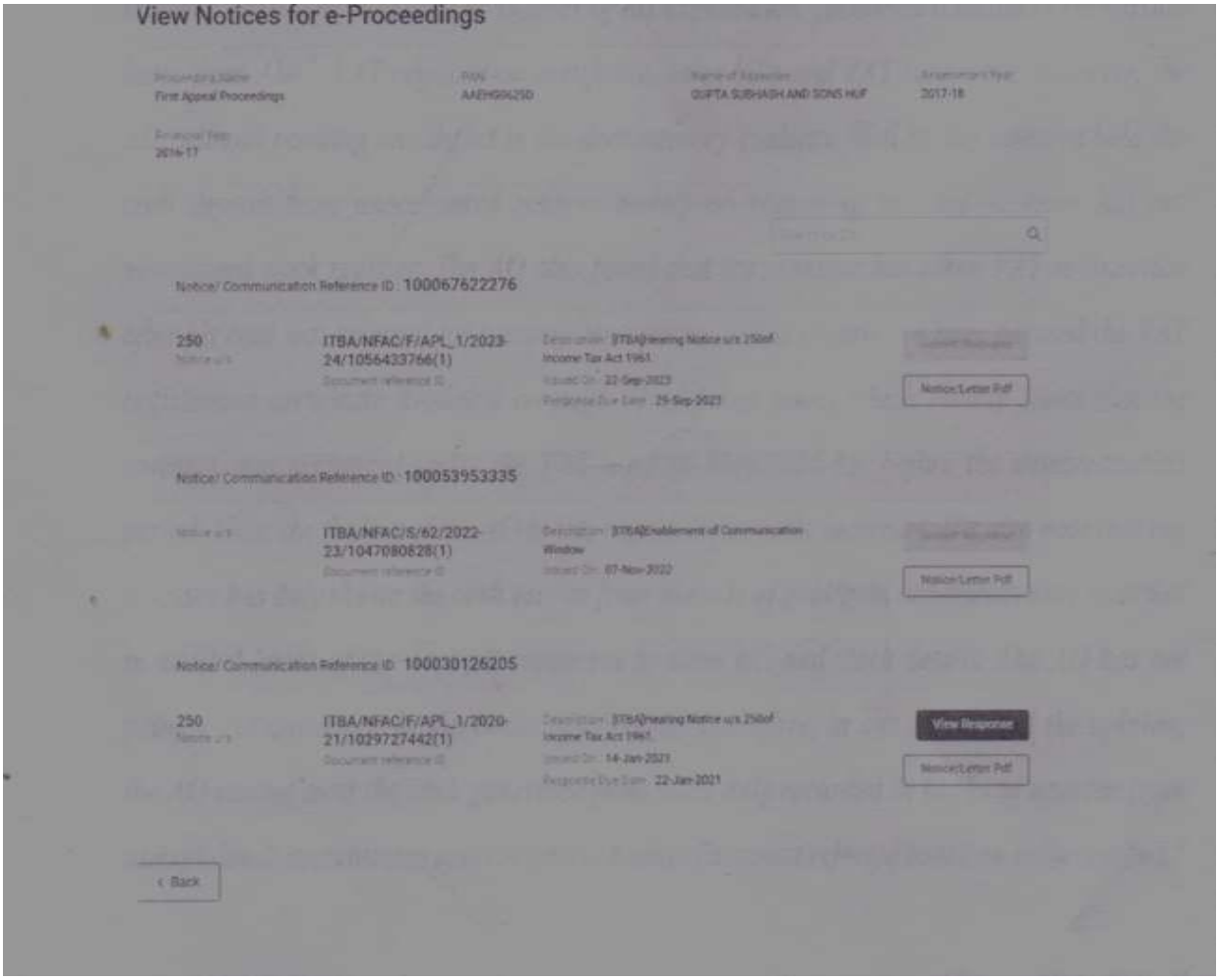
d) The ledger accounts and bank statements documenting the aforementioned creditor repayments, were submitted during the Assessment proceedings and have also been made part of the PB I at Pages 38-55. Regarding the cash deposits, since the Appellant had engaged in over-the-counter cash sales, the accumulated cash had to be deposited into the banks following the Government of India's demonetization directive issued on 08.11.2016. This was necessary to facilitate the required payments to creditors. It is respectfully submitted that, even without the imposition of demonetisation, the cash receipts would necessarily have been remitted to the banking system in order to discharge the Appellant's trade creditors, cash payments being prohibited by virtue of Section 40A(3) of the Act.

8.19 Furthermore, it is settled law that in the event the Ld. A.O. was not satisfied about the correctness/completeness of the Books of the Appellant - the same could have been rejected by the Ld. A.O. upon judicious exercise of his/her power u/s 145(3) of the Act. It is essential to state that even before rejection of books of account, the A.O. must record a clear finding that the system of accounting followed by an assessee cannot deduce correct profit or

income. The CIT(A) has however cited in his Order that the Books in the case at hand **"are being found incorrect"** (see Para 4.3.8 of his order dated 05.10.2023) without even asking for the books of accounts. The observation regarding non-production/submission of books of accounts by the Appellant in para 4.3.7 of its Order dated 05.10.2023 is reproduced below:

> 4.3.7 In this respect, it is also to be noted that, the appellant at no point of time in the appeal provided the books or the supporting evidences only relying on the AO's verification of the same. AO will not maintain an entire copy of complete books and supporting documents to provide the same to the appellate authority and it was the duty of the appellant to do the same on request of the appellate authority. Evidently, the appellant has not produced the same. Further, emphasizing the AO's verification, but countering AO findings that the cash sales are not supporting the deposits, are two contradictory positions adopted by the appellant.

8.20 In rebuttal to the above, it is being submitted that books of accounts have never been sought by the CIT(A). Copy of the screenshot of the Appellate proceedings is reproduced below:



8.21 It is also submitted that a perusal of the statutory notices issued in the course of the Assessment Proceedings (see PB II, pp. 1-22) make it evident that the Ld. A.O. never required the production of the Appellant's complete books of account, underscoring the absence of any genuine inquiry into the Appellant's records. It is further submitted that the Ld. CIT(A) likewise made no request for the production of the Appellant's books of account, yet upheld the impugned addition in a cursory manner—effectively rubber-stamping the AO's conclusion without any independent scrutiny. A screenshot of the first-appeal portal and the notices issued during those proceedings are annexed at Pages 28-31 and 32-36 of PB II for the Bench's reference.

8.22 In furtherance to the above, the Appellant lastly submits that the Ld. A.O. and the Ld.CIT(A) have grossly erred in making/sustaining the impugned addition without first rejecting the duly audited books of account under Section 145(3) of the Act. In the absence of any recorded finding that the books of account were incorrect or incomplete, and without even requisitioning the same during assessment or appellate proceedings, the addition is without jurisdiction and contrary to settled principles of law. Having accepted the sales recorded in the books, the authorities below could not have, in law, disregarded the corresponding cash deposits as "unexplained" without first rejecting the books. Attention to the said effect is directed towards the following case laws that comprise of similar factual circumstances:

> **In** Abishek Prakashchand Chhajed **vs.** I TO, ITA No.ll3/ADH/2023, decision dated 04.10.2023, **the Hon'ble Tribunal opined as follows:**
>
> "We have heard the rival contentions of both the parties and perused the materials available on records. Admittedly, the assessee deposited cash during the demonetization period for Rs.50 lakhs in two different bank accounts. The sources of such deposit were explained by the assessee as sales proceeds of jewelry business in which he indulges during the month of October 2016. **The assessee, in support of his explanation, furnished a business permission letter from AMC, VAT registration certificate, sales bills and VAT return etc. However, the AO, without pointing any defect in the documentary evidence filed by the assessee held the cash deposit from unaccounted sources merely on reasoning that the assessee has not maintained stock register. The AO also found that the assessee has taken VAT registration after his case was selected for scrutiny assessment. In this regard, we have perused the VAT registration certificate available on page 91 of paper books which clearly states that the assessee was registered under the VAT w.e.f 06-May-2016 i.e. before the demonetization period. Thus, the finding of the AO**

> **in this regard is factually incorrect.** We also note that the assessee has duly shown the cash receipt from the sale of gold/gold ornaments duly recorded in audited books of the account supported by sales bill and stock details. The AO has not pointed out any defect in the books of accounts. Therefore, in our considered the opinion, the AO cannot treat the cash generated from sales duly recorded in books of account from unexplained/unaccounted sources unless books of account rejected based on valid reasons. ”
>
> [Emphasis Supplied]

Furthermore, in the case of **CIT Karnal vs. Om Overseas, [2008] 173 Taxman 185 (Punjab & Haryana)** the High Court has overturned any rejection of the books, bereft of justification and pinpointing the deficiencies in the audited books of accounts. See:

> “4. Aggrieved against the said order, the assessee filed an appeal before the Commissioner of Income-tax (Appeals), Karnal. The appeal filed by the assessee was partly allowed by the CIT(A), Karnal vide his order dated 12-8-2004 and the addition of Rs. 20,83,752 made by the Assessing Officer was deleted. While allowing the said deletion the CIT (Appeals), Karnal, observed as under :—
>
> "The matter has been considered. It is seen that the addition has been made by the Assessing Officer without pointing out any specific defect in the books of account. The Assessing Officer has rejected the books of account only on the ground that the appellant has not been able to keep records of raw material consumed in respect of each and every item produced by the appellant. The Assessing Officer has rejected without any justification the explanation of the appellant that consumption of raw material for each of the products cannot be reconciled in the case of the appellant because the product pattern was large and items of different designs and sizes etc. were produced by the appellant. There was no legal obligation on the part of the appellant to maintain such a record. **Audited accounts could not have been rejected without pointing out any specific defect or deficiencies in the books of account maintained by the appellant.** Moreover, the appellant’s income was 100per cent exempt and there could not have been any tax liability and higher income being declared. Thus, no purpose of the revenue has been served by making such additions. Keeping in view all these facts, addition of Rs. 20,83,752 is directed to be deleted."
>
> 8. We find no force in the arguments raised by the learned

counsel for the revenue. **While allowing the appeal of the assessee, the CIT(A) has given a finding offact that the additions have been made by the Assessing Officer without pointing out any specific defect in the books of account. The said finding has been further upheld by the Tribunal During the course of arguments, learned counsel was unable to point out any illegality or perversity in the said finding of fact. Thus, we find no infirmity in the order of the Tribunal.** No substantial question of law is arising for determination of this Court in this appeal and the same is hereby dismissed. **"**

[Emphasis Supplied]

9. To conclude, it is submitted that the Learned AO, without any substantive inquiry, simply added back Rs.52,62,000—out of the total Rs.78,00,000 deposited—to the Appellant's returned income, thereby effecting a clear double addition. In these circumstances, the Learned CIT(A) cannot legitimately sustain this addition on mere surmise and conjecture, especially when his finding that the books of account are "incorrect" (see Para 4.3.8 of his order dated 05.10.2023) is entirely devoid of logical reasoning. It is respectfully submitted that the cash sales recorded by the Appellant in F.Y. 2016-17 were genuine over-the-counter transactions, which, following the demonetisation directive, had to be lodged in the banking system. In the absence of any concrete evidence or formal inquiry by the Learned AO, it is wholly impermissible to brand these fabric sales as "bogus," or to reject the Appellant's detailed documentary proof and audited books. It is further submitted that, following A.Y. 2017-18, the Appellant discontinued the clothing business due to internal disputes involving his sons and the Karta, followed by the ill health of the Karta in the year 2019. This is corroborated by the fact that all subsequent returns filed in the Appellant's name show no business activity.

In view of the foregoing—and having regard to both jurisdictional and substantive infirmities in the impugned additions—the balance of convenience decisively favors the Appellant. Accordingly, it is most respectfully prayed that the Bench delete the additions made by the Learned AO and upheld by the Learned CIT(A)."

9. On the other hand, ld. DR of the Revenue brought to our notice page 7 of the first appellate order and submitted that the cash deposit made by the assessee during the current financial year is very abnormal as observed by

ld. CIT (A) i.e. to the extent of 80.82% compared to previous year of only 2.52%. Therefore, he submitted that he relies on the detailed findings of the lower authorities for making the above addition of cash deposits.

10. Considered the rival submissions and material available on record. We observe that the AO has observed that the assessee has made cash deposit during the year to the extent of Rs.75,00,000/- and he gave the relief to the assessee to the extent of cash deposits made by the assessee during the previous financial year to the extent of Rs.22,38,000/- and he has not clearly justified the reason for making such addition without properly verifying the books of the assessee. Further we observe that the assessee has filed detailed submissions before the ld. CIT (A) and ld. CIT (A) also observed that compared to the previous financial year, assessee's turnover has gone down and also the cash deposits were to the extent of 80.82% to the total sales declared by the assessee. Since the cash deposit during this financial year is 80.82% of the total sales, he justified the findings of the AO. In our view, he failed to appreciate the fact that in the previous financial years, the turnover of the assessee were Rs.7.80 crores, Rs.6.03 crores and Rs.8.88 crores in the previous three financial years respectively. The percentage of cash deposit is comparatively low in comparison to total sales declared by the assessee in those respective financial years. In this financial year, it is fact on record that total sales

of the assessee has drastically gone down i.e. Rs.96,51,421/- out of which assessee had deposited cash of Rs.78,00,000/-. Before us, assessee has brought to our notice that during the year, assessee has sold the goods on credit to the extent of Rs.21,21,000/- and cash sales were at Rs.75.29 lakhs. Assessee has made cash deposit of Rs.3,00,000/- during pre-demonetization period and during demonetization period, assessee has deposited Rs.75,00,000/- which is equal to cash sales made by the assessee during the year. Further it is brought to our notice that assessee has maintained proper books of account and also changed the method of sales by increasing the out of counter sales, accordingly achieved more cash sales during the financial year. From the record, it justifies for making cash deposits during the year under consideration because the cash book and books of account justifies for the same.

11. We observe that the assessee had liquidated the whole closing stock previous year itself. It has sold all the purchases of this year, the reason may be sharp decrease in the business during the year. The assessee also showed the stock movement. Therefore, assessee has devised distress sale programme during the year and achieved sales. Since assessee has sold mostly on cash sales during the year, there is a possibility that assessee had cash at his disposal during the demonetization period and accordingly deposited the above cash. Further we observe that AO has

observed that there is a cash deposit during the year and applied unjustified way of giving credit of cash deposit made by the assessee during the previous year without proper justification or verification of the nature of business. During the previous financial year, assessee has achieved Rs.8.8 crores of turnover and deposited Rs.22,38,000/- whereas in the current financial year assessee has achieved Rs.96,51,000/- turnover only and made the cash deposit of Rs.78,00,000/-. There is a complete shift in the pattern of sales compared to previous financial year and AO has proceeded to give the credit of the cash deposit of previous year without proper application of mind compared to the nature of transactions for the year under consideration. Even the ld. CIT(A) ignored the above facts.

12. With regard to issues raised by the assessee relating to no enquiry conducted by the AO u/s 142(2) on which assessee has heavily relied on the decision of Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram vs. CIT (supra) and also the issue of without rejecting the books of account, the AO has proceeded to make the addition. On this issue assessee has also relied on several decisions. After considering both the submissions of both the parties, this is being a factual matter, we are restricting ourselves to decide the issue at our disposal on the merits and no doubt the case laws relied by the assessee are applicable directly on

the facts presented before us. However since the factual issue is directly in favour of the assessee, we are restricting ourselves to adjudicate the same on factual basis, therefore, we are inclined to allow the appeal of the assessee on merits and delete the addition proposed by the AO. The other legal issues raised are kept open.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 12th day of November, 2025.

Sd/-	**sde/-**
(VIMAL KUMAR)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 12.11.2025
TS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI