**IN THE INCOME TAX APPELLATE TRIBUNAL**
**LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**
**AND SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No. 258/Lkw/2020
Assessment Year: 2017-18

| | | |
|---|---|---|
| M/s Shiva Goods Carrier Pvt. Ltd<br>Plot No. 5/A, Khargapur,<br>Ram Asrey Ka Purwa,<br>Chinhat, Lucknow.<br>PAN:AAMCS4020K | Vs. | Dy.C.I.T.,<br>Range-6,<br>Lucknow. |
| (Appellant) | | (Respondent) |

I.T.A. No. 256/Lkw/2020
Assessment Year: 2017-18

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|---|---|---|
| M/s Shiva Veener (India) Pvt. Ltd.,<br>Plot No. 5/A, Khargapur,<br>Ram Asrey Ka Purwa,<br>Chinhat, Lucknow.<br>PAN:AAMCS1640R | Vs. | Dy.C.I.T.,<br>Range-6,<br>Lucknow. |
| (Appellant) | | (Respondent) |

| | |
|---|---|
| Appellants by | Shri Om Kumar, Advocate |
| Respondent by | Shri Harish Gidwani, Sr. D.R. |
| Date of hearing | 02/05/2023 |
| Date of pronouncement | 01/06/2023 |

**O R D E R**

**PER BENCH:**

(A) Appeal vide I.T.A. No.258/Lkw/2020 has been filed by M/s Shiva Goods Carrier Pvt. Ltd. for assessment year 2017-18 against impugned appellate order dated 30/06/2020 of learned CIT(A).

(B) In the case of M/s Shiva Goods Carrier Pvt. Ltd., assessment order dated 28/12/2019 was passed u/s 143(3) of the Income Tax Act, 1961 ("IT Act" for short) whereby the assessee's total income was determined at Rs.81,80,860/- as against returned income of Rs.34,20,860/-. In the aforesaid assessment order an addition of Rs.47,60,000/- was made u/s 68 of the IT Act. The relevant portion of the assessment order is reproduced as under:

> *"5. On the evening of 8th of November, 2016 the Government of India around 8:10 P.M. informed the citizens that all 1500 and 1000 banknotes of the Mahatma Gandhi Series would be ceased to be legal tender in India from midnight i.e. from 9 November 2016 meaning thereby these notes would not be acceptable for transactions from midnight onwards. However, Government also assured the citizens and taxpayers that there was no need to panic and that they can deposit old 500 and 11000 banknotes in their bank accounts till 30/12/2016. Accordingly, the Reserve Bank of India (RBI) had withdrawn Legal Tender character of old bank notes in the denomination of Rs 500/- and Rs 1000/- w.e.f. 9 th November, 2016, through Specified Bank Notes (cessation of liabilities) Act, 2017 and Specified Bank Notes (deposit of confiscated notes) Rules, 2017.*
>
> *6. In this case, during the demonetisation period i.e. from 09/11/2016 till 30/12/2106, assessee had deposited old 500 and I 1000 banknotes [also referred as specified bank notes or in short SBNs] to the tune of Rs. 2,82,60,000/- in his bank accounts. The details of cash deposited are given below,*

| *S.No* | *Name of Bank* | *Account No* | *Cash deposited during demonetization period* |
|---|---|---|---|
| *1* | *Bank of Baroda, Branch - Rudrapur* | *24980200006713* | *20,50,000 on 10/11/2016* |
| *2.* | *Bank of Baroda, Branch - Gomti Nagar, Lucknow* | *26700500003948* | *2, 62, 10,000 on 19/11/2016* |
| | *Total* | | *2,82,60,000/-* |

*7. Assesee had been showcaused through notice u/s 142(1) dated 21/09/2019 and 16/10/2019 to explain the source of above cash deposit during the demonetisation period. In response to the above notices, the assessee had submitted, "The company has only source of cash is cash withdrawls from its bank accounts as the company don't make any cash sale or cash receipts from its customers as a policy therefore, all the cash is generated through cash withdrawls from its bank accounts and cash is needed by the company to make payments to farmers , transporters, wages & other expenses"*

*8. Assessee's submission is considered but is not found tenable. Assessee had claimed that all the cash deposits in the demonetisation period was from available cash balance, in cash book in which source of cash was from bank withdrawals. However, in support of its claims, assessee had only given copy of cash book and a table showing total cash withdrawal during the year. However, assessee had not given any linkages of cash withdrawals and whether these withdrawals were available for redeposit. Analysis of cash book shows that bank drawings are made at regular interval. The plea of the assessee can only be considered for withdrawals made in the month of October and November (till 08/11/2016) in which cumulative withdrawal of Rs 2,35,00,000/- were made. Hence the amount of Rs.2,82,60,000 – Rs.2,35,00,000/- i.e. Rs.47,60,000/- still remains unexplained."*

(B.1) The Assessing Officer treated the aforesaid amount of Rs.47,60,000/- as unexplained deposit of specified bank notes i.e. (old bank notes of 500 and 1000 denominations ("SBN" for short) as unexplained; and invoked section 68 read with section 115BBE of the IT Act, resulting in the aforesaid addition of Rs.47,60,000/-. The assessee filed appeal in the office of the learned Commissioner of Income Tax (Appeals) ["learned CIT(A)" for short]. Vide impugned appellate order dated 30/06/2020, the learned CIT(A) dismissed the assessee's appeal and upheld the aforesaid addition of Rs.47,60,000/- made by the Assessing Officer in the aforesaid assessment order dated 28/12/2019. The present appeal vide I.T.A. No.258/Lkw/2020 has been filed by M/s Shiva Goods Carrier Pvt. Ltd. against the aforesaid impugned appellate order dated 30/06/2020 of learned CIT(A). The grounds of appeal, originally filed by the assessee are as under:

"1. *The learned CIT(A) erred in confirming the addition made of Rs.47,60,000/- towards cash deposited in bank account without appreciating that the appellant had duly discharged the onus by proving the source of cash deposit in the bank accounts by filing complete books of accounts and Bank Statements, as the total cash deposited in the bank accounts was withdrawn from bank accounts only and there was no cash inflow in the books of appellant other than from bank accounts, which is not disputed. Further, cash balance as on 08.11.2016 was Rs.4,22,66,866.40 in books of accounts and out of said Rs. 2,82,60,000/- only were deposited in banks which were demonetised currency and after deposit of this sum an amount of Rs.1,40,06,866.49 were still available in the hands of the appellant and the Ld. AO has not rejected the books of accounts u/s 145(3), so he cannot make any separate addition for cash deposit and hence, the addition confirmed of Rs.47,60,000/- is without any justification and liable to be deleted.*

2. *The Ld. CIT(A) failed to appreciate that the transaction is to be looked from the businessmen point of view, the appellant is engaged in the trading of agriculture wood those are purchased in cash directly from farmers through various branches of appellant and another business of the appellant is of transportation which also require cash, hence, cash in hand is always maintained in all the 48 branches and Head Office for smooth running of business and also that no further documents were called for either by the Ld. AO or the Ld. CIT(AJ during proceedings of case and when books of accounts of assessee were accepted by Assessing officer as genuine, and cash balance shown therein was sufficient to cover high denomination notes held by assessee, assessee was not required to prove source of receipt of said high denomination notes which were legal tender at that time, hence, having accepted the books of Accounts as genuine, the source of cash deposited in the bank account gets explained and thus, the addition confirmed of Rs.47,60,000/- is unjustified and liable to be deleted.*

3. *Without prejudice to the above grounds, the Ld. CIT(A) has grievously erred in law and or on facts by not considering the fact that the appellant have submitted before Ld. AO, entire*

*cash books, sale/purchase, cash withdrawals details and Balance Sheets of current and previous years and average cash holding was greater than the amount deposited during demonetisation and all assessment years was scrutinised by the department and the cash balance in the books of assessee was explained during previous years but when the same cash was deposited in the banks due to demonetisation it becomes unexplained in the eyes of department and if Ld. AO and Ld. CIT(A] is in opinion that the cash was utilised, than they must elaborate that how and where this cash was utilised without passing entries in the books of accounts, and what sources/proof the department have to come to this conclusion that this cash was utilised elsewhere and the department must also prove with the evidence that the demonetised currency which was deposited in banks was out of the books, no such findings were recorded in the orders passed by the Ld. AO or Ld. CIT(A), hence, illegal and liable to be deleted.*

4. *Without prejudice to the above grounds, the learned CIT(A) has grievously erred in law and or on fact by not considering the plea of appellant on wrong applicability of Sec. 68 as when the Ld. AO has accepted all the books of accounts of the appellant than treating cash balance of books of appellant as unexplained will lead to double taxation of one income which is against the I.T. Act, 1961 and Sec. 68 relates to the credit entries of books of accounts and in present case all cash entries are related to the bank accounts only which has already been confirmed with the banks by Ld. AO and there was no discrepancy found but without pointing specific entries, he just labelled a portion of cash deposits as unexplained without pointing out how accepted cash deposits was explained by the appellant and what documents were not submitted by the appellant related to the unexplained cash deposits, what was the parameters adopted by the Ld. AO as well as the Ld. CIT(A) in deciding the quantum of cash utilised, which is unanswered and it clearly proves that the order passed is based on presumptions only which is illegal and arbitrary in nature, hence, liable to be quashed.*

5. *Without prejudice to the above grounds, the learned CIT(A) has grievously erred in law and or on facts in not allowing sufficient opportunity to the appellant before disposing of the appeal. The details/ evidence for the appeal could not be produced for the*

*reasons stated in the statement of facts. The Ld. CIT(A] has heard the appeal at a glance only and not tried to cross verify anything as mentioned in grounds and written arguments and disallowed in a single stroke mechanically, without applying any mind and has travelled on the same track as was created by the Ld. AO. Thus there was gross violation off the principles of natural justice, hence, the order u/s 250 of Income Tax Act, 1961 passed by the Ld. CIT(A) is liable to be deleted.*

6. *Without prejudice to the above grounds, the learned CIT(A) has grievously erred in law and or on facts in not considering the ground of ad-hoc addition by the Ld. AO which is not sustainable in law, the Ld. AO has accepted the plea of cash holding of Assessee to the tune of Rs.2,32,00,000.00 withdrawn between 1st Oct. 2016 to 8th Nov. 2016 only as per Ld AO, which is factually incorrect as the amount of cash withdrawals by the appellant during the period was Rs.4,12,00,000.00, if the actual figures of cash withdrawals were taken for calculation no addition would be possible. Ld AO made this addition without assigning any reason/logic for accepting withdrawals of this period or disallowance of withdrawals of other period which is an ad-hoc addition, bad in the eyes of law, hence liable to be deleted."*

(B.1.1) During the pendency of assessee's appeal in Income Tax Appellate Tribunal ("ITAT for short), the assessee amended the grounds of appeal, and filed concise grounds of appeal as under:

"1. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition of Rs.47,60,000/- u/s 68 of the I.T. Act 1961 even though the appellant had duly proved the source of cash generation.*

2. *That the Ld. AO as well as Ld. CIT (A) has grossly erred in law and to the facts of the case in making lump sum addition on the basis of his presumptions and guess work, without the support of any material either collected or placed upon records.*

3. *That the Ld. AO has grossly erred in law and to the facts of the case in making addition on the basis of wrong figures of cash withdrawals of the appellant and the Ld. CIT (A) has ignored this fact while confirming the additions made by Ld. AO.*

*4. That no proper and reasonable opportunity if any was ever afforded by the Ld. AO as well as Ld. CIT (A) prior proceeded to complete the assessment proceedings and thereby making illegal and impugned additions in the declared income of the appellant.*

*5. The appellant prays that the Order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer also be set aside."*

(B.2) The assessee also filed statement of facts running into 28 pages (page 9 to page 37 of Form-36). The statement of facts, inter alia, contained the following information regarding appellate proceedings in the office of the learned CIT(A):

*"15. That on 26.06.2020, inspite of coronavirus epidemic, the counsel of the appellant went to the office of CIT(A)-2, Lucknow but the Ld. CIT(A)-2, Lucknow was not present in the office due to some meeting, so the counsel of the appellant submitted written arguments and noted for next date of hearing as 30.06.2020. The copy of the written arguments submitted before Ld. CIT(A) is annexed herewith as Annexure-G.*

*16. That the key points of written arguments submitted to CIT(A] are reproduced here-*

*A. That the addition of Rs.47,60,000/- was made by the AO just on wild imagination & speculation of that all cash withdrawals were being made by the company only after utilisation of cash in his hand without considering the nature of businesses, requirement of cash in those businesses, number of offices and number of bank accounts maintained by the assessee as all these factors directly relates to the quantum of cash needs of anyone.*

*B. That the addition of Rs.47,60,000/- was made by AO in spite of acceptance by himself the plea of cash holding by assessee to the tune of Rs 2,32,00,000/- which was withdrawn during Oct. and Nov. 2016 what parameters were being applied in accepting this amount has not being specified? While it is a well settled principle that ad-hoc addition under Income Tax Act is bad in the eyes of law.*

*C. That the application of section 68 of the Income Tax Act, 1961 by the AO in the present case without pointing any specific entry of the books of accounts of the assessee is not justified. He only asked about the entries of the cash deposits in bank accounts which was well replied on facts but he did not make any further quarries on this or on any other entries posted in the books to prove that cash balance in the books of assessee is false.*

*D. We rely in the order of Ld. Delhi Tribunal in the case of Gordhan, Delhi v/s DCIT dated 19/10/2019. The relevant extract is reproduced below: -*

> *"no addition can be made u/s 68 on the sole reason that there is a time gap of 5 months between the date of withdrawals from bank account and redeposit the same in the bank account. Unless the AO demonstrate that the amount in question has been used by the assessee for any other purpose. In my view addition is made on inferences and presumptions which is bad in law."*

*E. We also rely in the order of ACIT vs Baldev Raj Charla 121 TTJ 366 [Delhi]. The relevant extract is reproduced below: -*

> *"merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts."*

*F. We also rely in the order of Ld. Delhi High Court in the case of CIT vs Kulwant Rai in 291 ITR 36 wherein the honourable Delhi High Court has held as under: -*

> *"This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum*

*of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lacs on 4th Dec., 2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the AO or C1T(A) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under s. 158BC of the Act and the same was rightly ordered to be deleted."*

*G. We also rely in the order of Hon'ble Allahabad High Court in the case of CIT Vs Raghuraji Agro Industries Pvt Ltd (2012] 349 ITR 260 (All), the honourable court observed as under: -*

*"After hearing both the parties and on perusal of record, it appears that so far as the quantity of HSD and paddy husk are concerned, there is no dispute. It has been fully reconciled and verifiable from the ledger mentioned by the A.O. The books of accounts were not rejected nor any defect was pointed out by the A.O., so, there cannot be any ad-hoc addition. Moreover, in the instant case, A.O. has made the addition on estimate basis which is merely a question of fact."*

*H. That the assessing officer has erred in law and on facts in applying section 68 of the Income Tax Act, 1961 in this case without pointing any specific entry of the books of accounts of the assessee. He only asked about the entries of the cash deposits in bank accounts which was well replied on facts but he did not make any further quarries on this or on any other entries posted in the books to prove that cash balance in the books of assessee is false.*

*I. That the assessing officer has not accepted the reply (entire cash was withdrawn from bank accounts of the company as there was no cash received by the company from its customers or from any other person during the assessment year or in previous years) and documents (ledger accounts, cash book, summary of withdrawals & bank statements) filed by the assessee company in relation of cash deposited in bank. What other proof can be submitted by the*

*assessee company in this regard for the satisfaction of the assessing officer is a million-dollar question?*

*J. That the Hon'ble Delhi ITAT in the case of A-One Housing Complex Ltd. Vs ITO (2008) 110 ITD 361 (Del) observed as under:-*

> *"13. However, the pertinent question for our consideration is when the onus as assessee can be said to be discharged. In our humble opinion, the degree of onus would depend on the facts of each case and no standard degree of proof can be applied in all cases irrespective of the nature of receipt. It may be stringent or light depending upon the facts of the case. The purpose is to point out that no standard proof is required to discharge the onus which lies on the assessee."*

*K. That the assessing officer had not accepted the cash balance shown in the books of accounts of the assessee in full which was withdrawn only from bank accounts of the company as neither the company made any sale in cash nor received any payment whatsoever, in cash, without giving any logic for the same. He failed to elaborate how the cash withdrawn from bank accounts has been utilised by the assessee company without making entries in the books of accounts.*

*L. That any cash withdrawn from bank accounts either can be utilised in making payments for expenses or purchases but the assessing officer had not raised any question on purchases or expenses posted in the books of accounts of the company rather the same was accepted in full. The assessing officer had accepted that the entire cash was withdrawn from bank accounts of the company but refused to admit that the same was present with the company for the re-deposit without hinting any logical use of such cash without making entries in the books of accounts.*

*M. That if the imagination of assessing authority was correct that the cash was utilised by the company than it has to be applied for the purchase or expenditures and in that case the profit declared by the assessee company in its return of income must be recalculated which has not been done by the assessing officer in his order of assessment.*
*N. That acceptance of the books of accounts in terms of income declared by the assessee and denial of cash balance shown in the same books of accounts cannot be applied simultaneously.*

*17. That on 30.06.2020, inspite of coronavirus epidemic, the counsel of the appellant attended the hearing of case and Ld.CIT[A] discussed case with him on business model of appellant only but refused to discuss on legality of the impugned order in the light of case laws pronounced by the various Hon'ble ITAT's, Hon'ble High Court of various States and Hon'ble Supreme Court of India. In regard to the written arguments submitted by the appellant, the Ld. CIT(A) assured that the same shall be considered and if needed, a notice of next hearing shall be sent The approach of CIT(A) of considering only matter of facts and ignoring legal aspects are against the very purpose of legislation in relation to the proceedings at first appellate stage.*

*18. That on 06.07.2020, the order of the Ld. CIT(A]-2, Lucknow u/s 250 of the Income Tax Act, 1961 dated 30.06.2020 was uploaded on e-filing portal of the appellant. The copy of the order u/s 250 of the Income Tax Act, 1961 dated 30.06.2020 Ld. CIT(A) is annexed herewith as Annexure-B.*

*19. That we were surprised to see the order of CIT(A) as we were expecting to the notice for next hearing as the case was not fully discussed during the previous hearing as per our experience. We were unable to understand the reason behind such hurry in disposal of appeal. There was no such case, where the Ld. CIT(A) was bound to dispose off the appeal up to 30.06.2020 because the case was not going to be time barred on 30.06.2020.*

*20. That the Ld. CIT(A) has decided the appeal in a casual manner, mechanically without the application of any prudence which is clearly reflected in the order of this case. The Ld. CIT(A) has admitted in the order on point no. 3 that-*

> *"During the course of appellate proceedings, Shri Om Kumar, Advocate appeared before me and filed the written submission. The Authorised Representative of the Appellant has also been heard. I proceed now to discuss and decide the issues raised on the basis of grounds of appeal involved in the appeal before me."*

*But nothing is discussed in the order of Ld. CIT(A) on the points of written arguments, which were stated there to establish the correctness of appellant's claim as per ground no. 11 read as "The applicant craves leaves to add, amend, alter or delete all or any of the*

*ground of appeal and to submit any additional ground or grounds or evidence or evidences up to the final hearing of this appeal."*

*21. That the order of Ld. CIT(A) is fully silent on the grounds taken in the written arguments submitted by the appellant. It is a well settled principal established by the Apex Court of law that any judicial or quasi judicial proceeding is reaches to finality only when all the questions raised by the concerned parties are being decided by the adjudicating authorities legally and logically and if any order does not fulfill this condition, such order is bad in eyes of law and must be quashed. Any appeal filed u/s 250 of the Income Tax Act, 1961 is a quasi judicial proceeding and officer adjudicating the appeal is bound to follow the laws laid down by the Apex Court which have been fully ignored in the present case by the Ld. AO as well as by the Ld. CIT(A)-2, Lucknow, hence, the same is liable to be quashed.*

*22. That the Ld. CIT(A) has reproduced the final comment of the order passed by Ld. AO that-*

> *"The appellant gave copy of cash book and table showing cash withdrawals during the year. No linkages were however provided between the cash withdrawals and whether it was actually available for re-deposit."*
>
> *The AO observed that:*
>
> *"Assessee had claimed that all the case deposits in the demonetisation period was from available cash balance in cash hook in which source of cash was from bank withdrawals. However, in support of its claims, assessee had only given copy of cash book and a table showing total cash withdrawals during the year. However, assessee had not given any linkages of cash withdrawals and whether these withdrawals were available for redeposit. Analysis of cash book shows that bank drawings are made at regular interval. The plea of the assessee can only be considered for withdrawals made in the month of October and November (till 08.11.2016) in which cumulative withdrawals of Rs.2,35,00,000/-was made. Hence the amount of Rs.2,82,60,000/- (-Rs.2,35,00,000/- i.e. Rs.47,60,000/- still remains unexplained."*
>
> *"The AO added the amount of Rs.47,60,000/- "*

*However, cumulative cash withdrawals of October and November (Till 08/11/2016) quoted herein above are incorrect, the actual figures as per documents submitted on e-filing portal during e-assessment proceedings are-*

| ***Particulars*** | ***Cash Withdrawals from 01/10/2016 to 08.11.2016*** |
|---|---|
| ***Trading Cash Book*** | ***1 ,80,00,000.00*** |
| ***Transportation Cash Book*** | ***2,32,00,000.00*** |
| ***Total*** | ***4,12,00,000.00*** |

*It proves that Ld. AO as well as Ld. CIT(A) has pronounced their orders without proper examination of the documents submitted by the appellant. If the same was done, on the logic of Ld. AO (which is against facts of the case and laws prevailing) the addition should be calculated as 2,82,60,000.00 - 4,12,00,000.00 = (-) 1,29,40,000.00 hence, no addition was possible by the Ld AO.*

*The details regarding two business and their separate accounting was well explained in the first detailed reply to the Ld. AO as well as to the Ld. CIT(A) in the statement of facts but none of them tried to understand the facts of appellant and passed impugned orders arbitrarily. It proves that the only objective of assessment was to make additions of demonetised money deposited in banks anyway because assessee dared to deposit demonetised currency in banks which is a heinous crime in the eyes of the department.*

*23. That the Ld. CIT(A) has denied to accept the case laws contested by the appellant by mentioning in point no. 9 at page 4 of her order that-*

> *"Ground of appeal no. 4, 5, 6, 7 & 8: The appellant has contested applicability of case law, however the case laws contested by the appellant are squarely applicable. As such the appeal does not hold good here."*

*Here the Ld. CIT(A) has not narrated any specific reason/logic in relation to not relying about any submission made by the appellant those were contested against the submissions made on case laws cited by the Ld. AO. Ld. CIT(A) and also ignored to discuss anything*

*in her order, which was contested by the appellant against the order passed by the Ld. AO.*

*24. That the Ld. CIT(A) has dismissed the ground no. 9 and 10 pertaining to not providing of reasonable opportunity of personal hearing by the Ld. AO by mentioning in point no. 10 at page 4 of her order that-*

> *"Ground of appeal no. 9 & 10 of the appeal pertain to providing of reasonable opportunity and discussion with the AO. As far as the issue of adequate opportunity is concerned from the submissions of the appellant it is obvious that the appellant's main grievance is that the AO did not hold any discussions with the appellant but asked the AR to upload all replied on the Income Tax Portal. The case of e-assessment proceeding person to person inter-face is not required as such this contention of the appellant does not hold good and is dismissed."*

*In relation to the above it is submitted that the Ld. AO was required to examine the books of accounts and other documents those were uploaded online and at least the same were required to be examined through personal hearing in case of any doubt or suspicion. This is fact that e-proceedings does not require personal hearing but it does not mean that the intention of legislature was to pass the order of assessment on roughly basis.*
*In present case no provisional order was prepared and forwarded to the appellant prior to passing off this erroneous order or any other notice for any specific clarification was raised.*

*In the case of Salem Sree Ramavilas Chit Company vs. DCIT, Hon'ble Madras High Court has observed that:-*

> *"While E-Assessment without human interaction is laudable, such proceedings can lead to erroneous assessment if officers are not able to understand the transactions and accounts of an assessee without a personal hearing. Assessment proceeding under the changed scenario would require proper determination of facts by proper exchange and flow of correspondence between the assessee and the AO. The AO should at least call for an explanation in writing before proceeding to conclude that the amount collected by the assessee was unusual Also, since the assessment proceedings no longer involve human*

*interaction and is based on records alone, the assessment proceeding should have commenced much earlier so that before passing assessment order, the AO could have come to a definite conclusion on facts after fully understanding the nature of business of the assessee."*

*Therefore, the Ld. AO as well as the Ld. CIT(A] was required to examine the case in detail, but he failed to do so and decided the same roughly and tried his best to hide the facts of the case and knowingly not tried to entertain as the appellant was expecting for the same.*

*25. That the Ld. CIT(A) at point no. 11 of page no. 4 of her order stated-*

*"The grounds of appeal no. 1, 2 &3 of the appeal pertain to the addition on account of section 68 of the IT Act and as per section 68 of the IT Act:-*

*"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:*

*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:*

*Provided further that nothing contained in the first 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 (23 FB] of section 10."*

*The Ld. AO as well as the Ld. CIT(A) both restricted themselves upto bare reading of sec. 68 and applied the same against appellant without applying their mind and ignoring all the facts and circumstances of the case and also not tried to consider or discuss any of the case laws cited by the appellant. They both have also failed to understand that the power of satisfaction of assessing officer is not absolute as every power comes with a responsibility, just stating that the explanation furnished by the assessee is not satisfactory is not enough, he must have to record the reason of dissatisfaction in the order and this principle of recording the reason of dissatisfaction in the order have been laid down by the higher courts of law in many cases.*

*26. That the Ld. CIT(A) at point no. 11 which no. 11 is repeated at page no. 5 of her order stated-*

*"The scope of section 68 has been examined. The source of these deposits are not clear. Section 68 enacts a golden rule of evidence which is not in dispute, i.e., if any sum is found credited in the books of account of an assessee, the onus is on him to explain the said entry and the principle embodied in sec. 68 is only a statutory recognition of what was always understood to be the law based upon the rule that the burden of proof is on the taxpayer to prove the genuineness of borrowings since the relevant facts are exclusively within his knowledge. Different High Courts as well as Supreme. Court in their decisions have consistently held that when there is o sum credited in the books of account of the assessee or money is received by the assessee by way of loan or gift, the initial onus lies on the assessee to establish the source."*

*The remark which is passed by Ld. CIT(A) that the source of these deposits are not clear is totally baseless because the demonetised currency which was deposited in banks were part of cash balance, verifiable from the books of accounts which were submitted during the proceedings of the case before Ld. AO and the books of accounts was also accepted/The Ld. CIT(A) has alleged by quoting the orders of different high Court and Hon'ble Supreme court of India that the onus lies upon the appellant in case he has received any sum by way of loan or*

*gift to establish the source, but here the present case is totally different, the appellant has not taken any loan or received any gift from any one. In fact as stated everywhere, the demonetised currency in the cash balance as on 08.11.2016 was deposited in banks and how the Ld. AO and Ld. CIT(A) can prove that amount of cash withdrawals from banks before 01.10.2016 was utilised. It seems that the Ld. CIT(A) was pre-determined to dismiss all cases pertaining to cash deposits after demonetisation without considering the facts of the cases and a pro-forma order has been drafted by her which is being used in every such case by just using copy and paste functions.*

*27. That the Ld. CIT(A) at point no. 12 of page no. 5 of her order stated:-*

> *"Under sec. 68, the onus is on the assessee to offer explanation where any sum is found credited in the books of account and where the assessee fails to prove to the satisfaction of the Assessing officer, the source and nature of the amount of cash credits, he is entitled to draw an inference that the credit entries represent income taxable in the hands of the assessee. It is not the duty of the Assessing officer to locate the exact source of the cash credits and the burden to identify the source lies upon the assessee and he is required to explain the genuineness of the credit entry. The expression "nature and source" in sec. 68 has to be understood together as a requirement of identification of the source and the nature of the source, so that the genuineness or otherwise of could be inferred. In the present case, he has not been able to establish the creditworthiness of his brother and the nature and source of such credits have also not been explained by the assessee."*

*In the present case the appellant is a company duly incorporated under the Companies Act, 1956 and no company could have brother as per Companies Act, 1956 or as amended in 2013 and the company had also not taken any loan or gift from anyone during the period, all funds received are only realisation of sale/ service proceeds. It proves that the Ld. CIT(A] has passed the order without going through the facts of the case mechanically which is bad in law and liable to be quashed.*

*Further, demonetised cash deposited in the banks was cash in hand as on 08.11.2016 which was generated through bank withdrawals on*

*different dates and places. The proof of the same in our little prudence and knowledge could only be cash books of company and bank statements of concerned accounts which had been submitted but if there could be some other documents in the opinion of Ld. AO as well as Ld. CIT(A] they should have asked for such documents through show cause notice or during personal hearing which had not done. To prove the inflows in our bank accounts, we have submitted copies of VAT Returns of two years, copies of party ledgers, copies of bank ledgers and summary of various heads as demanded by the Ld. AO through various notices. There is nothing which was demanded but not submitted by the appellant and nothing was rejected by the Ld. AO which was submitted by the appellant. In such case, how it could be held that the appellant has not discharged onus as assessee?*

*Hon'ble Delhi ITAT in the case of A-One Housing Complex Ltd. Vs ITO (2008) 110 ITD 361 (Del) observed as under:-*

> *"13. However, the pertinent question for our consideration is when the onus as assessee can be said to be discharged. In our humble opinion, the degree of onus would depend on the facts of each case and no standard degree of proof can be applied in all cases irrespective of the nature of receipt. It may be stringent or light depending upon the facts of the case. The purpose is to point out that no standard proof is required to discharge the onus which lies on the assessee."*

*28. That the Ld. CIT(A) at point no. 13 of page no. 5 of her order stated-*

> *"It is a settled proposition of law that the assessee has a legal obligation to explain the nature and source of such credit. In order to prove that the transaction is not hit by section 68, the assessee has to establish, first the identity, second the creditworthiness of the creditor and third, the genuineness of the transaction. Only when these three ingredients are established, prima facie, than the onus shifts on the department. Mere establishing the identity of the creditor would not be enough, neither proof of creditworthiness would be sufficient, all the three ingredients have to be established. When these ingredients are established, the onus shifts on the deportment. The onus is stated to be shifted only when there is evidence to sufficiently establish a prima facie case in favour of the party on whom the onus lies."*

*As per Ld. CIT(A), the assessee has legal obligation to explain the nature and source of such credit, in the present case the appellant well explained with documents the nature and source as demonetised currency was withdrawn from banks and retained for payments towards purchases and expenses as per business compulsions of the appellant and this plea has not been rebutted by the Ld. AO rather it was accepted but proportionately without pointing specific transactions but ad-hoc which is bad in the law.*

*Further the Ld CIT(A) had stated that In order to prove that the transaction is not hit by section 68, the assessee has to establish, first the identity, second the creditworthiness of the creditor and third, the genuineness of the transaction.*

*The appellant established first, the identity of the demonetised currency from cash books which has not been rejected by the Ld AO, secondly, creditworthiness of the creditors is not needed to be proved because all cash was withdrawn from Bank of Baroda and it has creditworthiness to pay the quantum of amount in question, thirdly, the genuineness of the transactions are also proven as the withdrawals and deposits are undisputed and Busniess of the appellant require cash holdings which has also not disputed by the Ld AO, rather he himself allowed proportionate cash in hand and accepted books of accounts fully. Now as per the Ld CIT(A) the onus has shifted to the department which has not been discharged by the Ld AO as well as Ld CIT(AJ.*

*29. That the Ld. CIT(A) at point no. 14 of page no. 5 of her order stated:-*

> *"In the instant case the appellant was required to prove the three elements basic to section 68. The appellant failed to explain the source of the cash deposited during the period of demonetisation. The AO has successfully marshalled the facts to show that the regular withdrawals were for business purposes and has duly considered the withdrawals made in October and part of November (8th November, 2016)."*

*The Ld CIT(A) has failed to understand the facts of the case and provisions of the Income Tax Act, 1961 and also rulings ruled by various higher courts, the question of explanation of source of cash deposited during demonetisation has been well elaborated in above*

*mentioned point of this appeal. The consideration of withdrawals made in October and part of November (8th November, 2016) are bad on facts as actual withdrawals from banks during this period were Rs. 4,12,00,000.00 while he considered only Rs. 2,32,00,000.00 recorded in transport Cash Book only ignoring Rs. 1,80,00,000.00 recorded in trading cash book and also bad in law as no disallowance can be made on speculation without pointing out specific entries which are being disallowed along with the reasons for disallowance of the same.*

*Ld. Delhi High Court in the case of CIT vs Kulwant rai in 291 ITR 36, the Hon'ble Delhi High Court has held as under: -*

> *"This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs.2 lacs on 4th Dec., 2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the AO or CIT(A) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under s. 158BC of the Act and the same was rightly ordered to be deleted."*

*Hon'ble Allahabad High Court in the case of CIT Vs Raghuraji Agro Industries Pvt Ltd (2012) 349 ITR 260 (All), the Hon'ble court observed as under: -*

> *"After hearing both the parties and on perusal of record, it appears that so far as the quantity of HSD and paddy husk are concerned, there is no dispute. It has been fully reconciled and verifiable from the ledger mentioned by the A.O. The books of accounts were not rejected nor any defect was pointed out by the A.O., so, there cannot be any ad-hoc addition. Moreover, in*

*the instant case, A.O. has made the addition on estimate basis which is merely a question of fact."*

*Therefore, the orders of Ld AO as well as Ld CIT(A) are not only bad on facts but also bad in law.*

*30. That the Ld. CIT(A) at point no. 15 of page no. 6 of her order stated:-*

> *"In support of the transaction the appellant merely relied upon the cash books. He again failed to prove that if he was accumulating the routine regular withdrawals for deposit post demonetisation, how was he meeting the routine expenses of his business? The question of linkage of withdrawals made to the cash deposited remains unanswered. Having failed to prove the genuineness of the transaction as well, the action of the AO in adding the quantum deposits is upheld."*

*The Ld AO as well as the Ld CIT(A] has grossly failed to understand the business of appellant and need of regular cash holding at various branches for smooth running of his business which is well evident in turnover of the company post demonetised period where business of appellant had declined due to non-availability of cash during the months of November to January 2016. There was no accumulation of cash for deposit post demonstrations as nobody imagined that such thing was going to happen and the business model of appellant does not permit him to deposit cash in his bank accounts as no receipts are accepted in cash but all payments are received only through banks. The company have not received any payment in cash since incorporation. The company withdraws cash from banks only to make the payments to farmers, labours, vehicle owners and others which is fully allowed under the laws of county. All offices of the company are having cash reserves to meet the payment requirements and all withdrawals are being made to retain the level of cash reserves. The company has 48 offices other than Head Office and the cash is retained on all places as per their requirements. These facts are not only verifiable with the records but also was well explained to the Ld AO as well as the Ld QT(A) through the replies and documents submitted and facts narrated in the appeal filed but they ignored these facts knowingly or unknowingly, mistakenly or deliberately.*

*As far as the question of meeting the routine expenses is concerned, the Ld AO as well as the Ld CIT(A) has grossly failed to understand*

*that the closing Cash Balance in the hands of the appellant as on 08.11.2016 was Rs. 4,22,66,866.49 out of that only Rs.2,82,60,000.00 was deposited in banks which were demonetised currency and Rs.1,40,06,866.49 valid currency was still available in the hands of the appellant. This money was available in the hands of the appellant after meeting all the routine expenses and payments to the farmers. The demonetised currency deposited in banks was part of cash reserves (in 500 and 1000 notes) at various branches of the appellant.*

*As far as the question of linkage of cash deposits with the withdrawals are concerned, when the all cash available in the hands of the appellant generated through withdrawals from the banks only and there is no cash receipts even Rs. 1 from anyone during the current period or in previous years also, than the question of linkage of cash deposits with the withdrawals can only be raised by the person who is unaware with the facts of the case or who is determined to cause the irreparable loss to the appellant for whatever reason best known by him only.*

*The details of key figures of the case which are wrongly reported in the orders of the Ld AO as well as the Ld CIT(A) are reproduced hereunder-*

| ***Particulars*** | ***Actual Amount as per Books of Accounts*** | ***Amount Reported in the Order*** | ***Difference*** |
|---|---|---|---|
| ***Cash Withdrawals from 01. 10.2016 to 08.11.2016*** | ***4,12,00,000.00*** | ***2,32,00,000.00*** | ***1 ,80,00,000.00*** |

*The details of other key figures of the case which are not considered or omitted in the orders of the Ld AO as well as the Ld CIT(A) are reproduced hereunder-*

| *Particulars* | *Actual Amount as per Books of Accounts* | *Remarks* |
|---|---|---|
| *Cash Withdrawals upto 08.11.2016* | *29,73,88,882.50* | |
| *Closing Cash Balance as on 08.11.2016* | *4,22,66,866.49* | |
| *Valid currency in hand not deposited* | *1,40,06,866.49* | |
| *Cash Deposited after 08.1 1 .2016* | *2,82,60,000* | |

| | | |
|---|---|---|
| *Total withdrawals during the year* | *33,51,78,882.50* | |
| *Cash Withdrawals after 08. 1 1 .201 6* | *3,77,90,000* | |
| *Cash Utilised upto 08.11.2016* | *26,42,11,495.47* | *88.45%* |
| *Cash Utilised after 08.1 1 .2016* | *3,44,89,423.00* | *11.55%* |

*It is crystal clear from the above figures that the all payments and expenses were duly recorded in the books of accounts as and when they occurred and the theory of utilisation of withdrawals are baseless against the facts of the case and based on the wild imagination of the Ld AO and the Ld CIT(A) just travelled on the same track created by the Ld AO.*

*The Ld C1T(A) has upheld the quantum addition made by the Ld AO is bad in law as under Income Tax Act, 1961 the income of an assessee is being calculated on real facts no sort of imagination is permitted for either tax payers or the department.*

*Reliance should be placed in the order of Ld. Delhi Tribunal in the case of Gordhan, Delhi v/s DCIT dated 19/10/2019, where it was held that: -*

> *"no addition can be made u/s 68 on the sole reason that there is a time gap of 5 months between the date of withdrawals from bank account and redeposit the same in the bank account. Unless the AO demonstrate that the amount in question has been used by the assessee for any other purpose. In my view addition is made on inferences and presumptions which is bad in law."*

*Reliance should also be placed in the order of ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi), where it was held that: -*

> *"merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts."*

*31. That it is crystal clear from the above points that the order passed by the Ld AO as well as the Ld CIT(A) are not only against the facts of the case but also bad in law. The Ld CIT(A) had also either forgotten or willfully avoided to consider the additional grounds raised in the written arguments submitted by the appellant.*

*32. That the reliance must be placed on cases cited hereunder:-*

> *The ITAT, Mumbai Bench in the case of ITO vs. Surana Traders, (2005)93 TTJ 875: (2005)92 ITD 212, the relevant observation of the Mumbai Bench were as under :-*
>
> *"So merely because for the reasons that the purchaser parties were not traceable, the assessee could not be penalised. In the sales documents, the assessee has made available all necessary details, i.e. the total weight sold as well as the rate per kilogram. Undisputedly, the assessee has maintained complete books of accounts along with day to day and kilogram to kilogram stock register. These were produced before the AO by the assessee. The assessee also submitted stock tally sheet along with the audited accounts. The audit report of the assessee also bears ample testimony in favour of the assessee. The factum of the assessee having maintained stock register and quantitative details have been mentioned by the AO0 in the assessment order. No mistake were pointed out by the AO in these records maintained by the assessee. Since the purchases have been held to be genuine, the corresponding sales cannot. by any stretch of imagination be termed as hawala transaction. It is the burden of the department to prove the correctness of such additions. When, in such like cases, a quantitative tally is furnished, even if purchases are not available no addition is called for."*

*Reliance can be placed on the decision of the Income Tax Appellate Tribunal - Delhi in the case of Neeta Breja, New Delhi vs ITO, New Delhi ITA No. 524/Del/2017 where it was held that:-*

> *"In the present case also the learned assessing officer or the learned CIT A did not show that above cash was not available in the hands of the assessee or have been spent on any other purposes. Further the coordinate bench in AC1T vs Baldev Raj Charla 121 TT] 366 (Delhi) also held that merely because there was a time gap between withdrawal of cash and cash deposits*

*explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts. In view of above facts, the ground number 1 of the appeal of the assessee is allowed and orders of lower authorities are reversed."*

*Reliance can also be placed on the decision of the Ld. Indore Bench in the case of DEWAS SOYA LTD, UJJAIN v/s Income Tax (Appeal No 336/Ind/2012 has held that:-*

*"The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act."*

*This view has been held by the Hon'ble Supreme Court in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 72ITR194 (SC) that:-*

*"It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again."*

*Reliance can also be placed on the decision of Hon'ble Supreme Court in the case of CIT vs Durga Prasad More (1969) 72 ITR 807 (SC) in which it was held:-*

*"the amount represented the income of the assessee of the previous year, it was liable to be included in the total income and an enquiry whether for the purpose of bringing the amount to tax it was from a business activity or from some other source was not relevant".*

*Reliance can be placed on the decision of Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordia vs ITO (2008) 298 ITR 349 in which it was held that:-*

*"Addition u/s 68 could not be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them".*

*In the decision of Hon'ble ITAT, Nagpur Bench in the case of M/s Heera Steel Limited vs. ITO (2005) 4 ITJ 437 is also worth to be mentioned here that wherein it was held that:-*

*"Both the lower authorities failed to appreciate the case of the assessee that these were the trade advances and not cash credits and against such advance, the assessee has supplied the material in due time as per details available on record. In view of the above, there is no justification for the revenue authorities to treat these cash advances as unexplained cash credit u/s 68".*

(B.2.1) At the time of hearing before us, the appellant assessee was represented by Shri Om Kumar, Advocate, learned Counsel for the assessee and Revenue was represented by Shri Harish Gidwani, Sr. D.R. Learned Counsel for the assessee drew our attention to key points of written arguments submitted to learned CIT(A) during appellate proceedings in the office of learned CIT(A), which have already been reproduced in foregoing paragraph (B.2) of this order; and placed heavy reliance on the same. Moreover, he submitted that it was not in dispute that the assessee company did not make any cash sale or cash receipt from its customers as a policy, and that the only source of cash for the assessee company was withdrawals from its bank accounts. He drew our attention to paragraph 7 of the assessment order in this regard. He further submitted that all the expenses of the assessee company, whether made in cash or through banking channels, are duly reflected in the cash book of the assessee company. The learned Counsel for the assessee furthermore submitted that linkage of cash withdrawals, as well as how these withdrawals were available for deposit are clearly evidenced from the cash book. The learned

Counsel for the assessee also submitted that the copy of cash book and table showing cash withdrawals were submitted to the Assessing Officer which were self-explanatory for establishing legitimate and explained sources for the deposit of SBNs during the demonetization period as well as for expenses incurred by the assessee. He further contended that if any further materials or evidences were required for establishing linkage of cash withdrawals, and/or for how these withdrawals were available for deposit of SBNs during demonetization period and/or for sources of funds for incurring the expenses of the assessee; then the assessee should have been asked to provide the same, but this was not done. The learned Counsel for the assessee also contended that the Assessing Officer and learned CIT(A) were in error in only treating withdrawals made in October, 2016 and November (till 08/11/2016) as explained for the purpose of deposit of SBNs in the banks during demonetization period and further, that instead, they should have considered withdrawals made during the earlier period also. The learned Counsel for the assessee also submitted, without prejudice, that in any case, even if the withdrawals made in the month of October to November, 2016 (till 08/11/2016) are considered, even then there were sufficient withdrawals from assessee's bank accounts to explain the deposit of SBNs during the demonetization period. In this regard, he submitted that the assessee was engaged in two businesses; firstly, trading of goods and secondly, transportation of goods by road. However, for coming to the figure of Rs.2,35,00,000/-, to calculate withdrawals from banks in the months of October, 2016 and November, 2016 till 08/11/2016 (in paragraph 8 of the assessment order), the Assessing Officer failed to consider the withdrawals amounting to Rs.1,80,00,000/- from the business of trading in goods. He further submitted that the Assessing Officer only considered the withdrawals made from the business of transportation of goods. He also contended that the correct figure of withdrawal from business of

transportation of goods was Rs.2,32,00,000/- (and not Rs.2,35,00,000/- incorrectly recorded by the Assessing Officer.) He contended further that if the total withdrawal of Rs.2,32,00,000/- from transportation business and Rs.1,80,00,000/- from trading business is considered, the total amount of cash withdrawals made in October, 2016 and in November, 2016 (till 08/11/2016) comes to Rs.4,12,00,000/- which adequately explains the deposit of SBNs amounting to Rs.2,82,60,000/-; including the aforesaid amount of Rs.47,60,000/-, during demonetization period.

(C) Appeal vide I.T.A. No.256/Lkw/2020 has been filed by M/s Shiva Veener (India) Pvt. Ltd. for assessment year 2017-18 against impugned appellate order dated 30/06/2020 of learned CIT(A). In this case assessment order dated 28/12/2019 was passed u/s 143(3) of the Income Tax Act, 1961 ("IT Act" for short) whereby the assessee's total income was determined at Rs.3,45,87,830/- as against returned income of Rs.48,93,830/-. In the aforesaid assessment order an addition of Rs.2,96,94,000/- was made u/s 68 of the IT Act. The relevant portion of the assessment order as reproduced as under:

> *"5. On the evening of 8th of November, 2016 the Government of India around 8:10 P.M. informed the citizens that all 1500 and 1000 banknotes of the Mahatma Gandhi Series would be ceased to be legal tender in India from midnight i.e. from 9 November 2016 meaning thereby these notes would not be acceptable for transactions from midnight onwards. However, Government also assured the citizens and taxpayers that there was no need to panic and that they can deposit old 500 and 11000 banknotes in their bank accounts till 30/12/2016. Accordingly, the Reserve Bank of India (RBI) had withdrawn Legal Tender character of old bank notes in the denomination of Rs 500/- and Rs 1000/- w.e.f. 9 th November, 2016, through Specified Bank Notes (cessation of liabilities) Act, 2017 and Specified Bank Notes (deposit of confiscated notes) Rules, 2017.*

*6. In this case, during the demonetisation period i.e. from 09/11/2016 till 30/12/2106, assessee had deposited old 500 and I 1000 banknotes [also referred as specified bank notes or in short SBNs] to the tune of Rs.5,98,44,000/- in his bank accounts. The details of cash deposited are given below:*

| S.No | Name of Bank | Account No | Cash deposited during demonetization period |
|---|---|---|---|
| 1. | Bank of Baroda, Branch - Gomti Nagar, Lucknow | 26700500003947 | 3,01 ,44,0007- on 12/11/2016 |
| 2. | Bank of Baroda, Branch - Gomti Nagar, Lucknow | 26700500003947 | 2,35,00,000/- on 13/11/2016 |
| 3. | Bank of Baroda, Branch - Gomti Nagar, Lucknow | 26700500003947 | 42,00,0007- on 01/12/2016 |
| | Bank of Baroda, Branch - Sitapur | 07370200000307 | 20,00,000/- on 12/11/2016 |
| | Total | | 5,98,44,0007- |

*7. Assessee had been showcaused through notice u/s 142(1) dated 16/08/2019 and 16/10/2019 to explain the source of above cash deposit during the demonetisation period. In response to the above notices, the assessee had submitted, "The company has only source of cash is cash withdrawals from its bank accounts as the company don't make any cash sale or cash receipts from its customers as a policy therefore, all the cash is generated through cash withdrawals from its bank accounts and cash is needed by the company to make payments to farmers, transporters, wages & other expenses"*

*8. Assessee's submission is considered but is not found tenable. Assessee had claimed that all the cash deposits in the demonetisation period was from available cash balance in cash book in which source*

*of cash was from bank withdrawals. However, in support of its claims, assessee had only given copy of cash book and a table showing total cash withdrawal during the year. However assessee had not given any linkages of cash withdrawals and whether these withdrawals were available for redeposit. Analysis of cash book shows that assessee had huge opening cash balance of Rs 10,61,98,491/-. Despite having such a huge cash in hand, bank drawings are made at every 3-4 days to the tune of 5-10 lakhs. Despite being having such a very high cash balance, assessee was in regular need of bank drawings for smooth running of its business operations. This fact is totally against preponderance of probabilities and can only be explained by the fact that regular bank withdrawals were made for the purposes of business only and hence, the same were not available for redeposit. Reliance in support of above findings is also placed upon a recent judgement of the Hon'ble Punjab and Haryana High Court in the case of Smt. Kavita Chandra v. Commissioner of Income-tax [2017] 81 taxmann.com 317 (Punjab & Haryana), in which Hon'ble High Court had held that cash deposits can be treated as 'unexplained income', if the assessee was unable to link the cash withdrawn from the bank a/c with the cash deposit. In this case, however assessee had not been able to provide linkage of its cash withdrawals to its cash deposit. Hence from above analysis, it can be safely said that regular withdrawals by the assessee were for the business purposes and were not available for redeposit. The plea of the assessee can only be considered for withdrawals made in the month of October and November (till 08/11/2016) in which cumulative withdrawal of Rs.3,01,50,000/- was made. Hence, the difference amount of Rs.2,96,94,000/- still remains unexplained."*

(C.1) The Assessing Officer treated the aforesaid amount of Rs.2,96,94,000/- as unexplained deposit of specific bank notes (old bank notes of 500 and 1000 denominations) as unexplained; and invoked section 68 read with section 115BBE of the IT Act, resulting in the aforesaid addition of Rs.2,96,94,000/-/-. The assessee filed appeal in the office of the learned Commissioner of Income Tax (Appeals) ["learned CIT(A)" for short]. Vide impugned appellate order dated 30/06/2020, the learned CIT(A) dismissed the assessee's appeal and upheld the aforesaid addition of Rs.2,96,94,000/- made by the Assessing Officer in the aforesaid assessment

order dated 28/12/2019. The present appeal vide I.T.A. No.256/Lo2/2020 has been filed by M/s Shiva Veener (India) Pvt. Ltd. against the aforesaid impugned appellate order dated 30/06/2020 of learned CIT(A). The grounds of appeal, originally filed by the assessee are as under:

*"1. Because the learned CIT(A) erred in confirming the addition made of 2,96,94,000/- towards cash deposited in bank account without appreciating that the appellant had duly discharged the onus by proving the source of cash deposit in the bank accounts by filing complete books of accounts and Bank Statements, as the total cash deposited in the bank accounts was withdrawn from bank accounts only and there was no cash inflow in the books of appellant other than from bank accounts, which is not disputed. Further, cash balance as on 08.11.2016 was Rs. 8,39,71,032.28 in books of accounts and out of said Rs. 5,98,44,000/- only were deposited in banks which were demonetised currency and after deposit of this sum an amount of Rs. 2,41,27,032.28 were still available in the hands of the appellant and the Ld. AO has not rejected the books of accounts u/s 145(3), so he cannot make any separate addition for cash deposit and hence, the addition confirmed of Rs. 2,96,94,000/- is without any justification and liable to be deleted.*

*2. Because The Ld. CIT(A) failed to appreciate that the transaction is to be looked from the businessmen point of view, the appellant is engaged in the trading of agriculture wood those are purchased in cash directly from farmers through various branches of appellant and another business of the appellant is of transportation which also require cash, hence, cash in hand is always maintained in all the 48 branches and Head Office for smooth running of business and also that no further documents were called for either by the Ld. AO or the Ld. CIT(A) during proceedings of case and when books of accounts of assessee were accepted by Assessing officer as genuine, and cash balance shown therein was sufficient to cover high denomination notes held by assessee, assessee was not required to prove source of receipt of said high denomination notes which were legal tender at that time, hence, having accepted the books of Accounts as genuine, the source of cash deposited in the bank account gets explained and thus, the addition confirmed of Rs. 2,96,94,000/- is unjustified and liable to be deleted.*

*3. Because the Ld. CIT(A) has grievously erred in law and or on facts by not considering the fact that the appellant have submitted before Ld. AO, entire cash books, sale/purchase, cash withdrawals details and Balance Sheets of current and previous years and average cash holding was greater than the amount deposited during demonetisation and all assessment years was scrutinised by the department and the cash balance in the books of assessee was explained during previous years but when the same cash was deposited in the banks due to demonetisation it becomes unexplained in the eyes of department and if Ld. AO and Ld. CIT(A) is in opinion that the cash was utilised, than they must elaborate that how and where this cash was utilised without passing entries in the books of accounts, and what sources/proof the department have to come to this conclusion that this cash was utilised elsewhere and the department must also prove with the evidence that the demonetised currency which was deposited in banks was out of the books, no such findings were recorded in the orders passed by the Ld. AO or Ld. CIT(A), hence, illegal and liable to be deleted.*

*4. Because the learned CIT(A) has grievously erred in law and or on fact by not considering the plea of appellant on wrong applicability of Sec. 68 as when the Ld. AO has accepted all the books of accounts of the appellant than treating cash balance of books of appellant as unexplained will lead to double taxation of one income which is against the I.T. Act, 1961 and Sec. 68 relates to the credit entries of books of accounts and in present case all cash entries are related to the bank accounts only which has already been confirmed with the banks by Ld. AO and there was no discrepancy found but without pointing specific entries, he just labelled a portion of cash deposits as unexplained without pointing out how accepted cash deposits was explained by the appellant and what documents were not submitted by the appellant related to the unexplained cash deposits, what was the parameters adopted by the Ld. AO as well as the Ld. CIT(A) in deciding the quantum of cash utilised, which is unanswered and it clearly proves that the order passed is based on presumptions only which is illegal and arbitrary in nature, hence, liable to be quashed.*

*5. Without prejudice to the above grounds, the learned CIT(A) has grievously erred in law and or on facts in not allowing sufficient opportunity to the appellant before disposing of the appeal. The details/evidence for the appeal could not be produced for the reasons stated in the statement of facts. The Ld. CIT(A) has heard the appeal at a glance only and not tried to cross verify anything as mentioned in*

*grounds and written arguments and disallowed in a single stroke mechanically, without applying any mind and has travelled on the same track as was created by the Ld. AO. Thus there was gross violation off the principles of natural justice. The learned CIT(A) has also ignored the ground of appeal of not allowing sufficient opportunity to the assessee before disposing of the assessment proceedings by the Ld. AO, which is wholly illegal, unlawful and against the principles of natural justice hence, the order u/s 250 of Income Tax Act, 1961 passed by the Ld. CIT(A) is liable to be deleted.*

*6. Without prejudice to the above grounds, the learned CIT(A) has grievously erred in law and or on facts in not considering the ground of ad-hoc addition by the learned Assessing Officer which is not sustainable in law, the Ld. AO has accepted the plea of cash holding of Assessee to the tune of Rs. 3,01,50,000.00 withdrawn between 1st Oct. 2016 to 8th Nov. 2016 only as per Ld AO, which is factually incorrect as the amount of cash withdrawals by the appellant during the period was Rs. 4,26,50,000.00, without considering opening cash balance of Rs. 10,85,72,358.54 as on 01.04.2016 which was also reported incorrectly as Rs. 10,61,98,491 in his order, if the actual figures of cash withdrawals were taken for calculation the addition would be reduced by Rs. 1,25,00,000.00. Ld AO made this addition without assigning any reason/logic for accepting withdrawals of this period or disallowance of withdrawals of other period which is an ad-hoc addition, bad in the eyes of law, hence liable to be deleted."*

(C.1.1) During the pendency of assessee's appeal in Income Tax Appellate Tribunal ("ITAT for short), the assessee amended the grounds of appeal and filed concise grounds of appeal as under:

*"1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition of Rs.2,96,94,000/- u/s 68 of the I.T. Act 1961 even though the appellant had duly proved the source of cash generation.*

*2. That the Ld. AO as well as Ld. CIT (A) has grossly erred in law and to the facts of the case in making lump sum addition on the basis of his presumptions and guess work, without the support of any material either collected or placed upon records.*

*3. That the Ld. AO has grossly erred in law and to the facts of the case in making addition on the basis of wrong figures of cash withdrawals of the appellant and the Ld. CIT (A) has ignored this fact while confirming the additions made by Ld. AO.*

*4. That no proper and reasonable opportunity if any was ever afforded by the Ld. AO as well as Ld. CIT (A) prior proceeded to complete the assessment proceedings and thereby making illegal and impugned additions in the declared income of the appellant.*

*5. The appellant prays that the Order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer also be set aside."*

(C.2) The assessee also filed statement of facts running into 31 pages (page 9 to page 30 of Form-36). The statements of facts, inter alia, contained the following information regarding appellate proceedings in the office of the learned CIT(A):

*"17. That on 26.06.2020, inspite of coronavirus epidemic, the counsel of the appellant went to the office of CIT(A)-2, Lucknow but the Ld. CIT(A)-2, Lucknow was not present in the office due to some meeting, so the counsel of the appellant submitted written arguments and noted for next date of hearing as 30.06.2020. The copy of the written arguments submitted before Ld. CIT(A) is annexed herewith as Annexure-G.*

*18. That the key points of written arguments submitted to CIT(A] are reproduced here-*

*A. That the addition of Rs.2,96,94,000/- was made by the AO just on wild imagination & speculation of that all cash withdrawals were being made by the company only after utilisation of cash in his hand without considering the nature of businesses, requirement of cash in those businesses, number of offices and number of bank accounts maintained by the assessee as all these factors directly relates to the quantum of cash needs of anyone.*

*B. That the addition of Rs.2,96,94,000/- was made by AO in spite of acceptance by himself the plea of cash holding by assessee to the tune of Rs.3,01,50,000/- which was withdrawn during Oct. and Nov. 2016 what parameters were being applied in accepting this amount has not being specified? While it is a well settled principle that ad-hoc addition under Income Tax Act is bad in the eyes of law.*

*C. That the application of section 68 of the Income Tax Act, 1961 by the AO in the present case without pointing any specific entry of the books of accounts of the assessee is not justified. He only asked about the entries of the cash deposits in bank accounts which was well replied on facts but he did not make any further quarries on this or on any other entries posted in the books to prove that cash balance in the books of assessee is false.*

*D. We rely in the order of Ld. Delhi Tribunal in the case of Gordhan, Delhi v/s DCIT dated 19/10/2019. The relevant extract is reproduced below: -*

> *"no addition can be made u/s 68 on the sole reason that there is a time gap of 5 months between the date of withdrawals from bank account and redeposit the same in the bank account. Unless the AO demonstrate that the amount in question has been used by the assessee for any other purpose. In my view addition is made on inferences and presumptions which is bad in law."*

*E. We also rely in the order of ACIT vs Baldev Raj Charla 121 TTJ 366 [Delhi]. The relevant extract is reproduced below: -*

> *"merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts."*

*F. We also rely in the order of Ld. Delhi High Court in the case of CIT vs Kulwant Rai in 291 ITR 36 wherein the honourable Delhi High Court has held as under: -*

*"This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lacs on 4th Dec., 2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the AO or C1T(A) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under s. 158BC of the Act and the same was rightly ordered to be deleted."*

*G. We also rely in the order of Hon'ble Allahabad High Court in the case of CIT Vs Raghuraji Agro Industries Pvt Ltd (2012] 349 ITR 260 (All), the honourable court observed as under: -*

*"After hearing both the parties and on perusal of record, it appears that so far as the quantity of HSD and paddy husk are concerned, there is no dispute. It has been fully reconciled and verifiable from the ledger mentioned by the A.O. The books of accounts were not rejected nor any defect was pointed out by the A.O., so, there cannot be any ad-hoc addition. Moreover, in the instant case, A.O. has made the addition on estimate basis which is merely a question of fact."*

*H. That the assessing officer has erred in law and on facts in applying section 68 of the Income Tax Act, 1961 in this case without pointing any specific entry of the books of accounts of the assessee. He only asked about the entries of the cash deposits in bank accounts which was well replied on facts but he did not make any further quarries on this or on any other entries posted in the books to prove that cash balance in the books of assessee is false.*

*I. That the assessing officer has not accepted the reply (entire cash was withdrawn from bank accounts of the company as there was*

*no cash received by the company from its customers or from any other person during the assessment year or in previous years) and documents (ledger accounts, cash book, summary of withdrawals & bank statements) filed by the assessee company in relation of cash deposited in bank. What other proof can be submitted by the assessee company in this regard for the satisfaction of the assessing officer is a million-dollar question?*

*J. That the Hon'ble Delhi ITAT in the case of A-One Housing Complex Ltd. Vs ITO (2008) 110 ITD 361 (Del) observed as under:-*

> *"13. However, the pertinent question for our consideration is when the onus as assessee can be said to be discharged. In our humble opinion, the degree of onus would depend on the facts of each case and no standard degree of proof can be applied in all cases irrespective of the nature of receipt. It may be stringent or light depending upon the facts of the case. The purpose is to point out that no standard proof is required to discharge the onus which lies on the assessee."*

*K. That the assessing officer had not accepted the cash balance shown in the books of accounts of the assessee in full which was withdrawn only from bank accounts of the company as neither the company made any sale in cash nor received any payment whatsoever, in cash, without giving any logic for the same. He failed to elaborate how the cash withdrawn from bank accounts has been utilised by the assessee company without making entries in the books of accounts.*

*L. That any cash withdrawn from bank accounts either can be utilised in making payments for expenses or purchases but the assessing officer had not raised any question on purchases or expenses posted in the books of accounts of the company rather the same was accepted in full. The assessing officer had accepted that the entire cash was withdrawn from bank accounts of the company but refused to admit that the same was present with the company for the re-deposit without hinting any logical use of such cash without making entries in the books of accounts.*

*M. That if the imagination of assessing authority was correct that the cash was utilised by the company than it has to be applied for the purchase or expenditures and in that case the profit declared by the*

*assessee company in its return of income must be recalculated which has not been done by the assessing officer in his order of assessment.*

*N. That acceptance of the books of accounts in terms of income declared by the assessee and denial of cash balance shown in the same books of accounts cannot be applied simultaneously.*

*19. That on 30.06.2020, inspite of coronavirus epidemic, the counsel of the appellant attended the hearing of case and Ld.CIT[A] discussed case with him on business model of appellant only but refused to discuss on legality of the impugned order in the light of case laws pronounced by the various Hon'ble ITAT's, Hon'ble High Court of various States and Hon'ble Supreme Court of India. In regard to the written arguments submitted by the appellant, the Ld. CIT(A) assured that the same shall be considered and if needed, a notice of next hearing shall be sent The approach of CIT(A) of considering only matter of facts and ignoring legal aspects are against the very purpose of legislation in relation to the proceedings at first appellate stage.*

*20. That on 06.07.2020, the order of the Ld. CIT(A]-2, Lucknow u/s 250 of the Income Tax Act, 1961 dated 30.06.2020 was uploaded on e-filing portal of the appellant. The copy of the order u/s 250 of the Income Tax Act, 1961 dated 30.06.2020 Ld. CIT(A) is annexed herewith as Annexure-C.*

*21. That we were surprised to see the order of CIT(A) as we were expecting to the notice for next hearing as the case was not fully discussed during the previous hearing as per our experience. We were unable to understand the reason behind such hurry in disposal of appeal. There was no such case, where the Ld. CIT(A) was bound to dispose off the appeal up to 30.06.2020 because the case was not going to be time barred on 30.06.2020.*

*22. That the Ld. CIT(A) has decided the appeal in a casual manner, mechanically without the application of any prudence which is clearly reflected in the order of this case. The Ld. CIT(A) has admitted in the order on point no. 3 that-*

> *"During the course of appellate proceedings, Shri Om Kumar, Advocate appeared before me and filed the written submission. The Authorised Representative of the Appellant has also been heard. I proceed now to discuss and decide the issues raised on*

*the basis of grounds of appeal involved in the appeal before me."*

*But nothing is discussed in the order of Ld. CIT(A) on the points of written arguments, which were stated there to establish the correctness of appellant's claim as per ground no. 11 read as "The applicant craves leaves to add, amend, alter or delete all or any of the ground of appeal and to submit any additional ground or grounds or evidence or evidences up to the final hearing of this appeal."*

*23. That the order of Ld. CIT(A) is fully silent on the grounds taken in the written arguments submitted by the appellant. It is a well settled principal established by the Apex Court of law that any judicial or quasi judicial proceeding is reaches to finality only when all the questions raised by the concerned parties are being decided by the adjudicating authorities legally and logically and if any order does not fulfill this condition, such order is bad in eyes of law and must be quashed. Any appeal filed u/s 250 of the Income Tax Act, 1961 is a quasi judicial proceeding and officer adjudicating the appeal is bound to follow the laws laid down by the Apex Court which have been fully ignored in the present case by the Ld. AO as well as by the Ld. CIT(A)-2, Lucknow, hence, the same is liable to be quashed.*

*22. That the Ld. CIT(A) has reproduced the final comment of the order passed by Ld. AO that-*

*"The appellant gave copy of cash book and table showing cash withdrawals during the year. No linkages were however provided between the cash withdrawals and whether it was actually available for re-deposit."*

*The AO observed that:*

*"Analysis of cash book shows that assessee had huge opening cash balance of Rs.10,61,98,491/-. Despite having such a huge cash in hand, bank drawings are made at every 3-4 days to the tune of 5-10 lakhs. Despite being having such a very high cash balance, assessee was in regular need of bank drawings for smooth running of its business operations. This fact is totally against preponderance of probabilities and can only be explained by the fact that regular bank withdrawals were made for the purposes of business only and hence, the same were not available for redeposit.*

*In this case, however assessee had not been able to provide linkage of its cash withdrawals to its cash deposit. Hence from above analysis, it can be safely said that regular withdrawals by the assessee were for the business purposes and were not available for redeposit. The plea of the assessee can only be considered for withdrawals made in the month of October and November (till 08/11/2016) in which cumulative withdrawal of Rs.3,01,50,000/- was made. Hence, the difference amount of Rs. 2,96,94,000/- still remains unexplained".*

*"The AO added the amount of Rs.2,96,94,000/- "*

*However, both figures opening cash balance as well as cumulative cash withdrawals of October and November (Till 08/11/2016) quoted herein above are incorrect, the actual figures as per documents submitted on e-filing portal during eassessment proceedings are-*

| *Particulars* | *Opening cash balance as on 01/04/2016* | *Cash withdrawals from 1/10/2016 to 8/11/2016* |
|---|---|---|
| *Trading cash book* | *10,61,98,491.54* | *3,01,50,000.00* |
| *Transportation cash book* | *23,73,867.00* | *1,25,00,000.00* |
| *Total* | *10,85,72,358.54* | *4,26,50,000.00* |

*It proves that Ld. AO as well as Ld. CIT(A) has pronounced their orders without proper examination of the documents submitted by the appellant. If the same was done, on the logic of Ld. AO (which is against facts of the case and laws prevailing) the addition should be calculated as 5,98,44,000.00 - 4,26,50,000.00 = 1,71,94,000.00 only.*

*The details regarding two business and their separate accounting was well explained in the first detailed reply to the Ld. AO as well as to the Ld. CIT(A) in the statement of facts but none of them tried to understand the facts of appellant and passed impugned orders arbitrarily. It proves that the only objective of assessment was to make additions of demonetised money deposited in banks anyway because assessee dared to deposit demonetised currency in banks which is a heinous crime in the eyes of the department.*

*25. That the Ld. CIT(A) has denied to accept the case laws contested by the appellant by mentioning in point no. 9 at page 4 of her order that-*

> *"Ground of appeal no. 4, 5, 6, 7 & 8: The appellant has contested applicability of case law, however the case laws contested by the appellant are squarely applicable. As such the appeal does not hold good here."*

*Here the Ld. CIT(A) has not narrated any specific reason/logic in relation to not relying about any submission made by the appellant those were contested against the submissions made on case laws cited by the Ld. AO. Ld. CIT(A) and also ignored to discuss anything in her order, which was contested by the appellant against the order passed by the Ld. AO.*

*26. That the Ld. CIT(A) has dismissed the ground no. 9 and 10 pertaining to not providing of reasonable opportunity of personal hearing by the Ld. AO by mentioning in point no. 10 at page 4 of her order that-*

> *"Ground of appeal no. 9 & 10 of the appeal pertain to providing of reasonable opportunity and discussion with the AO. As far as the issue of adequate opportunity is concerned from the submissions of the appellant it is obvious that the appellant's main grievance is that the AO did not hold any discussions with the appellant but asked the AR to upload all replied on the Income Tax Portal. The case of e-assessment proceeding person to person inter-face is not required as such this contention of the appellant does not hold good and is dismissed."*

*In relation to the above it is submitted that the Ld. AO was required to examine the books of accounts and other documents those were uploaded online and at least the same were required to be examined through personal hearing in case of any doubt or suspicion. This is fact that e-proceedings does not require personal hearing but it does not mean that the intention of legislature was to pass the order of assessment on roughly basis. In present case no provisional order was prepared and forwarded to the appellant prior to passing off this erroneous order or any other notice for any specific clarification was raised.*

*In the case of Salem Sree Ramavilas Chit Company vs. DCIT, Hon'ble Madras High Court has observed that:-*

> *"While E-Assessment without human interaction is laudable, such proceedings can lead to erroneous assessment if officers are not able to understand the transactions and accounts of an assessee without a personal hearing. Assessment proceeding under the changed scenario would require proper determination of facts by proper exchange and flow of correspondence between the assessee and the AO. The AO should at least call for an explanation in writing before proceeding to conclude that the amount collected by the assessee was unusual Also, since the assessment proceedings no longer involve human interaction and is based on records alone, the assessment proceeding should have commenced much earlier so that before passing assessment order, the AO could have come to a definite conclusion on facts after fully understanding the nature of business of the assessee."*

*Therefore, the Ld. AO as well as the Ld. CIT(A) was required to examine the case in detail, but he failed to do so and decided the same roughly and tried his best to hide the facts of the case and knowingly not tried to entertain as the appellant was expecting for the same.*

*27. That the Ld. CIT(A) at point no. 11 of page no. 5 of her order stated-*

> *"The grounds of appeal no. 1, 2 &3 of the appeal pertain to the addition on account of section 68 of the IT Act and as per section 68 of the IT Act:-*
>
> *"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:*
>
> *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:*

*Provided further that nothing contained in the first 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 (23 FB] of section 10."*

*The Ld. AO as well as the Ld. CIT(A) both restricted themselves upto bare reading of sec. 68 and applied the same against appellant without applying their mind and ignoring all the facts and circumstances of the case and also not tried to consider or discuss any of the case laws cited by the appellant. They both have also failed to understand that the power of satisfaction of assessing officer is not absolute as every power comes with a responsibility, just stating that the explanation furnished by the assessee is not satisfactory is not enough, he must have to record the reason of dissatisfaction in the order and this principle of recording the reason of dissatisfaction in the order have been laid down by the higher courts of law in many cases.*

*26. That the Ld. CIT(A) at point no. 11 which no. 11 is repeated at page no. 5 of her order stated-*

*"The scope of section 68 has been examined. The source of these deposits are not clear. Section 68 enacts a golden rule of evidence which is not in dispute, i.e., if any sum is found credited in the books of account of an assessee, the onus is on him to explain the said entry and the principle embodied in sec. 68 is only a statutory recognition of what was always understood to be the law based upon the rule that the burden of proof is on the taxpayer to prove the genuineness of borrowings since the relevant facts are exclusively within his knowledge. Different High Courts as well as Supreme. Court in their decisions have consistently held that when there is o sum*

*credited in the books of account of the assessee or money is received by the assessee by way of loan or gift, the initial onus lies on the assessee to establish the source."*

*The remark which is passed by Ld. CIT(A) that the source of these deposits are not clear is totally baseless because the demonetised currency which was deposited in banks were part of cash balance, verifiable from the books of accounts which were submitted during the proceedings of the case before Ld. AO and the books of accounts was also accepted/The Ld. CIT(A) has alleged by quoting the orders of different high Court and Hon'ble Supreme court of India that the onus lies upon the appellant in case he has received any sum by way of loan or gift to establish the source, but here the present case is totally different, the appellant has not taken any loan or received any gift from any one. In fact as stated everywhere, the demonetised currency in the cash balance as on 08.11.2016 was deposited in banks and how the Ld. AO and Ld. CIT(A) can prove that amount of cash withdrawals from banks before 01.10.2016 was utilised. It seems that the Ld. CIT(A) was pre-determined to dismiss all cases pertaining to cash deposits after demonetisation without considering the facts of the cases and a pro-forma order has been drafted by her which is being used in every such case by just using copy and paste functions.*

*27. That the Ld. CIT(A) at point no. 12 of page no. 5 of her order stated:-*

*"Under sec. 68, the onus is on the assessee to offer explanation where any sum is found credited in the books of account and where the assessee fails to prove to the satisfaction of the Assessing officer, the source and nature of the amount of cash credits, he is entitled to draw an inference that the credit entries represent income taxable in the hands of the assessee. It is not the duty of the Assessing officer to locate the exact source of the cash credits and the burden to identify the source lies upon the assessee and he is required to explain the genuineness of the credit entry. The expression "nature and source" in sec. 68 has to be understood together as a requirement of identification of the source and the nature of the source, so that the genuineness or otherwise of could be inferred. In the present case, he has not been able to establish*

*the creditworthiness of his brother and the nature and source of such credits have also not been explained by the assessee."*

*In the present case the appellant is a company duly incorporated under the Companies Act, 1956 and no company could have brother as per Companies Act, 1956 or as amended in 2013 and the company had also not taken any loan or gift from anyone during the period, all funds received are only realisation of sale/ service proceeds. It proves that the Ld. CIT(A] has passed the order without going through the facts of the case mechanically which is bad in law and liable to be quashed.*

*Further, demonetised cash deposited in the banks was cash in hand as on 08.11.2016 which was generated through bank withdrawals on different dates and places. The proof of the same in our little prudence and knowledge could only be cash books of company and bank statements of concerned accounts which had been submitted but if there could be some other documents in the opinion of Ld. AO as well as Ld. CIT(A] they should have asked for such documents through show cause notice or during personal hearing which had not done. To prove the inflows in our bank accounts, we have submitted copies of VAT Returns of two years, copies of party ledgers, copies of bank ledgers and summary of various heads as demanded by the Ld. AO through various notices. There is nothing which was demanded but not submitted by the appellant and nothing was rejected by the Ld. AO which was submitted by the appellant. In such case, how it could be held that the appellant has not discharged onus as assessee?*

*Hon'ble Delhi ITAT in the case of A-One Housing Complex Ltd. Vs ITO (2008) 110 ITD 361 (Del) observed as under:-*

*"13. However, the pertinent question for our consideration is when the onus as assessee can be said to be discharged. In our humble opinion, the degree of onus would depend on the facts of each case and no standard degree of proof can be applied in all cases irrespective of the nature of receipt. It may be stringent or light depending upon the facts of the case. The purpose is to point out that no standard proof is required to discharge the onus which lies on the assessee."*

*30. That the Ld. CIT(A) at point no. 13 of page no. 6 of her order stated-*

*"It is a settled proposition of law that the assessee has a legal obligation to explain the nature and source of such credit. In order to prove that the transaction is not hit by section 68, the assessee has to establish, first the identity, second the creditworthiness of the creditor and third, the genuineness of the transaction. Only when these three ingredients are established, prima facie, than the onus shifts on the department. Mere establishing the identity of the creditor would not be enough, neither proof of creditworthiness would be sufficient, all the three ingredients have to be established. When these ingredients are established, the onus shifts on the deportment. The onus is stated to be shifted only when there is evidence to sufficiently establish a prima facie case in favour of the party on whom the onus lies."*

*As per Ld. CIT(A), the assessee has legal obligation to explain the nature and source of such credit, in the present case the appellant well explained with documents the nature and source as demonetised currency was withdrawn from banks and retained for payments towards purchases and expenses as per business compulsions of the appellant and this plea has not been rebutted by the Ld. AO rather it was accepted but proportionately without pointing specific transactions but ad-hoc which is bad in the law.*

*Further the Ld CIT(A) had stated that In order to prove that the transaction is not hit by section 68, the assessee has to establish, first the identity, second the creditworthiness of the creditor and third, the genuineness of the transaction.*

*The appellant established first, the identity of the demonetised currency from cash books which has not been rejected by the Ld AO, secondly, creditworthiness of the creditors is not needed to be proved because all cash was withdrawn from Bank of Baroda and it has creditworthiness to pay the quantum of amount in question, thirdly, the genuineness of the transactions are also proven as the withdrawals and deposits are undisputed and Business of the appellant require cash holdings which has also not disputed by the Ld AO, rather he himself allowed proportionate cash in hand and accepted books of accounts fully. Now as per the Ld CIT(A) the onus has shifted to the department which has not been discharged by the Ld AO as well as Ld CIT(A).*

*31. That the Ld. CIT(A) at point no. 14 of page no. 6 of her order stated:-*

> *"In the instant case the appellant was required to prove the three elements basic to section 68. The appellant failed to explain the source of the cash deposited during the period of demonetisation. The AO has successfully marshalled the facts to show that the regular withdrawals were for business purposes and has duly considered the withdrawals made in October and part of November (8th November, 2016)."*

*The Ld CIT(A) has failed to understand the facts of the case and provisions of the Income Tax Act, 1961 and also rulings ruled by various higher courts, the question of explanation of source of cash deposited during demonetisation has been well elaborated in above mentioned point of this appeal. The consideration of withdrawals made in October and part of November (8th November, 2016) are bad on facts as actual withdrawals from banks during this period were Rs.4,26,50,000.00 while he considered only Rs.3,01,50,000.00 recorded in trading Cash Book only ignoring Rs.1,25,00,000.00 recorded in transport cash book and also bad in law as no disallowance can be made on speculation without pointing out specific entries which are being disallowed along with the reasons for disallowance of the same.*

*Ld. Delhi High Court in the case of CIT vs Kulwant rai in 291 ITR 36, the Hon'ble Delhi High Court has held as under: -*

> *"This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs.2 lacs on 4th Dec., 2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the AO or CIT(A) to support their view that the entire cash withdrawals must have been*

*spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under s. 158BC of the Act and the same was rightly ordered to be deleted."*

*Hon'ble Allahabad High Court in the case of CIT Vs Raghuraji Agro Industries Pvt Ltd (2012) 349 ITR 260 (All), the Hon'ble court observed as under: -*

*"After hearing both the parties and on perusal of record, it appears that so far as the quantity of HSD and paddy husk are concerned, there is no dispute. It has been fully reconciled and verifiable from the ledger mentioned by the A.O. The books of accounts were not rejected nor any defect was pointed out by the A.O., so, there cannot be any ad-hoc addition. Moreover, in the instant case, A.O. has made the addition on estimate basis which is merely a question of fact."*

*Therefore, the orders of Ld AO as well as Ld CIT(A) are not only bad on facts but also bad in law.*

*32. That the Ld. CIT(A) at point no. 15 of page no. 6 of her order stated:-*

*"In support of the transaction the appellant merely relied upon the cash books. He again failed to prove that if he was accumulating the routine regular withdrawals for deposit post demonetisation, how was he meeting the routine expenses of his business? The question of linkage of withdrawals made to the cash deposited remains unanswered. Having failed to prove the genuineness of the transaction as well, the action of the AO in adding the quantum deposits is upheld."*

*The Ld AO as well as the Ld CIT(A] has grossly failed to understand the business of appellant and need of regular cash holding at various branches for smooth running of his business which is well evident in turnover of the company post demonetised period where business of appellant had declined due to non-availability of cash during the months of November to January 2016. There was no accumulation of cash for deposit post demonstrations as nobody imagined that such thing was going to happen and the business model of appellant does not permit him to deposit cash in his bank accounts as no receipts are accepted in cash but all payments are received only through banks.*

*The company have not received any payment in cash since incorporation. The company withdraws cash from banks only to make the payments to farmers, labours, vehicle owners and others which is fully allowed under the laws of county. All offices of the company are having cash reserves to meet the payment requirements and all withdrawals are being made to retain the level of cash reserves. The company has 48 offices other than Head Office and the cash is retained on all places as per their requirements. These facts are not only verifiable with the records but also was well explained to the Ld AO as well as the Ld QT(A) through the replies and documents submitted and facts narrated in the appeal filed but they ignored these facts knowingly or unknowingly, mistakenly or deliberately.*

*As far as the question of meeting the routine expenses is concerned, the Ld AO as well as the Ld CIT(A) has grossly failed to understand that the closing Cash Balance in the hands of the appellant as on 08.11.2016 was Rs.8,17,77,407.28 out of that only Rs.5,98,44,000.00 was deposited in banks which were demonetised currency and Rs.2,19,33,407.28 valid currency was still available in the hands of the appellant. This money was available in the hands of the appellant after meeting all the routine expenses and payments to the farmers. The demonetised currency deposited in banks was part of cash reserves (in 500 and 1000 notes) at various branches of the appellant.*

*As far as the question of linkage of cash deposits with the withdrawals are concerned, when the all cash available in the hands of the appellant generated through withdrawals from the banks only and there is no cash receipts even Rs. 1 from anyone during the current period or in previous years also, than the question of linkage of cash deposits with the withdrawals can only be raised by the person who is unaware with the facts of the case or who is determined to cause the irreparable loss to the appellant for whatever reason best known by him only.*

*The details of key figures of the case which are wrongly reported in the orders of the Ld AO as well as the Ld CIT(A) are reproduced hereunder-*

| *Particulars* | *Actual amount as per books of account* | *Amount reported in the order* | *Difference* |
|---|---|---|---|
| *Opening cash balance as on 01/04/2016* | *10,85,72,358.54* | *10,61,98,491.00* | *23,73,867.00* |

| | | | |
|---|---|---|---|
| *Cash withdrawals from 01/10/2016 to 08/11/2016* | *4,26,50,000.00* | *3,01,50,000.00* | *1,25,00,000.00* |

*The details of other key figures of the case which are not considered or omitted in the orders of the Ld AO as well as the Ld CIT(A) are reproduced hereunder-*

| *Particulars* | *Actual Amount as per Books of Accounts* | *Remarks* |
|---|---|---|
| *Opening cash balance as on 01/04/2016* | *10,85,72,358.54* | |
| *Cash withdrawals upto 08/11/2016* | *27,03,53,801.00* | |
| *Cash balance as on 08/11/2016* | *8,39,71,032.28* | |
| *Valid currency in hand not deposited* | *2,41,27,032.00* | |
| *Cash deposited after 08/11/2016* | *5,98,44,000.00* | |
| *Total withdrawals during the year* | *32,74,46,801.00* | |
| *Cash withdrawals after 08/11/2016* | *5,70,93,000.00* | |
| *Cash Utilised after 08.1 1 .2016* | *29,49,55,127.26* | *79.07%* |
| *Cash utilized after 08/11/2016* | *7,80,88,930.00* | *20.93%* |

*It is crystal clear from the above figures that the all payments and expenses were duly recorded in the books of accounts as and when they occurred and the theory of utilisation of withdrawals are baseless against the facts of the case and based on the wild imagination of the Ld AO and the Ld CIT(A) just travelled on the same track created by the Ld AO.*

*The Ld CIT(A) has upheld the quantum addition made by the Ld AO is bad in law as under Income Tax Act, 1961 the income of an assessee is being calculated on real facts no sort of imagination is permitted for either tax payers or the department.*

*Reliance should be placed in the order of Ld. Delhi Tribunal in the case of Gordhan, Delhi v/s DCIT dated 19/10/2019, where it was held that: -*

*"no addition can be made u/s 68 on the sole reason that there is a time gap of 5 months between the date of withdrawals from bank account and redeposit the same in the bank account. Unless the AO demonstrate that the amount in question has been used by the assessee for any other purpose. In my view addition is made on inferences and presumptions which is bad in law."*

*Reliance should also be placed in the order of ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi), where it was held that: -*

*"merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts."*

*33. That it is crystal clear from the above points that the order passed by the Ld AO as well as the Ld CIT(A) are not only against the facts of the case but also bad in law. The Ld CIT(A) had also either forgotten or willfully avoided to consider the additional grounds raised in the written arguments submitted by the appellant.*

*34. That the reliance must be placed on cases cited hereunder:-*

*The ITAT, Mumbai Bench in the case of ITO vs. Surana Traders, (2005)93 TTJ 875: (2005)92 ITD 212, the relevant observation of the Mumbai Bench were as under :-*

*"So merely because for the reasons that the purchaser parties were not traceable, the assessee could not be penalised. In the sales documents, the assessee has made available all necessary details, i.e. the total weight sold as well as the rate per kilogram. Undisputedly, the assessee has maintained complete books of accounts along with day to day and kilogram to kilogram stock register. These were produced before the AO by the assessee. The assessee also submitted stock tally sheet along with the audited accounts. The audit report of the assessee also bears ample testimony in favour of the assessee. The factum of the assessee having maintained stock register*

*and quantitative details have been mentioned by the AO0 in the assessment order. No mistake were pointed out by the AO in these records maintained by the assessee. Since the purchases have been held to be genuine, the corresponding sales cannot. by any stretch of imagination be termed as hawala transaction. It is the burden of the department to prove the correctness of such additions. When, in such like cases, a quantitative tally is furnished, even if purchases are not available no addition is called for."*

*Reliance can be placed on the decision of the Income Tax Appellate Tribunal - Delhi in the case of Neeta Breja, New Delhi vs ITO, New Delhi ITA No. 524/Del/2017 where it was held that:-*

*"In the present case also the learned assessing officer or the learned CIT A did not show that above cash was not available in the hands of the assessee or have been spent on any other purposes. Further the coordinate bench in AC1T vs Baldev Raj Charla 121 TT] 366 (Delhi) also held that merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts. In view of above facts, the ground number 1 of the appeal of the assessee is allowed and orders of lower authorities are reversed."*

*Reliance can also be placed on the decision of the Ld. Indore Bench in the case of DEWAS SOYA LTD, UJJAIN v/s Income Tax (Appeal No 336/Ind/2012 has held that:-*

*"The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act."*

*This view has been held by the Hon'ble Supreme Court in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 72ITR194 (SC) that:-*

*"It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again."*

*Reliance can also be placed on the decision of Hon'ble Supreme Court in the case of CIT vs Durga Prasad More (1969) 72 ITR 807 (SC) in which it was held:-*

*"the amount represented the income of the assessee of the previous year, it was liable to be included in the total income and an enquiry whether for the purpose of bringing the amount to tax it was from a business activity or from some other source was not relevant".*

*Reliance can be placed on the decision of Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordia vs ITO (2008) 298 ITR 349 in which it was held that:-*

*"Addition u/s 68 could not be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them".*

*In the decision of Hon'ble ITAT, Nagpur Bench in the case of M/s Heera Steel Limited vs. ITO (2005) 4 ITJ 437 is also worth to be mentioned here that wherein it was held that:-*

*"Both the lower authorities failed to appreciate the case of the assessee that these were the trade advances and not cash credits and against such advance, the assessee has supplied the material in due time as per details available on record. In view of the above, there is no justification for the revenue authorities to treat these cash advances as unexplained cash credit u/s 68".*

(C.2.1) At the time of hearing before us, the appellant assessee was represented by Shri Om Kumar, Advocate, learned Counsel for the assessee and the Revenue was represented by Shri Harish Gidwani, Sr. D.R. Learned Counsel for the assessee drew our attention to key points of written

arguments submitted to learned CIT(A) during appellate proceedings in the office of learned CIT(A), which have already been reproduced in foregoing paragraph (C.2) of this order, and placed heavy reliance on the same. Moreover, he submitted that the assessee company did not make any cash sale or cash receipt from its customers as a policy, and that the only source of cash for the assessee company was withdrawals from its bank accounts. He drew our attention to paragraph 7 of the assessment order in this regard. He further submitted that all the expenses of the assessee company, whether made in cash or through banking channels, are duly reflected in the cash book of the assessee company. The learned Counsel for the assessee submitted furthermore that linkage of cash withdrawals, as well as how these withdrawals were available for deposit are clearly evidenced from the cash book. The learned Counsel for the assessee also submitted that the copy of cash book and table showing cash withdrawals were submitted to the Assessing Officer which were self-explanatory for establishing legitimate and explained sources for the deposit of SBNs during the demonetization period as well as for expenses incurred by the assessee. He further contended that if any further materials or evidences were required for establishing linkage of cash withdrawals, and/or for how these withdrawals were available for deposit of SBNs during demonetization period and/or for sources of funds for incurring the expenses; then the assessee should have been asked to provide the same, but this was not done. The learned Counsel for the assessee contended that learned Assessing Officer and learned CIT(A) were in error in only treating withdrawals made in October, 2016 and November (till 08/11/2016) as explained for the purpose of deposit of SBNs in the banks during demonetization period and further, that instead they should have considered withdrawals made during the earlier period also. The learned Counsel for the assessee also submitted, without prejudice, that in any case even if the withdrawals made in the

month of October to November, 2016 (till 08/11/2016) are considered, even then; for coming to the figure of Rs.3,01,50,000/- to calculate withdrawals from banks in the month of October, 2016 and in November, 2016 till 08/11/2016 (in paragraph 8 of the assessment order), the Assessing Officer failed to consider the withdrawals amounting to Rs.1,25,00,000/- from the business of transportation. He further submitted that the Assessing Officer only considered the withdrawals made from the business of trading of goods. He contended further that if the total withdrawal of Rs.1,25,00,000/- from transportation business and Rs.3,01,50,000/- from trading business is considered, the total amount of cash withdrawals made in October, 2016 and in November, 2016 (till 08/11/2016) comes to Rs.4,26,50,000/- and not Rs.3,01,50,000/- as wrongly recorded by the Assessing Officer.

(D) As can be readily seen, on perusal of the foregoing portion of this consolidated order; the submissions and contentions made by learned Counsel for the assessee in these two appeals before us, were, mutatis mutandis, similar in nature. The learned Counsel for the assessee also placed reliance on judicial precedents and case laws referred to in "statement of facts", already mentioned in foregoing paragraph (B.2) and (C.2) of this order.

(D.1) Learned Sr. Departmental Representative for Revenue made common submissions in respect of both the appeals which were heard together. As regards the judicial precedents, he submitted that the issue whether the deposit of SBNs by the assessee in the bank, during demonetization period, was out of explained and legitimate sources was, in substance, essentially a questions of fact; and view taken on this issue should depend on specific facts and circumstances of each case, which can vary from case to case.

(D.2) On specific facts and circumstances of the present two appeals before us, the learned Sr. D.R. for Revenue submitted that having regard to the various submissions and contentions made by the learned Counsel for the assessee; the issues in dispute in the present two appeals, regarding aforesaid addition of Rs.49,60,000/- in the case of M/s Shiva Goods Carrier Pvt. Ltd. in I.T.A. No.258/Lkw/2020 and regarding aforesaid addition of Rs.2,96,94,000/- in the case of M/s Shiva Veener (India) Pvt. Ltd. in I.T.A. No.256/Lkw/2020; may be set aside to the file of the respective Assessing Officers with the direction to pass fresh orders in accordance with law after providing reasonable opportunities to the respective assessees and after due verification of facts and circumstances. The learned Counsel for the assessee submitted in his rejoinder, that the assessees had a strong case on merits, considering the specific facts and circumstances of the cases. However, he expressed no objection to the submission made by learned Sr. D.R. for Revenue that issues in dispute may be set aside to the files of the respective files of the respective Assessing Officers with the direction to pass fresh orders in accordance with law after providing reasonable opportunities to the respective assessees, and after due verification of facts and circumstances; and on this, he expressed agreement with the learned Sr. D.R. for Revenue, at the time of hearing before us.

(D.2.1) In view of the foregoing and as representatives of both sides are in agreement on this; we set aside the impugned appellate orders of the learned CIT(A) in each of the two appeals before us; and we restore the issue in dispute in the present two appeals before us, regarding aforesaid addition of Rs.47,60,000/- in the case of M/s Shiva Goods Carrier Pvt. Ltd. in I.T.A. No.258/Lkw/2020 and regarding aforesaid addition of Rs.2,96,94,000/- in the case of M/s Shiva Veener (India) Pvt. Ltd. in I.T.A.

No.256/Lkw/2020; to the file of the respective Assessing Officers with the direction to pass de nono orders in accordance with law, after providing reasonable opportunities to the respective assessees and after due verification of facts and circumstances. All the grounds of appeal in the two appeals before us are treated as disposed of in accordance with the aforesaid directions.

(E) In the result, for statistical purposes, both the appeals are partly allowed.

(Order pronounced in the open court on 01/06/2023)

| | |
|---|---|
| **Sd/.** | **Sd/.** |
| **(SUDHANSHU SRIVASTAVA)** | **(ANADEE NATH MISSHRA)** |
| **Judicial Member** | **Accountant Member** |

Dated:01/06/2023
*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T.,

Assistant Registrar