आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No.302/JP/2024
निर्धारण वर्ष/Assessment Years :2017-18

Suwalka and Suwalka Properties and Builders Pvt. Ltd. Bundi Road, Kunhari Ladpura, Kota.	बनाम Vs.	Asst. Commissioner of Income Tax, Central Circle, Kota.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAHCS 7054 C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by :Sh. Vijay Goyal, CA
राजस्व की ओर से/Revenue by: Sh. Anup Singh, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 29/08/2024
उदघोषणा की तारीख/Date of Pronouncement: 03/10/2024

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

As the above named assessee was aggrieved by the finding recorded in the order passed by the Commissioner of Income Tax (Appeals), Udaipur-2 vide his order dated 17/01/2024 [for short CIT(A)]the assessee preferred the present appeal. The dispute relates to the assessment year 2017-18. The order under challenged was passed by ld. CIT(A) because the assessee preferred the first appeal before him challenging the

assessment order dated 22.12.2019 passed u/s.143(3)of the Income Tax Act, [for short Act] by ACIT,Central Circle, Kota [for short AO].

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

"1. On the facts and in the circumstances of the case, the order CIT(A) erred in rejecting the books of account of the assessee by applying the provision of Section 145(3) of the Income Tax Act, 1961 without asking the assessee to produce the books of account and without examining the books of accounts.

2. On the facts and in the circumstances of the case, the ld. CIT(A) erred in sustaining the addition of Rs. 2,64,00,000/- on account of cash deposited in bank accounts in the demonetized currency, as unexplained cash credit of the assessee by applying the provisions of section 68 of the Act as against addition made by ld. AO u/s 69A and taxing the same by applying provisions of section 115BBE of IT. Act alleging the same as undisclosed income of appellant and further erred in reducing the same income from business income declared by the assessee and adding the same as Income from other sources. The entire findings of lower authorities are based on presumption, assumption and having no material or irrelevant material and without providing the adequate opportunity of submission of documents. The addition was made without considering the submission and documents of the assessee in the judicial perspective.

3. The appellant prays for leave to Add, to amend, to delete, or modify the all or any grounds of appeal on or before the hearing of appeal."

3. Succinctly, the fact as culled out from the records is thatassessee is corporate entity and engaged in the business of real estate as a builder and developer. Return of income declaring total income at Rs. 3,67,82,720/- was E-filed on 06.03.2018 by the assessee company for the A.Y 2017-18. The case was selected for scrutiny through Computer assisted selection of

cases (CASS) programmed on parameters decided by CBDT. The first notice u/s 143(2) issued on dated 09.08.2018 by the AO which was served upon the assessee and hearing was fixed on 20.08.2018. Further, notice u/s 142(1) issued on 22.01.2019 along with questionnaire/Annexure-A requiring certain details/information, which was served upon the assessee. Further, notice under sub section (1) of Section 142 of the Act was issued on 30.08.2019 and served to the assessee due to change of incumbent as per section 129 of the I.T. Act, 1961. In response to that, the assessee submitted reply online from time to time which are considered and placed on record by the AO.

3.1 Ld. AO in the assessment proceeding noted that the assessee Company has shown various expenses including other expenses of Rs. 3,85,98,705/- in P & L account including miscellaneous expenses of Rs. 23,02,592/- and business promotion expenses of Rs. 70,000/-. Above expenses in P & L account are not satisfactorily explained and assesseefailed to submit supporting documents like bill- vouchers to substantiate his claim. Employee register and wages register were not produced for examination. Further day to day stock register has not been produced for examination. Certain expenses are paid in cash mode and

self made vouchers are maintained which are not verifiable. Correctness and completeness of the books of accounts cannot be accepted in absence of proper documentation. Further, the probability of involvement of personal expenses cannot be ruled out in personal nature expenses. Therefore, these expenses claimed by assessee are not open for verification. Hence, after considering all the facts and circumstances of the case, ld. AO made a lump sum addition of Rs. 15,00,000/-in the total income of the assessee for the year under consideration.

3.2 Ld. AO also based on the information he has,observed that for the year under assessment, the assessee company has deposited Rs. 2,79,00,000/- in its various bank accounts during demonetization period. The assessee accepted this fact and mentioned the same amount in return filed by it on 06.03.2018. Vide notice u/s 142(1) on various dates during assessment proceeding the assessee was asked to explain the source of cash deposited during the demonetization period from 09.11.2016 to 31.12.2016. The assessee submitted that it had sold cheja stone and other material in cash of Rs. 3,24,44,415/- during the year under assessment and the cash deposited during the demonetization period is received from such sale made by the assessee. Further, the assessee stated that "regarding

deposit during demonetization, a surrender of Rs. 15.00 Lac has been made before D.D.I.T Kota under P.M.G.K.Y scheme and Rs. 7,48,500/- was deposited as tax & FDR of Rs. 3,75,000/- was also made under the scheme for just to purchase the peace of mind".

3.3 As per assessee's submission, the assessee has sold material worth Rs. 3,24,44,415/- from 01.04.2016 to 08.11.2016 and no such sale has occurred after 08.11.2016. The contention of the assessee is not found convincing as the material worth Rs. 3,24,44,415/- was sold in first 7 months and no such material was sold in next 4 months. This fact is unbelievable. The assessee has also not shown any stock of such material in its Books of Accounts of current year as well as for the earlier years. Further, as business concern, sale of material worth Rs. 3,24,44,415/- in cash during the year sounds uncommon as also no such sale has occurred in any previous years. Further, the assessee has not provided any bills and vouchers in support of such sale of such material worth Rs. 3,24,44,415/-. The assessee contended that Rs. 3,24,44,415/- is included in its P&L and including the cash deposited during demonetization in its total income for the year will amount to double taxation is not found convincing. The assessee has not provided any bills and vouchers in support of its claim of

sale of Rs. 3,24,44,415/- and it could not establish that the cash obtained from such sale is deposited during demonetization. The assessee has only provided cash book andledger but not provided any other documents in support of its claim despite being called several times. Since, the assessee could not establish that such sale has occurred during the year under consideration, the contention of the assessee is not found satisfactory and the amount of demonetized currency deposited during the demonetization period after considering the amount of Rs. 15.00 lacs surrender under the P.M.G.K.Y scheme by the assessee company, at Rs.2,64,00,000/- (2,79,00,000/- - 15,00,000/-) was added to the total income of the assessee treated as unexplained money as per provision of section 69A of the IT Act, 1961 and tax is charged u/s 115BBE of the IT Act.

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

> "6.4 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are beingdiscussed and decided as under:-
>
> The appellant has raised ground number 2 and additional ground with respect to addition of Rs. 2,64,00,000/- made in the assessment order.

With respect to this addition the AO mentioned in the order that as per information available on record during the year under consideration, the assessee company has deposited Rs. 2,79,00,000/- in its various bank accounts during demonetization period. As per assessee's submission, the assessee has sold some material worth Rs. 3,24,44,415/- from 01.04.2016 to 08.11.2016 and no such salehas occurred after 08.11.2016. The contention of the assessee is not foundconvincing as the material worth Rs. 3,24,44,415/- was sold in first 7 months and no such material was sold in next 4 months. This fact is unbelievable. The assessee has also not shown any stock of such material in its Books of Accounts of current and earlier years. Further, as business concern, sale of material worth Rs. 3,24,44,415/-in cash during the F.Y sounds uncommon. And no such sale has occurred in any previous years. Further, the assessee has not provided any bills and vouchers in support of sale of such material worth Rs. 3,24,44,415/-

The AO further noted that the claim of the assessee that Rs. 3,24,44,415/- is included in its P&L and including the cash deposited during demonetization in its total income for the year will amount to double taxation is not found convincing. The assessee has not provided any bills and vouchers in support of its claim of sale of Rs. 3,24,44,415/- and it could not establish that the cash obtained from such sale is deposited during demonetization. The assessee has only provided cash book and ledger but not provided any other documents in support of its claim despite being called several times by this office. Since, the assessee could not establish that such sale has occurred during the year under consideration, the contention of the assessee is not found satisfactory and the amount of demonetized currency deposited during the demonetization period after considering the amount of Rs. 15.00 lacs surrender under the P.M.G.K.Y scheme by the assessee company, at Rs. 2,64,00,000/-(2,79,00,000/- 15,00,000/-) is hereby added to the total income of the assessee treated as unexplained money as per provision of section 69A of the IT Act, 1961 and tax is charged u/s 115BBE of the IT Act.

The arguments of the appellant are considered as under-

The submissions with respect to the Additional Ground are given first and then, without prejudice to the said submissions, with respect to Ground Nos. 2(a) and 2(b).

It is argued that the cash sales are duly recorded in the books of accounts but the Ld AO has not considered the explanation of the assessee satisfactory and made addition under section 69A, In such a situation the addition is not tenable in the eyes of law because assessee had recorded such transactions in its books of account and once they are recorded, then no explanation is required to be to be offered so far as section 69A concerned.

In the case of the assessee, the cash sales are duly recorded in the books of account but the Ld. AO hasnot considered the explanation of the assessee satisfactory and made addition under section 69A in such asituation, the addition is not tenable in the eyes of law because assessee had recorded such transactions in hisbooks of account and once they are recorded, then no explanation is required to be offered so far as section 69A is concerned. Therefore, such addition is liable to be quashed.

The argument of the appellant is considered and found to be partly acceptable. The AO has not believed that the cash deposited during demonetization period is earned from the sale of Cheja Stone as claimed by the appellant. The appellant has not provided any bills and vouchers in support of sale of Cheja Stone. In the absence of these evidences, the explanation of the appellant is rightly rejected by the AO thatthe cash deposited during demonetization period is from the sale of Cheja Stone. The AO also recorded that the assessee company has deposited Rs. 2,79,00,000/- in its various bank accounts during demonetization period. As per assessee's submission. the assessee has sold some material worth Rs. 3,24,44,415/- from 01.04.2016 to 08.11.2016 and no such sale has occurred after 08.11.2016. The contention of the assessee is not found convincing as the material worth Rs. 3,24,44,415/-was sold in first 7 months and no such material was sold in next 4 months. This fact is unbelievable. The assessee has also not shown any stock of such material in its Books of Accounts of current and earlier years. Further, as business concern, sale of material worth Rs. 3,24,44,415/- in cash during the F.Y sounds uncommon. And no such sale has occurred in any previous years.

In these facts and circumstances, the AO was correct in holding that the source of cash deposited during demonetization of Rs. 2,79,00,000/- remain unexplained. Out of Rs. 2,79,00,000/- deposited the amount of Rs. 15 lakhs was sourced out of Rs. 15 lakhs surrendered in PMGKY Scheme. Therefore the AO made addition of Rs. 2,64,00,000/-. The appellant further could not establish genuineness of business as no evidence is furnished to show that for making sale of Cheja Stone, the assessee got permission of government for mining as claimed by the appellant. Therefore, the claim of the appellant is rightly rejected by the AO. However, the AO has added this amount twice. Once, the amount was part of returned income as claimed by the assessee which is not accepted by the AO. Again the amount was treated as deemed income and added in the total income of the assessee. Therefore, the claim of the appellant is found to be acceptable that the same amount is added twice. In these facts, the amount of addition of 2,64,00,000/- is required to be removed from the gross income of Rs. 3,67,82,724/- to avoid duplicate addition. The assessed total income will be reduced by this amount accordingly.

Further, the AO has made addition under section 69A which is not found to be applicable on the facts of the case. The addition should have been made under section 68 as the source of cash deposited during the demonetization

period remains unexplained. Therefore, the addition of Rs. 2,64,00,000/- made by the AO is upheld u/s 68 of the Act as the source of the cash deposited in the bank account remain unexplained.

In view of the above findings, the argument of the appellant that section 69A is not applicable on the facts of the case are treated as disposed of as the addition is being upheld u/s 68 of the I.T. Act. The decisions relied upon by the appellant in this regard are not found to be applicable in view of these findings.

The appellant has raised further Ground No. 2 (a) Cash deposited in bank accounts during demonetization periodtreated as unexplained money and stated that the Ld. AO has erred in making addition of Rs. 2,64,00,000 to the total income of the assessee u/s 69A, by treating it as unexplained money

In the Ground No. 2(a) taken without prejudice to Additional Ground, the appellant stated that during the course of assessment proceedings, details/information/documents were called from the assessee by the Ld. AO from time to time, which were duly submitted. Books of account, comprising of Cash Book, Bank Books, Ledger, etc., along with Bank Statements, bills and vouchers, were produced before the Ld. AO for examination Copies of Cash Book, Bank Books, Bank Statements and Sales Ledger were submitted to the Ld. AO. Copy of audit report, audited statement of Profit and Loss, Balance sheet and Computation of Total Income were also submitted.

The reply of the appellant is not found to be acceptable in view of the findings made by the AO in the assessment order. The AO noted that the appellant has not provided any bills and vouchers in support of sale of Cheja Stone. The AO also recorded that the assessee company has deposited Rs. 2,79,00,000/- in its various bank accounts during demonetization period. As per assessee's submission, the assessee has sold some material worth Rs. 3,24,44,415/- from 01.04.2016 to 08.11.2016 and no such sale has occurred after 08.11.2016. The contention of the assessee is not found convincing as the material worth Rs. 3,24,44,415/- was sold in first 7 months and no such material was sold in next 4 months. This fact is unbelievable. The assessee has also not shown any stock of such material in its Books of Accounts of current and earlier years. Further, as business concern, sale of material worth Rs.3,24,44,415/- in cash during the F.Y sounds uncommon and no such sale has occurred in any previous years.

It is further argued that it is not the case of the Ld AO that the cash deposited in the banks during the demonetization period was in excess of what was available in the Cash Book. The fact that the cash deposits in banks were sourced out of cash sales is evident from the entries in the Cash Book

It is argued that no material was brought on record by the Ld. AO to draw an inference that the explanation offered by the assessee was incorrect or

unreasonable or that the impugned sum represented income of the assessee from undisclosed sources as against the entries recorded in the audited books of account. He did not find any concrete and conclusive evidence of bogus sales and non-existing cash in the books of account. The addition has been made by merely twisting the facts and giving some findings which are not alone sufficient to justify the addition and hence is not tenable in the eyes of law. The profit as per the audited books of account ought to have been considered by the Ld. AO.

It is argued that no doubt the Ld. AO was duty bound to examine the genuineness of sales and source of cash deposited in bank in demonetized currency but this exercise was carried out without considering the facts, documents and submissions of the assessee in right perspective, which lead to wrong addition in the income of the assessee. From the perusal of the assessment order, it is explicit that the detailed submissions of the assessee, duly supported by documentary evidence, have been brushed aside by briefly making some observations in brief.

As discussed above, the sale of Cheja Stone is not considered as genuine business of the aseessee by the AO. Therefore, the source of cash deposited during demonetization period remains unexplained which is upheld u/s 68 of the Income Tax Act. The appellant has explained that the source of cash deposited during demonetization period is out of sales of Cheja Stone. However, in the absence ofsupporting evidence furnished during assessment proceedings, the source of cash remain unexplained and same is treated as unexplained credit in the books of accounts and added u/s 68 of the Income Tax Act. In view of these facts the decisions relied upon by the appellant are not found applicable on the facts of the case.

It is argued that once the assessing officer accepts the books of account and the entries in the books of account are matched, there is no case for making the addition as unexplained.

The claim of the appellant is not found to acceptable as the AO has not accepted that the source of cash deposited during demonetization was from the sale of Cheja Stone. Therefore the argument and decisions relied upon by the appellant are not found applicable on the facts of the case.

It is argued that the Ld. AD has made the huge addition under section 69A without rejecting the books of account by invoking the provisions of s. 145(3) The Income Tax Law does not empower the AD to make exorbitant addition without rejecting the books of account under section 145(3) The appellant also relied upon some decisions.

Considering the reply of the appellant and facts of the case, it was considered that as per the provisions of I.T. Act, the CIT (A) has coterminous powers. On the facts of the case, the AO should have rejected the books of

accounts of the assessee as the source of cash deposited during the demonetization period is not satisfactorily explained by the assessee. Therefore, the appellant was issued show cause notice on 29-12-2023 as per provisions of section 251(2) of the Income Tax Act.

In response to the show cause notice, the appellant furnished reply on 03-01- 2024.

The appellant mainly argued in the reply that the CIT(A) has no power to travel beyond the subject matter of the assessment. It is argued that the CIT (A) is not entitled to assess new source of income.

The argument of the appellant are considered. The show cause notice issued to the appellant was related to subject matter of the assessment. In fact the addition was made by the AO of Rs. 2,64,00,000/- and the show cause notice is related to that amount only. The show cause notice only to strengthen the order of the AO. Since, the amount added by the AO is only proposed to be added therefore, the argument of the appellant that new source of income cannot be added is not found to be relevant on the facts of the case.

The appellant also relied upon the decision of ITAT, Jaipur in the case of Zuberi Engineering Company v. Deputy Commissioner of Income-tax, Circle-2, Jaipur [2019] 103 taxmann.com 196 (Jaipur-Trib.).

The ITAT in the above decision relied upon by the appellant held that the Assessing Officer made certain disallowances of expenses while completing the assessment under section 143(3) whereas the Commissioner (Appeals) invoked the powers to enhance the assessment by rejecting the books of account and consequently the income of the assessee was enhanced by applying the G.P. rate to estimate the income of the assessee. Therefore, it is clear that the said issue and aspect of not accepting the book results of the assessee was never taken up by the Assessing Officer in the scrutiny assessments of the assessee.

However, in the present case, the source of cash from sale of Cheja Stone as claimed by the assessee is not accepted by the AO. Therefore, the AO has not accepted the book result which is evident from the assessment order. However, the AO did not invoke the section 145(3) while making the addition. The ITAT in the above order also held that the subject matter of assessment is the matters which were taken up by the Assessing Officer during the scrutiny assessment are very much subject matter of appeal so far as the power of the Commissioner (Appeals) exercising enhancement of income. In this case also the amount of Rs. 2,64,00,000/- was subject matter of assessment which were taken up by the Assessing Officer during the scrutiny assessment. Therefore, this issue is very much subject matter of appeal and within the power of the Commissioner (Appeals). Therefore, on the facts of the case, the decision relied upon by the appellant is not found to be applicable.

The appellant relied upon the decision of ITAT DELHI BENCH 'SMC' in the caseof Toffee Agricultural Farms (P.) Ltd.V.Income-tax Officer [2022]141 taxmann.com 429 (Delhi - Trib.). On reading this judgement it is noted that in thatcase it was noted by the ITAT as under -

“I find merit into the contention of the assessee that there is no power conferred upon the learned CIT(Appeals) to assess a particular item under different provision of the Act what the Assessing Officer had done without giving a specific notice to the assessee regarding such action. The Revenue has not brought any material to suggest that the assessee was put to notice by the leamed CIT(Appeals) before taking such action"

In this present case of the assessee, the assessee was issued show cause notice by the CIT(Appeals) before taking action. Hence, the decision relied upon by the appellant is distinguishable on the facts of this case.

The appellant relied upon the decision of THE ITAT PUNE BENCH 'B' in the case Rangnathappa Govindappa Zharkhande V Income-tax Officer of [2022] 144 taxmann.com 152 (Pune - Trib.). On reading this judgement it is noted that in that case it was noted by the ITAT as under -

"Next comes equally important legal question that the CIT(A) has bifurcated the Assessing Officer's long term capital gains' computation of Rs.74,55,088/- to business income to the extent of business profits of Rs.65,58,156/- Mr. Jasnani strong supported the same on the ground that the CIT(A)'s jurisdiction is co-terminus with that of the Assessing Officer in arriving at the correct computation of an assessee's taxable income. We find no merit in the Revenue's instant arguments in light of CIT v. Shapoorji Pallonji Mistry [1962] 44 ITR 891 (SC), CIT v. Union Tyers [1999] 107 Taxman 447/240 ITR 556 (Delhi) and CIT v. Sardari Lal & Co. [2002] 120 Taxman 595/[2001] 251 ITR 864 (Delhi) that the CIT(A)'s jurisdiction does not extend to introducing an altogether new source of income as it has been done in the facts of the instant case. Faced with this situation, we accept the assessee's vehement arguments challenging business profits addition of Rs.65,58,156/-"

On observing the decision it is noted that the ITAT held that the CIT(A)'s jurisdiction does not extend to introducing an altogether new source of income. In the present case of the appellant, no new source of income is introduced. The addition made by the AO is only being strengthened. Therefore, the reliance placed by the appellant is not found to be applicable on the facts of the case.

It is further noted in that case by the ITAT as under -

"20. In the facts of the present case only issue considered and discussed by the assessing officer is with respect to claim of the assessee u/s 54F of the act which

was rejected after inquiry and further claim alternatively made u/s 54 of the act was also rejected relying up on the decision of the Honourable Supreme court. The issue of verification of capital gain was not the issue which was at all dealt with by the assessing officer, or even a question of verification made by ld AO. There was no inquiry made by the ld AO on the issue of capital gain shown by the assessee. The ld AO has not at all considered the issue of sales consideration received by the assessee on sale of house as an issue of dispute before him. Therefore according to us, ld CIT (A) could not have made enhancement on the issue holding that capital gain shown by the assessee itself is not in accordance with the law and given a finding that no capital gain has accrued to the assessee. CIT (A) further held that funds received by the assessee is unaccounted income of the assessee and chargeable to tax u/s 68 of the act. On the matrix as held by the Honorable Delhi high court the above issue falls within the scope of the provision of section 147 of the act and not u/s 251 (1) (a) of the act. Further the Honourable Delhi high court in para no 27 has also held that power of the first appellate authority is not restricted to examine only those aspects of assessment about which the assessee makes a grievance but it covers the whole assessment to correct the order of the Assessing Officer not only with regard to the matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the Assessing Officer and determined in the course of assessment. Therefore for the purpose of enhancement of income by CIT (A), it is necessary that either the matter should be raised in the appeal by the assessee or even otherwise the matter should ld have been considered and determined in the course of assessment proceedings. It is not at all necessary that AO should have made any adjustment to the total income of the assessee. Hence, enhancement u/s 251(1)(a) of the act is prohibited on the issues which have not at all been considered by the AO during assessment proceedings. This gives the common understanding that the ld CIT (A) cannot enhance income of the assessee on altogether 'new Source'. Therefore it is clear that Therefore, the CIT(A) is not competent to enhance the assessment taking an income which income was not considered expressly or by necessary implication by the Assessing Officer at all. Such is the mandate of the decisions of various high courts such as in CIT v. National Co. Ltd. [1993] 199 ITR 445 (Cal), Sait Bansilal and Rangisetti Veeranna v. CIT [1972] 83 ITR 750 (AP), Sterling Construction & Trading Co. v. ITO [1975] 99 ITR 236 (Kar) and LokenathTolaram v. CIT [1986] 24 Taxman 486/161 ITR 82 (Bom). Hence issue no 11 enlisted in para no 13 of the order is decided in favour of the assessee. In view of our decision on issue no (i), issue no (ii) does not survive and issue no (iii) is dealt with separately. In view of this we allow ground no 1,2,3,14,15 and 16 of the appeal of the assessee.

21. As we have held that ld CIT (A) has exceeded his jurisdiction in enhancing the income of the assessee by considering the new sources of income not at all considered by the ld AO, consequently we allow the ground no 9,10,11,12 and 13 of the appeal of the assessee where the addition u/s 68 of the act has been made by the ld CIT (A) enhancing income of the assessee holding that sale

consideration received by the assessee on sale of property is chargeable to tax as undisclosed income u/s 68 of the act."

In the above order relied upon by the appellant CIT (A) has exceeded his jurisdiction in enhancing the income of the assessee by considering the new sources of income not at all considered by the Id AO. However, in the case of the appellant the addition of Rs. 2,64,00,000/- was not only considered by the AO but the addition was also made by the AO. Therefore, the reliance placed by the appellant is not found to be applicable on the facts of the case.

The appellant relied upon the decision of THE ITAT DELHI BENCH 'E' in the case of Hari Mohan Sharma v. Assistant Commissioner of Income-tax, Circle-63(1), New Delhi [2019] 110 taxmann.com 119 (Delhi-Trib.). On reading this judgement it is noted that in that case it was noted by the ITAT as under-

"19. The principle culled out from the above judicial precedents clearly shows that words "enhance the assessment are confined to the assessment reached through a particular process. It cannot be extended to the amount which ought to have been computed. There being other provisions which allow escaped income from new sources to be taxed after following a certain prescribed procedure. So long as a certain item of income had been considered and examined by the Assessing Officer from the point of view of its assessability and so long as the CIT(A) does not travel beyond the record of the year, there has never been any doubt as to his powers of redoing the categorization and bringing the assessment within the true description of the law

20. In the facts of the present case only issue considered and discussed by the assessing officer is with respect to claim of the assessee u/s 54F of the act which was rejected after inquiry and further claim alternatively made u/s 54 of the act was also rejected relying up on the decision of the Honourable Supreme court. The issue of verification of capital gain was not the issue which was at all dealt with by the assessing officer, or even a question of verification made by Id AO. There was no inquiry made by the Id AO on the issue of capital gain shown by the assessee. The Id AO has not at all considered the issue of sales consideration received by the assessee on sale of house as an issue of dispute before him. Therefore according to us, Id CIT (A) could not have made enhancement on the issue holding that capital gain shown by the assessee itself is not in accordance with the law and given a finding that no capital gain has accrued to the assessee. CIT (A) further held that funds received by the assessee is unaccounted income of the assessee and chargeable to tax u/s 68 of the act. On the matrix as held by the Honorable Delhi high court the above issue falls within the scope of the provision of section 147 of the act and not u/s 251 (1) (a) of the act. Further the Honourable Delhi high court in para no 27 has also held that power of theunder:-

“38. Considering the fact that the Assessing Officer in the assessment order has neither discussed the issue nor made any addition uls 58(2)(vib), therefore,

respectfully following the deosionscted above, we are of the considered opinion that the Id.CIT(A) has no power to adjudicate the issue by introducing a new source of income and his order has to be confined to those tems of income which is subject matter of original assessment. We accordingly set aside the order of the CITIA) and direct the Assessing Officer to delete the addmion. The grounds of appeal raised by the assessee are accordingly allowed."

In that came, it was held that the CIT(A) has no power to adjudicate the issue by introducing a new source of income which the Assessing Officer in the assessment order has neither docussed nor made any addition. However, in the present case, the addition which is being confirmed is not only considered by the AD but the AD made addition also. Therefore, the decision relied upon by the AD is not found to be applicable on the facts of the case

In the absence of any statutory provision, the general principle relating to the amplitude of the powers of the CIT (A) is that such powers are coterminous with that of the initial authority, in the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. (Supreme Court- September 4, 1990[1991] 187 ITR 688 (SC), Jute Corporation Of India Limited).

While considering the scope and powers of the appellate authority, under the Income Tax Act, 1961, courts have consistently held that the power of the first appellate authority are coterminous with that of the Assessing Officer and that the appellate authority can do what the Assessing Officer ought to have done and also direct the latter to do what he has failed. Appeal is also a continuation of original proceedings and unless some fetters are placed upon the powers of the appellate authority by express words, the appellate authority can exercise all the powers as that of the original authority. Reliance is placed on the observations of the Apex Courts in CIT v. Kanpur Coal Syndicate [1964] 53 ITR 225, the Court held that powers of the Commissioner are co-terminous with that of the ITO and the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. A question regarding powers of the first appellate authority came up for consideration before the Supreme Court in CIT v. NirbheramDaluram [1977] 224 ITR 610/91 Taxman 181. Following their earlier decisions in Kanpur Coal Syndicate's case (supra) and Jute Corpn, of India Ltd.'s case (supra) their Lordships retterated that the appellate powers conferred on the Commissioner under section 251 could not be confined to the matter which had been considered by the ITO.

In view of the above discussion, the argument of the appellant are not found to be acceptable.

In response to the show cause notice, the appellant was required to furnish verifiable evidences to prove that genuine sale was made from which the cash was received which was deposited during demonetization. However, the

appellant failed to furnish any evidence required by show cause notice. Because of failure to furnish credible evidence in support of source of cash deposited during demonetization the books of accounts are not found to be reliable and rejected by invoking section 145(3) of the Income Tax Act. The cash credited in the name of sale is treated as unexplained credits in the books of accounts of the appellant. Therefore, the addition is made as proposed in the show cause notice u/s 68.

The appellant further argued that the Ld. AO wrongly applied the provisions of section 115BBE with a motive to levy the tax on the higher slab rate. It is also pertinent to mention here that before applying the provisions of section 115BBE of the Act, the specific show cause notice was not given to the assessee and in absence of specific show cause notice, the provisions of this section cannot be applied in mechanical manner.

When addition u/s 68 of the Act is made taxing it at the rate prescribed u/s 155BBE of the Act was a natural corollary. It is provided in the Act itself. The AO has to tax as per provisions of section 115BBE if addition is made u/s 68 or section 69, 69A etc. I find that there is no provision regarding issuing show cause for applying tax rate as provided in section 115BBE. It is natural consequence if addition is made under these sections. Therefore, the argument of the appellant are not found to be acceptable that specific show cause was required to be given for applying section 115BBE. In this regard ITAT RAJKOT BENCH IN THE VijubhaJitubha Jadeja v. Principal Commissioner of Income-tax [2023] 154 taxmann.com 615 (Rajkot - Trib.) held as under -

"Further the AO having made addition u/s 68 of the Act, taxing it at the rate prescribed u/s 1558BE of the Act was a natural corollary. Admittedly the law itself prescribes a special rate of tax for additions made u/s 68, 69,69A/B/C of the Act u/s 115BBE of the Act. Even the Ld. Counsel for the assessee does not dispute this position of law. The AO, therefore having not taxed the addition made on account of unexplained creditors u/s 68 of the Act, as per the rate prescribed u/s 115BBE of the Act, is clearly an error causing prejudice to the Revenue."

In view of the above discussion, the addition of Rs. 2,64,00,000/- is confirmed u/s 68 as unexplained credits and the charging section 115BBE is upheld as the addition is being made u/s 68 of the Income Tax Act.

In the result the issue raised in ground number 4 is treated as dismissed.

In the ground no. 2 of the appeal the appellant stated that the Ld. AO has erred in making addition of Rs. 2,64,00,000/- to the total income of the assessee u/s 69A,by treating it as unexplained money, (b) Without prejudice to Ground No.2(a) That the Ld. AO has erred in making the above addition of Rs. 2,64,00,000/- since the assessee had already shown in its Profit and Loss Account the corresponding sale through which the cash deposited in Banks was

generated and therefore, this sum was already added as income. Thus, the Ld. AO, by treating the cash deposited in Bank Accounts as undisclosed income and adding it to the total income, has resulted in double taxation,

The appellant also argued that the amount of cash sales is being reflected in the trading and profit and loss account of the assessee. Therefore, the contention of the Ld. AO that the said cash sales are unexplained money under section 69A means that the impugned sales had been taxed twice; firstly the same was treated as sales and secondly the same was treated as unexplained money under section 69A of the Act. This would tantamount to double taxation of income, which is impermissible in law. Therefore, the action of the Ld. AO in holding that the assessee could not substantiate the sales with documentary evidences is not based on correct appreciation of the facts.

The argument of the appellant are considered. In the ground number 2 (a) the issue raised is similar as raised in the ground number 4 which has already been dismissed. Therefore, this issue raised in ground no. 2(a) is also treated as dismissed in accordance the discussion in the earlier paragraphs.

The issue raised by the appellant in ground no. 2(b) is with regard to double taxation of the same amount. This is found to be admissible as the amount of addition made of Rs. 2,64,00,000/- is the same amount which is treated by the assessee as sale in the books of accounts. The sale is not found to be genuine and therefore addition is made under section 68. In these circumstances, the amount which is not considered as part of sale needs to be reduced from the returned income and thereafter the addition is to be made under section 68 as discussed in preceding paragraphs. The appellant gets partial relief accordingly.

The ground number 2 is treated as partly allowed."

5. Feeling not satisfied with the finding so recorded by the ld. CIT(A) on the issue of applicability of section 145(3), 69A and 115BBE of the Act on the issue the assessee preferred the present appeal on the grounds as reiterated herein above. In support of the grounds so raised by the assessee ld. AR of the assessee, has filed a detailed submissions in respect of the two grounds raised by the assessee and the same is reproduced herein below:

"The assessee company is engaged in real estate business as builder and developer. Return of Income for the A.Y. 2017-18 declaring Total Income at Rs. 3,67,82,720 was E-filed by the company on 06.03.2018. The case for the AY 2017-18 was selected for scrutiny through CASS. The assessment was completed u/s 143(3) by Id. AO; DCIT, Central Circle, Kota at the total income of Rs. 6,46,82,720/- by making the following disallowance and addition.

S.No	Particulars	Amount (Rs.)
1.	Lumpsum disallowance out of Other Expenses	15,00,000
2.	Addition u/s 69A by treating cash deposited in bank accounts during demonetization period as unexplained money	2,64,00,000
	Total addition	2,79,00,000

Aggrieved from the assessment order, the assessee filed appeal before Ld CIT(A), Udaipur-2. The Id CIT(A) partly allowed the appeal of assessee. The gist of findings of Id CIT(A) is as under:-

a) Out of total disallowance of Rs. 15,00,000/- out of other expenses, the Id CIT(A) sustained the addition of Rs. 1,92,993/- and remaining disallowance of Rs. 13,07,007/- was deleted.

b) The Id CIT(A) rejected the books of account by invoking section 145(3) of I.Tax Act by holding that assessee failed to furnish credible evidence in support of the source of cash deposited during the demonetization, hence the books of account of assessee are not reliable. (Page 38 of order)

c) The Id CIT(A) reduced the amount Rs. 2,64,00,000/- from business income of the assessee and upheld the addition of Rs 2,64,00,000/- as income from other sources u/s 68 of Income Tax Act treating the cash deposited during demonetization as unexplained credit as against unexplained investment held by Id AO u/s 69A and taxing the same under 115BBE of the Act, 1961. (page 30, 38 and 39 of order)

Now aggrieved from the order of Id CIT(A), the assessee is in appeal before Hon'ble Tribunal.

2. Challenging the aforesaid order of the Id CIT(A), the assessee filed this appeal before Hon'ble Tribunal and following grounds of appeal were raised in Form No 36: -

1. On the facts and in the circumstances of the case, the order CIT (A) erred in in rejecting the books of account of the assessee by applying the provision of Section 145(3) of the Income Tax Act, 1961 without asking the assessee to produce the books of account and without examining the books of accounts.

2. On the facts and in the circumstances of the case, the Ld CIT (A) erred in sustaining the addition of Rs 2,64,00,000/- on account of cash deposited in bank accounts in the demonetized currency, as unexplained cash credit of the assessee by applying the provisions of section 68 of the Act as against addition made by ld AO u/s 69A and taxing the same by applying provisions of section 115BBE of I.Tax Act alleging the same as undisclosed income of appellant and further erred in reducing the same income from business income declared by the assessee and adding the same as Income from other sources. The entire findings of lower authorities are based on presumption, assumption and having no material or irrelevant material and without providing the adequate opportunity of submission of documents. The addition was made without considering the submission and documents of the assessee in the judicial perspective.

3. The appellant prays for leave to Add, to amend, to delete, or modify the all or any grounds of appeal on or before the hearing of appeal.

3) Submission of Assessee

3.1 Ground No 1 & 2 are inter connected and basically relate to holding the receipts of Rs. 2,64,00,000/- from cash sales which was deposited in bank account in demonetised currency as unexplained cash credit u/s 68 and taxing the same at higher rate u/s 115BBE of I.Tax Act by rejecting the books of account of the assessee.

3.1.1 Issues Involved in the appeal

Basically three issues are emerged from the appeal of the assessee filed before Hon'ble Tribunal.

(A) Treated the cash sales of Cheja (Masonry) Stone, fire wood, and scrap steel which was deposited in demonetized currency as unexplained credit entries u/s 68 of I.Tax Act and taxing the same in higher bracket of tax by applying provisions of section 115BBE.

(B) Whether the CIT(A) can apply the provisions of section 68 of Income Tax Act.

(C) Whether the books of account of the assessee can be rejected by CIT(A) by applying the provisions of section 145(3) of I.Tax Act.

The submission of the assessee on the above said issues are as under:-

A) Treated the cash sales of Cheja (Masonry) Stone, fire wood, and scrap steel which was deposited in demonetized currency as unexplained credit entries u/s 68 of I.Tax Act and taxing the same in higher bracket of tax by applying provisions of section 115BBE.

a.1 Finding of AO (Page 2-4 of Astt Order)

The ld AO noticed that the assessee company has deposited Rs. 2,79,00,000/- in its various bank accounts during demonetization period. The assessee submitted that it had sold cheja (masonry) stone and other material in cash of Rs. 3,24,44,415/- during the year and the cash deposited during the demonetization period is cash earned from such sale. Further, the assessee stated that "regarding deposit during demonetization, a surrender of Rs. 15 Lakh has been made before D.D.I.T Kota under P.M.G.K.Y scheme just to purchase the peace of mind

The ld AO did not find the contention of the assessee as acceptable as the material worth Rs. 3,24,44,415/- was sold in first 7 months and no such material was sold in next 4 months. Further the assessee has also not shown any stock of such material in its Books of Accounts of current and earlier years. Further, as business concern, sale of material worth Rs. 3,24,44,415/- in cash during the F.Y sounds uncommon. And no such sale has occurred in any previous years. Further, the assessee has not provided any bills and vouchers in support of sale of such material worth Rs. 3,24,44,415/- and it could not establish that the cash obtained from such sale is deposited during demonetization. The assessee has only provided cash book and ledger but not provided any other documents in support of its claim. The ld AO made the addition of Rs. Rs.2,64,00,000/- (2,79,00,000/- 15,00,000/-) as unexplained money as per provision of section 69A of the IT Act, 1961 and taxed u/s 115BBE of the IT Act

a.2 Finding of CIT(A) :-

The gist of findings of ld CIT(A) is as under:-

a) The ld CIT(A) rejected the books of account by invoking section 145(3) of I.Tax Act by holding that assessee failed to furnish credible evidence in support of the source of cash deposited during the demonetization, hence the books of account of assessee are not reliable. (Page 38 of order)

b) The ld CIT(A) reduced the amount Rs. 2,64,00,000/- from business income of the assessee and upheld the addition of Rs 2,64,00,000/- as income from other sources u/s 68 of Income Tax Act treating the cash deposited during demonetization as unexplained credit as against unexplained investment held by ld AO u/s 69A and taxing the same under 115BBE of the Act, 1961. (page 30, 38 and 39 of order)

a.3 Submission of assessee:-

a.3.(i) The assessee maintains proper books of account which were audited by Chartered Accountants: -

The assessee is a private limited company and maintains regular books of account.

According to Section 2(12A) of the Income Tax Act, 1961, books or books of account, include ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as electronic data.

The books of account are audited by Chartered Accountants under Companies Act as well as under Income Tax Act. Copy of audit report, audited statement of Profit and Loss and Balance sheet and Computation of Total Income were furnished to the Ld. AO. (Copy at PB Page No. 5-49). The copy of audit report under Companies Act is at PB page 23-31. The copy of tax audit report is at PB page 5-21. The auditors have certified that proper books of account as required by law have been kept by the company and books of account give a true and fair view of its profit. There is no finding of lower authorities that the books of account are manipulated or not maintained in regular course of business on day to day basis.

The cash sales and the corresponding deposits in Banks are duly reflected in the books of account. The entries in the accounts of an assessee are to be believed. The section in the Indian Evidence Act, 1872 that prima-facie, seem relevant is section 34 relating to entries in the books of account and reads as under: -

"Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability."

This section provides (1) that entries in books of account regularly kept in the course of business are relevant and therefore, admissible. The lower authorities have not been able to give any reasons why the entries in the books of account should be disbelieved. This burden is on the AO/CIT(A) to discharge – not on the assessee. Therefore, the books of account regularly maintained by the assessee in ordinary course of business are acceptable evidence u/s 34 of Evidence Act.

a.3.(ii) The source of cash, which deposited in demonetized currency was duly explained:-

During the year under consideration, the assessee deposited Rs. 2,79,00,000/- in demonetized currency. The cash so deposited by the assessee was accumulated cash which was received against cash sale of Masonry Stone (Cheja Stone), Fire woods, and scrap steel. The lower authorities failed to appreciate the nature of cash sales. The assessee is not in the business of Cheja Stone (Masonry Stones), or wood or steel scrap but the assessee was constructing huge sized

multi-storeyed building at Plot No 1,2,3,4 with two basements, stilt and building upto height of 30 meters. The building plan was sanctioned by Kota Development Authority vide letter dated 15/10/2015. The most of the land in Kota is stony or say rocky and the assessee's land was also situated in a stony/rocky area. Whenever the excavation was made, it is natural that either sand is digged out in sandy land or stone is digged out in rocky land. Since the land of the assessee was stony or say rocky, huge quantity of stone was digged out while excavation of two basements and foundation of building. These stones are used as masonry stones/cheja stone. Further, in shuttering process, while casting of roofs, rafts, columns, beams wooden shuttering is also used and during this process some shuttering is damaged and becomes waste and used as fire wood. Similarly, tor steel is used in casting of rafts, beams, columns, and roof, and while cutting of tor steel bars in required sizes, scrap which is in the form of small cut of tor steel is derived and these small cut sized bars of tor steel cannot be used otherwise and are always sold as scrap. Therefore, during the process of construction of building on land, the masonry stone, scrap wood and scrap steel was obtained which the assessee sold in cash from time to time during the period 01/04/2016 to 15/11/2016. The assessee produced before the lower authorities copy of :-

(i) Fire wood sale ledger (PB page 61-64), Rs. 18,81,000
(ii) Steel & Scrap Sale Ledger (PB page 65-70), Rs. 45,73,500/-and
(iii) Cheja Stone Ledger (PB page 71-98), Rs, 2,59,89,915/-

The assessee is not doing the business of Cheja (masonry) stone, fire wood or scrap steel. The quantification of cheja (masonry) stone derived while excavation of rocky land, wooden waste or steel waste derived in the process of construction of building not possible so it cannot be accounted for as stock. These are always accounted for as and when sale is made and this is regular practice of the builder trade.

The total revenue from operation was Rs. 40.77 crore (PB page 33). The breakup of this revenue is given at PB page 44. Out of total revenue of Rs. 40,76,97,556/- the other operating revenue was reported at Rs. 3,24,44,415/- which represents revenue from sale of cheja (masonry) stone, fire wood (Scrap shuttering), steel scrap.

Further the assessee was under composition scheme of Vat and required to pay VAT in lump sum and for this purpose Form VAT 70 under Rule 17A was issued to the assessee by the VAT department.

Further TCS was also collected on sale of Fire wood (Wooden scrap) derived from shuttering, and steel scrap @ 1% of sale shown as under:-

Steel Scrap sale	Fire wood Scrap sale	Total	TCS

45,73,500	18,81,000	64,54,500	64550

It is admitted fact that each transaction should be analyzed with the point of view of the businessman, generally prevailing practice in the trade and its acceptability in the eye of law. A transaction cannot be treated as non-genuine for wants of the details which are not required to obtain and keep as per the law.

The assessee had cash balance of Rs. 2,79,88,461.88 as on 08-11-2016 in the audited books of account, out of which it deposited Rs. 2,79,00,000/- in bank accounts from 10-11-2016 to 31-12-2016. The copy of cash book from the period 01-11-2016 to 31-12-2016 is at paper book page 54-60. The assessee surrendered Rs. 15 Lakh before D.D.I.T Kota under P.M.G.K.Y scheme just to purchase the peace of mind so the lower authorities treated Rs. 2,64,00,000 = (2,79,00,000-15,00,000) as unexplained.

The ld. AO neither found any concrete and conclusive evidence of back dating of the entries of sale, evidence of bogus sales, evidence of non-existing of stock as on the date of sales and non-existing cash in the books of account, there is no such findings in the assessment order.

A perusal of the finding of Ld. AO in the Assessment Order which clearly show that the cash sales are duly recorded in the books of account but the Ld. AO has not considered the explanation of the assessee satisfactory and made addition under section 69A which is not tenable in the eyes of law because assessee had recorded such transactions in its books of account and once they are recorded, then no explanation is required to be to be offered so far as section 69A is concerned. The ld CIT(A) invoked section 68 as against 69A applied by the ld AO and taxed the amount Rs. 2,64,00,000/- under section 115BBE as against normal tax rate. The findings of both the lower authorities are not in accordance with law and unsustainable in the eyes of law.

a.3.(iii) The cash sale of cheja (Masonry) stone, fire wood, and scrap sale was treated partly as explained and partly unexplained while the nature of transaction and documentation are same.

The lower authorities are blowing hot and cold in same stream. They accepted the part of the sales from Cheja stone, sale of fire wood and sale of steel scrap as genuine and part of these sales as not genuine without any basis. This may be seen from the following data:-

S.No	Particulars	PB page	Amount	Amount
1	Cheja (Masonry) Stone Cash Sale			
a)	01-04-2016 to 08-11-2016	71-97	2,57,51,065	
b)	9-11-2016 to 15-11-2016	97-98	2,38,850	
	Total Sales of Cheja Stone in Cash			2,59,89,915
2.	Fire Wood Cash sale			
	01-04-2016 to 31-10-2016	61-64		18,81,000

3.	Steel Scrap			
	01-04-2016 to 31-10-2016	65-70		45,73,500
	Total Cash sale during the year			3,24,44,415
	Treated as Explained (Deposited in legal currency			45,44,415
	Treated as Unexplained (deposited in demonetized currency)			2,79,00,000
	Declared under PMGKY			15,00,000
	Balance Treated as unexplained credit u/s 68/investment u/s 69A			2,64,00,000

On the same set of documents, on the same facts and circumstances part of the cash sales of Rs. 45,44,415/- were treated as genuine sales and taxed at normal rate of taxation as business receipts and part of the cash sales Rs. 2,64,00,000/- was treated as unexplained cash credit u/s 68 of ld CIT(A)/ unexplained money etc u/s 69A by the ld AO taxed as special rate of taxation u/s 115BBE. The only basis of treatment by lower authorities was nature of currency deposited in bank. Whatever deposit was made in bank accounts in legal tendered currency was treated as explained and whatever deposit was made in demonetized currency was treated as unexplained. Thus, ld. AO is blowing hot and cold in same stream accepting and rejecting the explanations offered by the assessee with respect to the transactions of identical nature at his sheer convenience merely on the basis of surmises and conjecture without any evidence or material on record. Thus, bald allegation of ld. AO that the cash deposited in demonetized currency had arisen from some undisclosed source not reflected in the books of account as against the accounted cash sales in books of account and alsowhich is regular feature of the trade of assessee. The conclusion of ld. AO is *dehors*of any credible evidence/material on record is unsustainable both in law and on facts. Addition so made by the lower authorities deeming the impugned cash deposits arising out of accounted cash sales as unexplained cash credits merely on the basis surmises & conjectures is fallacious and deserves to be deleted.

a.3.(iv) The Ld AO/CIT(A) rejected the explanation of the assessee without making any inquiry. The AO and CIT(A) neither followed the principle of law nor principle of evidence rather appeared to be bent upon making huge additions without any basis. The lower authorities have not made independent inquiry on this issue.

The vast power has been given to Assessing Officer under Income Tax Law.

a) It is settled law that the AO is quasi-judicial authority and should be governed in his function by judicial consideration and must conform to the rules of natural justice and must proceed without bias- Tin Box Co. Vs CIT 249 ITR 216 (SC).

b) It is also settled law that the AO must act honestly on the material before him and not vindictively, capriciously, or arbitrarily- Gurumukh Singh Vs CIT 12 ITR 393, 427 (FB), Dakeshwari Cotton Mills Ltd Vs CIT 26 ITR 775,

c) It is also settled law that the AO is not entitled to make a pure guess without any evidence or material at all - Dakeshwari Cotton Mills Ltd Vs CIT 26 ITR 775,
During the course of assessment proceedings, vide letter dated 15-12-2019 (PB page 111) the assessee explained to ld AO that:-

"3. Your goodself has mentioned in the notice that during demonetization period total cash of Rs. 2,79,00,000 has been deposited in bank. The assessee has submitted copy of cash book & the sales ledger with previous replies. The copies of ledger & cash book are themself documentary proof regarding sale of cheja stone & other material. During the period under construction excavation of site at road no 1 IPIA Kota project was made and the stone was digged out by excavation & this material was sold to the various persons in cash who came to site & purchased this stone, the other waste building materials lying at bundi road sites which was also sold during the year to various persons in cash."

Section 131(1)(d) of the Income-tax Act empowers the Income-tax (IT) Authorities to issue commissions. The powers granted to the authorities under section 131 are derived from the Code of Civil Procedure (CPC). Section 75, read with Rules 1 to 14 of Order XXVI of the CPC, states that a commission can be issued, among other things, to examine witnesses, conduct local investigations, or examine accounts. He could have inquire that whether the land is rocky land and whether the masonry stone could be derived while excavation of two basements and foundation of the building. Whether scrap wood and steel was obtained in the process of construction of building. But the ld AO merely on guess rejected the valid explanation of the assessee without any basis. It is admitted position of law that no addition can be made in the income of the assessee only on the basis of suspicion. Suspicion howsoever strong but cannot partake the character of evidence. The reliance is placed on following decisions: -

i) Dhakeswari Cotton Mills Ltd vs. Commissioner of Income-tax [1954] 26 ITR 775 (SC)

ii) Umacharan Shaw & Bros vs. Commissioner of Income-tax [1959] 37 ITR 271 (SC)

iii) CIT vs. Kapil Nagpal, DBITA 609/2014 (Delhi HC)

iv) Goyal Gases (P.) Ltd vs. Commissioner of Income-tax [1997] 94 TAXMAN 57 (DELHI)

It is admitted position of law the suspicion can be initiating point for investigation but not the final basis of assessment/reassessment/addition.

i) PCIT v. Aditya Birla Telecom Ltd. [2019] 105 taxmann.com 206 (Bombay)

ii) Rustagi Engineering Udyog (P.) Ltd vs. Deputy Commissioner of Income-tax [2016] 382 ITR 443 (Delhi).
iii) Principal Commissioner of Income-tax vs. Meenakshi Overseas (P.) Ltd [2017] 82 taxmann.com 300 (Delhi)
iv) CIT vs. Shri Jawahar Lal Oswal, DBITA 49/1999 (Punjab & Haryana HC)
v) Commissioner of Income-tax v. Neel Giri Krishi Farms (P.) Ltd. [2013] 218 Taxman 95 (Allahabad)(MAG.)

a.3.(v) Cash sales cannot be treated as unexplained credit entry u/s 68 of I.Tax Act.

The cash deposited in the demonetized currency added as income of the assessee by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in statement of profit & loss, therefore there is no occasion to consider the same as unexplained credit entry of the assessee by applying the provisions of section 68 of the Act. It is further relevant to mention here that if the intention of the legislature would be to apply the provisions of section 68 of the Act on the sale transactions also than it such case as per law it would be mandatory to have the identity, genuineness and creditworthiness of each buyer. But the law is not so and in case of sale below to certain limit the assessee was not required to prove all these ingredients of section 68 of the Act and even also in case of sale exceeding to certain limit the assessee is not required to prove the creditworthiness of buyer. Thus, this also strengthen the contention of the assessee that the provisions of section 68 are not applicable on the transaction which are already credited in the P&L and the same can only made applicable on the cash credits such as loans, share applicationetc. It is an admitted fact that in the case of transactions of sales/purchases of goods/investments/assets the creditworthiness of the payee is not relevant for the receiver as the amount was received against the something sold to him, therefore such transactions cannot be examined with point of view of cash credits.

Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordia *vs* Income-tax Officer [2008] 298 ITR 349 (Rajasthan) held that no addition could be made in respect of the amount standing in the books of the assessee, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.

Further reliance is placed on the decision of Hon'ble ITAT B Bench Jaipur in the case of ACIT vs M/s MotisonsJewellers Ltd ITA No 161/JP/2022 AY 2017-18 order dated 29/09/2022 wherein the Hon'ble ITAT has relied upon the above decision and held that:-

“15. We also find that the Department has raised the solitary ground for deletion of addition of Rs.12,17,48,500/- made by the AO by applying the provisions of Section 68 and taxed as per provisions of Section 115BBE of the Act. All the points or allegation noted by the ld. AO is duly considered and discussed by the ld. CIT(A) while dealing with the appeal of the assessee. The revenue did not pin point which of the findings of the ld. CIT(A) is incorrect and against the facts placed on record by the assessee. The ld. AR of the assessee during the course of hearing taken us to all the points raised by the AO so as to prove that the contention raised by the AO to prove that the sales made by the assessee company as on the date of demonetization is correct and possible looking to the strength of staff, space of demonstration and parking and the considering availability of stock on hand as proved that the sales made by the assessee company is genuine sales recorded in the books of account. All the details required to prove the sales made by the assessee were provided in the assessment proceedings. As regards the receipt of the cash from the customer the ld. AR of the assessee relied upon the findings of the jurisdiction high court judgement in the case of Smt. Harshil Chordia Vs. ITO reported at 298 ITR 349 (Rajasthan-HC). In this case the Jurisdictional Hon’ble High Court have held that

So far as question No. 2 is concerned, apparently when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of account of the assessee would not attract section 68 because the cash deposits becomes self-explanatory and such amounts were received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition of Rs. 6,98,000 would not arise. We, therefore, hold that no addition was required to be made in respect of Rs. 6,98,000, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.

16. Thus, the fact of the case on hand is similar to the jurisdictional high court decision cited by the ld. AR of the assessee. The ld. AR of the assessee also relied upon the coordinate Jaipur ITAT decision also on the issue and the revenue not prove the sale made by the assessee which is executed after giving the goods to the customer, duly reflected in the invoice issued, assessee having sufficient stock in the books, sales is duly reflected in the books of accounts supported by payment of VAT. Therefore, the contention of the revenue based on the facts and circumstance of the case is not accepted and we see no reason to find any fault in the detailed reasoned finding in the order of the ld. CIT(A). Thus, we sustain the order of the ld. CIT(A) and based on these observations the appeal of the revenue in ITA NO. 161/JPR/2022 stands dismissed.”

a.3.(vi) Opening closing stock not mentioned:-

The lower authorities doubted the genuineness of cash sale by mentioning the no details of opening closing stock was mentioned in the financial statements. In this regard, the assessee submit that it is neither trader nor manufacture of items which were sold in cash. Rather, these items say Cheja (Masonry) stone, wood scrap and steel scrap were derived during the process of construction of building and quantification of these items is not possible. These items are always accounted for on sale basis. Further, the cheja stone obtained while excavation of basement and foundation either can be used in construction of assessee's own building itself or it may be sold in market. The assessee used hollo bricks instead of cheja stone to reduce the load over the building. It is normal practice of the builders to account for the income of these items on cash basis.

a.3.(vii) No sale after 08-11-2016

The lower authorities failed to understand the nature of the business of the assessee. When the excavation is completed no further stone can be digged out from earth. Similarly when the civil structure work is complete, the waste/scrap from steel or shuttering cannot be obtained. Further there was sales of cheja stone after 08-11-2016 of Rs. 2,38,850/- in legal tender currency and which the ld AO himself treated as explained.

A.3.(viii) Section 115BBE cannot be applied in the case of assesse:-

As stated in the forgoing paras the whole purpose of the lower authorities in singling out the cash deposited in demonetized currency as arising out of unexplained sources and is to somehow trigger the provisions of section 115BBE read with section 68 of the Act to the income already offered for tax by the assessee (as cash sales) at a higher rate of tax of 77.25% (i.e. flat rate of 60% plus surcharge @ 25% on such tax and cess as applicable). Section 115BBE of the Act is a machinery provision to levy tax on income and it should not enlarge the ambit of section 68 of the Act to create a deeming fiction to tax any sum already credited/offered to tax as income. Section 68 of the Act traditionally applies to unexplained 'cash credit' like loans, deposits, advances, share capital, etc. and not to sums already offered to tax as income by the assessee in its return of income at the highest slab rate. Such recourse is unwarranted keeping in mind the objective to introduce section 115BBE of the Act which was only to curb the practice of laundering of unaccounted money by taking advantage of the basic exemption limit. The reason and purpose of the provision was explained by the explanatory memorandum to the Finance Bill 2012 as under:-

1) "Under the existing provisions of the Income-tax Act, certain unexplained amounts are deemed as income under section 68, section 69, section 69A, section 69B, section 69C and section *69D of the Act and are subject to tax as per the tax rate applicable to the assessee. In case of individuals, HUF, etc., no tax is levied up to the basic exemption limit. Therefore, in these cases, no tax can be*

levied on these deemed income if the amount of such deemed income is less than the amount of basic exemption limit and even if it is higher, it is levied at the lower slab rate.

2) In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, it is proposed to tax the unexplained credits, money, investment, expenditure, etc., which has been deemed as income under section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of 30% (plus surcharge and cess as applicable). It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections. This amendment will take effect from 1st April,2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years."

Thus, the intention of the Legislature behind introduction of section 115BBE was not to bring to tax genuine receipts already offered to tax as income by the Assessee at higher tax rates. Such an interpretation would lead to recurring attempts on the part of the revenue authorities to reject genuine explanations offered by the assessee with respect to sums credited/offered as income in its books as unsatisfactory solely to extort higher rates of taxes thereon u/s 115BBE of the Act. The AO/CIT(A) in exercising his powers u/s 69A/68 of the Act is not vested with unfettered powers to reject any explanation as being not to his satisfaction merely on the basis of surmises and conjecture. The AO/CIT(A) is bound under law to act reasonable and just while framing any satisfactory opinion surrounding the explanation offered by the taxpayer. From the facts of the case at hand, it is clear that the AO/CIT(A) has acted unreasonably and capriciously in rejecting the genuine explanations offered by the Assessee in respect of the impugned cash deposits as unsatisfactory solely with the aim of fastening exorbitant tax liability on the assessee under the garb of section 69A/68 of the Act. Such recourse primarily hedged on surmises, conjecture, assumptions, presumptions and whims of the ld. AO/CIT(A) is clearly unwarranted and the additions so made is unsustainable in the eyes of law and thus deserves to be quashed.

The ld. AO/CIT(A) while making the impugned addition u/s 69A/68 and rejecting the explanation offered by the Assessee with respect to the nature and source of the cash deposited in bank accounts during the demonetization period in demonetized currency and have acted merely on surmises, conjectures, suspicion, presumptions and assumptions. The humble submissions of the assessee highlighting the glaring internal inconsistencies in the orders of the ld. AO the repeated violations of the provisions of law by them are as under:

i) The AO has treated the cash deposited in the banks during the demonetization period in demonetized currency as unexplained money u/s 69A of the Act whereas the cash deposited in legal tendered money was treated as

explained although the nature and source of the cash deposits in both the cases was proceeds arising out of cash sales.

ii) It is not the case of the Department that the cash deposited in the banks during the demonetization period was in excess of what was available in the cash book. The fact that the cash deposits in banks were sourced out of cash sales is evident from the entries in the cashbooks.

iii) The books of account of the Assessee have been audited by an independent reputed auditor. The cash sales & receipts are duly supported by entries in the books of account maintained in the regular course of the business, which were produced before the AO in course of the assessment proceedings, and nothing adverse in connection therewith was noted by the A.O.

It is pertinent to note that while the AO/CIT(A) has accepted the cash deposited in the bank accounts during the impugned F.Y. 2016-17 in the Non-demonetized currency. The ld. AO/CIT(A) did not accept the same modus operandi with respect to the cash deposited in demonetized currency merely on the pretext that the same was deposited in demonetized currency and hence was suspicious in nature. Thus, ld.AO/CIT(A) is blowing hot and cold in same stream accepting and rejecting the explanations offered by the assessee with respect to the transactions of identical nature at her sheer convenience merely on the basis of surmises and conjecture without any evidence or material on record. Thus, bald allegation of ld. AO/CIT(A) that the cash deposited in demonetized currency had arisen from some undisclosed source not reflected in the books of account as against the accounted cash sales in books of account and also which is regular feature of the trade of assessee. The conclusion of ld. AO/CIT(A) is *dehors* of any credible evidence/material on record is unsustainable both in law and on facts. Findings so made by the AO/CIT(A) deeming the impugned cash deposits arising out of accounted cash sales as unexplained investment/cash credits merely on the basis surmises & conjectures is fallacious and deserves to be deleted.

It is also pertinent to mention here before applying the provisions of section 115BBE of the Act the specific show caused notice did not give to the assessee and in absence of specific show cause notice the provisions of this section cannot be applied mechanically. Reliance is placed on the decision of Hon'ble Jodhpur bench of ITAT in the case of Suraj Kanwar Devra v/s ITO 2(2), Udaipur in ITA No. 50/Jodh/2021 dated 23.11.2021

Without prejudice to our forgoing submission we may further submit that amendment provisions of section 115BBE of the Act as amended by the Taxation (Second Amendment) Act, 2016 are applicable from 15.12.2016 and are not retrospective in operation and therefore not applicable to the cash deposited in the bank prior to 15.12.2016. The Tax laws as the Taxation (Second amendment) Act, 2016 was amended on 15.12.2016 and received the ascent of

President of India on the said date. It was submitted that though the amendment was applicable for assessment year 2017-18 but only on income referred to in said section pertaining to the date after 15.12.2016. The amendment provisions are not retrospective in operation and are not applicable in the present case and therefore the ld. CIT(A) has been wrongly taxed the addition made u/s 68 of the Act by applying the amended provisions.

a.3.(ix) In support of our submission given in paras hereinabove the reliance in this connection is placed on following judgements: -

a) AyodhayaJajra Vs CIT(A) ITA No 43/Jodh/2022 order dated 08/04/2024

b) 2022 (10) TMI 116 - ITAT JAIPUR ACIT, CENTRAL CIRCLE-2, JAIPUR VERSUS M/S MOTISONS JEWELLERS LTD. AND (VICE-VERSA)

c) 2022 (11) TMI 1333 - ITAT JAIPUR Other Citation: [2023] 104 ITR (Trib) 455 (ITAT [Jai]) ASSTT. COMMISSIONER OF INCOME-TAX, CENTRAL CIRCLE-1, JAIPUR. VERSUS. SHRI MAHENDRA KUMAR AGARWAL,

d) 2022 (11) TMI 1334 - ITAT JAIPUR INCOME TAX OFFICER, WARD 1 (2) , JAIPUR. VERSUS. SHRI RAJ KUMAR NOWAL,

e) 2022 (12) TMI 750 - ITAT JAIPUR THE ACIT CENTRAL CIRCLE-2 JAIPUR VERSUS SHRI CHANDRA SURANA

f) 2023 (3) TMI 1148 - ITAT JAIPUR MAHESH KUMAR GUPTA VERSUS ACIT CIRCLE-04, JAIPUR

g) 2021 (12) TMI 599 - ITAT BANGALORE ANANTPUR KALPANA VERSUS ITO, WARD – 1, KOPPAL.

h) As in the case of CIT Vs. Associated Transport Pvt. Ltd. [1994 (1) TMI 18 - CALCUTTA HIGH COURT] on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources.

i) 2021 (5) TMI 447 - ITAT VISAKHAPATNAMASST. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1 VISAKHAPATNAM VERSUS M/S HIRAPANNA JEWELLERS AND (VICE-VERSA))

j) 2021 (2) TMI 737 - ITAT GAUHATI NILKANTHA SAHA VERSUS ITO, WARD-MORIGAON

k) 2021 (1) TMI 837 - ITAT GAUHATI NURUL ISLAM VERSUS ITO, WARD-2, NAGAON)

l) Lalchand Bhagat Ambica Ram Vs. CIT (1959) 37 ITR 288 (SC))
which is set in somewhat similar back drop in connection with treatment of the encashment of high denomination notes by the assessee therein on the promulgation of High Denomination Bank Notes (Demonetization) Ordinance, 1946 as unexplained money on mere conjecture and surmise of the Revenue Authorities. The relevant facts of the said case are that the ITO in the course of the assessment noticed that the appellant therein had encashed high denomination notes of the value of 2,91,000. The ITO asked for an explanation, which the appellant gave stating that these notes formed part of its cash balances including cash balance in the Almirah account. The appellant sought to prove the fact that the high denomination notes encashed by it formed part of its cash balances from certain entries in its accounts wherein the fact that moneys were received in high denomination notes had been noted. Portions of these entries to the effect that moneys had been received in high denomination notes were found by the ITO to be subsequent interpolations made by the appellant with a view to advance its case that the cash balances contained the high denomination notes encashed by it. The ITO rejected the appellant's explanation that the high denomination notes formed part of its cash balances and treated the sum of 2,91,000 as the appellant's secreted profits from business and included it in its total income and assessed the appellant. Before the Tribunal, the appellant stated that the said entries were made in sheer nervousness after the coming into force of the High Denomination Bank Notes (Demonetization) Ordinance, 1946, on 12th Jan., 1946, as the appellant did not know that it had specific proof in its possession of having the high denomination notes as part of its cash balances. The Tribunal held that there was no other reason to suspect the genuineness of the account books in which these interpolations were made. If the entire account books were fabricated to serve its purpose, there would be no need for the appellant to make interpolations between the lines already written in a different ink and in such an obvious manner as to catch one's eye on the most cursory perusal. The Tribunal, however, examined the cash book and taking into consideration all the circumstances which had been adverted to by the ITO held that the appellant might be expected to have possessed as part of its business cash balance of at least 1,50,000 in the shape of high denomination notes on 12th Jan., 1946, when the Ordinance above-mentioned was promulgated. The Tribunal came to the conclusion that the nature of the source from which the appellant derived the remaining 141 high denomination notes of 1,000 each remained unexplained to its satisfaction. It accordingly ordered that the addition be reduced from 2,91,000 to 1,41,000. On the said facts, the Hon'ble Supreme Court held that– the Tribunal having held that books of assessee were genuine which showed a cash balance of 3,10,681 on the relevant date; the Tribunal could not have accepted the cash balance of 1,50,000 out of the value of high denomination notes of the value of 2,91,000 and treated the balance 1,41,000 as income

from undisclosed sources. It was held that in doing so, The Tribunal had indulged in conjectures and surmises and acted without any evidence or upon a view of facts which could not reasonably be entertained. The relevant excerpts from the order of the Hon'ble Apex Court are reproduced hereunder:

If the entries in the books of account in regard to the balance in Rokar and the balance in Almirah were held to be genuine, logically enough there was no escape from the conclusion that the appellant had offered reasonable explanation as to the source of the 291 high denomination notes of 1,000 each which it encashed on 19th Jan., 1946. It was not open to the Tribunal to accept the genuineness of these books of account and accept the explanation of the appellant in part as to 1,50,000 and reject the same in regard to the sum of 1,41,000.Consistently enough, the Tribunal ought to have accepted the explanation of the appellant in regard to the whole of the sum of 2,91,000 and held that the appellant had satisfactorily explained the encashment of the 291 high denomination notes of 1,000 each on 19th Jan., 1946. [para 14]

The Tribunal, however, appears to have been influenced by the suspicions, conjectures and surmises which were freely indulged in by the ITO and the AAC and arrived at its own conclusion, as it were, by a rule of thumb holding without any proper materials before it that the appellant might be expected to have possessed as part of its business, cash balance of at least 1,50,000 in the shape of high denomination notes on 12th Jan., 1946,-a mere conjecture or surmise for which there was no basis in the materials on record before it. [para 15]

Unless the Tribunal had at the back of its mind the various probabilities which had been referred to by the ITO it could not have come to the conclusion it did that the balance of 1,41,000 comprising of the remaining 141 high denomination notes of 1,000 each was not satisfactorily explained by the appellant. [para 18]

If the entries in the books of account were genuine and the balance in Rokar and the balance in Almirah on 12th Jan., 1946, aggregated to 3,10,681-13-9 and if it was not improbable that a fairly good portion of the very large sums received by the appellant from time to time, say in excess of 10,000 at a time, consisted of high denomination notes, there was no basis for the conclusion that the appellant had satisfactorily explained the possession of 1,50,000 in the high denomination notes of 1,000 each leaving the possession of the balance of 141 high denomination notes of 1,000 each unexplained. Either the Tribunal did not apply its mind to the situation or it arrived at the conclusion it did merely by applying the rule of thumb in which event the finding of fact reached by it was such as could not reasonably be entertained or the facts found were such as no person acting judicially and properly instructed as to the relevant law could have found, or the Tribunal in arriving at its findings was influenced by irrelevant

considerations or indulged in conjectures, surmises or suspicions in which event also its finding could not be sustained. [para 19]

As the conclusion of the ITO was thus either perverse or vitiated by suspicions, conjectures or surmises, the finding of the Tribunal was equally perverse or vitiated if the Tribunal took count of all these probabilities and without any rhyme or reason and merely by a rule of thumb came to the conclusion that the possession of 150 high denomination notes of 1,000 each was satisfactorily explained by the appellant but not that of the balance of 141 high denomination notes of 1,000 each.[para 20]

Therefore, the Tribunal in arriving at the conclusion in the present case indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in other words, perverse and the Court is entitled to interfere. [para 23]

j) Lakhmichand Baijnath V. CIT [1959] 35 ITR 416 (SC).)

Amount credited in business books can normally be presumed as business receipt. When an amount is credited in business books, it is not an unreasonable inference to draw that it is a receipt from business

k) CIT v/s. Kailash Jewellery House ITA No. 613/2010 decided by Delhi High Court on 09.04.2010

In the facts of above case cash of Rs.24,58,400/- was deposited in bank account. The Assessing Officer made the addition on the ground that nexus of such deposit was not establish with any source of income. The assessee claimed that it was duly recorded in the books on account of cash sales and was considered in the Profit and Loss Account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book was submitted to the Assessing Officer and no discrepancy was pointed out. On this basis CIT(A) deleted the addition. Tribunal also observed that it is not in dispute that sum of Rs.24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. Therefore, cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The Hon'ble High Court dismissed the appeal filed by the Department. Promulgated

l) 2021 (9) TMI 1192 - ITAT VISAKHAPATNAM DY. COMMISSIONER OF INCOME TAX CIRCLE-3 (1) VISAKHAPATNAM VERSUS SRI JAYA PRAKASH BABU VALLURI AND (VICE-VERSA)

Cash deposits made during demonetization period, which was added back to income u/s 69A - HELD THAT:- CIT(A) observed that the assessee is maintaining regular books of accounts and the deposits were made out of the book balances and therefore, following the decision of Karthik Constructions [2018 (3) TMI 39 - ITAT MUMBAI] the Ld.CIT(A) held that there is no case for making the addition, accordingly deleted the addition.

Thus, findings of lower authorities are completely wrong, unjustified, perverse and not according to the settled principal of law, therefore the same may kindly be set aside and to direct the AO to tax the impugned cash sale at normal tax rate treating the same as business income.

B) Regarding application of section 68 by CIT(A) we submit as under:-

i) Section 68 was not applied by AO, therefore, the CIT(A) cannot apply it.
ii) It is relevant to mention here that as per section 251 (1)(a) of Income Tax Act, 1961 the CIT (A) shall have the power *"in an appeal against an order of assessment he may confirm, reduce, enhance or annual the assessment".* As regard applicability of section 68 of I.Tax Act by CIT(A) we submit that the assessee has made detailed submission before the ld AO and satisfied the ld AO that it has discharged its onus laid down under section 68 of Income Tax Act. The ld AO being satisfied with the submission of assessee on section 68, has not applied section 68 of Income Tax Act for the addition. The provisions of section 68 specify the authority mentioned as "Assessing Officer".

For the sake of clarity we are reproducing the provisions of section 68 of I.Tax Act as stood for AY 2017-18 as under:-

"Where any sum is found credited in the book 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."

Therefore, addition under section 68 of ITax Act can be made only he the explanation of the assessee is not satisfactory in the opinion of "Assessing Officer".

The Assessing Officer has been defined u/s 2(7A) of Income Tax act as under:-

"(7A) Assessing Officer" means the Assistant Commissioner [31][or Deputy Commissioner] [32][or Assistant Director] [31][or Deputy Director] or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the [33][Additional Commissioner or] [34][Additional Director or] [35][Joint Commissioner or Joint Director] who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act ;]"

Therefore, CIT(A) is not assessing officer so he cannot invoke the provisions of section 68 for making the addition particularly when the Assessing Officer has satisfied about the ingredients of section 68 of Income Tax Act. In the case of the assessee the ld. AO has not framed an opinion that the explanation given by the assessee was not satisfactory but he framed an opinion after examining the facts, documents and explanation that the additions cannot be made u/s 68 but it should have been made u/s 69A of Income Tax Act, 1961 then the jurisdiction of CIT (A) in limited to deciding the matter whether the addition u/s 69A is correct or not. In the appellate proceeding the addition cannot be confirmed by applying all together different section by invoking a section for which satisfaction is required to be by "Assessing Officer" and the assessing officer after considering the detailed reply and documents was satisfied about the ingredients of section 68.

Reliance placed on the following decisions:-

a) ITAT Jaipur Bench in the case of M/s MotisonsGobal Private Limited vs ACIT ITA No 388/ JP/2017 order dated 02/11/2017. Findings of Hon'ble ITAT is at page 162-162 in para 7.4 of the order.

b) Hon'ble INCOME TAX APPELLATE TRIBUNAL DELHI BENCH 'D': NEW DELHI in ITA No. 2835/Del/2015 (Assessment Year: 2012-13) Smt. Tripat Kaur Date of pronouncement 09/10/2018

'…If authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorized under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to perform an action on any particular issue, then it is that authority alone who should do that action. We draw support from various decision of Honorable High courts in Ghanshyam K. Khabrani v. *ACIT* [2012] 346 ITR 443 (Bom), *CIT* v. *SPL'S Siddhartha Ltd.* [2012] 345 ITR 223 (delhi) and also of the Honourable supreme court AnirudhsinhjiKaransinhji Jadeja v. State of Gujarat [1995] 5 SCC 302 where in hon. Supreme court held as under :—

--13. It has been stated by Wade and Forsyth in

'Administrative Law', 7th Edition at pages 358 and 359 under the heading 'SURRENDER, ABDICATION, DICTATION' and sub- heading "Power in the wrong hands" as below:- "Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them ". "Ministers and their departments

have several times fallen foul of the same rule, no doubt equally to their surprise....":'

c) Hon'ble ITAT Chennai Bench in the case of Smt. Sekar Jayalakshmi vs Income Tax Officer [2023] 150 taxmann.com 120 (Chennai - Trib.) held that CIT(A) isn't empowered to change section under which AO made an addition during assessment. The relevant finding is reproduced as under:-

"In this case, the Assessing Officer made addition of Rs. 6,00,000/- as unexplained credit. However, the Assessing Officer has not mentioned the relevant section under which, the addition was made, but "unexplained credit" comes under section 68 of the Act. In the appellate order, in page No. 7, para (v), the ld. CIT(A) has noted that "However, I am also in agreement with the appellant that the provisions of section 68 are not applicable to the appellant". Therefore, the ld. CIT(A) treated the addition of Rs. 6,00,000/- as unexplained money under section 69A of the Act and confirmed the addition. Section 68 of the Act deals with "unexplained Credit" in the books of the assessee and section 69A of the Act deals with "unexplained money, bullion, jewellery or other valuable article". Both are entirely different. Though the Assessing Officer has not mentioned the section 68 of the At in his order, the very fact that he calls it "unexplained credit" and not "unexplained money" as done by the ld. CIT(A), while he invoked section 69A of the Act, it proves that the Assessing Officer invoked section 68 of the Act. I find merit into the contention of the ld. Counsel for the assessee that there is no power conferred upon the ld. CIT(A) to assess a particular item under different provision of the Act what the Assessing Officer had done without giving a specific notice to the assessee regarding such action. I am of the considered view that law does not permit for such change of provision of law. As per section 250 of the Act, the ld. CIT(A) is empowered to make further inquiry as he thinks fit or may direct the Assessing Officer to make further inquiry and report to the ld. CIT(A). As per section 251(1)(a) of the Act, in appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment, but there is no such power provided by the law that ld. CIT(A) could change the provision of law qua the item of which assessment was made. Therefore, in the absence of such power, learned CIT(Appeals) could not have treated the addition made under section 69A of the Act. Therefore, the addition made by the ld. CIT(A) under section 69A of the Act is liable to be deleted."

C) Rejection of the books of account by CIT(A) by applying the provision of Section 145(3) of the Income Tax Act, 1961.

c.1 Finding of Ld AO

The ld AO has not invoked section 145(3) of the I.T.Act and has not rejected the books of account of the assessee.

c.2 Findings of ld CIT(A) page 38 of the order:-

The ld CIT(A) issued show cause notice to the assessee for rejection of books of account and application of section 68 as against section 69A applied by the ld AO. (copy at PB page 125). The assessee objected the proposed rejection of the books of account by filing detailed reply to ld CIT(A). (Copy at PB page 126-130). However, the ld CIT(A) rejected the books of account by invoking section 145(3) of I.Tax Act by holding that assessee failed to furnish credible evidence in support of the source of cash deposited during the demonetization, hence the books of account of assessee are not reliable. (Page 38 of order)

c.3 Submission of assessee:-

(i) The ld CIT(A) rejected the books of account without examining the books of account:-

The assessee produced complete set of books of account before the ld AO, who examined the books of account and he has not rejected the books of account, on the other hand ld CIT(A) rejected the books of account without asking the assessee to produce the books of account and without examining the books of account.

(ii) 145(3) cannot be applied as no finding of ld CIT(A) on the ingredients of section 145(3) of I. Tax Act

To apply the provisions of section 145(3) of Income Tax Act, there must be finding on the ingredients of section 145(3) of I,Tax Act. that

a) books of account are not correct or incomplete or

b) the assessee is not following the proper method of accounting regularly or

c) not following the accounting standards notified by Central Government.

In the case of the assessee, there is no such finding of the ld CIT(A)

(iii) The assesses maintains proper books of account and books of account are audited under the Companies Act as well as under Income Tax Act.
Books of account defined in section 2(12A) of I.Tax Act. According to Section 2(12A) of the Income Tax Act, 1961, books or books of account, include ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as electronic data. Section 145 does not specify any set of accounts to be maintained by an assessee. Also, Rule 6F of Income Tax Rules, 1962 prescribes certain set of books only for professionals and not for other assessees or businesses or traders.

The assessee maintains proper books of account on mercantile basis. The books of account are audited by Chartered Accountants under Companies Act as well as under Income Tax Act. The copy of audit report under Companies Act is at PB page 23-31. The copy of tax audit report is at PB page 5-21. The auditors have certified that proper books of account as required by law have been kept by the

company and books of account give a true and fair view of its profit. There is no finding of lower authorities that the books of account are manipulated.

The entries in the accounts of an assessee are to be believed. The section in the Indian Evidence Act, 1872 that prima-facie, seem relevant is section 34 relating to entries in the books of account and reads thus: -

"Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability."

This section provides (1) that entries in books of account regularly kept in the course of business are relevant and therefore, admissible.

The ld CIT(A) so far has not been able to give any reasons why the entries in the books of account should be disbelieved. This burden is on the AO/CIT(A) to discharge – not on the assessee. As mentioned earlier, no irregularly has been pointed out by the ld CIT(A) regarding the books of accounts maintained by the assessee.

Therefore the books of account regularly maintained by the assessee in ordinary course of business are acceptable evidence u/s 34 of Evidence Act

(iv) Verification of cash sale cannot be a valid ground to reject the books of account. The ld CIT(A) rejected the books of account by holding that the assessee has not produced credible evidence in support of cash sales. The lower authorities failed to appreciate the nature of cash sales. The assessee is not in the business of Cheja Stone (Masonry Stones), or wood or steel scrap but the assessee was constructing huge multi-storeyed building at Plot No 1,2,3,4 with two basements, stilt and building upto height of 30 meters. The building plan was sanctioned by Kota Development Authority vide letter dated 15/10/2015. The most of the land in Kota is stony or say rocky and the assessee's land was also situated in a stony/rocky area. Whenever the excavation was made, it is natural that sand is digged out in sandy land and stone is digged out in rocky land. Since the land of the assessee was stony or say rocky, huge quantity of stone was digged out while excavation of two basements and foundation of building. These stones are used as masonry stones/cheja stone. Further, in shuttering process old damaged wooden shuttering becomes waste and similarly steel scrap which is in the form of small cut of tor steel which also cannot be otherwise used are always sold as scrap. The assessee sold these stones and scrap in cash from time to time during the period 01/04/2016 to 15/11/2016. The assessee produced before the lower authorities copy of :-

(i) Fire wood sale ledger (PB page 61-64),
(ii) Steel & Scrap Sale Ledger (PB page 65-70), and
(iii) Cheja Stone Ledger (PB page 71-98),

It is admitted fact that each transaction should be analyzed with the point of view of the businessman, generally prevailing practice in the trade and its acceptability in the eye of law. A transaction cannot be treated as non-genuine for wants of the details which are not required to obtain and keep as per the law.
Reliance is placed on following decisions:-

i) Hon'bleHigh Court of Bombay in the case of R.B. Jessaram Fatehchand (Sugar Dept.)v/s Commissioner of Income Tax [1970] 75 ITR 33 (Bombay) held that :-
Section 145 of the Income-tax Act, 1961 [Corresponding to section 13 of the Indian Income-Tax Act, 1922] - Method of accounting - Rejection of accounts - On assessee's inability to supply addresses of purchasers who purchased goods on cash, ITO rejected assessee's books of account showing result in respect of cash sale transactions, and made addition - AAC deleted additions but Tribunal restored ITO's orders - Whether there was no necessity whatsoever for assessee to maintain addresses of cash customers - Held, yes - Whether, therefore, rejection of book results of assessee was unjustified - Held, yes - Whether, consequently, additions made to assessee's income were liable to be deleted - Held, yes

ii) Hon'ble ITAT Jaipur Bench in the case of ACIT Circle-1 Jaipur Vs M/s Uttam Chand Deshraj(ITAT Jaipur Bench ITA No 419/JP/2010 Order dated 25/03/2011) has made following findings as regard cash sales.

"Making some sales in cash is also no ground for rejecting the books of account. There should be some material that cash sales made by assessee either on account of sale on a lower price or sale made out of the material which is not shown in the books of account. There is no instance that cash sales have been made on lower rate than prevailing market price. In view of these facts and circumstances, we hold that there was no justification in rejecting the books of account and disturbing the trading result."

iii) ITAT Delhi in Kishore Jeram Bhai Khaniya, Proprietor, M/s Poonam Enterprises v. ITO ITA No. 1220/Del/2011 ITAT Delhi Judgement dated 13.05.2014)

The Hon'ble Tribunal held that

We find that so long as the availability of stock in there and there is nothing adverse against the cash memos issued by the assessee, such cash sales cannot be doubted. Here it is pertinent to note that the volume of such cash sales at Rs.22.06 is to be seen in the light of assessee's total turn- over of Rs.10.29 crores. It is but natural that if a customer makes cash purchase and lifts the goods, there is no duty cast upon the seller to insist for the address of the purchaser. In the light of the fact that stock record was available with the assessee, which evidenced the making of sale, we fail to appreciate as to how any addition can be made by treating cash sales as bogus……………………………….We are dealing with a situation in which the

assessee has himself offered the amount of cash sales as his income by duly including it in his total sales. Once a particular amount is already offered for taxation, the same cannot be again considered u/s 68 of the Act. In fact, such addition has resulted into double addition."

(v) The defects pointed out by the ld CIT(A) are not defect at all. The true profit can be deduced from the books of account maintained by the assessee. The assessee is maintaining proper books of account, and following the accounting policies and accounting standards regularly. Each case has to be considered on its own peculiar facts, having regard to the nature of business. Action of the Ld CIT(A) clearly demonstrates that he could not gather any details or find any irregularity in maintenance of the books so as to justify rejection of books in toto. Therefore, we pray your honor to quash the reasoning offered by the Ld CIT(A) for rejecting the books as legally unsustainable proposition. We further rely on the following decisions:-

a) MotisonsJewellers Ltd Vs ACIT ITA No 178/JP/2022 order dated 29/09/2022

Hon'ble ITAT at page 123 of its order held that

"*Hence, looking into the entirety of the facts, circumstances of the case and the case laws cited by the AR of the assessee (supra), we allow the appeal of the assessee by holding that the rejection of books of account on the basis of insignificant defects in all respect, is not justified and books of account deserves to be accepted. Before invoking the provisions of Section 145(3) of the Act, the AO has to bring on record material on the basis of which he has arrived at the conclusion with regard to correctness or completeness of the accounts of the assessee or the method of accounting employed by it. In the instant case, it was not the case that the assessee had not followed either cash or mercantile system of accounting. It was also not the case that the Central Government had notified any particular accounting standard not followed by assessee. Further the assessee maintains proper books of account audited by Chartered Accountant and the profit may be derived from the audited books of account therefore there is no justification in estimation of income by applying NP rate and accordingly the lower authorities are directed to delete the addition of Rs. 47,72,297/- sustained by ld CIT(A)."*

(i) M. DURAI RAJ vs. COMMISSIONER OF INCOME TAX

HIGH COURT OF KERALA (1972) 83 ITR 484 (KER):—

Held

What is relevant to consider in such cases is whether the assessee's accounts are maintained according to the method regularly employed by him, whether they are correct and complete, and whether the income can be properly computed from the accounts. There is no finding that the purchases have been

exaggerated or the sales have been suppressed, or that any transaction has not come into the accounts. In these circumstances, the grounds stated by the Tribunal are neither valid nor relevant in rejecting the accounts of the assessee.

(c) ST Teresa's Oil Mills Vs State of Kerala 76 ITR 365 (Ker)

Accounts regularly maintained in the course of business have to be taken as correct unless there are strong and sufficient reason to indicate that they are unreliable.

(e) Haridas Parikh Vs ITO 113 TTJ 274 (ITAT Jodhpur):- Hon'ble ITAT Jodhpur Bench has held that unless the AO is able to point out certain transactions which have been left to be entered in the books of account or that the assessee has sold some of the items at a price higher than what is disclosed in the books of account or if proper particulars, bills, vouchers, are not forthcoming etc., the books of account cannot be rejected without assigning specific reasons. In the instant case merely because different range and nature of items are being dealt with by the assessee and the maintenance of quantitative stock of each and every item is not practically possible, the books of account maintained by the assessee which are free from any defect cannot be rejected merely because the average GP rate was slightly lower than the average GP rate of the earlier year.

(f) Vishal Infrastructure Ltd Vs ACIT 104 ITD 537 (ITAT Hyderabad) PB 167-185:- Hon'ble ITAT Hyderabad A Bench held that the undisputed fact is that the assessee which is a limited company has been consistently following a particular method of accounting. Its accounts are audited both under the Companies Act as well as under s. 44AB. Such audited accounts are being filed with the Registrar of Companies as well as with the IT Department for more than 7 years. The Revenue has scrutinized the accounts and the method of accounting regularly employed and adopted by the assessee year after year have not been found fault with. Auditors of the company both under the Companies Act and the IT Act have been consistently certifying that the assessee has been regularly following the method of accounting and that the annual profits can be properly deduced from such method of accounting employed by the assessee. The auditors over the years have also been certifying that the accounts are regularly maintained and are complete in the sense that there is no significant omission therein. This finding has been accepted by different AOs over a period of seven years. Though the principles of *res judicata* do not apply to income-tax proceedings, each assessment year being a unit by itself, yet in cases, when a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have been allowed that position to be sustained by not challenging the order, it may not be appropriate to allow that position to be changed in a subsequent year. For rejecting the view taken for the earlier assessment years, there must be a material change in the fact situation. Hon'ble ITAT placed reliance on —Radhasoami Satsang vs. CIT (1991) 100 CTR (SC) 267 : (1992) 193 ITR 321 (SC), CIT vs. A.R.J. Security Printers (2003) 183 CTR

(Del) 323 : (2003) 264 ITR 276 (Del) and CIT vs. Neo Poly Pack (P) Ltd. (2000) 245 ITR 492 (Del).

(g) Avdesh Pratap Singh Abdul Rehman & Bros Vs CIT (1994) 210 ITR 406 (All) 186-187 -Held that absence of stock register may not per se lead to an inference that accounts are false or incomplete.

(h) Pandit Bros Vs CIT (1954) 26 ITR 159 (Pun) PB 188-194-Held that absence of stock register is not sufficient ground to reject the books of account.

(i) Ashok Refractories Pvt Ltd Vs CIT (2005) 279 ITR 475 (Cal) PB 195-201 - Held that absence of stock register may not per se lead to an inference that accounts are false or incomplete.

Therefore, in view of submission, the ld CIT(A) has not justified in rejecting the books of account by invoking the section 145 and the action of ld CIT(A) deserves to be set aside

3.3 Ground No 3:- Not pressed

Prayer of assessee:-
The humble assessee prays your honor kindly to allow the appeal filed by the assessee"

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	Particulars	Page No.
1.	Copy of ITR and computation of total income of AY 2017-18	1-4
2.	Copy of Audit Report, Audited Balance sheet and Statement of Profit and Loss along with all annexure of AY 2017-18	5-49
3.	Copy of Notice dated 09/08/2018 issued u/s 143(3) of the Income Tax Act, 1961	50-53
4.	Copy of Cash book for the period 01/11/2017 to 31/12/2017	54-60
5.	Copy of Fire Wood Sales Account for the period 01/04/2016 to 31/10/2017	61-64
6.	Copy of Steel & Scrap Sales Account for the period 01/04/2016 to 31/10/2017	65-70
7.	Copy of Cheja Stone Sales Account for the period 01/04/2016 to 15/11/2017	71-98
8.	Copy of Written Submission filed before CIT(A)	99-124
9.	Copy of Show Cause Notice issued by CIT(A) vide notice dated 29/12/2023	125
10.	Copy of Reply 03/01/2024 filed against show cause notice issued by CIT(A)	126-130
11.	Copy of Order of Hon'ble Rajasthan High Court in the case of Pr Commissioner of Income Tax, Alwar v/s Bajargan Traders, Jaipur vide DB Income Tax Appeal No. 258/2017	131-135
12.	Copy of order of Hon'ble ITAT Lucknow in the case of Sunny Kapoor vs Income Tax Officer (2022) 142 taxmann.com 577	136-138

Case laws relied upon:

S. No.	Particulars	Page No.
	Hon'ble Supreme Court	
1	Dhakeswari Cotton Mills Ltd vs. Commissioner of Income-tax [1954] 26 ITR 775 (SC)	1-14
2	Umacharan Shaw & Bros vs. Commissioner of Income-tax [1959] 37 ITR 271 (SC)	15-26
3	Lalchand Bhagat Ambica Ram Vs. CIT (1959) 37 ITR 288 (SC)	27-51
4	Lakhmichand Baijnath V. CIT [1959] 35 ITR 416 (SC)	52-61
5	Tin Box Co. Vs CIT 249 ITR 216 (SC)	62-63
6	AnirudhsinhjiKaransinhji Jadeja v. State of Gujarat [1995] 5 SCC 302	64-69
7	Radhasoami Satsang vs. CIT (1991) 100 CTR (SC) 267 : (1992) 193 ITR 321 (SC)	71-75
	Jurisdictional Rajasthan High Court	
8	Smt. Harshila Chordia vs Income-tax Officer Appeal No. 4 of 2002 NOVEMBER 7, 2006 [2008] 298 ITR 349 (Rajasthan)	76-80
	Other High Courts	
9	CIT vs. Kapil Nagpal, DBITA 609/2014 (Delhi HC)	81-89
10	Goyal Gases (P.) Ltd vs. Commissioner of Income-tax [1997] 94 TAXMAN 57 (DELHI)	90-93
11	PCIT vs. Aditya Birla Telecom Ltd. [2019] 105 taxmann.com 206 (Bombay)	94-104
12	Rustagi Engineering Udyog (P.) Ltd vs. Deputy Commissioner of Income-tax [2016] 382 ITR 443 (Delhi).	105-117
13	Principal Commissioner of Income-tax vs. Meenakshi Overseas (P.) Ltd [2017] 82 taxmann.com 300 (Delhi)	118-136
14	CIT vs. Shri Jawahar Lal Oswal, DBITA 49/1999 (Punjab & Haryana HC)	137-162
15	Commissioner of Income-tax vs. Neel Giri Krishi Farms (P.) Ltd. [2013] 218 Taxman 95 (Allahabad)(MAG.)	163-169
16	R.B. Jessaram Fatehchand (Sugar Dept.) v/s Commissioner of Income Tax [1970] 75 ITR 33 (Bombay)	170-177
17	CIT v/s. Kailash Jewellery House ITA No. 613/2010 Delhi High Court dated 09.04.2010	178-179
18	Gurumukh Singh Vs CIT 12 ITR 393, 427 (FB)	180-207
19	As in the case of CIT Vs. Associated Transport Pvt. Ltd. [1994 (1) TMI 18 - CALCUTTA HIGH COURT]	208-210
20	Ghanshyam K. Khabrani vs. ACIT [2012] 346 ITR 443 (Bom)	211-216
21	CIT v. SPL'S Siddhartha Ltd. [2012] 345 ITR 223 (delhi)	217-220
22	M. DURAI RAJ vs. COMMISSIONER OF INCOME TAX HIGH COURT OF KERALA (1972) 83 ITR 484 (KER)	221-227
23	ST Teresa's Oil Mills Vs State of Kerala 76 ITR 365 (Ker)	228-230
24	CIT vs. A.R.J. Security Printers (2003) 183 CTR (Del) 323 : (2003) 264 ITR 276 (Del)	231-233
25	CIT vs. Neo Poly Pack (P) Ltd. (2000) 245 ITR 492 (Del)	234-235
26	Avdesh Pratap Singh Abdul Rehman & Bros Vs CIT (1994) 210 ITR 406 (All) 186-187	236-237
27	Pandit Bros Vs CIT (1954) 26 ITR 159 (Pun)	238-244
28	Ashok Refractories Pvt Ltd Vs CIT (2005) 279 ITR 475 (Cal)	245-251
	ITAT Jaipur Bench	
29	ACIT Circle-1 Jaipur vs M/s Uttam Chand Deshraj (ITAT Jaipur Bench ITA No 419/JP/2010 Order dated 25/03/2011)	252-255
30	2022 (10) TMI 116 - ITAT Jaipur ACIT, Central Circle-2, Jaipur Vs M/S MotisonsJewellers Ltd. and (Vice-Versa).	256-308
31	2022 (11) TMI 1333 - ITAT Jaipur Other Citation: [2023] 104 ITR (Trib) 455 (ITAT [Jai]) Asstt. Commissioner Of Income-Tax, Central Circle-1, Jaipur. Vs Shri Mahendra Kumar Agarwal.	309-340
32	2022 (11) TMI 1334 - ITAT Jaipur Income Tax Officer, Ward 1 (2) , Jaipur. Versus.	341-373

	Shri Raj Kumar Nowal.	
33	2022 (12) TMI 750 - ITAT Jaipur The ACIT Central Circle-2 Jaipur Versus Shri Chandra Surana.	374-383
34	2023 (3) TMI 1148 - ITAT JAIPUR Mahesh Kumar Gupta Versus ACIT Circle-04, Jaipur.	384-408
35	M/s MotisonsGobal Private Limited vs ACIT in ITA 388 & 389/JP/2017 vide order dated 02/11/2017	409-593
	Other ITAT Bench	
36	Kishore Jeram Bhai Khaniya, Proprietor, M/s Poonam Enterprises v. ITO ITA No. 1220/Del/2011 ITAT Delhi dated 13.05.2014	594-598
37	2021 (5) TMI 447 - ITAT VISAKHAPATNAMASST. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1 VISAKHAPATNAM VERSUS M/S HIRAPANNA JEWELLERS AND (VICE-VERSA)	599-605
38	2021 (1) TMI 837 - ITAT GAUHATI NURUL ISLAM VERSUS ITO, WARD-2, NAGAON	606-608
39	AyodhayaJajra Vs CIT(A) ITA No 43/Jodh/2022 order dated 08/04/2024	609-628
40	2021 (12) TMI 599 - ITAT Bangalore Anantpur Kalpana Versus ITO, Ward – 1, Koppal	629-633
41	2021 (2) TMI 737 - ITAT GauhatiNilkantha Saha Versus ITO, Ward-Morigaon	634-641
42	2021 (9) TMI 1192 - ITAT Visakhapatnam Dy. Commissioner Of Income Tax Circle-3 (1) Visakhapatnam Versus Sri Jaya Prakash Babu Valluri And (Vice-Versa)	642-648
43	Karthik Constructions [2018 (3) TMI 39 - ITAT MUMBAI] the Ld.CIT(A)	649-652
44	Hon'ble Income Tax Appellate Tribunal Delhi Bench 'D': New Delhi in ITA No. 2835/Del/2015 (Assessment Year: 2012-13) Smt. Tripat Kaur Date of pronouncement 09/10/2018	653-667
45	Hon'ble ITAT Chennai Bench in the case of Smt. Sekar Jayalakshmi vs Income Tax Officer [2023] 150 taxmann.com 120 (Chennai - Trib.)	668-670
46	Haridas Parikh Vs ITO 113 TTJ 274 (ITAT Jodhpur)	671-673
47	Vishal Infrastructure Ltd Vs ACIT 104 ITD 537 (ITAT Hyderabad)	674-693

7. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee submitted all the details including the ledger account of the sale of cheja stone. The assessee is in the business of development of immovable property. The assessee has excavated the land which is under development. For the basement of the property to be developed was rock land. Assessee excavated 10 feet which of two basements and five feet four foundation of the property. Thus, effectively total 25 cubic feet of land area more than

10,000 sq. feet dig out and thereby the assessee has sold and offered and income of Rs. 3,24,44,415/- as other operating revenue, vide note No. 23 of audited accounts placed on record at page No. 44 of the paper book. The assessee has offered profit for an amount of Rs. 3,08,39,992/- on this operating income. If that income was not offered the assessee would be in loss for the year under consideration. The assessee has already offered income which is duly reflected in the audited accounts. Ld. AO has not invoked the provisions of section 145(3) and thereby without doing so made the addition of the sales already reflected in the books of accounts and the same cannot be separately made in the hands of the assessee. The assessee based the provisions of section 2(12A) of the Act maintained records which were produced before the Assessing Officer. Ld. AO did not find a single defect in the books of accounts so reproduced. The ld. AR of the assessee also submitted that the books of accounts of the assessee audited under the two separate laws i.e. under the Income Tax Act and under the provisions of the Companies Act. Both auditors not made any single adverse remark about the maintenance of the account maintained by the assessee under both the laws. Thus considering the provisions of section 34 of the evidence Act the books of accounts cannot be thrown away and separate addition of the amount already refracted in the books of

accounts cannot be made, based on the provisions of section 68/69A of the Act.Even when the matter carried before ld. CIT(A), he also did not find any defect in the books of the accounts produced Ld. CIT(A) did not appreciate the fact that the assessee is not in regular manufacturer of the stone but it is in the possession of rocky land which was under development and n that digging process excavated stones which assessee sold. The cost of excavated the area under development is already refracted in the books and allowed, whereas consequent revenue derived by the assessee from sale of such stone is considered u/s 69A of the Act. Thereby alleged to charge the said income as per provisions of section 115BBE of the Act is not correct. During the course of proceedings before lower authorities, the assessee produced the cash book bank book ledger account sales chart but that has not been correctly appreciated by the lower authorities. As regards the sales of stones, provisions of TCS are not applicable so while selling that part of stones offered as revenue receipts. When this arguments was advanced by the assessee before the lower authority they did not feel to make the spot enquiry about the contentions raised by the assessee. As regards the contentions of rocky land has been rejected without making any enquiry. The decisions cited by the lower authorities are different on facts and thus are not applicable. To support the contentions so raised by the ld.

AR of the assessee, he has relied upon the various case laws cited in the paper book filed. The ld. AR Vehemently opposed the action of the revenue that they cannot charge new source of income which is already reflected in the books of the accounts.

8. Per contra, the ld. DR relied upon the order of lower authorities and also filed a report of ld. AO which reads as under:-

> "Subject:--Calling of report on Appellate proceedings in the case of Suwalka and Suwalka Properties and Builders Pvt. Ltd., PAN- AAHCS7054C for the A.Y. 2017-18 before the Hon'ble ITAT-reg.
>
> Respected Sir,
>
> Kindly refer to your office letter No.432 dated 12.08.2024 on the above mentioned subject wherein report was sought in the case of the assessee before the Hon'ble ITAT.
>
> In continuation to earlier factual report vide this office letter No. 183 dated 12.08.2024, it is further submitted that the assessee Company engaged in the business of real estate as a builder and developer. The assessee company E-filed its Return of income on 06.03.2018 declaring total income of Rs. 3,67,82,720/- for the A.Y. 2017-18. Subsequently, assessment order u/s 143(3) of Income Tax Act, 1961 was passed by the AO at assessed income of Rs.6,46,82,720/ on 22.12.2019 after making addition of Rs. 15,00,000/- on account of lump sum addition out of other expenses and Rs.2,64,00,000/- on account of cash deposited during demonetization period.
>
> Aggrieved by the aforesaid addition the assessee comapny has preferred the appeal before CIT(A) had partly allowed the appeal on 17.01.2024.
>
> Aggrieved from the assessment order, the assessee filed appeal before Ld CIT(A), Udaipur-2. The ld CIT(A) partly allowed the appeal of assessee. The gist of findings of ld CIT(A) is as under: - a) Out of total disallowance of Rs. 15,00,000/- out of other expenses, the ld CIT(A) sustained the addition of Rs. 1,92,993/- and remaining disallowance of Rs. 13,07,007/-was deleted.
> b) The ld CIT(A) rejected the books of account by invoking section 145(3) of I. Tax Act by holding that assessee failed to furnish credible evidence in

support of the source of cash deposited during the demonetization, hence the books of account of assessee are not reliable. (Page 38 of order)

c) The ld CIT(A) reduced the amount Rs. 2,64,00,000/- from business income of the assessee and upheld the addition of Rs 2,64,00,000/- as income from other sources u/s 68 of Income Tax Act treating the cash deposited during demonetization as unexplained credit as against unexplained investment held by ld AO u/s 69A and taxing the same under 115BBE of the Act, 1961. (page 30, 38 and 39 of order)

2) Now aggrieved from the order of ld CIT(A), the assessee is in appeal before Hon'ble Tribunal and following grounds of appeal were raised in Form No 36: -

1. On the facts and in the circumstances of the case, the order CIT (A) erred in in rejecting the books of account of the assessee by applying the provision of Section 145(3) of the Income Tax Act, 1961 without asking the assessee to produce the books of account and without examining the books of accounts.

2. On the facts and in the circumstances of the case, the Ld CIT (A) erred in sustaining the addition of Rs 2,64,00,000/- on account of cash deposited in bank accounts in the demonetized currency, as unexplained cash credit of the assessee by applying the provisions of section 68 of the Act as against addition made by ld AO u/s 69A and taxing the same by applying provisions of section 1158BE of 1. Tax Act alleging the same as undisclosed income of appellant and further erred in reducing the same income from business income declared by the assessee and adding the same as Income from other sources. The entire findings of lower authorities are based on presumption, assumption and having no material or irrelevant material and without providing the adequate opportunity of submission of documents. The addition was made without considering the submission and documents of the assessee in the judicial perspective.

3. The appellant prays for leave to Add, to amend, to delete, or modify the all or any grounds of appeal on or before the hearing of appeal.

Submission of Assessee before ITAT

3.1 Ground No 1 & 2 are inter connected and basically relate to holding the receipts of Rs. 2,64,00,000/- from cash sales which was deposited in bank account in demonetised currency as unexplained cash credit u/s 68 and taxing the same at higher rate u/s 115BBE of I. Tax Act by rejecting the books of account of the assessee.
3.1.1 Issues Involved in the appeal

Basically three issues are emerged from the appeal of the assessee filed before Hon'ble Tribunal.

(A) Treated the cash sales of Cheja (Masonry) Stone, fire wood, and scrap steel which was deposited in demonetized currency as unexplained credit entries u/s 68 of 1. Tax Act and taxing the same in higher bracket of tax by applying provisions of section 1158BE.
B) Whether the CIT(A) can apply the provisions of section 68 of Income Tax Act.
(C) Whether the books of account of the assessee can be rejected by CIT(A) by applying the provisions of section 145(3) of 1. Tax Act.
The submission of the assessee on the above said issues are as under-
A) Treated the cash sales of Cheja (Masonry) Stone, fire wood, and scrap steel which was deposited in demonetized currency as unexplained credit entries u/s 68 of 1. Tax Act and taxing the same in higher bracket of tax by applying provisions of section 1158BE.

The comments on assessee 'submission before ITAT is being submitted hereunder which is based on assessment records as available with this office(i) During the year under consideration, the assessee company has deposited Rs. 2,79,00,000/- in its various bank accounts during demonetization period. The assessee accepted this fact and mentioned the same amount in return filed by it on 06.03.2018. The assessee was asked vide notice u/s 142(1) on various dates during assessment proceeding to explain the source of cash deposited during the demonetization period from 09.11.2016 to 31.12.2016. The assessee submitted that it had sold cheja stone and other material in cash of Rs. 3,24,44,415/- during the year and the cash deposited during the demonetization period is cash earned from such sale. Further, the assessee stated that "regarding deposit during demonetization, a surrender of Rs. 15 Lakh has been made before D.D.I.T Kota under P.M.G.K.Y scheme and Rs. 748500/- was deposited as tax & FDR of Rs. 375000/- was also made under the scheme for just to purchase the peace of mind".

During the assessment proceedings, as per assessee's submission, the assessee has sold some material worth Rs. 3,24,44,415/- from 01.04.2016 to 08.11.2016 and no such sale has occurred after 08.11.2016.

The contention of the assessee is not found convincing as the material worth Rs. 3,24,44,415/- was sold in first 7 months and no such material was sold in next 4 months. This fact is unbelievable. The assessee has also not shown any stock of such material in its Books of Accounts of current and earlier years. Further, as business concern, sale of material worth Rs.3,24,44,415/- in cash during the F.Y sounds uncommon.

And no such sale has occurred in any previous years. Further, the assessee has not provided any bills and vouchers in support of sale of such material worth Rs. 3,24,44,415/-.

Further the contention of the assessee is that the Rs. 3,24,44,415/- isn included in its P&L and including the cash deposited during demonetization in its

total income for the year will amount to double taxation is not found convincing. The assessee has not provided any bilis and vouchers in support of its claim of sale of Rs. 3,24,44,415/- and it could not establish that the cash obtained from such sale is deposited during demonetization. During the assessment proceedings, the assessee has only provided cash book and ledger but not provided any other documents in support of its claim despite being called several times by the then A.O.. Since, during the assessment proceedings, the assessee could not establish that such sale has occurred during the year under consideration, Hence, the A.O. has rightly made addition of Rs. 2,64,00,000/- as treated unexplained money.

(ii) During the appellative proceedings before ITAT, the assessee has also raised grounds:-

(B) Whether the CIT(A) can apply the provisions of section 68 of Income Tax Act.
(C) Whether the books of account of the assessee can be rejected by CIT(A) by applying the provisions of section 145(3) of 1. Tax Act.

As discussed above, the sale of Cheja Stone is not considered as genuine business of the aseessee by the then AO. Therefore, the source of cash deposited during demonetization period remains unexplained which is upheld u/s 68 of the Income Tax Act by the CIT(A). However, in the absence of supporting evidence furnished during assessment proceedings, the source of cash remain unexplained and same is treated as unexplained credit in the books of accounts and added u/s 68 of the Income Tax Act.

In this regard it is submitted that there is no provision regarding issuing show cause for applying tax rate as provided in section 115BBE. It is natural consequence if addition is made under these sections. Therefore, the argument of the assessee are not found to be acceptable that specific show cause was required to be given for applying section 115BBE.

In this regard ITAT RAJKOT BENCH IN THE VijubhaJitubha Jadeja v. Principal Commissioner of Income-tax [2023] 154 taxmann.com 615 (Rajkot. Trib.) held as under-

"Further the AO having made addition u/s 68 of the Act, taxing it at the rate prescribed u/s 155BBE of the Act was a natural corollary. Admittedly the law itself prescribes a special rate of tax for additions made u/s 68, 69,69A/B/C of the Act u/s 115BBE of the Act.

Therefore the argument and decisions relied upon by the assessee are not found applicable on the facts of the case.

It is argued that the Ld. AO has made the huge addition under section 69A without rejecting the books of account by invoking the provisions of s. 145(3). The

Income Tax Law does not empower the AO to make exorbitant addition without rejecting the books of account under section 145(3). The appellant also relied upon some decisions.

Considering the facts of the case, it was considered that as per the provisions of I.T. Act, the CIT (A) has coterminous powers. On the facts of the case, the AO should have rejected the books of accounts of the assessee as the source of cash deposited during the demonetization period is not satisfactorily explained by the assessee. Therefore, the assessee was issued show cause notice on 29-12-2023 as per provisions of section 251(2) of the Income Tax Act by the CIT(A).

In response to the show cause notice, the assessee furnished reply on 03-61 2024. The appellant mainly argued in the reply that CIT(A) has no power to trail beyond the subject matter of the assessment. It is argued that the CIT (A) is no entitled to assess new source of income.

While considering the scope and powers of the appellate authority, under the Income Tax Act, 1961, courts have consistently held that the power of the first appellate authority are coterminous with that of the Assessing Officer and that the appellate authority can do what the Assessing Officer ought to have done and also direct the latter to do what he has failed. Appeal is also a continuation of original proceedings and unless some fetters are placed upon the powers of the appellate authority by express words, the appellate authority can exercise all the powers as that of the original authority.

Reliance is placed on the observations of the Apex Courts in CIT v. Kanpur Coal Syndicate [1964] 53 ITR 225, the Court held that powers of the Commissioner are co-terminous with that of the ITO and the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. A question regarding powers of the first appellate authority came up for consideration before the Supreme Court in CIT v. NirbheramDaluram [1977] 224 ITR 610/91 Taxman 181. Following their carlier decisions in Kanpur Coal Syndicate's case (supra) and Jute Corpn. of India Ltd.'s case (supra) their Lordships reiterated that the appellate powers conferred on the Commissioner under section 251 could not be confined to the matter which had been considered by the ITO.

In view of the above discussion, the argument of the assessee before ITAT and cited case laws thereon are not found to be acceptable. Copy of assessment order and order of CIT(A) is being enclosed for your ready reference.

The factual report is again being submitted for kind perusal and necessary action."

9. The ld. DR in addition to the report of AO vehemently argued that out of total sales of Rs. 3,24,44,415/- sales made by the assessee additions of Rs. 2,64,00,000/- only has been made u/s 69A of the Act and thereby higher rate of tax as per provision of section 115BBE of the Act. As the assessee failed to substantiate the sale of stone with corroborative / cogent evidence about the sale of material of chajar stone. The assessee specifically asked to give the bills issued for the sale of stone but assessee could not furnish such records to substantiate the receipt. Ld. AO has already given the reason at page No. 3 of his assessment order stating that the assessee has not shown any stock of such material in books of accounts and the fact mentioned by the assessee for sale of material to the tune of Rs. 3,25,45,415/- cannot support the contentions. The assessee failed to provide any bills/vouchers for recording such high value of sale recorded in the books. The assessee has merely submitted the ledger account and cash book which was not sufficient to prove the source deposit of cash into the bank account under the demonetization period for an amount of Rs. 2,64,00,000/- and thereby the Assessing Officer reasoning were correct. When the matter carried out before ld. CIT(A) by the

assessee, CIT(A) has rightly observed that the addition is to be made in the hands of the assessee u/s 68 of the Act and not u/s 69A of the Act. The ld. CIT(A) has done that as per co-judicial before vested upon him. While doing so ld. CIT(A) has also relied upon the various judicial decisions as cited in his order. The assessee even before the ld. CIT(A) could not submit any details of source of such cash deposited into bank account. The ld. CIT(A) has also fairly directed the ld. AO to give relief of amount already recorded in the books of account and has confirmed the levy of special tax rate as per provisions of section 115BBE of the Act. So, considering the overall fact already discussed in the orders of the lower authorities, ld. DR supported the orders of the lower authority.

10. We have heard the rival contentions and perused the material placed on record.In this appeal the assessee has effectively taken two grounds of appeal. Ground no. 1 raised by the assessee challenging the action of the ld. CIT(A) in rejecting the books of accounts of the assessee as per provision of section 145(3) of the Act and that too without asking the assessee to produce the books and without examination of the same he has rejected the books results. Ground no. 2 raised by the assessee challenging the action of the ld. CIT(A) holding that so far as the addition

made by the ld. AO for an amount of Rs. 2,64,00,000/- provision of section 68 will apply instead ld. AO applied 69A of the Act.

11. The apple of discord for raising both the grounds is that the assessee has deposited as sum of Rs. 2,79,00,000/- during the demonetization period in the bank account. Ld. AO granted relief for an amount of Rs. 15,00,000/- as the assessee has disclosed a sum of Rs. 15,00,000/- in the PMGKY scheme and thereby balance amount of Rs. 2,64,00,000/- was considered as chargeable to tax in accordance with the provisions of section 69A of the Act as unexplained money. Brief facts related to the dispute is that assessee company deposited a sum of Rs. 2,79,00,000/- in its various bank accounts during demonetization period. The assessee **accepted this fact and mentioned the same amount in return filed by it** on 06.03.2018. Vide notice u/s 142(1) on various dates during assessment proceeding the assessee was asked to explain the source of cash deposited during the demonetization period from 09.11.2016 to 31.12.2016. The assessee submitted that it had sold cheja stone and other material in cash of Rs. 3,24,44,415/- during the year under assessment and the cash deposited during the demonetization period is received from such sale made by the assessee. Further, the assessee stated that "regarding deposit

during demonetization, a surrender of Rs. 15.00 Lac has been made before D.D.I.T Kota under P.M.G.K.Y scheme and Rs. 7,48,500/- was deposited as tax & FDR of Rs. 3,75,000/- was also made under the scheme for just to purchase the peace of mind". As submitted by the assessee that they sold material worth Rs. 3,24,44,415/- from 01.04.2016 to 08.11.2016 and no such sale has occurred after 08.11.2016. Ld. AO found that contention of the assessee as not convincing as they have sold stone in first 7 months and no such material was sold in next 4 months. Ld. AO also noted that the assessee has also not shown any stock of such material in its Books of Accounts of current year as well as for the earlier years. Further, as business concern, sale of material worth Rs. 3,24,44,415/- in cash during the year sounds uncommon as also no such sale has occurred in any previous years. Further, before AO the assessee not provided any bills and vouchers in support of such sale.Assessee contended that Rs. 3,24,44,415/- is included in its Profit & Loss Account and that explain the source of cash deposited during demonetization. Charging it again will amount to double taxation,but that submission was not found convincing to AO. The assessee has not provided any bills and vouchers in support of its claim of sale of Rs. 3,24,44,415/- and it could not establish that the cash obtained from such sale is deposited during demonetization. The assessee

has only provided cash book andledger but not provided any other documents in support of its claim despite being called several times. Since, the assessee could not establish that sale occurred during the year under consideration, the contention of the assessee is not found satisfactory and the amount of demonetized currency deposited during the demonetization period after considering the amount of Rs. 15.00 lacs surrender under the P.M.G.K.Y by the assessee company, at Rs.2,64,00,000/-(2,79,00,000/- - 15,00,000/-) was added to the total income of the assessee treated as unexplained money as per provision of section 69A of the IT Act, 1961 and tax is charged u/s 115BBE of the IT Act.

12. When the matter carried to the first appellate stage, the ld. CIT(A) so far as the contention of the assessee that the income for an amount of Rs. 2,64,00,000/- taxed twice was accepted and directed the ld. AO reduce that amount from the income of the assessee. But while directing so ld. CIT(A) invoked the provision of section 145(3) of the Act and hold that assessee failed to furnish credible evidence in support of the source of cash deposited and hence he rejected the books results. He also holds a view that instead of provision of section 69A as applied by AO directed the ld. AO to apply the provision of section 68 of the Act so far as the credit of

sales amount in dispute. The assessee way of this appeal challenges that finding of the ld. CIT(A) before us.

13. Thus, at this stage the assessee challenged the order of the lower authority on three counts first one is that the cash sales of Cheja (Masonry) Stone, firewood, and scrap of steel reported by the assessee in the books of account and out of that sales cash so generated forms part of the cash deposited into the bank account partly in demonetized currency as unexplained credit entries u/s 68 of the Act and taxing the same in higher bracket of tax by applying provisions of section 115BBE. Second is that whether based on the fact ld. CIT(A) can apply the provisions of section 68 of Income Tax Act or not, and the third issue is that whether the books of account of the assessee can be rejected by CIT(A) by applying the provisions of section 145(3) of the Act.

14. On 29.12.2023 ld. CIT(A) issued a show cause notice asking the assessee to show cause as to why the books of accounts maintained by them should be rejected as no verifiable evidence are available to prove that genuineness of the sales was made from which the cash was received and deposited during the demonetization period. The assessee also asked to show cause as to why the cash deposited should not be treated as

unexplained credit in the books of accounts as per provision of section 68 of the Act. Assessee on 03.01.2024 filed a detailed submission objecting to the action of the ld. CIT(A)stating that the invoking of both the provisions are beyond the scope of appellate proceedings.

15. The assessee contended that impugned addition represents the amount realised on account of the sales recorded in the regular books of accounts of the assessee. Those books of accounts are audited as per the provisions of the Companies Act as well as under the Income tax Act. There are no adverse remarks in the books of accounts maintained by the assessee. The ld. AO has not rejected those books of accounts while examination of the said books of account and based on the information so called for also not found any defects in the records so maintained by the assessee. The sales so made by the assessee is duly accepted and offered for value added tax and that sales have already been accepted. There cannot be a double addition while considering that sales as part of the records and the profit of the same is already subjected to tax and making again the cash deposited into the bank account as unexplained money as per provision of section 68 of the Act when the ld. AO has not rejected the book results and without reducing the sales from the books so maintained

by the assessee. Thus, the same income cannot be taxed twice, one as sales and another considering the cash deposit as unexplained. The ld. CIT(A) has rejected the book results simply mentioning that ;

> In response to the show cause notice, the appellant was required to furnish verifiable evidences to prove that genuine sale was made from which the cash was received which was deposited during demonetization. However, the appellant failed to furnish any evidence required by show cause notice. Because of failure to furnish credible evidence in support of source of cash deposited during demonetization the books of accounts are not found to be reliable and rejected by invoking section 145(3) of the Income Tax Act. The cash credited in the name of sale is treated as unexplained credits in the books of accounts of the appellant. Therefore, the addition is made as proposed in the show cause notice u/s 68.

As is not disputed that ld. AO has not rejected the books and not passed order u/s. 144 of the Act. Ld. CIT(A) has done so based on the mere surmise and conjecture as noted herein above. As is also evident from the orders of the lower authority that the assessee has produced all the details that has been required by the ld. AO and they have not found the records defective. Merely the ld. AO and the ld. CIT(A) made suspicions on the records of sales of stone that too on account of rocky land excavated and thereby sold stone so excavated. Relevant receipt is reflected in the books of accounts. Out of the sum of received part of the amount considered as explained and part of the same as not genuine for the same set of records. We note that the ld. CIT(A) has not advanced single a reason or basis of rejection of the book results which are otherwise verified, and no defects

were found by the ld. AO and ld. CIT(A) and that when ld. AO and ld. CIT(A) has already considered the part of the amount deposited into the bank account as business receipt and the part of the same was not considered. While doing so ld. CIT(A) has not satisfied the condition as required as per provision of section 145(3) of the Act and that too without pointing out any defects in the books of accounts. The ld. CIT(A) merely rejected the book results because the assessee deposited cash in demonetized currency, and that was the reasons to reject the book results which is not a valid reason to invoke the provision of 145(3). Thus, at this stage it would be better go through the provision that section and the same reads as under :

> **Method of accounting.**
> **145.** (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.
> (2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income.
> (3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.

As it is evident that the provision of section 145(3) can be invoked in the following circumstances:

- When the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee.
- When the method of accounting provided in Section 145 (1) has not been regularly followed by the assessee.
- When the accounting standards notified under Section 145 (2) have not been regularly followed by the assessee.

From the observations recorded in the order of the lower authority none of the conditions are satisfied and thus same is not evident from the finding of the lower authority. Not only that the bench also observed that when the provision of section 145(3) is to be invoked the assessment is to be completed as per the manner provided in section 144 of the Act and the proper opportunity is required to be given by pointing out the defects in the books of account which we observe that the same is not followed and the order is passed u/s. 143(3) of the Act which is also not correct. We get strength to support our view based on the provision of the Act and decision of the Hon'ble Jurisdiction Rajasthan high court in the case of CIT Vs. Pink City Developers [99 taxmann.com 422 (Rajasthan)]. In that case our Hon'ble High court held that;

> 7. The counsel for the respondent contended that the Tribunal while considering the objection of section 145(3) of the Income-tax Act has rightly observed as under :

> "(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144."

> 8. Taking into considerations, the overall facts and circumstances of the case, we are of the opinion that the Tribunal while confirming the order passed by the Commissioner of Income-tax (Appeals) has not committed any error, therefore, the issue is answered in favour of the assessee and against the Department.

Here we note that out of the sales of worth Rs. 3,24,44,415/- sales worth Rs. 2,64,00,000/- was not considered as genuine because the assessee out of those sales deposited the amount in the specified bank notes. Thus, on the same set of records revenue was satisfied for sales of Rs. 60,44,415/- [Rs. 3,24,44,415 less Rs. 2,64,00,000/-] and for Rs. 2,64,00,000/- hold a view that the assessee has not maintained proper sales records and therefore invoked the provision of section 145(3) of the Act is not correct. Ld. AO or that of ld. CIT(A) has not considered it fit to make the verification of the contention at the place of business / site to verify the contention and thereby tried to collect the corroborative evidence and without doing so part sales is accepted and part not is not correct reasons to reject the books of accounts. Based on these observations ground no1 raised by the assessee is allowed.

16. Ground no. 2 relates to action of the lower authority treating the part of the sales attributable to cash sales as unexplained money (under section 69A) or that of the unexplained cash credits (under section 68) of the Act. As we hold a view that the revenue cannot be accept the part of the sales as explained and part of the sales not explained on the same set of evidence. Therefore, the cash deposited in the demonetized currency added as income of the assessee by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in statement of profit & loss account. Therefore, there is no occasion to consider the same as unexplained credit entry of the assessee by applying the provisions of section 68 of the Act. We get support of our view from the decision of our High Court of Rajasthan in the case of Smt. Harshila Chordia *vs* Income-tax Officer [2008] 298 ITR 349 (Rajasthan) “wherein it was held that no addition could be made in respect of the amount standing in the books of the assessee, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.” As the fact of this cash being similar that part of the sales is considered by the revenue has explained and part of it not is not correct and therefore, we

hold that cash deposited by the assessee out of sales proceeds of stone cannot be considered attributable to the provision of section 68 or that of 69A of the Act. Based on these observations ground no. 2 raised by the assessee is allowed.

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

Order pronounced in the open court on 03/10/2024.

Sd/-	Sd/-
(डा० एस. सीतालक्ष्मी)	(राठौड़ कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 03/10/2024
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Suwalka and Suwalka Properties and Builders Pvt. Ltd., Kota
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle, Kota
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त (अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 302/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

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