

CASE LAWS – ASSESSMENTS RELATING TO DEMONITIZATION

IN FAVOUR OF THE ASSESSEE:

- 1. Kanpur Steel Co. Ltd., vs Commissioner of Income Tax – High Court of Allahabad – Misc. Case No 261 of 1950 (1957) 25 CCH 0042 All HC - (1957) 32 ITR 0056**

Burden of proof that the high denomination notes encashed on their demonetization constituted suppressed income of assessee is on the Department.

(<https://thetaxtalk.com/2019/09/17/burden-of-proof-that-the-high-denomination-notes-encashed-on-their-demonetization-constituted-suppressed-income/>...)

- 2. Gur Prasad Hari Das vs. CIT [1963] 47 ITR 634 (All):
Cash Deposited during Demonetization: Practical aspects in Income Tax Assessment:**

If high denomination notes were found in Assessee's possession, it must prima-facie be presumed to be forming the part of cash balance of assessee and the burden is on the Department to prove that it constituted Assessee's undisclosed income on the basis of material in the possession of Department. Without any material & evidence, it could not be presumed that it represents the income from some undisclosed source.

(<https://thetaxtalk.com/2019/09/10/cash-deposited-during-demonetization-practical-aspects-in-income-tax-assessment/>)

- 3. ITO v. Madhuri Mishra [ITA No.337/LKW/2012, AY 2009-10]**

No addition u/s 68 is sustainable where the source of cash deposits were explained and proved as (a) opening balance (b) cash withdrawal from bank and (c) advance against purchase of land in respect of which agreement was produced.

- 4. ITO v. Baburao K. Pisal [ITA No. 6091/Mum/2012]-**

Addition on account of unexplained cash credit was not justifiable if the assessee had maintained regular cash book, its accounts were audited & deposit made is explained by assessee. Addition is not sustainable if no contrary evidence was brought on record by revenue.

- 5. Mehta Parikh & Co. v. CIT [1956] 30 ITR 181 (SC):**

When assessee submitted books of account showing relevant entries & payment being made to them which resulted in cash in its books and also submitted affidavits of payers, Revenue authorities cannot hold that it was not possible that all payments after a particular date were being made in multiples of Rs.1,000/-. No addition can be sustained based on pure surmise.

- 6. Narendra G. Goradia vs. CIT [1998] 234 ITR 571 (Bombay).**

Where there was sufficient balance on date of deposit, Assessing Officer cannot make additions of part of amount for want of details of receipts in some of high denomination notes. [Also, in Lakshmi Rice Mills vs. CIT [1974] 97 ITR 258 (Pat)]

7. Sri Sri Nilkantha Narayan Singh vs. CIT [1951] 20 ITR 8 (Pat):

Where the assessee did not maintain and hence did not produce any Home Chest Account though it was his case that the high denomination notes were savings from his personal allowance, there was no warrant for drawing an adverse inference. Assessee produced details of withdrawals for past 7 years and claimed the amount encashed on demonetization as his past saving; such an explanation cannot be rejected by AO. –

(<https://thetaxtalk.com/2019/09/10/cash-deposited-during-demonetization-practical-aspects-in-income-tax-assessment/>)

8. LAKSHMI RICE MILLS vs. COMMISSIONER OF INCOME TAX- HIGH COURT OF PATNA- S.N.P. Singh. Actg. C.J. & S.K. Jha, J.- Tax Case No. 44 of 1970- 15th April, 1974- (1974) 42 CCH 0104 Pat HC- (1974) 97 ITR 0258- Legislation Referred to- Section 69A- Case pertains to- Asst. Year 1946-47.

Demonetization special cases: Assessee is not required to prove the source of receipt of high denomination notes.

(<https://thetaxtalk.com/2019/09/21/demonetization-special-cases-assessee-is-not-required-to-prove-the-source-of-receipt-of-high-denomination-no...>)

9. MEHTA PARIKH & CO. vs. COMMISSIONER OF INCOME TAX-

SUPREME COURT OF INDIA-S.R. Das, C.J.; Bhagwati & Venkatarama Ayyar, JJ- Civil Appeal No. 81 of 1954-10th May, 1956-(1956) 24 CCH 0089 ISCC-(1956) 30 ITR 0181-Legislation Referred to-Section 69A-Case pertains to-Asst. Year 1947-48.

Demonetization special: No addition warranted when assessee submitted books of account showing relevant entries of payment being made to them which resulted in cash in its books and also submitted affidavits of payers,

(<https://thetaxtalk.com/2019/09/16/demonetization-special-no-addition-warranted-when-assessee-submitted-books-of-account-showing-relevant-e...>)

10. ANIL KUMAR SINGH & ORS. vs. COMMISSIONER OF INCOME TAX- HIGH

COURT OF CALCUTTA- S. Deb & Sabyasachi Mukharji, JJ.- IT Ref. No. 60 of 1964- 17th April, 1969- (1969) 37 CCH 0139 Kol HC- (1972) 84 ITR 0307- Legislation Referred to- Section 69A- Case pertains to- Asst. Year 1964-65.

Rejection of explanation that assessee might have changed high demonetization Currency note is not improper.

(<https://thetaxtalk.com/2019/09/11/rejection-of-explanation-that-assessee-might-have-changed-high-demonetization-currency-note-is-not-improper/>)

11. DCIT Vs Seniorita Enterprises Pvt. Ltd. (ITAT Delhi)

[Appeal Number : I.T.A. No. 5388/DEL/2015]

Addition under section 68 is not sustainable if there is a clear lack of inquiry on the part of AO

12. SMT. Teena Bethala v/s ITO (ITA No 1383/Bang/2019) dated 28/08/2019

On a reading of section 69A (supra), it is clear that the onus is upon the AO to find the assessee to be the owner of any money, bullion, jewellery or valuable article and such money, bullion, jewellery or valuable article was not recorded in the books of account, if any, maintained by the assessee for any source of income. In these circumstances, the AO can resort to making an addition under section 69A of the Act only in respect of such monies / assets / articles or things which are not recorded in the assessee's books of account. In the case on hand, the cash deposits are recorded in the books of account and are reportedly made on the receipt from a creditor. Further, the PAN and address of the creditor as well as ledger account copies of the creditor in the assessee's books of account have also been filed before the AO. In these circumstances, it is evident that the AO has not made out a case calling for an addition under section 69A of the Act. Probably, an addition under section 68 of the Act could have been considered; but then that is not the case of the AO. The assessee, apart from raising several other grounds, has challenged the legality of the addition being made under section 69A of the Act. In support of the assessee's contentions, the learned AR placed reliance on the decision of the ITAT – Mumbai Bench in the case of DCIT Vs. Karthik Construction Co. in ITA No. 2292/Mum/2016 dated 23.02.2018, wherein the Bench at para 6 thereof has held that addition under section 69A of the Act cannot be made in respect of those assets / monies / entries which are recorded in the assessee's books of account. In ITA Nos.1383 and 384/Bang/2019 my considered view, the aforesaid decision of the ITAT – Mumbai Bench (supra) is squarely applicable to the facts of the case on hand, where the entries are recorded in the assessee's books of account. In this view of the matter, I am of the opinion that the addition of Rs.6,30,000/- made under section 69A of the Act is bad in law in the facts and circumstances of the case on hand and therefore delete the addition of Rs.6,30,000/- made thereunder. The AO is accordingly directed.

13. CIT v Bhaichand N. Gandhi [1983] 141 ITR 67 (Bom.)

When the assessee is not required to maintain any books of accounts and no such books is maintained then it can be argued that mere pass book or bank statement can-not be construed as book of accounts and addition made u/s 68 is not justified

14. Gordhan, Delhi v/s DCIT dated 19/10/2019 (Delhi Trib)

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

15. ACIT vs Baldev Raj Charla 121 TTD 366 (Delhi)

Merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the

Assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts. In view of above facts, the ground number 1 of the appeal of the assessee is allowed and orders of lower authorities are reversed.

15. CIT vs Kulwant rai in 291 ITR 36

The honourable Delhi High Court has held as under:-

“ This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lacs on 4th Dec., 2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the AO or CIT(A) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under s. 158BC of the Act and the same was rightly ordered to be deleted.” On the basis of this judgement the Ld Delhi tribunal recently deleted the addition made for inordinate delay in cash deposit in the case of **NEETA BREJA v/s ITO (ITA No 524/D/17/25-11-2019)**

15. AGONS GLOBAL P LTD v/s ACIT (Appeal No 3741 to 3746/Del/2019)

It was held that mere addition made on this ground that there is deviation in ratio is not proper. When the assessee had regular cash sale and deposit of cash in bank accounts and if nothing incrementing is found contrary, then addition u/s 68 of such cash sale would tantamount to double taxation.

16. DEWAS SOYA LTD, UJJAIN v/s Income Tax (Appeal No 336/Ind/2012)

The Ld. Indore Bench has held that “ The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act. This view has been held by the Hon 'ble **Supreme Court in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 72ITR194 (SC)** that “It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed”. The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again. Reliance can also be placed on the decision of Hon'ble Supreme Court in

the case of **CIT vs Durga Prasad More (1969) 72 ITR 807 (SC)** in which it was held "If the amount represented the income of the assessee of the previous year, it was liable to be included in the total income and an enquiry whether for the purpose of bringing the amount to tax it was from a business activity or from some other source was not relevant".

17. Smt. Harshila Chordia vs ITO (2008) 298 ITR 349

Hon'ble Rajasthan High Court has held that "Addition u/s 68 could not be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them."

18. Mis Heera Steel Limited vs ITO (2005) 4 IT J 437

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

19. Addl. CIT vs. Ghai Lime Stone Co. (1983) 144 ITR 140(MP).

The Hon'ble M.P. High Court has observed that It is evident from these judicial rulings that trade advances or cash received against which goods is supplied subsequently is not a cash credit as contemplated by section 68.

20. ITO vs. Surana Traders, (2005)93 TTJ 875: (2005)92 ITD 212

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

IN FAVOUR OF THE DEPARTMENT:

1. Chunilal Rastogi vs. CIT [1955] 28 ITR 341 (Pat)-

Initial onus is on assessee to establish the source and nature of an amount & if he fails to discharge it, authorities are entitled to draw an inference that amount received was of an income nature. [Similar ratio in M. L. Tewary vs. CIT [1955] 27 ITR 630 (Pat)]

2. Narayan Meena v. ITO (2017) 59 ITR (Trib) 403 (Jp-Trib):

Where having regard to human probabilities and normal course of human conduct, explanation furnished by assessee as regards cash deposits in his bank account was not wholesome and verifiable, AO was justified in making addition under section 68.

3. Karan Bhalla v. ITO 2017 TaxPub(DT) 1667 (Del-Trib):

Since the conduct of the assessee in the present case was wholly non-cooperative & despite statutorily notice for explaining source of the cash deposit in the bank account, assessee failed to do so. The conduct of the assessee speaks against the assessee. Therefore, no interference was called in the matter and the appeal of the assessee stood dismissed.

**4. M.L. TEWARY vs. COMMISSIONER OF INCOME TAX - HIGH COURT OF PATNA-
Ramaswami & Choudhary, JJ.- Misc. Judicial Case No. 266 of 1952- 1st
September, 1954- (1954) 22 CCH 0102 Pat HC- (1955) 27 ITR 0630 -**

Legislation Referred to- Sections 4, 69A- Case pertains to- Asst. Year 1946-47:

Demonetization special case: Explanation of assessee rejected by the court for the reason that it is improbable that a businessmen would keep a large amount locked up till demonetization.