

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. No. 260/Asr/2024
Assessment Year: 2017-18

M/s Chintpurni School,
Vill. Bungal Tehsil Pathankot
Distt. Pathankot (Punjab)
[PAN: AAEEFC 9606J]
(Appellant)

Vs.

Dy. Commissioner of Income Tax,
Central Circle, Amritsar-143001

(Respondent)

Appellant by	:	Sh. Joginder Singh, CA
Respondent by	:	Sh. Himanshu, Sr. DR
Date of Hearing	:	22.08.2024
Date of Pronouncement	:	04.09.2024

ORDER

Per Dr. Mitha Lal Meena, AM:

This appeal is filed against the order dated 29/03/2024 of the learned commissioner of income tax appeals-5, Ludhiana [hereinafter referred to as “the CIT(A)”] which is arising out of the assessment order dated 24/12/2019

passed under section 143(3) of the Income Tax Act 1961 by the DCIT, Circle- Pathankot, in respect of the assessment year 2017 -18.

2. The appellant assessee has raised the following grounds of appeal.

1. That the ORDER OF THE Ld. AO and Ld. CIT(A) are bad and erroneous in law
2. That on the facts and circumstances of the case, the Ld. CIT(A)-5 Ludhiana has erred both in law and on facts in upholding an addition of Rs.2,42,64,239/- representing alleged unexplained cash deposits in the bank account of the appellant during the period of demonetization and brought to tax u/s 68 of the Income tax Act, 1961 read with section 115BBE of the Act.
 - 2.1. That on the facts and circumstances of the case, the Ld. CIT(A)-5, Ludhiana has also failed to appreciate that the Ld. AO having accepted the cash receipts from the students and taxed income thereon could not by any stretch of imagination either legally or logically hold that cash deposited is unexplained and taxed as income of the assessee u/s 68 of the Income tax Act, 1961.
 - 2.2. That the Ld. AO and the Ld. CIT(A) erred in treating the cash deposits during demonetization period as income of the assessee, despite accepting the fact that the same were received from the students only in the regular course of business activity of the assessee, more particularly when the same were duly recorded in the books of account which were not rejected or found to be incorrect and incomplete and when the income returned was also accepted by the them.
 - 2.3. That the Ld. CIT(A) has upheld the addition made by the Ld. AO on the basis of suspicion, conjectures, surmises and presumptions which are contrary to the facts on record, material placed on record and are otherwise unsustainable in law and addition so sustained is unwarranted.

3. That the Ld. CIT(A) has uphold the order of the Ld. AO which was passed on the basis of statement of one of the parents of the students and the same were never confronted to the assessee nor any explanation was called from the assessee which violates the principal of natural justice.
4. The appellant craves leave to add, amend, alter or otherwise raise any other ground of appeal.

3. Briefly, the facts are that the assessee is running a day boarding cum residential school upto class 12th under the name and style of Indian Heritage School owned by the firm M/S Chintpurni School situated at Village Bungal, Pathankot. The appellant firm is constituted of three partners namely Shri Sunil Kumar Joshi, Adarsh Mohan and Vikram Joshi having 40%, 20% and 40% shares respectively. The return of income was e-filed on 22.12.2017 under acknowledgement No.342414371221217 declaring total income at Rs. 70,17,370/- and the case was taken up for scrutiny under CASS-Complete scrutiny. During the scrutiny proceeding the Assessing Officer (In short "the AO") being not satisfied with the replies of the assessee, passed the assessment order u/s 143(3) of the Income tax Act, 1961 and assessed the income at Rs.3,13,61,890/- as against the returned income of Rs.70,17,370/- after making additions of Rs.2,42,64,239/- on account of cash deposited in SBN notes during the

demonetization period as unexplained u/s 68 of the I. T. Act, 1961 and charged to tax u/s 115BBE of the Act and further made an addition of Rs.78,282/- being 10% of the total expenses of Rs.7,82,822/- claimed under the heads, cleaning and sanitation expenses, misc. expenses, games, sports and smart class expenses and telephone expenses.

4. Being aggrieved with the said order, the assessee has filed an appeal before the Ld. CIT (Appeal) who vide his order No.10402/IT/CIT(A)-5/Ldh/2019-20 dated 29.03.2024 dismissed the appeal of the assessee by observing as under:

(i) I have carefully considered the facts of the case, submissions of the appellant, assessment order as well as legal position. In the light of the above submissions, the only question arises is addition of Rs. 2,42,64,239/- as cash deposited during demonetization period being treated as unexplained cash deposited and disallowance of Rs. 78,282/- as 10% of expenses claimed in P & L Account.

(ii) As regards, the cash deposited in bank account during demonetization period in SBN is concerned; the AO has discussed this issue at length in the assessment order. He has carried out detailed analysis of the cash deposited in demonization period with respect to other months of the same year as well as with respect of previous year. On the perusal of cash deposit details, It was revealed that assessee has deposited Rs. 3,03,20,100/- in November, 2016 during demonetization period as against Rs. 18,42,000/- in November, 2015.

it was also noticed that monthly cash deposit average for pre demone ' P ^ was Rs. 24,64,812/- (Rs. 1,72,53,690/7) and for post demonetization perio ,i Rs.15,39,670/-(Rs.46,49,010/3) but it abruptly rose to Rs. 1,52,2 , (Rs.3,04,48,100/2) in the demonetization period in the Financial Year 2016-17 .The detail of the monthly cash deposits for Financial year 2015-16 and 2016-17 and monthly average for f.Y.2017-18 is tabulated below:-

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Month	Cash Deposit in Bank during F. Y. 2015-16	Cash Deposit in Bank during F. Y. 2016-17	Monthly average cash deposits in F.Y. 2016-17
April	17,00,000.00	90,50,000.00	24,64,812/-
May	12,60,000.00	1,00,000.00	
June	11,00,000.00	5,590.00	
July	53,10,000.00	33,28,00.00	
Aug.	42,46,600.00	12,10,000.00	
Sept.	16,78,000.00	2,10,000.00	
Oct.	6,61,000.00	33,50,000.00	
Nov.	18,42,000.00	3,03,20,100.00	1,52,24,050/-
Dec.	43,10,000.00	1,28,000.00	
Jan.	15,05,459.00	-	15,39,670/-
Feb.	35,99,420.00	2,20,000.00	
March	45,02,400.00	43,99,010.00	
Total	3,19,19,973.00	5,23,20,000.00	

Thereafter he has carried out investigation and held that the amount alleged to be cash fee received is not correct. E.g. in the case of student Shriya Sodhi, on the basis of investigation the AO found that she had paid Rs. 2,00,000/- to Rs. 2,30,000/- as total fee in respect of her daughter for the year under consideration. Whereas, as per appellant the fee from this student was Rs. 2,60,050/-. This there was a gap in between the amount stated to be fee and amount actually received as fee Methodology of working out student wise fee has been discussed in the assessment order.

(iii) AO further discussed in depth that the argument of the appellant about maintaining imprest of Rs.50,00,000/- is also not correct. This issue has also been discussed at length in the assessment order. AO has cited detailed reason and produced copy of imprest account in the assessment order also. It was clearly mentioned that there was no mention of imprest account in balance sheet.

(iv) AO has also made comparison with preceding years and brought on record that there was not much change in the number of student or fee structure.

(v) AO has given benefit of opening cash in hand available and made addition of remaining deposits.

(vi) On the other hand, the appellant's main submissions are as under:

- (a) The appellant has been keeping substantial! cash (out of disclosed school fee *receipts*) regularly. When demonetization was announced, cash was deposited *in* the bank account.
- (b) The fee differ from class to class. Also some students are day boarders. Fee structure for them is different.
- (c) *In respect of example of a* student Shriya Sodhi cited by the AO, it was submitted *that the assertion* was made by the mother of the student not by father. Also, only *approximate figure* was given.
- (d) All the cash deposited is out of disclosed sources.
- (e) It was *maintaining* substantial imprest in the form of cash.

(vii) These arguments of the appellant have been considered and are being discussed. As regards appellant keeping such a huge cash, the argument of the appellant defies logic and principle of probable human conduct. Most of the school prefer fee payment by cheque and in exceptional circumstances accept cash. Under such circumstances, having such a huge cash fee receipt is highly improbable. Second}y, the school is prestigious school and, in all likelihood, must be having bank branch in the campus itself or in the nearby area. When, bank branch is available easily, then keeping such a huge amount of cash running in crores of rupees defies all logic. The appellant has taken loans and is paying interest as well. Thus a person of ordinary prudence will deposit disclosed cash in bank accounts and either would reduce its loan and interest burden or use it for making FDR etc. There is no such activity by the appellant, School fees are collected quarter wise, Even as per schedule of fee available on the website of the school, as well as information submitted during assessment and appellate proceeding, the fee is charged on quarterly basis, Thus, there would be four quarters- ending on June, September, December and March, The fee collected would be deposited in a short time period when it is collected, This is also corroborated with the pattern of cash deposit in the bank account. Maximum deposits are in the months Of July, October, Dec/Jan and April. This is in alignment

with the regular activity of school. However, in the current year, huge cash deposit of Rs.3,03,20,100/- was made in the month of November 2016 (i.e. during demonetisation period), In fact, this is 61.05% of total cash deposited during the entire year, No person of ordinary prudence will keep quarterly fees with it in cash for over two months or even over two quarters.

(ix) There is not much increase in the number of students or in fee structure, However, in the books of account, the gross receipt as well as net profit has shown substantial increase. This is summarized as under:

AY	Turnover (Rs.)	NP rate
2017-18	7,65,43,894	14.40%
2016-17	5,23,48,468	8.54%
2015-16	4,40,40,582	7.58%

From the above it is clear that had there been no demonetization, the turnover as well as rate would have been in the similar range, However, due to this additional cash deposit in bank, which, as per appellant is disclosed fee, the turnover and NP rate are showing huge jump,

(x) The submission of the appellant the in case of student Shriya Sodhi, information given by her mother is not reliable, is not acceptable. Parents are responsible for the education of the student, and both are very much aware about the fee structure etc.

(xi) The cash deposited in bank account in Nov 2015 was only Rs.18A2,000/-, whereas the cash deposited in Nov 2016 isRs.3,03,20,100/-. Such a huge gap has not been explained by the appellant.

(xi) The appellant has not been able to bring documentary evidence on record to controvert these facts as well as facts brought on record and analyzed in depth by the AO.

Therefore, in my considered view that the AO has been right in confirming the cash deposit of Rs.2,42,64,239/- again explained cash deposit in bank account u/s 68 of the Act and rightly hold it to be taxed at special rate prescribed u/s 115BBE of the Act. Thus, the finding of the AO is confirmed."

5. The Ld. Counsel for the assessee appellant submitted that the Ld. CIT(A)-5 Ludhiana has erred both in law and on facts in upholding an addition of Rs.2,42,64,239/- alleged as unexplained cash deposits in the bank account of the appellant during the period of demonetization and taxed u/s 68 of the Income tax Act, 1961 read with section 115BBE of the Act. He contended that on the facts, the Ld. CIT(A)-5, Ludhiana has failed to appreciate that the Ld. AO having accepted the cash receipts from the students and taxed income thereon, so it could not by any stretch of imagination either legally or logically hold that cash deposited was unexplained and taxed as income of the assessee u/s 68 of the Income tax Act, 1961. The Ld. AR explained that the Ld. AO and the Ld. CIT(A) erred in treating the cash deposits during demonetization period as income of the assessee, despite accepting the fact that the same were received from the students only in the regular course of business activity of the assessee, more particularly when the same were duly recorded in the books of account which were neither rejected nor found to be incorrect and incomplete and thus, the income returned ought to have been also accepted by the them. The AR argued that the Ld. CIT(A) has upheld the addition made by the Ld. AO on the basis of suspicion, conjectures,

surmises and presumptions which are contrary to the facts on record, material placed on record and are otherwise unsustainable in law and addition so sustained is unwarranted. Further, the AR contended that the Ld. CIT(A) has uphold the order of the Ld. AO which was passed on the basis of statement of one of the parents of the students which was never confronted to the assessee nor any explanation was called from the assessee in rebuttal which is in violation of the principal of natural justice.

In support, he filed a written synopsis which reads as under:

1. Briefly the facts of the case are that the assessee is engaged in running a day boarding cum residential school upto 12th class under the name and style of M/S Indian Heritage School at Village Bungal Pathankot (Punjab). It filed its return of income declaring an income of Rs.70,19,370/- on 22.12.2017 vide acknowledgement No.342414371221217. Case was selected for scrutiny under CSS scheme and notices were issued from time to time. During the year under consideration, the assessee has deposited cash amounting to Rs.2,98,05,600/- in SBN notes in different bank of which details have been given in Para-5 page-2 of the assessment order. Out of the said cash deposit, the Ld. AO has allowed the benefit of opening cash in hand amounting to Rs.55,14,361/- and made disallowance for balance amount of Rs.2,42,64,239/- u/s 68 r.w.s. 155BBE of the Act on the allegation that the assessee failed to establish that the cash deposited during the demonetization period was part of normal business receipt. The assessment has been framed u/s 143(3) of the I.T. Act, 1961.
2. Aggrieved with the order of the Ld. AO the assessee preferred an appeal before the Ld. CIT(A) on 23.01.2020. The Ld. CIT(A) vide order dated 29.03.2024 upheld the disallowance made by the Ld. AO by treating the cash deposits as unexplained cash deposited in bank u/s 68 of the Act and also hold that it to be taxed at special rate prescribed u/s 115BBE of the Act, 1961.
3. The past history for the three years related to number of students in school, total fee charged, fee received in cash and cash deposited in bank is given in the chart as under:-

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Financial year	No. of students	Total fee charged	Fee collected in cash	Cash deposited in bank	%age of fee collected in cash	%age of cash deposited into bank out of cash receipts
2014-15	517	4,40,40,582/-	3,39,19,997/-		77.01%	
2015-16	590	5,23,48,648/-	3,64,48,792/-	3,19,19,973/-	69.62%	87.57%
2016-17	593	7,65,43,8937/-	5,83,39,8637/-	5,23,20,800/-	76.21%	89.68%

(Copy of the Balance sheets, P&L account along with copies of schedules for the Financial years ended on 31.03.2016 and 31.03.2017 are as per Page No.42 to 54 and 55 to 65 of the

4. With regard to Point No.8 of the Assessment order, the Ld. AO has pointed out that the assessee during demonetization period deposited 61.05% of the total cash deposited in F.Y. 2016-17. The comparison has been made with cash deposited in the corresponding period in previous financial year and worked out that in the corresponding period only 19.60% have been deposited. The said discrepancy is explained under:-

Month	Cash deposited in FY 15-16	%age of total cash deposited	Cash deposited in FY 16-17	%age of total cash deposited	Explanation to A.O. discrepancy
April		5.50%		17.29%	As per the working of the Ld.AO that in the corresponding preceding F.Y. 51.89% have been deposited upto 08.11.2015 and in the current year the assessee only deposited 34.35% upto 08.11.2016 which means that the assessee has deposited less cash in the bank by 17.54% (51.89-34.35) which have gone
May		4.07%		0.19%	
June		3.56%	5,590	0.01%	
July		17.17%		6.36%	
August	42,48,600	13.74%	12,10,000	2.31%	
Sept.,		5.42%		0.40%	
Oct.,		2.14%		6.40%	
01.11. to 08.11.	90,000	0.29%		1.39%	

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Total proportion of cash deposited till this date		51.89%		34.35%	to the cash in hand. Opening cash in hand and imprest amounting to Rs.55,14,361/- plus 50,00,000/- which was also deposited during demonetization period which constitute 20.14% of the total cash deposited. Thus the difference pointed out by the Ld. AO is duly explained which has not been considered by both the authorities.
09.11. to 31.12.	60,62,000	19.60%	2,97,18,100 *	56.80%	*Value adopted by AO is Rs.3,43,37,110/- wrongly which include the cash deposit of Jan., to March, 17
Jan to March	88,32,023	28.52%		8.83%	

5. The Ld. AO in para-II page No.12 of the assessment order disputed that the assessee has received fee more than the prescribed fee for the financial year 2016-17 and he has pointed out the same in the chart of 13 students. The observation of the Ld. AO is factually incorrect and totally based on surmises, conjectures and presumptions. It is pertinent to mention here that the class-wise number of students, fee structure of the students have been submitted to the Ld. AO and he has incorporated the fee structure along with number of students for the three financial years in the assessment order at Para 8.1 page No. 7. The explanation to the observation of the Ld. AO is explained as explained hereunder:-

S. No	Name of the student/ class	Border / day border	Total fees paid in FY 2016-17 as per AO	Fees as per school fee structure for FY 2016-17 as per AO	Difference as per AO	Bifurcation of fee head	Amount	Nature of receipt	
1.	Dilsehaj Kaur	Border		2/51,000	99,020	Tuition fee		Cash	50,000
						Tuck shop	8,420	Bank	

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	Sekhon II-B				Trf.to Bipenjeet Singh Sekhon	30,000	Cl. balance	43,020
					Dress rent exp.	400		
					Scholartc books	200		
					Reversal bank of transfer	93,020		

5.2 charged in the financial year 2016-17 to cover up demonetization cash, in this regard, a detailed chart of each class-wise students, Border, day border, prescribed fee and actual fee received and explanation thereof. Thus as per the above explanation it is clear that there is no evidence to substantiate that excess fee has been received from the students than the prescribed fee. The said exercise has been done by the Ld. AO is merely on doubts and suspicious and it is settled law that doubts and suspicious, however, strong it may be cannot take the shape of evidence. Reliance is placed on the following judgments:-

- (i) CIT v/s Ram Narail (1997) 224-ITR- 180 (P&H High court)
- (ii) Joint CIT v/s Gramo Phone Company of India Ltd. 265-1TR-(Kol)(Trib)-46(AT)
- (iii) D.N. Kamani (HUF) v/s Dy.CIT(1999) 65 ITJ(Pat)504-(1999) 70 ITD (Patna)77
- (iv) Elite Developers v/s DY.CIT(2000) 68 TTJ (Nagpur)616: (2000)73 ITD(Nagpur)379)
- (v) Monga Metals (P) Ltd. v/s Asstt.(2000) CIT 67 TTJ (All) 247);
- (vi) CIT v/s Daulat Ram Rawatmull 1972 CTR (SC) 411: (1973) 87 ITR 349 (SC)

5.3. Further, in Para 11.1 the Ld. AO has mentioned that on the basis of facts and verification u/s 133(6) of the Act and also the field verification from the parents of the students, and also referred that verbal enquiries have been done and during the course of verification/ enquiries, the parents have denied of having paying such a huge fee recorded in the books of account of the assessee. In this regard, it is submitted that report of the field verification as alleged by the Ld. AO has not never ever been confronted nor same has been reported in the assessment order. Moreover, the Ld. AO has failed to mention the particulars of the person/ field Officer through whom such field enquiries have been carried out. The Ld. AO has stated that verbal enquiries were carried out but has not mentioned the factual position about the persons from whom

the verbal enquiries were carried out nor he has been able to mention the date, time and particulars of such persons. Thus such enquiries do not have any evidential value under the eyes of law. Therefore, such acts on the part of the Ld. AO are factually incorrect and illegal and the order passed on the basis of such enquiries is void ab initio and does not stand the test of law under any circumstances. Further, it can only be concluded that such allegation of the Ld. AO are purely on the basis of suspicion, conjectures or surmises could not be sustained in the eyes of law as held by the Hon'ble Supreme Court in the case of Omar Salay Mohammad Saint v/s CIT (1959) 37-ITR151 (SC). (Copy of the judgement is at page No.83 to 95 of PB)

5.4 Further, in Para-11.2, the Ld. AO has referred the verification made u/s 133(6) in respect of student Shriya Sodhi in which the mother of the student has submitted that as per her knowledge, my husband has paid approximately Rs.2 to 2.30 lakhs to the school during the FY 2016-17. The Ld. AO has also referred the details of the installments paid by said students and on the basis of said verification he has concluded that fictitious cash entries of Rs.30 to 60 thousand made in pre-demonetization period to justify the cash deposits. In this regard, it is submitted that the allegation of the Ld. AO is totally incorrect and not based on the facts on record. The mother of the student has mentioned in her reply that approximately such amount of fee have been paid and it is on record that the prescribed fee for the said student as per the order of the Ld. AO in Para-8.1. is Rs.2,61,000/- whereas during the year under consideration she has paid Rs.2,37,000/towards tuition fee and Rs.24,000/- was allowed as discount by management and the balance of Rs.23,500/-have been received under other heads as the said student is Border student for meeting her day to day expenses. The details of other receipts have duly been mentioned in the ledger account of the said student which is placed on the Page No.96A of PB.(Ledger copies of account of Other receipts page No.96 to 116 of PB). The other receipts have duly been reflected in the P&L account under various heads. These facts clearly establish that the fee has been received strictly as per the prescribed norms and the mother of the student has confirmed the approximation figure of Rs.2,30,000/- because the fee was paid by her husband. As such, there is no discrepancy in the charging of fee and factually the verification has substantiated the fee charged by the school from the student. Again the conclusion drawn by the Ld. AO that excess fee has been charged is totally on surmises, conjectures and suspicious which stands nowhere under the eyes of law.

5.5 It would not be out of place to mention here that the verification conducted u/s 133(6) of the Act has not been confronted to the assessee and the said information has been used at the back of the assessee. Any information used at the back of the assessee and not confronted is wholly arbitrary and contrary to the principal of natural justices. This act of the Ld. AO is totally illegal. Reliance is placed on the following judgements:-

- a) Hon'ble Supreme Court in the case of Andaman Timber Industries v/s Commissioner of Central Excise 281 CTR 241-
- b) The Hon'ble Supreme Court in the case of Kishan Chand Chella Ram v/s CIT- 125 ITR-713.
- c) IT v/s Ashwani Gupta (2010) 191 Taxmann 51 (Del)-
- d) CIT SMC Broker Ltd. (2007) 288 ITR- 345 (Del).

5.6. Further, it is submitted that during the course of assessment proceedings, complete books of accounts, ledgers, class-wise and date-wise cash receipts from students in the financial year 2015-16 and 2016-17 were submitted before the Ld. AO and he admitted the same as is evident from Para-9 of the assessment order. The assessee further submitted the class-wise number of students in the school, class-wise prescribed fee as per the Border/ day border student for the FY 2014-15, 2015-16 and 2016-17, and the Ld. AO has also incorporated the same in the assessment order vide Para-8.1 page No. 7. The Ld. AO has not disputed the fee structure, number of students. The book results shown by the assessee have been accepted and never been rejected by the Ld. AO and Ld. CIT(A) at any point of time and also no defect has been pointed out in the books of account as maintained by the assessee. The books of account are subject to audit u/s 44AB of the Act. Besides this, the evidence produced by the assessee before the Ld. AO and Ld. CIT(A) clearly shows that the assessee has received fee from students on account of tuition fee and other related events strictly as per prescribed fee. The assessee has given the complete details along with ledger account of each student from whom the fee have been received and the Ld. AO has not doubted the identity of the students rather he had admitted in the order that such number of students were studying in the FY 2015-16 and 2016-17. The Ld. AO has also not doubted the source of fee collected from the

students and how this fee has been collected. The said increased receipt on account of tuition fee has not been doubted by the department. So the cash receipts made by the assessee can be very well covered under the increased turnover for the year under consideration, which has been duly accepted by the department. The cash deposited by the assessee has duly been accounted for in the books of account. Further, the Ld. AO has not alleged any bogus receipt or back dated receipts made by the assessee.

5.7 It is further submitted that no estimation of income can be made without rejection of books of account. The basic principle in the law relating to income tax is that if there is no challenge to the transaction represented by the entries in the books, then it is not open to the other side to contend that what is shown by the entries is not the real state of affairs. Kind attention is invited to the Hon'ble Supreme Court in the case of Mehta Park and Company v/s CIT (1956) 30 ITR-181 (SC) in which it is held at Page No.191 Para-13.1.:-(copy of judgment on page No.117 to 191 of PB).

"To put the matter in a nut-shell, the accounts of the appellant have been accepted by the Tribunal as genuine, and it is impossible to say, having regard to the cash balance as shown therein, that the notes in question could not have been included therein".

The Hon'ble Supreme Court in the case of Lalchand Bhagat Ambika Ram v/s CIT (1959) 37ITR-288 (SC) (Cop.y of judgment on page No. 192 to 199 of PB) has held (Page No.196 para 24) that when entries in the books of account in regard to cash balances were held to be genuine, there was no escape from the conclusion that the assessee had offered reasonable explanation as to source of all high denomination notes which it en-cashed on 19th January 1946 and it was not open to ITAT to accept the genuineness of those books and accept the assessee's explanation in part and reject the same in regard to balance sum. It was observed that ITAT in arriving its conclusion in suspicions, conjectures and surmises and acted without any evidence or upon a view of the facts which would not be reasonably entertained or finding was perverse which could not be sustained and Supreme Court was entitled to interfere with such findings and therefore, addition was deleted.

5.8. On the basis of the said judgment the Hon'ble ITAT Delhi bench "F" New Delhi under ITA No.1606/Del/2023 assessment year 2017-18 has allowed the appeal of the

assessee with regard to cash deposit during demonetization period. (The copy of the judgment is annexed as Page No. 200 to 205 of PB.

5.9. In the case of Punjab and Haryana Hon'ble High Court in the case of B.S.V. Auto Industries v/s CIT-ITA No.194 of 1999 it was held :-

"When the books of accounts including stock register etc. have neither been rejected nor any doubted, accounts could not be by passed merely on the whims and fancies of the authorities".

5.10. The Tribunal Chandigarh "B" Bench in case of Madan Lal Aggarwal (HUF) vs. Dy.CIT(ITA No.28/Chd/2023, dated 8th Dec., 2023 has held that:-

" No doubt has been pointed out by the AO in terms of availability of stock or in any of the documentation so submitted by the assessee or in the books of account. Therefore, merely the fact that certain cash deposits have been made by the assessee during the period of demonetization and such deposits are on a higher side considering the past year figures cannot be basis to hold the explanation so made by the assessee as unsustainable and treat the cash sales as bogus and bring the cash deposits to tax under section 68 of the Act. "

5.11. Similarly in the case of Fashion Zone vs. Joint CIT (2024) 38 NYPITJ 340 (Chd) in which it was held (Page No.210) that merely the fact that certain cash deposits have been made by the assessee during demonetization period and such deposits are on higher side considering the past year figures cannot be basis to hold the explanation so made by the assessee as unsustainable and treat the cash sales as bogus and bringing the cash deposits to tax under section 68 of the Act. (copy of the judgment on page No. 206 to 210 of PB)

5.12. Similar ratios were also laid down in the cases of:-

- (i) Dy. CIT v/s Roop Fashion (2022) 98 ITR (Trib) 419 (Chad);
- (ii) 2023 (3) T MI 755 Tribunal Chandigarh, Gulshan Kumar vs. Dy. CIT (ITA No.488/Chd/2022 dated 31st October, 2022;
- (iii) Tribunal Chandigarh (2022) 97 ITR (Trib) 389 (Chd) Smt. Tripta Rani vs. Asstt. CIT (ITA No.135/Chd/2021 dated 13th June, 2022.

- (iv) Guranwala Jewels v/s Income tax Officer, the Hon'ble "A" bench Chandigarh (2024) 38 NYPITJ 582 (Chd); (Copy of judgment on page No.211 to 214 of PB)
- ✓ Micky Fire Works Industries, Shivkasi v/s ACIT Non-corporate Circle-2 dated 26th July, 2023 ITA No.264/Chny/2023 Assessment year 2017-18. (copy of judgment on page No.215 to 217 of PB).

" The Tribunal also observed that it is not in dispute that the 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, it is in these circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The findings of the CIT(A) and the Tribunal, which are ITA No.1420/Mum/2023 A. Y. 2017-18 Swarnasarita Jewellers 10 purely in the nature of factual findings, do not require any interference and, in any event, no substantial question of law arises for our consideration."

5.13.3. Further, in the case of Micky Fire Works Industries, Shivkasi v/s ACIT Non-corporate Circle-2 dated 26th July, 2023 ITA No.264/Chny/2023 Assessment year 2017-18, (Page No.215 to 217 of PB) the Bench observed that the SMC bench of the Tribunal in Mrs. Umamaheswari vs. ITO, ITA No.527/Chny/2022 dated 14.10.2022 (at page No.216 para-7) on identical facts, deleted similar additions on the ground that the assessee had duly evidenced the source of cash deposit and therefore, addition could not be made u/s 68. Similar is another decision of SMC Raipur bench in Rahul Cold Storage vs. ITO- ITA No.123/RRP/2022 dated 29.11.2022 wherein it has similarly been held that when the deposits were sourced out of business receipts duly recorded in the books of account, no such addition could be made u/s 68. Another decision of coordinate bench of Bangaluru Bench in ITO vs Manasa Medicals in ITA No.552/Bang/2022 dated 31.01.2022.

5.14. Thus in view of the decisions of the Hon'ble ITAT Benches and Hon'ble High Courts wherein it was established that the source of cash have been explained as business receipts duly recorded in the books of account, no such addition can be made u/s 68 of the Income tax Act, 1961 as the same tantamount to double addition.

6. The Ld. AO in point No. 12.1 and 12.2, noticed that no imprest has been shown in the Balance sheet as on 31.03.2016 and the Ld. AO has also reproduced the scanned copy of the Balance sheet in the assessment order at Page No.16. In response to the said query, the assessee had replied to the Ld. AO vide its reply dated 13.12.2019 which has been uploaded on the e-portal of the department in which it was categorically stated that the imprest has been shown under Schedule-J of the Balance sheet as on 31.03.2016 which is placed at page No.53 Serial No.5 of PB). The Ld. AO has not gone through the Schedule-J of the Balance sheet. The observation of the Ld. AO is factually incorrect. It is pertinent to mention here that the books of account of the assessee have been audited u/s 44AB of the AY 201617 and ITR for the said year was filed much prior to the date of demonetization so the presumption of not having imprest with the assessee is purely on surmises and conjectures without any evidence. The Ld. AO has given the benefit of opening cash in hand amounting to Rs.55,14,361/- and not allowed the benefit of balance of imprest as on 31.03.2016. Since it is established that the assessee was having genuinely imprest amounting to Rs.50 lakhs, therefore, same may kindly be considered and allowed.

6.2. The Ld. AO has also pointed out that there is abrupt increase of sale in tuck shop as compared to the immediate preceding assessment year. In this regard, it is again submitted that the books of account are being audited u/s 44AB of the Act and the Ld. AO has not pointed out any defect in the books of account and he has accepted the book results, therefore, the observation of the Ld. AO is totally based on surmises, conjectures and presumption. It is also pointed out that during the year there has been increase in the number of students in the Border category as compared to earlier year and by this increase, the correspondingly revenue has also increased.

6.3. The observation with regard to para-10 where the Ld. AO has worked out that there is increase in fee in the financial year 2015-16 as compared to F.Y. 2016-17. The assessee has given the complete bifurcation of the fee collected in the year 2015-16 and 2016-17 along with management discount and explanation towards fee charged as per Annexure-A. (Page No.14 to 41 of PB).

7. Per contra, the Ld. Addl. CIT. DR placed reliance on the impugned order. But he failed to rebut the contention of the Ld. AR and controvert/ distinguish the citations relied.

8. We have heard both sides, perused the material on record, impugned order, remand report, written submissions and citations filed before us. Admittedly, the Ld. CIT(A) has confirmed the addition of Rs.2,42,64,239/- made by the AO alleging an unexplained cash deposit in the bank account of the appellant during the period of demonetization and taxed u/s 68 of the Income tax Act, 1961 read with section 115BBE of the Act. It is noted that the Ld. CIT(A)-5 has failed to appreciate that the Ld. AO having accepted the cash receipts as the students' fees and in turn business receipts. Meaning thereby it could not by any stretch of imagination either legally or logically hold that cash deposited was unexplained and to be taxed as income of the assessee u/s 68 of the Income tax Act, 1961. The Ld. AR contended that the Ld. AO and the Ld. CIT(A) erred in treating the cash deposits during demonetization period as income of the assessee, despite accepting the fact that the same were received from the students only in the regular course of business activity of the assessee. Further the same amount of cash fee disputed were duly recorded in the books of account which were neither rejected nor found to be incorrect. It is further noted that the assessment order was passed on the basis of statement of one of the parents of the students which was never confronted to the

assessee nor any explanation was called from the assessee in rebuttal which is in violation of the principal of natural justice and rendered the assessment illegal and void ab-initio.

9. From the detailed Chart on Fee Structure and Fee Charged during the financial year 2016-17 it is evident that the disputed demonetization cash, was deposited out of the business receipts being collected in the form of Fee from each student's class-wise, boarding and day boarding prescribed fee and actual fee received thereof. The Ld. AO or the CIT(A) or the Ld. DR has failed to controvert the source of money deposited in bank being out of business/fee receipt during the demonetization period. To controvert the AO or the Ld. CIT(A) ought to have brought on record any material evidence but there was no such evidence on record to establish that the appellant assessee has received excess fee from the students than the prescribed fee. In our view, the said addition has been done by the Ld. AO, merely based on doubts and suspicion. It is settled law that doubts and suspicious, however, strong it cannot take the shape of evidence.

10. It is seen that finding of the AO based on verbal enquiries without any references of the persons or places had no evidentiary value and

therefore, the assessment order passed on the basis of such enquiries without being substantiated with support of evidence is held to be void ab initio. The finding of the Ld. AO as confirmed by the Ld. CIT(A) are purely based on suspicion, conjectures or surmises, that could not be sustained in the eyes of law as held by the Hon'ble Supreme Court in the case of Omar Salay Mohammad Saint v/s CIT (1959) 37-ITR151 (SC) CLPB-Pgs. 83-95.

11. From the statement of mother of one of the students where she stated that approximately amount of fee have been paid and it is seen from the record that the prescribed fee for the said student as per the order of the Ld. AO is Rs.2,61,000/-(Assessment Order in Para-8.1.) which stands verified that she has paid Rs.2,37,000/- towards tuition fee and Rs.24,000/- was allowed as discount by management during the year under consideration but the balance of Rs.23,500/- have been received under other heads as the said student was a Boarding student and it was for meeting her day to day expenses. The AR explained that the books of account are subject to audit u/s 44AB of the Act. Besides this, the evidence produced by the assessee before the Ld. AO and Ld. CIT(A) as being accepted by the authorities below, clearly revealed that the

assessee has received fee from students on account of tuition fee and other related events strictly as per prescribed fee. It is noted that the details of Fee receipts as per prescribed norms have duly been mentioned in the ledger account of the said student as per Ledger Page No.96A of PB. (Ledger copies of account of other receipts page No.96 to 116 of PB filed on record). It is pertinent to mention that the assessee has produced the books of account, Income and Expenditure Account which has been duly considered by the AO and the Ld. CIT(A) but neither of the authorities below has disputed the fee receipt being charged at the prescribed rate. In view of that matter, it stands clearly established that the fee has been received strictly as per the prescribed norms and the mother of the student has confirmed the approximation figure because the fee was paid by her husband. In our considered view, as such, there was no discrepancy in the charging and collection of fee by the appellant assessee school from the student.

12. Without prejudice to the above, it is worth mentioned that in the present case, the verification and enquiries conducted by the AO u/s 133(6) of the Act has not been confronted to the assessee and thus, the said information has been used at the back of the assessee without

granting opportunity to rebut the said allegation forming the basis of the alleged disputed addition. In our view, any information being used at the back of the assessee without confronting to the appellant, is wholly arbitrary and contrary to the principal of natural justices. Our view get as support from judgment delivered by the Hon'ble Supreme Court in the case of Andaman Timber Industries v/s Commissioner of Central Excise (Supra) and Kishan Chand Chella Ram v/s CIT (SC)(Supra).

13. In the case of Lalchand Bhagat Ambika Ram v/s CIT (SC) (Supra) observed that when entries in the books of account in regard to cash balances were held to be genuine, there was no escape from the conclusion that the assessee had offered reasonable explanation as to source of all high denomination notes which it en-cashed on 19th January 1946 and it was not open to ITAT to accept the genuineness of those books and accept the assessee's explanation in part and reject the same in regard to balance sum. It was observed that ITAT in arriving its conclusion in suspicions, conjectures and surmises and acted without any evidence or upon a view of the facts which would not be reasonably entertained or finding was perverse which could not be sustained, and

Supreme Court was entitled to interfere with such findings and therefore, addition was deleted.

14. Recently, in the case of Fashion Zone vs. JCIT Chd-Trib held that merely certain cash deposits have been made by the assessee during demonetization period and such deposits are on higher side considering the past year figures cannot be basis to hold the explanation so made by the assessee as unsustainable and treat the cash sales as bogus and bringing the cash deposits to tax under section 68 of the Act.

15. Considering the factual matrix and judicial precedents, we hold that the CIT(A)'s order is perverse to the facts on record as the observation and finding of the AO are contradictory to the facts and material on record and being based on presumptions, suspicion, conjectures, and surmises. Therefore, the addition made u/s 68 of the Income Tax Act amounting to Rs.2,42,64,239/- is bad in law and as such it is deleted. Thus, ground No. 2 and 3 are allowed.

16. Next issue is regarding disallowance of Rs.78,282/- out of various expenses claimed by the appellant.

17. The appellant has claimed various expenses in the P&L account such as Rs.2,69,722/- on account of Advertisement Expenses, Rs.50,533/- on account of Cleaning & Sanitation Expenses, Rs. 75,839/- on account of Misc. expenses, Rs.2,97,989/ on account of Games Sports & Smatt Class Expenses and Rs.88,739/- on account of Telephone Expenses. The AO alleged that assessee failed to furnish the complete bill/vouchers and justification of the huge expenses debited in the profit and loss account. Accordingly, 10% of these expenses were disallowed on account of unverifiable, unvouched expenses as well as on account of personal use debited in the profit and loss account. Thus, the disallowances made amounting to Rs.78,282/-(10% of Rs. 7,82,822/-). The AO in remand report submitted that this ground taken by assessee is baseless and needs to be rejected.

18. The CIT(A) has not addressed the contention of the appellant that no disallowances out of expenses can be made unless the expenses claim is disproved with corroborative evidence. The DR failed to controvert the contention of the Ld. AR and hence, the addition confirmed by the CIT(A) of Rs.78,282/- on estimate basis deserves to be deleted. Accordingly, we accept the grievance of the assessee as genuine and as such we delete

the addition of Rs.78,282/- made on an estimate basis. Accordingly,
Ground No. 3 is allowed.

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

Order pronounced in the open court on 04.09.2024

Sd/-
(Udayan Dasgupta)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T.

True Copy
By Order