

Demonetisation period cash deposit in the bank addition as undisclosed income. How to handle appeal before CIT (A)?

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▶ **Role of ITO and I.T Authorities under the I.T Act, 1961.**

The ITO and certain other authorities functioning under the Act have a dual character. They are both agencies of investigation made into the incomes of assesseees and they are also quasi-judicial authorities assessing the liabilities of the assesseees to payment of income-tax. Under section 142(2), the ITO may make such enquiry as he considers necessary for the purpose of obtaining full information in respect of the income or loss of an assessee. Under section 143(3), the ITO does not only hear such evidence as the assessee may produce or as he may require to be produced, but also takes into consideration "all relevant material which he has gathered" for the purpose of making an assessment. While the word "evidence" may recall the oral and documentary evidence as may be admissible under the Indian Evidence Act, the use of the word "material" shows that the ITO not being a court can rely upon material which may not be strictly evidence admissible under the Indian Evidence Act for the purpose of making an order of assessment. The courts often take judicial notice of certain facts which need not be proved, while administrative and quasi-judicial authorities can take "official notice" of wider varieties of facts which need not be proved before them. Thus, not only in respect of the relevancy but also in respect of proof the material which can be taken into consideration by the ITO and other authorities under the Act is far wider than the evidence which is strictly relevant and admissible under the Evidence Act.

▶ **Addl.CIT Vs. Jay Engineering Works Ltd (1978) 113 ITR 389 (Del.HC).**

▶ **Basic object of AO Under the I.T Act :**

To determine correct tax liability as per law.

- CIT Vs. Indian Express (Madurai) Pvt Ltd (1983) 140 ITR 705 (Mad.HC).

▶ **Importance of CIT (A):**

- CBDT Circular No: 17/2019 , Dated 08th Aug 2019. No appeal by Deptt. to Tribunal. Tax Effect-Rs50.00 Lacs. To HC -Rs1.00 Crore. To SC -Rs.2.00 Crores.

▶ **Role of Appellate Authorities:**

To determine the correct tax liability by correcting errors if any in the proceedings and issuing proper directions.

- Kapur Chnad Dhirmal Vs. CIT (1981) 131 ITR 451 (SC)
- Ahmedabad Electricity Co. Ltd Vs. CIT (1993) 199 ITR 351 (Bom.HC)-FB

▶ **For condonation of delay u/s 249(3):**

- Collector of Land Acquisition vs. MST Kattiji (1987) 167 ITR 471 (SC).
- Vedabhai Alias Vaijayanata Bhai Babu Rao Patil Vs. Shantaram Baburao Patil (2002) 253 ITR 798 (SC).

▶ **For deposit of admitted tax at the time of hearing of appeal for admission of appeal u/s 249 (4):**

- Mohammed Farooque Sarang Vs. DCIT (2017) 164 ITD 673 (Mum. Trib)
- Smt. Banu Begum Vs. DCIT (2012) 22 taxmann.com 235 (Hyd. Trib)
- CIT Vs. Banu Begum (2012) 19 taxmann.com 154 (Kar. HC)

▶ **CIT(A) can dismiss the appeal without deciding the merits of the case:**

- CIT Vs. B.N. Bhattacharjee (1979) 188 ITR 461 (SC)
- Estate of Late Tukojirao Holkar Vs. CWT (1997) 223 ITR 480 (MP. HC)
- CIT Vs. Multi Plan (P.) Ltd (1991) 38 ITD 320 (Del. Trib)

▶ **Contra Decision:**

CIT(A) can not dismiss the appeal straight way even if assessee was not present for hearing.

- CIT Vs. Prem Kumar Arjundas Luthra (HUF) (2016) 69 taxmann.com 407 (Bom.HC)
- MS. Swati Pawa Vs. DCIT (2019) 175 ITD 622 (Del.Trib).

▶ **Reasonable Opportunity of hearing is must for deciding the appeal:**

- Gemini Film Circuit Vs. CIT (2019) 109 taxmann.com 205 (Mad.HC)
- Tin Box Vs. CIT (2001) 249 ITR 216 (SC)
- Sahara India (Firm) Vs. CIT (2008) 300 ITR 403 (SC).

▶ **Power of Attorney in favour of AR is must for hearing before CIT(A):**

- CIT Vs. Chemmeens (1991) 188 ITR 634 (Ker.HC)
- Enquiry by CIT(A) from AO and Cross Examination of Third Party:
- CIT Vs. Jansampark Advertising & Marketing Pvt Ltd (2015) 375 ITR 373 (Del.HC).

▶ **Acceptance of Additional Grounds of Appeal u/s 250(5):**

Necessity : AO does not accept addition grounds in view of SC decision 'Goetze (India) Ltd Vs. CIT (2006) 284 ITR 323 (SC).

- CIT v. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC)
- Jute Corpn. of India Ltd. v. CIT(1991) 87 ITR 688 (SC).
- CIT Vs. Prithivi Brokers & Share Holders (2012) 349 ITR 336 (Bom.HC)

▶ **Admission of additional evidence by CIT(A) u/s 250(5) r.w.r 46A.**

- CIT Vs. Manish Build Well Pvt Ltd (2012) 204 Taxman 106 (Del.HC)
- Smt. Prabhabati S. Shaha Vs. CIT (1998) 231 ITR 1 (Bom.HC)
- PCIT Vs. Daljit Singh Sra (2017) 80 taxmann.com 271 (P&H.HC)

▶ **Reasoned speaking Order by CIT(A):**

- CIT Vs. Buildwell Assam Pvt Ltd (1982) 133 ITR 736 (Gauhati HC).

- ▶ **Non Speaking and No reasoned order. Natural Justice lapsed.**
 - CIT Vs. Surat Beverages Ltd (2013) 219 Taxman 39 (Guj.HC)
- ▶ **Main contention of appeal was not decided . Natural Justice lapsed.**
 - Vadilal Gases Ltd Vs. UOI (2014) 64 taxmann.com 56 (Guj.HC)
- ▶ **Power of CIT(A) to grant stay of demand u/s 251.**
 - ITO Vs. M.K.Mohammad Kunhi (1969) 71 ITR 815 (SC)
 - Maheswari Agro Industries Vs. UOI (2012) 346 ITR 375 (Raj.HC)
 - Kallettumkara Services Cooperative Bank Ltd Vs. ITO (2020) 268 Taxman 10 (Kerala.HC)
- ▶ **Appeal to Tribunal against order of CIT(A) regarding stay of demand:**
 - Assessee can file Appeal to Tribunal:**
 - Employee's Provident Fund Organisation Vs. Addl.CIT (2015) 153 ITD 642 (Del.Trib)
 - Assessee can not file Appeal to Tribunal:**
 - Rajya Krishi Utpadan Mandi Parishad Vs.ITO (2015) 153 ITD 1 (Lkw.Trib)-TM

POWER OF CIT (A) TO ENHANCE THE ASSESSMENT UNDER SECTION 251 (1)

- ▶ **Subject Matter of Assessment before AO- Yes.**
 - Gurinder Mohansingh Nindra jog Vs. CIT (2012) 348 ITR 170 (Del.HC)
- ▶ **Not Subject Matter of Assessment before AO - No.**
 - CIT Vs. B.P.Shreafudin (2017) 399 ITR 524 (Kerala HC).
 - CIT Vs. Sardari Lal & Co (2001) 251 ITR 864 (Del. HC)-FB
 - CIT Vs. Raj Bahadur Hardutroy Motilal Chamaria (1981) 31 ITR 451 (SC)
- ▶ **Show cause notice by CIT(A) before enhancing assessment:**
 - Y Brahmiah Vs. ITO (2015) 229 Taxman 558 (AP.HC)
 - Naresh Sunderlal Chug Vs. ITO (2018) 171 ITD 116 (Pune .Trib)
- ▶ **Jurisdiction of CIT(A) based on Jurisdiction of AO :**
 - CIT Vs. AAR BEE Industries (2013) 357 ITR 542 (Del.HC)
 - Vedanta Ltd Vs. ACIT (2018) 170 ITD 652 (Ahd.Trib)
- ▶ **SC or Jurisdictional HC Order not followed: Rectification u/s 154.**
 - ACIT Vs. Saurashtra Kutch Stock Exchange Ltd (2008) 305 ITR 227 (SC).

CASH DEPOSITE ADDITIONS DURING
DEMONETISATION PERIOD

(9th Nov. 2016 to 30th Dec. 2016)

**SBNs: Specified Bank Notes of denomination Rs. 500/-
and Rs. 1000/-**

Notifications and Acts relating to Demonetisation:

- Notification No:2652 , dated 8th Nov 2016 notified by the Ministry of Finance.
- Notification No:2653 , dated 8th Nov 2016 notified by the Ministry of Finance.
- The Specified Bank Notes (Cessation of Liabilities) Act,2017.
- Taxation Laws (Second Amendment) Act,2016.

- ▶ **Illegal Income is taxable under the I.T Act:**
 - CIT Vs. K.Thangamani (2009) 309 ITR 15 (Mad.HC)
- ▶ **Books of Account not maintained by the assessee u/s 44AD no addition of cash deposits realised out of cash sales and forming cash balance as on 8th Nov 2016.**
 - CIT Vs. Surinder Pal Anand (2010) 192 Taxman 264 (P&H HC)
 - Nanda Pal Lal Popli Vs. DCIT (2016) 160 ITD 413 (Chd.Trib)
 - Thomas Eapen Vs. ITO (2020) 180 ITD 74 (Cochin Trib)
- ▶ **Bank Pass Book not held as books of account cash deposit in the bank no addition u/s 68.**
 - CIT Vs. Bhaichand N.Gandhi (1983) 141 ITR 67 (Bom. HC)
 - ITO Vs. Kamal Kumar Mishra (2013) 143 ITD 686 (Lkw. Trib)
 - Ms.Mayawati Vs. DCIT (2008) 131 TTJ 178 (Del.Trib)

▶ **Contra decision in favour of Revenue.**

- Jagdish Prasad Sharma Vs. ITO . ITA No.104/Del/2015. Order dated 13/01/2020.
- Shri Janak Goel Vs. DCIT . ITA No.937 & 938 /Del/2012. Order dated 13/05/2019.
- Smt. Sushama Jain Vs. ITO . ITA No.1739/Del/2018. Order dated 03/02/2020.

▶ **Books of Account was not rejected and transaction relating to cash was duly entered in books of account. No addition can be made u/s 69.**

- Smt.Teena Bethala Vs. ITO . ITA NO: 1383/Bang/2019. Order dated 28/08/2019.
- DCIT Vs. Karthik Constructions. ITA NO: 2292/Mum/2016. Order dated 23/02/2018.

▶ **No addition can be made on the basis of Suspicion, Surmises, Rumour and Doubt.**

- Lalchand Bhagat Ambica Ram Vs. CIT (1959) 37 ITR 288 (SC)
- Omar Salay Mohamed Sait Vs. CIT (1959) 37 ITR 151 (SC)
- GTC Industries Ltd Vs. ACIT (2017) 164 ITD 1 (Mum.ITAT) (SB)

- ▶ **Suspicion however strong can not take the place of proof.**
 - Uma Charan Shaw & Bros. Vs. CIT (1959) 37 ITR 271 (SC)
 - CIT Vs. Anupam Kapoor (2008) 229 ITR 179 (P&H HC)
 - CIT Vs. Lakshmanarh Estate and Trading Co.Ltd (2013) 43 taxmann.com 438 (Cal.HC)
- ▶ **Addition under deeming provisions (Sec 68 or Sec 69 family) can not be made on mere suspicion, conjectures or perceptions basis.**
 - CIT Vs. Jawahar Lal Oswal (2016) 382 ITR 453 (P&H HC).
- ▶ **Addition under deeming provision (Sec 68 or Sec 69 family) can not be made on the basis of derived / computed figures.**
 - Aurobindo Sanitary Stores Vs. CIT (2005) 276 ITR 549 (Orissa HC)
- ▶ **As long as books of account are not rejected cash sales recorded in books held as genuine business receipts..**
 - Tolaram Dagga Vs. CIT (1996) 59 ITR 632 (Assam HC)
 - Lakmichand Bajnath Vs. CIT (1959) 35 ITR 416 (SC)

▶ **No addition of cash sales / cash advances which were converted to sales by tax invoices.**

- Crystal Networks (P) Ltd Vs. CIT. ITA 158 of 2012. Order date 29/07/2010 (Cal.HC):
- Smt. Harshila Chordia Vs. ITO (2007) 298 ITR 349 (Raj.HC):

▶ **Cash sales once accepted addition of cash deposit in the Bank results double taxation not permissible under the Act.**

- New Pooja Jewellers Vs. ITO . ITA NO: 1329/Kol/2019. Order dated 26/02/2020.
- Agson Global Pvt Ltd Vs. ACIT . ITA NO: 3741-3746/Del/2019. Order dated 31/10/2019.
- Nitisha Silk Mills Pvt Ltd Vs. ITO . ITA NO: 896/Ahd/2011. Order dated 20/07/2012.
- Bhagwant Merchants Pvt. Ltd. Vs. ITO. ITA NO: 2614/ KOL/2019. Order dated 29/05/2020

▶ **Earlier cash withdrawn redeposited after certain gape of time no addition as unexplained income.**

- ACIT Vs. Baldev Charla . 121 TTJ 366 (Del.ITAT)
- Baljeet Singh Vs. ITO . (2019) 108 taxmann.com 123 (Chd.Trib)

**CASE LAWS :
REJECTION OF
BOOKS OF ACCOUNT**

▶ **Books of Account cannot be rejected under Section 145 (3) on the ground that name, address of the customers to whom cash sales were made, were not submitted.**

- R.B. Jessaram Fatehchand (Sugar Deptt) Vs. CIT (1970) 75 ITR 33 (Bom. HC)
- M. Duri Raj Vs. CIT (1972) 83 ITR 484 (Kerala HC)

▶ **Non availability of certain vouchers cannot be basis for rejection of books of accounts under section 145 (3)**

- Ashok Kumar % Co. Vs. ITO (2004) 2 SOT 518 (ASR. Trib)
- ITO Vs. Laxmi Narain RamSwaroop Shivhare (2009) 119 ITD 15 TM (Agra Trib.)
- Hemrah Vs. Ac.IT (2006) 159 ITD 589 (Chd. Trib.)

1. **St. Teresa Oil Mills Vs. State of Kerala CIT (1970) 76 ITR 365 (Kerala.HC):**

AO has to prove that books of account maintained by the assessee is unreliable, incomplete or incorrect for rejection. Books of accounts regularly maintained by the assessee has to be taken as correct unless there is strong reasons to declare the same as unreliable . The rejection of books is not a matter to be done light-heartedly.

2. **Ashoke Refractories Pvt Ltd Vs. CIT (2005) 279 ITR 457 (Cal.HC):**

Opinion of AO after considering every factors that accounts is not reflecting true income is essential for rejection of books of account.

3. **CIT Vs. Vikas Plastics (1999) 239 ITR 161 (Guj.HC):**

Without finding that books of account is not showing correct income AO can not reject books of account.

4. **Pandit Bros. Vs. CIT (1954) 26 ITR 159 (P& H HC):**

For rejection of books of account u/s 145 relevant material should be in possession of the AO to establish that method of accounting followed by the assessee is not showing correct profitability.

5. **CIT Vs. Paradise Holidays (2010) 325 ITR 13 (Del.HC):**

Audited accounts with out any disqualification from the Auditor normally held as reliable. For rejection AO has to point out categorical finding that books of account maintained by the assessee is either incomplete or incomplete causing not reflecting true profits.

6. **CIT v. Rajnikanth Dave - (2006) 281 ITR 6 (All. HC):**

The Court held that the Assessing Officer is not justified in rejecting the books results without any allegation that the method of accounting adopted by the Assessee is such that the income cannot be properly deduced.

7. **Madnani Construction Corpn (P) Ltd. v. CIT (2008) 296 ITR 45 (Gau. HC):**

When the Assessing Officer has neither expressed his dissatisfaction about the correctness or completeness of the accounts nor any error is pointed out in P&L A/C and Audited report, rejection of books of account is not justified and the powers of best judgment cannot be invoked.

8. Dy. CIT v. Associated Petroleum Corpn. (2011) 44 SOT 45 (Ahd.ITAT):

AO to give a finding either method of accounting followed by the assessee or books of account maintained by the assessee is not correct enabling AO to work out true income of the assessee .

9. Saurashtra Ball Pen (P) Ltd. v. DCIT - (2208) 24 SOT 556 (Mum. ITAT)

AO to be satisfied after considering every material before him that either accounts are maintained not accurately or not complete for rejecting books of account u/s 145(3).

▶ **Once books of account is rejected same can not referred for making addition as undisclosed income:**

- Indwell Constructions Vs. CIT (1998) 232 ITR 776 (AP.HC)
- Amitabh Construction P.Ltd Vs. Addl.CIT (2011) 335 ITR 523 (Jharkhand.HC)
- Manipal House of Stones Vs. CIT (2017) 395 ITR 385 (Raj.HC)
- CIT Vs. Dulla Ram ,Labour Contractor (2014) 42 taxmann.com 349 (P&H. HC)

▶ **Once books of account has been rejected AO has to made a fair estimate of profit.**

- Kachwala Gems Vs. CIT (2007) 288 ITR 10 (SC)

▶ **On rejection of books of account AO has to estimate the profit of the current year considering net profit of the immediately preceding year:**

- CIT Vs. K.Y.Pilliah (1967) 63 ITR 411 (SC)
- ITO Vs. OM Silk Mills (2015) 55 taxmann.com 295 (Guj. HC)
- Prasant Oil Mills Vs. ITO (2016) 72 taxmann.com 136 (Guj. HC)

▶ **Books of account is rejected from estimated net profit computed by AO depreciation u/s 32 has to be allowed.**

- Lali Constructions Vs. ACIT (2015) 54 taxmann.com 68 (P&H. HC)
- ACIT Vs. J.S Grover Constructions (2016) 181 TTJ 23 (Asr.ITAT)

▶ **Source of money was explained and accepted by Dptt., there is no need to prove that assessee was in possession of currency notes in particular denomination.**

- Narendra G.Goredia Vs. CIT (234 ITR 571) (Bom.HC)

▶ **Cash Balance is sufficient to justify the deposit during demonetisation period, addition of undisclosed income is not justified.**

- Laxmi Rice Mills Vs. CIT (97 ITR 258) (Pat.HC)
- CIT Vs. Associated Transport Pvt Ltd (1995) 212 ITR 417 (Cal.HC)
- Bat Velbai Vs. CIT (1963) 49 ITR 130 (SC)
- Madhuri Das Narain Das Vs. CIT (1968) 67 ITR 368 (All.HC)

▶ **Books of account found genuine and balance in the book is sufficient to cover the amount deposited in the bank . Addition is not justified.**

- Mehta Parikh & Co. Vs. CIT (1956) 30 ITR 181 (SC)
- Lalchand Bhagat Ambica Ram Vs. CIT (1959) 37 ITR 288 (SC)

▶ **Estimation made by Tribunal regarding possession of high value denomination currency is not correct as not supported by relevant materials.**

- Ram Tandon Vs. CIT (1961) 42 ITR 689 (All.HC):
- Kanpur Steel Co. Ltd Vs. CIT (1957) 32 ITR 56 (All.HC):
- Chunilal Ticamchand Coal Co. Ltd Vs. CIT (1955) 27 ITR 602 (Pat.HC):
- Gur Prasad Hari Das Vs. CIT (1963) 47 ITR 634 (All.HC):

▶ **Amendment in Sec 115BBE by The Taxation Laws (Second Amendment) Act,2016 is prospective.**

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THANK YOU

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