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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 12.08.2025

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ITA 295/2025

PR. COMMISSIONER OF INCOME TAX (CENTRAL),
GURUGRAM

.....Appellant

Through: Mr Puneet Rai, Sr Standing Counsel,
Mr Ashvini Kumar, Mr Rishabh
Nangia and Mr Girban Naushad,
Standing Counsels.

versus

PANCHAM REALCON PVT. LTD.

.....Respondent

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE VINOD KUMAR

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 49282/2025 (Condonation of delay)

1. For the reasons stated in the application, the delay of 456 days in re-filing the appeal is condoned.
2. The application stands disposed of.

CM APPL. 49281/2025(Exemption)

3. Exemption is allowed, subject to all just exceptions.
4. The application stands disposed of.

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5. This appeal has been filed under Section 260A of the Income Tax Act, 1961 by the Principal Commissioner of Income Tax (Central),



Gurugram challenging the order dated 07.11.2023 of Income Tax Appellate Tribunal in ITA No. 2439/Del/2022, whereby, the ITAT has dismissed the appeal filed by the Revenue.

6. The subject matter of the appeal before the ITAT was an order passed by the Commissioner of Income Tax dated 15.07.2022, pertaining to assessment year 2017-18. The brief facts are that the assessee respondent company is engaged in the business of real estate. For the assessment year 2017-18, it filed e-filed return of income on 15.10.2017 declaring income of ₹1,18,30,950/-. Its case was picked up for complete scrutiny under CASS. Statutory notice(s) were issued/ served upon the assessee along with questionnaire which was duly responded to.

7. The learned Assessing Officer (AO) noticed that on 22.11.2016, in the post-demonetization period, the police intercepted two vehicles carrying cash amounting to ₹2,22,76,000/- which was belonging to M/s. Omaxe Ltd., the holding company of the assessee. The said cash was requisitioned under Section 132A of the Income Tax Act, 1961 (the Act) by the Income Tax Authority and a survey under Section 133A was also conducted at the office premises of M/s. Omaxe Ltd., wherein certain documents were impounded which contained noting of cash balances as on 8.11.2016, of various group companies belonging to Omaxe group to which the assessee also belonged.

8. The AO found that the cash balance available on 08.11.2016 with the assessee company was ₹3,87,270/- where the assessee had deposited cash amounting to ₹2,80,00,000/- , post demonetization.



9. The Id. AO required the assessee to prove the source of excess cash so deposited after demonetization. The explanation that the said deposit had been made out of cash available as per cash book balance on 8.11.2016. It was further explained that the said cash balance had been built up through cash withdrawals from bank accounts of the assessee. The assessee also furnished comparative charts for F.Y 2015-16 and F.Y 2016-17 showing month-wise cash balances, withdrawals and deposits in order to demonstrate that such withdrawals and the deposits made as a routine exercises even in the period prior to demonetization.

10. The explanation offered by the assessee was not acceptable to the learned AO who held that the assessee failed to furnish satisfactory explanation of the source of cash of ₹2,80,00,000/- deposited during the demonetization period and treated the same as unexplained cash credit under section 68 of the Act and added it to the income of the assessee. Accordingly, the learned AO completed the assessment on total income of ₹3,98,30,950/- on 23.12.2019 under section 143(3) of the Act.

11. Aggrieved by the order passed by learned AO, the assessee carried the matter in appeal before the learned Commissioner of Income Tax(Appeals) [CIT(A)] who deleted the impugned addition by recording the finding in para 5.3 as under:-

“5.3. It is therefore evident that the cash deposited post-demonetization is duly explained by the available cash balance as on 08.11.2016, which was in turn built up by cash withdrawals from bank accounts, which are undisputed, and



the opening cash balance at the beginning of the year, which is also undisputed since the same tallies with the case balance as on 31.03.2016 as per the ITR for A.Y. 2016-17 filed of ₹ on 12.10.2016 i.e., prior to demonetization. Therefore, the addition 2,80,00,000/- on account of unexplained cash deposited during demonetization, is untenable and is accordingly deleted. Ground nos. 1 to 3 are allowed.”

12. The Revenue’ dissatisfied with the order of the CIT(A) has filed the appeal, wherein the impugned order has been passed.

13. The case of the Revenue before the ITAT was that the impounded documents seized from the office of the assessee’s holding company, namely M/s. Omaxe Limited depicting that on 08.11.2016 the assessee had cash in hand of ₹3,87,270/- only and that no documentary evidence has been produced by the assessee in support of its claim that the impounded documents contained cash balance available at site offices maintained at the corporate headquarter for various exigencies.

14. In substance; it is the case of the Revenue that the impugned cash deposit has not been satisfactorily explained. The ITAT has from paragraph 9 onwards stated as under:-

“9. We have given our careful thought to the rival submissions of the parties and perused the records. It is observed that the Ld. CIT(A) has looked into each ground on the basis of which the Ld. AO did not accept the explanation offered by the assessee before him. In para 5.1 of the appellate order the Ld. CIT(A) enumerated five reasons given by the Ld. AO. As regards the observation of the Ld. AO that cash withdrawals made by the assessee are not near the dates of cash deposit and if the assessee had withdrawn cash



for wage payments/deals, why such expenses were not incurred, the Ld. CIT(A) considered the following chart submitted during the appellate proceedings which were before the Ld. AO as well with supporting cash books and bank statement

OMAXE PANCHAM REALCON PRIVATE LIMITED						
MONTHLY CHART FOR FINANCIAL YEAR 2015-16						
Month	Opening Balance	Cash Sales	Cash Withdrawal	Cash Deposited	Cash Expenses	Closing Balance
April, 2015	86,39,336	-	59,77,600	50,00,115	9,63,068	86,53,753
May, 2015	86,53,753	-	33,85,000	-	18,67,093	1,01,71,660
June, 2015	1,01,71,660	-	50,75,500	-	44,70,908	1,07,76,252
July, 2015	1,07,76,252	-	13,00,000	-	2,840	1,20,73,412
August, 2015	1,20,73,412	-	1,19,10,000	-	15,81,548	2,24,01,864
September, 2015	2,24,01,864	-	11,50,000	4,00,000	4,57,206	2,26,94,658
October, 2015	2,26,94,658	-	12,00,000	-	1,23,690	2,37,70,968
November, 2015	2,37,70,968	-	20,50,000	-	21,85,165	2,36,35,803
December, 2015	2,36,35,803	-	32,57,100	-	26,96,547	2,41,96,356
January, 2016	2,41,96,356	-	42,00,000	-	13,76,845	2,70,19,511
February, 2016	2,70,19,511	-	19,50,000	29,00,000	5,51,411	2,55,18,100
March, 2016	2,55,18,100	-	22,70,000	-	11,35,030	2,66,53,070
		-	4,37,25,200	83,00,115	1,74,11,351	

OMAXE PANCHAM REALCON PRIVATE LIMITED							
MONTHLY CHART FOR FINANCIAL YEAR 2016-17							
Month	Opening Balance	Cash Sales	Cash Withdrawal	Imprest from Dream Tower	Cash Deposited	Cash Expenses	Closing Balance
April, 2016	2,66,53,070	-	8,53,500	-	-	5,79,646	2,69,26,924
May, 2016	2,69,26,924	-	84,24,500	-	-	9,08,455	3,44,42,969
June, 2016	3,44,42,969	-	1,05,000	-	12,56,112	7,61,546	3,25,30,311
July, 2016	3,25,30,311	-	9,18,000	-	-	15,04,750	3,19,43,561
August, 2016	3,19,43,561	-	26,75,000	-	-	58,79,084	2,87,39,477
September, 2016	2,87,39,477	-	23,54,000	-	15,06,000	8,87,910	2,86,99,567
October, 2016	2,86,99,567	-	2,10,000	32,55,000	-	2,23,918	3,19,40,649
November, 2016	3,19,40,649	-	8,00,000	-	2,80,00,000	43,25,083	4,15,566
December, 2016	4,15,566	-	7,50,000	-	-	3,94,966	7,70,600
January, 2017	7,70,600	-	5,50,000	-	-	2,11,735	11,08,865
February, 2017	11,08,865	-	8,00,000	-	-	4,20,846	14,88,019
March, 2017	14,88,019	-	10,50,000	-	-	10,03,432	15,34,587
		-	1,94,90,000	32,55,000	3,07,62,112	1,71,01,371	

9.1 In para 5.2.2 of his appellate order, the Ld. CIT(A) extracted the set of comparative chart furnished during assessment proceedings as under:-



Month	Opening cash in hand	cash sales	cash deposit in bank	cash withdrawal from bank	Closing cash in hand
Apr-15	8639336		500000	590000	8653753
May-15	8653753			2975000	9685273
Jun-15	9685273			5260000	10289865
Jul-15	10289865			1300000	11587025
Aug-15	11587025			11910000	22401864
Sep-15	22401864		400000	1150000	22694658
Oct-15	22694658			800000	23770968
Nov till S-Nov-15	23770968			600000	23618404

Apr-16	26653070			700000	26926924
May-16	26926924			8150000	34442969
Jun-16	34442969		1256112		32530311
Jul-16	32530311			628000	31943561
Aug-16	31943561			2675000	28739477
Sep-16	28739477		1506000	1954000	28699567
Oct-16	28699567				
Nov till 8-Nov-16	31592649			500000	31948225

9.2 From the aforesaid charts the Ld. CIT(A) made the following observations and recorded his findings as follows:-
“ 5.2.3.From the comparative charts for complete financial years 2015-16 and 2016-17, it is observed that the appellant usually maintains a high cash balance in the books of account. This is evident from the opening cash balance of ₹ 86,39,336/- as on 01.04.2015, which is also corroborated by the cash balance as on 31.03.2015 as per the ITR and audit report for A.Y. 2015-16, which was filed much before demonetization and is therefore not a subject matter of manipulation. 5.2.4. It is also observed from the chart for F.Y. 2016-17 that the opening cash balance as on 01.04.2016 was of ₹ 2, 66 ,53,070/ as corroborated by the cash balance as on 31.03.2016 as per the ITR and audit report for A.Y. 2016-17, which was filed on 12.10.2016 i.e. before demonetization and is therefore not a subject matter of manipulation. Thereafter, the cash balance has been maintained at further higher levels for the remaining F.Y. upto the date of demonetization, by making further major cash withdrawals of ₹ 84,24,500/- in May, 2016 and ₹



26,75,000/- in August, 2016 and ₹ 23,54,000/- in September, 2016. The wisdom behind maintaining such high level of cash balance cannot be a subject matter of fingerprinting by the AO, and is best left to the business prudence of the assessee. However, the fact remains that high levels of cash balance have been shown in ITR filed by the appellant even prior to demonetization, as observed above. Further, the levels of cash withdrawals from bank accounts and cash deposits into bank accounts are also high for the two financial years under consideration. The cash withdrawal from bank accounts of the appellant was ₹ 4,37,25,200/- during F.Y. 2015-16 and the same was ₹ 1,94,90,000/- during F.Y. 2016-17. Similarly cash deposited into bank accounts was ₹ 83,00,115/- during F.Y. 2015-16 as compared to cash deposit of ₹ 3,07,62,112/- (normalized to ₹ 27,62,112 after adjusting for the forced deposit of ₹ 2,80,00,000 due to demonetization) during F.Y. 2016-17 which needs to be considered alongwith the high opening cash balance of ₹ 2,66,53,070/- as on 01.04.2016. Therefore, the trend of cash withdrawal and deposit was similar in both the years. In fact, substantial cash withdrawals as well as deposits into the bank accounts is very much a regular feature of the business of the appellant and hence there is nothing unusual in either the cash withdrawals or the cash deposits made during the year under consideration. It is also observed that the appellant has a low or negligible level of cash receipts through sales and also a relatively high level of cash expenses as seen from the comparative charts for both the years. In this regard, it is noteworthy that the assessee has not tried to explain the post-demonetization cash deposits by showing cash sales, which are NIL. A similar trend is observed in the preceding year also wherein the level of cash sales is negligible and level of cash expenses is high. The AO has remarked in a generalized manner that cash is normally withdrawn for immediate expenses such as wage payments, which have not been shown by the appellant. The said observation is not well-founded since high amount of cash expenses have been shown by the appellant and more importantly the AO has not established that wage payments



or any other expenses of meaningfully higher magnitude were being made in cash earlier and have now not been shown. Such generalized allegations without marshaling appropriate facts are not proper. It is thus seen that there was no unusual trend in cash withdrawals, cash deposits, cash sales, cash expenses and level of cash balances during the year under consideration as compared to the preceding year. The AO's observation that the assessee company being a running concern, could not have mounted cash for so long, amounts to mere surmises since the fact of maintenance of high cash balances across extended period of several months is duly established from the ITRs and audit reports as well as cash withdrawals of the appellant from its bank accounts, both of which are a matter of record and are not subject to manipulation. It is an established principle that business prudence behind such practices is not subject to questioning.

5.2.5. As regards the time gap of a few months between cash withdrawal and cash deposit into the bank accounts, similar trend is observed in the preceding year also, thereby establishing that such time gap too was a normal feature of the assessee's business. E.g. substantial cash withdrawal of ₹ 1,19,10,000/- was made in the month of August 2015 and the same was not effectively deposited back into the bank accounts till the month of March, 2016, resulting in a high closing balance of ₹ 2,66,53,070/- as on 31.03.2016.”

9.3 Regarding the observation of the Ld. AO that the assessee has prepared cash books in such a way that nearby cash withdrawals can be shown as cash deposited during demonetization, the Ld. CIT(A) held it to be untenable by recording the following observation and findings:

“5.2.6. ... In this regard it is a matter of fact that the bank withdrawals or deposits are reflected in the bank accounts statements as well as cash book and cannot be manipulated in any manner. The appellant has duly given the site cash books as well as main cash book whose total cash balance as on 08.11.2016 is ₹ 3,19,48,225/-. The said cash balance has mostly been built up by cash withdrawals from bank accounts, which are undisputed, and the opening cash



balance at the beginning of the year, which is also undisputed since the same tallies with the cash balance as on 31.03.2016 as per the ITR for A.Y, 2016-17 filed on 12.10.2016 Le. prior to demonetization. The AO has ignored the main cash book of the assessee and has considered only the site cash books in arriving at the figure of cash balance as on 08.11.2016. The appellant has stated that the existence of the main cash book cannot be denied since most of the bank transactions, whether deposits or withdrawals, have been routed through the main cash book, which is the reason why the main cash book has the bulk of cash balance. It is further submitted by the appellant that cash in hand as on 01.04.2016 as per the sum total of all cash books, including the main cash book, comes to ₹ 2,66,53,070/-, which is also the figure of cash in hand as on 31.03.2016 as per the ITR for A.Y. 2016-17 filed prior to demonetization. I have examined the above contentions and find that the AO's action in ignoring the main cash book is incorrect due to reasons cited by the appellant, since major bank withdrawals and deposits have been routed through the main cash book and if the said cash book is ignored, it would amount to ignoring the cash withdrawals made from bank accounts as well as cash deposits therein. Further, the AO has not cited any statement recorded or logical reasoning as to why the main cash book has been ignored. Therefore the observation of the AO that the cash book has been constructed in such a manner so as to explain the cash deposits, is untenable.”

9.4 As regards the Ld. AO's observation that the assessee being a builder and all sales are reportedly via cheque /RTGS/DD etc., so question of cash generation through sales does not arise, the Ld. CIT(A) noted that the assessee itself has not shown unusual cash sales to explain the cash deposited during demonetization. In fact cash sales are nil for FY 2016-17. He did not find any force in this argument of the Ld. AO.

9.5 The observation of the Ld. AO that the assessee has not disclosed any unaccounted income though the flagship



company M/s. Omaxe Ltd. surrendered huge amount has been countered by the Ld. CIT(A) by observing thus:

“5.2.8. ... The said observation is not rational, firstly since any disclosure made by the flagship company does not automatically translate into any acceptance of tax evasion by the appellant. Secondly, the surrender/disclosure made by the flagship company, M/s Omaxe Ltd, is on account of a totally different issue as evident from the statement of Sh. Rohtas Goel, CMD, Omaxe Ltd” and extracted the relevant portion thereof.

10. It would thus be seen that the Ld. CIT(A) has given cogent reasons with facts available in the records and legal backing to negate the observations and findings of the Ld. AO. The Revenue could not dismantle them by bringing on record any material which has not been considered or analysed by the Ld. CIT(A). The contentions raised by the Revenue in ground No. 1 to 6 and reiterated by the Ld. DR before us have no factual and/or legal basis. Endorsing the findings of the Ld. CIT(A) and following the decisions (supra) of the Co-ordinate Benches of the Tribunal, we dismiss the appeal of the Revenue.

11. Ground No. 7 is regarding additional ground etc. which has not been taken.

12. In the result, appeal of the Revenue is dismissed.”

15. On a perusal of the aforesaid order, it is noted that ITAT has primarily relied upon the order passed by the CIT(A).

16. The submission of Mr. Puneet Rai, learned Senior Standing Counsel for the Revenue is that the ITAT erred in affirming the order of the CIT(A) without considering the fact that there was closing balance of only ₹3,87,270/-, as on 08.11.2016, in the hands of the assessee as per the documents seized, consequent to survey held in the business premises of Omaxe Pvt. Ltd. The said assessee could not explain the deposit of huge amount of ₹2,80,00,000/- during the demonetization period.



17. Further, the cash deposit during demonetization period is immaterial. He placed before us the statement of all the companies under the Omaxe Ltd. to contend that insofar as the assessee is concerned, there being a minimal withdrawals, the deposit of ₹2,80,00,000/- cannot be justified. Accordingly to him, the nature and source of a receipt, whether it be of money or other property cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee.

18. We are unable to agree with the submission made by Mr. Rai for more than 2 reasons. Firstly, the issue involved is a pure question of fact, which cannot be considered in an appeal under 260A of the Act. Secondly, it cannot be said that the findings of the CIT(A) or the ITAT are perverse findings. There is some basis for the CIT(A) with which the ITAT has concurred to come, the conclusion that the facts available in the records, has legal backing, to negate the observation made by AO. In this regard the following findings of CIT(A) may be highlighted.

- i. from the comparative charts for complete financial years 2015-16 and 2016-17, it is seen the appellant usually maintained a high cash balance in the books of accounts.
- ii. the opening cash balance of ₹86,39,336/- was in place on 01.04.2015 as is clear from the ITA and Audit Report for assessment year 2015-16 which period is much before the demonetization.
- iii. as per the chart FY 2016-17, the opening cash balance as on 01.04.2016 was ₹2,66,53,070/-, as per the ITR and Audit Report for the year 2016-17 which was filed on 12.10.2016 before



demonetization and therefore, not a subject matter of manipulation.

- iv. the cash balance has been maintained at further higher levels for the remaining financial year up to the date of demonetization by making further major cash withdrawals of ₹84,24,500/- in September, 2016.
- v. the substantial cash withdrawals as well as deposits into the bank accounts are very much a regular feature of the business of the appellant. The assessee has low or negligible level of cash receipts through sales and also a relatively high level of cash expenses.
- vi. the observation made by the AO is in a generalised manner that the cash is normally withdrawn for immediate expenses is not well founded.
- vii. The time gap of a few months between cash withdrawal and cash deposit into the bank account, similar trend is observed in the preceding year also, thereby, establishing that such time gap was a normal feature of the assessee's business. For example substantial cash withdrawal of ₹1,19,10,000/- was made in the month of August, 2015 and the same was not effectively deposited back into the bank accounts till the month of March, 2016 resulting in a high closing balance of ₹2,66,53,070/- as on 31.03.2016.
- viii. The AO has ignored the main cashbook of the assessee and considered only the site cashbooks in arriving at the figure of cash balance as on 08.11.2016.

19. Hence, we are of the view that no substantial questions of law arises for consideration in this appeal.



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20. For the above reasons, the appeal is dismissed against the Revenue in favour of the assessee/respondent.

V. KAMESWAR RAO, J

VINOD KUMAR, J

AUGUST 12, 2025

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