THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai
Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 1408/Mum/2021 (A.Y. 2017-18)

DCIT, CC-1(1) 903, 9th Floor Pratishtha Bhavan M.K. Road Old CGO Bldg Annexe Mumbai-400 020.	Vs.	Shree Mangal Jewels Private Limited Shop No. 201, 2nd Floor, Chintamani Arcade, Dhanji Street Mumbai-400 003. PAN : AAOCS8954B
(Appellant)		(Respondent)

Assessee by	Shri R.S. Khandelwal
Department by	Shri Chetan M. Kacha
Date of Hearing	13.07.2022
Date of Pronouncement	11.10.2022

O R D E R

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 31.5.2021 passed by the learned CIT(A)-47, Mumbai and it relates to A.Y. 2017-18. The Revenue is aggrieved by the decision of the learned CIT(A) in deleting the addition of Rs. 4.85 crores made by the Assessing Officer as unexplained cash credit on account of failure of the assessee to satisfactorily explain cash sales.

2. The facts relating to the above said issue are stated in brief. The assessee is engaged in the business of wholesale and retail trading of gold bar, gold ornaments, diamond ornaments and other precious articles. The assessee was subjected to survey operation under section 133A of the I.T. Act on 7.4.2017. The survey action was initiated consequent to search operation conducted in a group concern named M/s. Mangal Royal Jewels Pvt. Ltd on the very same date. Consequent to the survey operations, the return of

income filed by the assessee for the year under consideration was taken up for scrutiny. It was noticed by the AO that the assessee has deposited cash of Rs. 4.85 crores in its bank account kept with Bharat Cooperative Bank Limited and the said cash consisted of demonitised currency notes of Rs.1000/- and Rs.500/-. Hence, the Assessing Officer asked the assessee to explain the sources of cash deposit made during demonetisation period.

3. The assessee explained that the cash deposits were made out of cash sales effected by it prior to announcement of demonetisation of Rs. 500/- and Rs. 1000/- notes on 8.11.2016. The assessee submitted that it has sold gold bar and diamond ornaments to the retail customers by cash on 8.11.2006 and earlier dates. It was stated that the cash received on such sales have been deposited into the bank account. It was further submitted that the cash sales have been duly reflected in the books of account and stock register. It was submitted that the stock book and regular books of account have been audited by its auditor and they did not find any fault or error in them. It was also submitted that sales figures have been reported to the Sales tax authorities also through VAT return and the sales have been accepted by the sales tax authorities. The assessee also submitted that the survey team has also verified the physical stock and compared the same with the book stock at the time of survey operations. They have also not found any discrepancy in the stock register and further they did not doubt sales recorded in the books of account. The assessee also submitted that the income tax provisions require collection of PAN number, when the value of bill exceeds Rs.2.00 lakhs and it has duly collected the PAN numbers. The assessee also furnished details of customer names along with the PAN numbers given by them. Accordingly, it was submitted that the sources of cash deposits were the cash balance available with the assessee in the books of accounts, which was accumulated out of cash sales.

4. The Assessing Officer, however, did not accept the explanations given by the assessee. He noticed that the assessee has not carried out any cash sales prior to 2nd November 2016 and there have been sudden increase in cash sales from 2nd November 2016. The Assessing Officer also observed that the concerned cash sale bills have not been signed by the customers. Further the assessee has not given any reason as to why it kept cash of Rs. 4.85 crores with him and deposited the same in a staggered manner from 10.11.2016 to 30.11.2016. The Assessing Officer also verified the PAN data of the customers and noticed that most of the customers have not filed their return of income. The Assessing Officer also issued summons under section 131 of the Act to some of the parties on random basis and the summons were returned back by the postal authority stating as "party not available/unknown". Accordingly the Assessing Officer took the view that the assessee has not actually sold the gold and it has only fabricated the sale bills in order to create source for unaccounted money available with it. Accordingly, the Assessing Officer rejected the claim of cash sales and held that the cash deposits aggregating to Rs. 4.85 crores made by the assessee are liable to be assessed as unexplained cash credit under section 68 of the Act. Accordingly, the Assessing Officer assessed the above said amount under section 68 of the Act. In the alternative, the Assessing Officer took the view that the assessee could not properly explain the source for the cash of Rs. 4.85 crores available with it and hence the same is assessable under section 69A of the Act also.

5. In the appellate proceedings, the Ld CIT(A) deleted the addition and hence the revenue has filed this appeal.

6. The Ld D.R submitted that the assessee has only fabricated sales bills and created source for the deposit of demonitised currency notes, which is proved by the fact that there has been sudden increase in cash sales just one week prior to the date of demonitisation. He submitted that the same is against human probabilities and hence the addition made by the AO is

justified. In this regard, he placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT (1995)(80 Taxman 89)(SC) and Durga Prasad More (1971)(82 ITR 540)(SC). He further submitted that the addition is sustainable if the genuineness of the transactions is not proved as held in the case of DCIT vs. Leena Power Tech Engineers (P) Ltd (2021)(130 taxmann.com 341)(Mum). The learned DR further submitted that the claim that the source for making deposits into the bank account can be accepted only if the assessee proves the genuineness of sales. He submitted that there was no proper reason for sudden increase in cash sales during the first week of November, 2016. Accordingly, the Ld D.R submitted that the claim of cash sales was rightly rejected by the AO. In support of this proposition, the D.R placed his reliance on the decision rendered by High Court of Himachal Pradesh in the case of J.M.J. Essential Oil Co. Vs. CIT (2018) 100 taxmann.com 181.

7. The Learned AR, on the contrary, submitted that the assessee has been maintaining stock register for purchase and sale of gold and diamond ornaments. The said stock register has been verified both by the auditors at the time of audit and also by the survey officials at the time of survey. The assessee has made cash sales out of the stock available with it and the sale of stock have been duly recorded in the stock register and in cash book. He submitted that the survey officials have compared the physical stock with the stock register and did not find any difference. The assessee has also duly disclosed the sales in its books of account. Hence, there is no reason to suspect the cash sales disclosed by the assessee which was the source for making cash deposits into the bank account of the assessee.

8. The Learned AR further submitted that an identical issue has been considered by the Vishakhapatnam Bench of the ITAT in the case of M/s. Hirapanna Jewellers (ITA No. 253/Viz/2020 dated 12.5.2021)(128 taxmann.com 291) and has deleted the identical addition made in that case

on identical reasoning. The Tribunal noted the fact that the sale bills were duly supported by outgo stocks; there were no abnormal profits and further the survey team also did not find any defect in the sales and stock. He submitted that the facts prevailing in the instant case are also identical. Accordingly the learned AR submitted that the decision rendered by Vishakhapatnam Bench of the ITAT shall squarely apply to the facts of the present case. He further submitted that identical view has been taken by the Chandigarh Bench of the ITAT in the case of M/s. Kalaneedhi Jewellers LLP (ITA No. 311/Chd/2021 dated 25.3.2022). The learned AR further submitted that the assessee has complied with the provisions of Income tax Act in collecting PAN number of customers and there was no necessity for the assessee to collect the address of the customers. However, the observations of the AO that the customers did not respond to the notice issued by him nor did they file their return of income are not relevant in the assessment of the assessee, since the assessee has proved sale of gold/diamond ornaments vis-à-vis the stock register. In support of this proposition, the learned AR relied on the decision rendered by Hon'ble Bombay High Court in the case of R.B.Jessaram Fatehchand (Sugar Dept) Vs. CIT (75 ITR 33).

9. The learned AR further submitted that the decision rendered by Hon'ble Himachal Pradesh High Court in the case of J.M.J. Essential Oil Co. (supra) has been rendered under the peculiar facts of that case and hence that decision is not applicable to the facts of the present case. He submitted the assessee before Hon'ble Himachal Pradesh High Court was eligible for deduction under section 80IC of the Act and the said assessee was found to have claimed cash sales of huge amount across the counter, which was found to be unusual in that nature of business. The assessee also did not offer proper explanations in this regard. Further, it is not clear as to whether the assessee could prove the sales through its stock register. Hence, under the peculiar facts of that case, the assessment of cash sales under section 68 of the Act was upheld by the High Court treating it as unexplained, mainly

on the reasoning that the AO was not satisfied with the explanations given by the assessee. However, in the instant case, sale of jewellery in cash is explained and it is not an unusual activity. Further the said sales are duly supported by the stock register. The books of accounts and stock registers were verified by the survey officials and they did not find any deficiency therein. The auditors, who audited the accounts also did not find any fault therein. Hence, it is not a case of rejection of explanations furnished by the assessee on valid reasons. On the contrary, the AO did not accept the explanations only on suspicious and surmises, that too, without bringing any material on record to disprove the books of accounts and stock register of the assessee. Accordingly, the learned AR submitted that the above said decision will not apply to the facts of the present case.

10. He further submitted that the provisions of sec.68 can be invoked only in cases of receipts shown as cash credits, without offering the same as income. Under sec.68 of the Act, a legal fiction is created in order to assess certain receipts shown as cash credits and not as income, i.e., when a taxable receipt is camouflaged as cash credit (non-taxable item of receipt), then the AO could invoke the provisions of sec.68 of the Act. In the instant case, the assessee has declared cash sales as its income in its profit and loss account and hence it is not a case of showing receipts as cash credits and camouflaging the said receipt not as income, which would attract the provisions of sec.68 of the Act.

11. The Ld A.R further submitted that the assessee did not have any other income, other than business income generated through its business activities of dealing in gold and diamond articles. When the assessee did not have any other source of income, it has to be presumed that the receipts have come from business activities only. Hence there is no question of assessing cash deposits as unexplained income u/s 69A of the Act as observed by the AO. In support of this proposition, the Ld A.R placed his reliance on the decision

rendered by Hon'ble High Court of Calcutta in the case of Daulatram Rawatmull vs. CIT (1967)(64 ITR 593)(Cal.).

12. We have heard rival contentions and perused the record. We notice that the Ld CIT(A) has deleted the addition with the following observations:-

> "9.3 Coming to the cash sales made by the assessee, I agree with the assessee that *no discrepancy in the stock of the assessee as such was found by the investigating officer or by the AO.* In fact, this group consisting of a few entities engaged in jewellery business was searched/surveyed and at the time of the search, no discrepancy in the stock of jewellery of any of the entities was found. If there was no discrepancy in the stock, the sales and purchases made by the aseessee till the date of search or the year end should have been in order. If the contention of the Ld. A.O. is to be accepted then there should have been some excess stock in possession of the assessee as on date of search, which the search team really did not find.
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> 9.4 Further, it is not the case that the assessee did not have sufficient stock of gold and diamond jewellery to make the above sales. In fact, the assessee was maintaining huge stock of over 52078gm as on 31.03.2016, 54028gm as on 31.03.2017 and 48506gm of gold as on 08.04.2017, on the date of survey. In fact, sales of the assessee are of the order of over 40crs., during the year as also in earlier years, as against these cash sales are of only Rs. 4.85 cr. Which is a small portion of overall sales. Therefore, it is not the case that the assessee could not have made the cash sales in the instant case. I also agree with the contention of the assessee that as on 08/11/2016, a lot of sales were made by the jewellers, late in the night and there were huge crowd outside the shop of the jewellers on the said date, as per the media reports. The reason is simple that there was panic in the public on account of declaration of demonetization and they had only four hours time to do whatever they could do with the banned currency notes. So, the cash sales have been made by the assessee in unusual time and in unusual circumstances and if viewed from that perspective, it does not look unusual.
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> 9.5 is father seen that the assesee has already disclosed these sales, in their sales tax returns/VAT returns and it appears that these returns were filed much before the search and seizure action carried out in the group of the assessee. It is also seen that there is no revision of sales/VAT returns of the assessee."
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> 9:8 Further, there was no discrepancy found between physical stock and stock in books of accounts while stocks were physically-verified by the Survey team, which means *physical sale of gold during the year & sale recorded in the books are not in divergence.* If based on AO allegation, the sale would have been bogus then how could the stock during the Survey

> operation would have been tallied with the stock in books of accounts upon physical stock verification done by Survey team & valued by government authorized valuer. It appears that proper sales were recorded in the books of accounts & VAT also paid on the same & the same is also shown in VAT return as well as statutory audit & tax audit report along with quantitative details of stocks, hence it clearly shows that the books of accounts are properly maintained by the company SMJPL as per prescribed method in section 145."

A perusal of the decision rendered by Ld CIT(A) would show that the Ld CIT(A) has taken note of an important fact in this case, viz., the sale of gold has been duly recorded in the stock register also. Hence it is not a case of declaring sales out of non-existing stock, which may attract addition of entire sales amount as income. With regard to the genuineness or veracity of entries made in the books of account and stock register, we notice that the survey officials who conducted survey in the hands of the assessee did not find any discrepancy either in the sales recorded in the books of account or in the entries made in the stock register with regard to the said sales. The auditors, who audited the accounts also did not find any fault with regard to these records. Accordingly, the Ld CIT(A) held that, if there was no discrepancy in the stock, the sales and purchases made by the assessee till the date of search or the year end should have been in order. We notice that the AO did not give credence to this important fact.

13. We notice that the assessee has obtained PAN number of its customers, wherever is required under the provisions of the Act and has also furnished those details to the assessing officer. We notice that the AO has given credence to the fact that the said customers did not file return of income nor did not they respond to the notices issued by him to them. As rightly contended by the Ld A.R, those aspects are not relevant to the issue under consideration. On the contrary, the information so obtained from the assessee, in the facts and circumstances of the case, may trigger further enquiries in the hands of the respective customers. So far a trader is concerned, the transaction of sales is complete when the stock is delivered to

the customer and consideration for the same is obtained from the customer. The decision rendered by Hon'ble Bombay High Court in the case of R.B.Jessaram Fatehchand (Sugar Dept) Vs. CIT (supra) would clarify this legal position. The relevant observations made by the Hon'ble jurisdictional High Court are extracted below:-

> "2. Now, the Income-tax Officer in not accepting the book results of the assessee proceeded mainly on the ground that in respect of the cash sales entered in the books of account of the assessee the assessee was unable to supply the addresses of the customers to whom sugar was sold. The assessee had supplied an explanation for his inability to do so, but the said explanation was not accepted by the Income-tax Officer. There was no other reason for the Income-tax Officer to discard the book results. He, no doubt, pointed out that it appeared that other wholesale traders in the market had shown a higher gross profit of their turnover but it appears that no explanation had been called for from the assessee in that connection by any questions having been specifically put to him in that connection. The Income-tax Officer had scrutinised closely the account books of the assessee and had found no fault with them excepting that the addresses of the customers for the cash sales of sugar had not been entered. It was not found by him that there were any other reasons for not accepting the said cash sales, such as, for instance, the sales being at lower rates than what were prevailing in the market or that they were not comparable with the other verified sales, which the assessee had made during the material time. In these circumstances, the reason given by the Income-tax Officer for rejecting the book results shown by the assessee's accounts or for not accepting the cash transactions as genuine cannot be accepted as good and sufficient unless there was an obligation on the part of the assessee to keep a record of the addresses of the cash customers. It could not, therefore, be said that the failure on his part to maintain the addresses was a suspicious circumstance giving rise to a doubt about the genuineness of the transactions entered into by the assessee.
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> 3. In the case of a cash transaction where delivery of goods is taken against cash payment, it is hardly necessary for the seller to bother about the name and address of the purchaser. In our opinion, therefore, the rejection of the results of the assessee's cash book by the Income-tax Officer was not at all justified and the Appellate Assistant Commissioner, therefore, was right in deleting the addition made by the Income-tax Officer. The Tribunal, it appears, has approached the matter on certain surmises and conjectures. It has referred to what it calls a matter of common knowledge that there is scarcity of sugar in certain months of the year and particularly in the months just before the new crushing season starts, which is in the month of October. Therefore, in the month of August, when the sale of sugar to the tune of Rs. 75,000 and odd was effected by the assessee, there might have been an occasion for the assessee to take advantage of the situation caused by the scarcity of sugar. Assuming that scarcity of sugar sometimes occurs just before the new crushing season starts in October, no such scarcity had

> occurred at the material time in the present case as is obvious from the Sugar Market Reports produced by the assessee, which show that the demand for sugar was slack and the rates, in the market were declining. According to the Tribunal, although the entries in the account books of the assessee appeared to be all right ostensibly, the assessee could not merely rely on the said entries but had further to show that the transactions as entered in these accounts were true and genuine. Since, in the present case, by reason of its failure to give the addresses of the customers, it had failed to establish adequately the genuineness of the transactions, the Income-tax Officer was right in taking the view that the book results shown by the assessee were not acceptable.
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> 4. In our opinion, the assessee's account books are to be accepted, unless, on verification, they disclosed any faults or defects, which cannot be reasonably and satisfactorily explained by the assessee. All the other transactions, except the cash transaction, which were verifiable, have been verified and scrutinised by the Income-tax Officer and there is nothing wrong whatsoever found with them. As to the cash transactions also, the quantity of sugar sold has not been disputed. The rates at which sugar was sold were not such as would excite suspicion by reason of being lower than the prevailing market rates. The names of the customers are also entered in respect of the transaction. All that is not done is that the addresses are not entered and on enquiry the assessee was unable to supply the addresses. Since, having regard to the nature of the transaction and the manner in which they had been effected, there was no necessity whatsoever for the assessee to have maintained the addresses of cash customers, the failure to maintain the same or to supply them as and when called for cannot be regarded as a circumstance giving rise to a suspicion with regard to the genuineness of the transactions. The Tribunal, therefore, was not right, in our opinion, in setting aside the order of the Appellate Assistant Commissioner and restoring that of the Income-tax Officer. There are no circumstances disclosed in the case nor is there any evidence or material on record which would justify the rejection of the book results."

14. The real question that arises in this case is whether the cash deposits made by the assessee into its bank account have been properly explained or not. The assessee has claimed the sources to be cash sales effected by it and the sales have been duly recorded in the books of accounts and stock register. We also notice that the survey officials have not found any discrepancy between physical stock and book stock. If the sales were not genuine, the survey officials would have found excess stock, which is not the case here.

15. The Ld D.R relied upon the decisions rendered in the cases of Sumati Dayal (supra), Durga Prasad More (supra) and submitted that the claim of cash sales is beyond the scope of human probabilities. First of all, the assessee has claimed sale of gold/diamond articles and it is proved that the said sales are supported by the stock register and sales bills. When purchase of stock has not been doubted, then there is no question of doubting the genuineness of sales bills and stock register, since the quantity of goods sold has been reduced from the stock shown in the stock register. The Ld A.R submitted that cash sales are not an unusual activity in any trade. Further, it is also a known fact that there were huge sales in jewellery shops on announcement of demonitisation. Hence, it cannot be said that the cash sales effected by the assessee is beyond the scope of human probabilities. Accordingly, in our view, both the above said decisions would not apply in the facts of the present case.

16. We notice that the decision in the case of J M J Essential Oils (supra) has been rendered by Hon'ble Himachal Pradesh High Court under peculiar facts of that case. As rightly pointed out by Ld A.R, it is not clear as to whether the assessee could prove the sales with stock register. In any case, a perusal of the above said decision would show that the Hon'ble Himachal Pradesh High Court has confirmed the addition of cash sales by invoking provisions of sec.68 of the Act on the ground that the assessee did not give proper reasons for cash sales effected in a particular month. Further, the assessee was also claiming deduction u/s 80IC of the Act. Hence, we agree with the Ld A.R that the said decision will not apply to the facts of the present case.

17. In our view, there is merit in the contentions of Ld A.R that the provisions of sec.68 can be invoked only in cases of cash credits, which were not offered as income, i.e., a legal fiction has been created in sec.68 of the Act to assess certain cash credits, which were not otherwise shown as income.

In the instant case, the assessee has declared the cash sales as its income in the profit and loss account. Hence it is not a case of cash credits, which were not shown as income, in order to attract the provisions of sec.68 of the Act.

18. We notice that an identical issue has been considered by Visakhapatnam bench of ITAT in the case of Hirapanna Jewellers (supra) and it was decided in favour of the assessee. For the sake of convenience, we extract below the order passed by the ITAT in the above said case:-

> **"7.** We have heard both the parties and perused the material placed on record. In the instant case, the assessee has admitted the receipts as sales and offered for taxation. The assessing officer made the addition u/s 68 as unexplained cash credit of the same amount which was accounted in the books as sales. In this regard, it is worthwhile to look into section 68 which reads as under:
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> > 68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:
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> From the perusal of section 68, the sum found credited in the books of accounts for which the assessee offers no explanation, the said sum is deemed to be income of the assessee. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. The assessee is engaged in the jewellery business and maintaining the regular stock registers. Both the DDIT (Inv.) and the AO have conducted the surveys on different dates, independently and no difference was found in the stock register or the stocks of the assessee. Purchases, sales and the Stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/stocks. Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. The assessing officer accepted the sales and the stocks. He has not disturbed the closing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales. Audit report u/s 44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. The assessee has furnished the trading

account, P& L account in page No. 7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared the exorbitant profits. Though certain suspicious features were noticed by the AO as well as the DDIT (Inv.), both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the assessee. Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence.

7.1 In the case of *CIT* v. *Associated Transport* (*P.*) *Ltd.* [1996] 84 Taxman 146/[1995] 212 ITR 417 (Cal.) the Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, therefore, held that there was no reason to treat this amount as income from undisclosed sources and it was not a fit case for treating the said amount as concealed income of the assessee. The revenue moved to Calcutta High Court against the order of the tribunal and the Hon'ble High Court has confirmed the order of the Tribunal while deleting the penalty, Hon'ble Calcutta high court held as under:

> "8. The Tribunal was of the view that the assessee had sufficient cash in hand. In the books of account of the assessee, cash balance was usually more than Rs. 81,000. There is no reason to treat this amount as income from undisclosed sources. It is not a fit case for treating the amount of Rs. 81,000 as concealed income of the assessee and consequently imposition of penalty was also not justified in this case."

In the case of *Lalchand Bhagat Ambica Ram* v. *CIT* [1959] 37 ITR 288 (SC), the Hon'ble Apex Court decided the matter in favour of assessee of the ground that it was clear on the record that the assessee maintained the books of accounts according to the mercantile system and there was sufficient cash balance in its cash books and the books of account of the assessee were not challenged by the Assessing officer. If the entries in the books of accounts are genuine and the balance in cash is matching with the books, it can be said that the assessee has explained the nature and source of such deposit.

In the case of *Lakshmi Rice Mills* v. *CIT* [1974] 97 ITR 258 (Pat.) Hon'ble Patna High court held as under:

> "It is, in my view, a fundamental principle governing the taxation of any undisclosed income or secreted profits that the income or the profits as such must find sufficient explanation at the hands of the assessee. If the balance at hand on the relevant date is sufficient to cover the value of the high denomination notes subsequently demonetised and even more, in the absence of any finding that the books of account of the assessee were not genuine, the source of income is well disclosed and it cannot amount to any secreted profits within the meaning of the law."

All the decisions cited *supra* suggest that once, the assessing officer accepts the books of accounts and the entries in the books of accounts are matched, there is no case for making the addition as unexplained. Hon'ble Delhi High court considered the issue of taxing the opening stocks in the case

of *CIT* v. *Akshit Kumar* [2021] 124 taxmann.com 123/277 Taxman 423 (Delhi), and upheld the order of the ITAT in deleting the addition related to sales. The Hon'ble High Court has extracted the relevant part of the order of the ITAT which reads as under:

> "17. Thus, in our opinion the sale made by the assessee out of his opening stock cannot be treated as unexplained income to be taxed as 'income from other sources'; firstly, the stock was available with the assessee in his books of account and trading in such stock including purchase, sale, opening and closing stock (quantity wise and value wise) has been accepted by the department year after year and in some years under scrutiny proceedings, therefore, non existence of stock or business cannot be upheld; secondly, the sale of stock in the earlier years and the sale of balance left out stock in subsequent years has been accepted or has not been disturbed, then to hold that no stock was sold in this year and remained with the assessee will be difficult proposition; thirdly, inquiry and inspection by the AO done much after the closure of business may not be persuasive for the past events especially in wake of facts as discussed above; and lastly, once neither any item in the trading account, nor gross profit has been rejected, then one part of credit side of the trading account, that is, sales cannot be discarded completely so as to hold that it is unexplained money."

7.2 In the instant case the assessee has established the sales with the bills and representing outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. In spite of conducting the survey the AO did not find any defects in sales and the stock. Therefore we do not find any reason to suspect the sales merely because of some routine observation of suspicious nature such as making sales of 270 bills in the span of 4 hours, non availability of KYC documents for sales, non writing of tag of the jewellery to the sale bills, non-availability of CCTV footage for huge rush of public *etc.* The contention of the assessee that due to demonetization, the public became panic and the cash available with them in old denomination notes becomes illegal from 9-11-2016 and made the investment in jewellery, thereby thronged the jewellery shops appear to be reasonable and supported by the newspaper clippings such as The Tribune, The Hindu etc. It is observed from the newspaper clippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through the country.

8. The Ld.DR placed reliance on various decisions. In the case of *Sumati Dayal* (*supra*), *Durga Prasad More* (*supra*), *Durga Prasad More* (*supra*) both the cases are related to the circumstantial evidences in the absence of direct evidence. In the instant case, the facts clearly support that the assessee has made the sales and there were sufficient stocks to meet the sales. Thus, the facts of the assessee's case are clearly distinguishable. The Ld.DR further relied on the decisions of *Kale Khan Mohammad Hanif* (*supra*), wherein, the Hon'ble Supreme Court held that the AO is permitted to make addition of unexplained cash credits even though the income is estimated on sales. **In the instant case, the AO had accepted the sales and no unexplained cash**

credits were found, thus, the case law relied upon by the Ld.DR is also distinguishable on the facts of the case. The Ld.DR relied on the decision of *P. MohanaKala* (*supra*), *Devi Prasad Vishwanath Prasad* (*supra*) both the cases refer to the sums found credited in the books of account but not offered as income, whereas in the instant case the assessee admitted the same as sales and offered for taxation, hence, the case laws has no application in the assessee's case. The Ld.DR also relied on the decision in *Naresh Kumar Tulshan* (*supra*), the decision was related to the addition u/s 69A representing huge deposit of cash in bank for which the initial source was declared as past profits and subsequently explained as withdrawal from partnership firm without relevant matching entries in the banks, therefore, the coordinate bench of ITAT held that withdrawal of such huge amount in high denomination was not practicable. The Ld.DR also relied on the decision of *J.M.J. Essential Oil Company* (*supra*) in the cited case, the assessee effected large sales in one month of each year continuously for two years and the assessee is eligible for deduction u/s 80IC and the AO observed that the assessee was inflating the sales and claiming the huge deductions. No such cash inflow is involved due to demonetization. Whereas in the assessee's case there were no such deduction or the exempt income and the profits were also not abnormal. The assessee explained the reason for huge sales with evidence and thus the case law relied up on by the DR is distinguishable. The Ld.DR relied on various case laws and all the case laws more or less are related to the additions made u/s 68 as unexplained cash credit and in none of the cases the assessees have admitted the same as income. Therefore, we find that the case laws relied up on by the Ld.DR has no application in the instant case and the same are distinguishable.

9. In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of *Kailash Jewellery House* (*ITA No.613/20109*) and the Hon'ble Gujarat High Court in the case of *Vishal Exports Overseas Ltd.* (ITA 2471 of 2009), Hence, we do not see any reason to interfere with the order of the Ld. CIT(A) and the same is upheld."

19. The above said decision rendered by ITAT, Visakhapatnam bench was followed by Chandigarh bench of ITAT in the case of Kalaneedhi Jewellers LLP (supra), besides following decisions:-

(a) Bansal Rice Mills vs. ITO (Chd TM)
(b) PCIT vs. Agson Global P Ltd (ITA No.68-73/2021 dated 19-01-2022)
(c) Lakshmi Rice Mills vs. CIT (1974) (97 ITR 0258)(Patna)
(d) PCIT vs. Akshit Kumar (Delhi HC)

Taking support of all these decision, the Chandigarh bench of ITAT held as under:-

> "10.13 In the present case also the cash deposited post demonitisation by the assessee was out of cash sales which had been accepted by the Sales tax/VAT department and not doubted by the AO, there was sufficient stock available with the assessee to make cash sales and there was festive season in the month of October 2016 prior to the making of cash deposit in bank account out of the sales. So respectfully, following aforesaid referred to orders by the various Hon'ble High Courts and the coordinate benches of ITAT, we are of the view that the impugned addition made by the AO and sustained by the Ld CIT(A) was not justified, accordingly the same is deleted."

20. The facts of the present case are identical with the facts prevailed in the cases of Hirapanna Jewellers and M/s Kalaneedhi Jewellers LLP. The cash sales declared by the assessee were duly supported by the stock register. The books of accounts and stock register have been found to be correct by the auditors and survey officials. During the course of assessment proceedings, the AO also did not find any fault or defect in the books of accounts or stock register maintained by the assessee. The impugned deposits have been made by the assessee from the cash balance available in the books of accounts, which were duly generated on sale of goods out of stock available with the assessee. It is not the case of the AO that the purchases of stock made by the assessee and entered in the stock register were not genuine. As observed by the Visakhapatnam bench of ITAT, there is no case of making abnormal profits from the cash sales recorded by the assessee. The observations of the AO with regard to non-response by the customers to the notices issued by him and non-filing of returns by the customers are not relevant to the facts of the present case, as held by jurisdictional Hon'ble Bombay High Court in the case of R.B.Jessaram Fatehchand (Sugar Dept) Vs. CIT (supra). Hence, on a conspectus of the matter, following the judicial authorities discussed supra, we hold that the assessee has duly explained the sources for making cash deposits into its bank account. Since the sources of cash have been generated out of business activities of the assessee, the same cannot also be assessed u/s

69A of the Act as unexplained asset. Accordingly, we do not find any infirmity in the decision rendered by Ld CIT(A).

21. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 11.10.2022.

Sd/-	Sd/-
(KAVITHA RAJAGOPAL)	(B.R. BASKARAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai; Dated : 11/10/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai

PS