

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 165/JP/2022  
निर्धारण वर्ष/Assessment Year : 2017-18.

Income Tax Officer, Ward 1(2), Jaipur.	बनाम Vs.	Shri Raj Kumar Nowal, Shop No. 3, Partanio Ka Rasta, Johari Bazar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AALPN 6069 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl. CIT)

निर्धारिती की ओर से / Assessee by : Shri Kapil Khejrolia (CA)

सुनवाई की तारीख / Date of Hearing : 27/09/2022

उदघोषणा की तारीख / Date of Pronouncement: 22/11/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal filed by the revenue is directed against order of the Id. CIT(A)-4, Jaipur dated 10-02-2022 for the assessment year 2017-18 wherein the revenue has raised the following grounds of appeal :-

1. Whether on the facts and circumstances of the case the Id CIT(A)-4, Jaipur has erred in deleting the addition of Rs. 1,03,00,000/- made u/s 68 of the I.Tax Act by treating the same as cash sales of the assessee?
2. Whether on the facts and in circumstances of the case the Id CIT(A)-4, Jaipur was justified in deleting the addition of Rs. 1,03,00,000/- made u/s 68 of the I.T. Act 1961 which was deposited by the assessee during the demonetization period and which also remained unverified during the assessment proceedings?

2. Brief facts of the case are that the assessee is an Individual and deriving income from business of jewellery in his proprietorship concern M/s D.N Diamonds and Dinanath Raj Kumar and interest income from saving bank account, FDR and parties. The assessee's books of account are audited by Chartered Accountant. The assessee filed his Income Tax Return on 16.10.2017 declaring total income of Rs. 40,11,520/-. The case of the assessee was taken up for scrutiny u/s 143(3) of the Income Tax Act, 1961 vide notice dated 25.09.2018. The assessee deposited Rs. 91,00,000/- in demonetized currency during the demonetization period 09.11.2016 to 31.12.2016 and cash Rs. 12,00,000/- in non-demonetized currency on 28.03.2017, and this Rs. 12,00,000/- was already offered for Income under "Pradhanmantri Garib Kalyan Yojna-2016". However, the AO made the addition of Rs. 91,00,000+12,00,000 totaling to Rs. 1,03,00,000/- and the assessment of the assessee was completed by AO vide her order dated 30.12.2019 at total income of Rs.1,43,11,520/- as against returned income of Rs. 40,11,520/-by giving reasons mentioned at pages 2-4 of her assessment order. Being aggrieved, the assessee filed appeal before Id. CIT(A)-4, Jaipur. The Id. CIT(A) after analyzing each facts and various judgments gave her finding in para **4.2 at pages 20-26** of her order and deleted the addition made by AO. Now, aggrieved by the order of the CIT (A), the revenue preferred present appeal before us.

3. Before us, the Id D/R reiterated the findings of AO in the assessment order and supported the addition made in the assessment order.

4. On the other hand, the Id. A/R reiterated the same submissions as raised by him before the lower authorities and also filed the written submission as under to support the order of Id. CIT(A).

**“a) The assessee relies upon the findings made by ld CIT(A).**

*The findings of ld CIT(A) is in para 4.2 at page 20-26 of her order. The ld CIT(A) after analysing each fact and various judgments made detailed factual finding in her order and deleted the addition made by ld AO. The assessee relies the findings of ld CIT(A).*

**b) Ld AO herself accepted the amount of Rs. 1,03,00,000/- deposited in bank as cash sales therefore addition u/s 68 cannot be made.**

**i) Rs. 12,00,000/- was deposited in non-demonetized currency on 28.03.2017, which too offered for Income under “Pradhanmantri Garib Kalyan Yojna-2016”**

*At the outset we would like to submit that the entire finding and addition so made by ld. AO is regarding the cash deposited in demonetized currency. The addition was made without appreciating the fact and also apparent from the table of cash deposited given at Page 3 of the assessment order the cash amounting to Rs, 91,00,000/- was only deposited in demonetization currency and cash Rs. 12,00,000/- was deposited in non-demonetized currency on 28.03.2017, which too offered for Income under “Pradhanmantri Garib Kalyan Yojna-2016” (Copy of form 1 and 2 are at PB Page 91 to 93). Therefore, the addition of Rs. 12,00,000/- is patently wrong and deserves to be deleted without any further submission and arguments.*

**ii) Details of sales:-**

*During the year under consideration the assessee deposited Rs. 91,00,000/- in demonetized currency. The cash so deposited was accumulated cash which was received against/for sales made in the proprietorship concerns of assessee M/s Dinanath Raj Kumar, Kanpur and M/s D. N. Diamonds, Jaipur by it over the period of the year prior to demonetization, major most during the period from 28.10.16 and 29.10.16.*

**a) Dinanath Raj Kumar, Kanpur**

*Sales of Dinanath Raj Kumar, Kanpur was of Rs. 73,06,624/- during the period from 22.10.2016 to 08.11.2016.*

**b) M/s D. N. Diamonds, Jaipur**

*Sales of M/s D. N. Diamonds, Jaipur was of Rs. 21,10,692/- during the period from 22.10.2016 to 08.11.2016.*

*Out of this the assessee was having cash amounting of Rs. 91,00,000/- in demonetization currency which was deposited in bank.*

*The cash accumulated from the sales, which was deposited in bank in demonetized currency, was treated by ld AO as undisclosed income of the assessee without any cogent reason and treated the corresponding sales as non-genuine solely for the reason that ld. AO was bent to add such cash deposited as income of the assessee.*

**(iii) Reason of increase in sales****(i) Increase in overall turnover:-**

<b>Financial Year</b>	<b>Total Turnover</b>
2015-16	1,15,92,702
2016-17	2,77,05,253

*The main reason of increase in sales during the FY 2016-17 was that:-*

- a) the firm Dinanath Raj Kumar has been started in the year 2015 itself and hence the sale was low in the year F Y 2015-16 as compared to sale in FY 2016-17.*
- b) Further during the F Y 2015-16 the mother of the assessee has expired and hence the assessee was not able to setup his business at Kanpur*

Hence the sale was low in the year FY 2015-16 as compared to sales in 2016-17.

(ii) **Increase in turnover in period 09/11 to 30/12-**

<b>Financial Year</b>	<b>Period</b>	<b>Total Turnover</b>
2015-16	09/11/15 to 30/12/15	24,10,695
2016-17	09/11/16 to 30/12/16	29,93,487

In FY 2015-16, the turnover for the period 9-11 to 30-12 was Rs. 24,10,695 as against Rs. 29,93,487/-. At the outset, we submit that the turnover for the period 09/11 to 30/12 was not relevant for the issue of the deposit of demonetized currency. The assessee achieved major sale on, Dhanteras and Choti Diwali were on 28/10/2016 and 29/10/2016 which falls before 09/11 to 30/12.

It is further relevant to brought in your kind notice that in the month of October-2016 the gold price was at lower side in comparison to previous three months and due to Diwali festival and marriage occasions the sale boosted in this month, therefore the sales of October-2016 and first few days of November-2016 was comparatively at higher side. Thus this is the basis reason of sudden increase in the sales of this month in comparison to sales of same month in previous year. As in the month of October-2016 the price of gold decreased in comparison to previous few month and in the same month the sales of festive season and marriage occasions started, therefore this resulted the dual benefit to the assessee and resulted the increase in sale. Therefore, persons who want to purchase Jewellery for their marriage ceremonies also purchased the jewellery in the October month looking to the lower prices of gold.

(iii) **Cash Sales for the period 01/04 to 08/11**

<b>Financial Year</b>	<b>Period</b>	<b>Total Turnover</b>
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2015-16	01/04/15 to 08/11/15	11,79,230 <b>(PB page 14)</b>
2016-17	01/04/16 to 08/11/16	1,00,74,070 <b>(PB page 14)</b>

*The main reason of increase in sales during the 01/04/16 to 08/11/16 was that:-*

- c) the firm Dinanath Raj Kumar has been started in the year 2015 itself and hence the sale was low in the year F Y 2015-16 as compared to sale in FY 2016-17.*
- d) Further during the F Y 2015-16 the mother of the assessee has expired and hence the assessee was not able to setup his business at Kanpur*

*Hence the sale was low during the period 01/04/15 to 08/11/15 in the year FY 2015-16 as compared to sales in 2016-17 for the same period.*

**(iv) Increase in cash sales during the FY 2016-17.**

*The cash sales during the FY 2015-16 was Rs. 17,72,830/- as against Rs. 1,17,87,255/- (PB page 14) during the FY 2016-17. We have already submitted that the assessee started new showroom in Kanpur during 2015 which could be properly established in 2016. So the cash sales of the FY 2015-16 cannot be compared with FY 2016-17.*

*However, the department has no any material to show that the assessee has booked bogus sales or fabricated the invoices to book back dated sales.*

**(iv) Sales of assessee supported by Bills/Invoices:-**

*The sales of assessee duly supported by the sale bill and invoice and duly verifiable form books of accounts including stock register, therefore, cannot be treated as abnormal and non-genuine. The ld. AO has not rejected the*

*books of account of the assessee meaning thereby all the entries in the books of account recorded by the assessee are correct. Therefore, the separate addition for the sales recorded in the books of account cannot be made by treating the same as undisclosed income.*

*In view of above submission there cannot be any reason for disbelieving the genuineness of the sales of the assessee merely for the reasons that the cash so received immediately was not deposited in bank and the same only deposited after announcement of demonetization more so when the same is duly supported with sale bill, entries in genuinely accepted books of account and the assessee was having the sufficient stock for that much of sales.*

**v) *The source of cash deposited in demonetized currency was sales made in cash***

*The source of cash deposited in demonetized currency was sales made in cash and such sales was part of total sales credited in trading a/c and the assessee has already offered income on such sales in Trading Account by reducing the cost of sales from sales. The ld. AO herself accepted the sales shown in trading a/c as genuine and has not disturbed the cash sales so declared by Assessee. Thus, eventually on the one hand the ld. AO accepted the sales declared by the assessee and on the other hands the corresponding cash generated from such sale which deposited in bank a/c was treated as undisclosed income of the assessee. The ld AO is blowing hot and cold in same stream.*

**vii) *Factual mistake of AO in finding that sales of current year decreased by 138.98%:-***

*The addition was made on the basis of factually wrong findings. The ld AO mentioned at para 1 at page 2 of her order that the total sales for the current year has decreased by around 138.98%. She further mentioned that it is hard to believe that when the total sales during the year has decreased then how can sale increase during a specific period of the year. The ld AO*

*completely failed to appreciate the chart at top of this page given by herself which shows the total sales of FY 2015-16 were 1,15,92,702/- and sales for FY 2016-17 were Rs. 2,77,05,253/- and in column (V) it shows that the sales of current year has increased by 138.98%. Thus, the addition was made on the foundation of wrong facts.*

**viii) Books of account are audited and the source of cash deposited in demonetized currency was cash received against/for sales made and such sales was part of total sales credited in trading a/c and the ld. AO accepted to such sales as genuine:-**

*The assessee maintains regular books of account, which are audited by independent and reputed Auditor. The cash sales & receipts are duly supported by relevant bills, which were produced before the AO in course of the assessment proceedings, and nothing adverse in connection therewith was noted by the A.O. The cash sales and the corresponding cash deposits in banks are duly reflected in books of the assessee in the respective years. The books of account and the entries pertaining to cash sales and cash deposits have been accepted by the Department in the assessments framed in the past years and also during this year. The audited financial statements form part of the regular returns filed by the assessee. The cash sales and cash deposits existed in the past years as well as in the months prior & subsequent to the demonetization period. The entries pertaining to cash sales and corresponding cash deposits in banks were duly reflected in the books of account of the assessee. The audited books of account and the tax audit report for the impugned F.Y. 2016- 17 (PB page 3-11) were also filed before the AO in course of the assessment proceeding and the sale for the other periods was accepted by the department. Sales shown by the assessee are fully backed with the sales bills, duly recorded in books of accounts and also in the stock register while on the other hand the ld. AO has not brought any material on record to establish that cash so deposited in bank account is undisclosed income of the assessee.*

*The source of cash deposited in demonetized currency was cash received against/for sales made and such sales was part of total sales credited in trading a/c and the ld. AO accepted to such sales as genuine and therefore, there remains no reasons to treat the corresponding cash generated from such sales and deposited in bank a/c as undisclosed income of the assessee. It is relevant to mention here that each deposit in bank comprise the source and once the source has been duly shown in trading a/c, which also accepted by ld. AO than there remains no reason to treat such deposit as undisclosed income of the assessee. On the one side the ld AO is accepting the cash sales as genuine being credited in trading account and on the other hand the same is treated as undisclosed income of the assessee. It is double stand of the ld AO.*

*It is not the case of the revenue that assessee was not having the source of cash or has not shown the relevant stock register before the assessing officer or not having the sufficient stock for making the sales. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details. The ld. AO did not make any enquiry on the material submitted by the assessee. She merely proceeded on presumption and assumption and make the addition on account of cash deposits without any reason.*

*She neither found any concrete and conclusive evidence of back dating of the entries of sale, evidence of bogus sales, evidence of bogus purchases, evidence of non-existing of stock as on the date of sales and non-existing cash in the books of account. The sales of the assessee are supported by the sales bills issued to customers and such sales bills are serially numbered. It cannot be denied that before announcement of demonetization the assessee was regularly making sales and issuing the sales bills to the customers, therefore the assessee was not having occasion for booking the bogus sales prior to announcement of demonetization as or such prior period the sales bills had already been issued. Therefore, it cannot be alleged that the assessee has booked the sales in backdate to generate the cash in hand*

*because of the reason that the assessee could not change the sale bills issued prior to the date when the demonetization announced as the same had already been issued to the customers in the regular course of business in relation to sale made and without changing the sale bills of the previous dates the manipulation in sale is not possible. Therefore, suspicion on the source of corresponding cash in hand available with assessee, which deposited in bank in demonetize currency is merely on assumption, presumption and without any material. Therefore, the suspicion on the submission and explanation given by assessee, which is supported by evidences is not correct because it is not possible for the assessee to make any adjustment in the sales in back date because the sale bill could not be changed in the back date as the same has already been issued to the customers.*

*Thus ld. AO has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus. Merely having some doubt by twisting the data and giving some findings which are not alone sufficient to justify the addition the income so assessed in not tenable in the eye of law.*

***It is further most importantly relevant to mention here that the Commercial Taxes Department had accepted the sales of the assessee declared in its VAT returns as genuine, therefore there remains no reason to doubt the genuineness of part of such sale by the ld. AO.***

*It is admitted position of law that no addition can be made in the income of the assessee only on the basis of suspicion. Suspicion howsoever strong but cannot partake the character of evidence. The reliance is placed on following decisions: -*

- i) Dhakeswari Cotton Mills Ltd vs. Commissioner of Income-tax [1954] 26 ITR 775 (SC)  
Case Law PB page 83-89*
- ii) Umacharan Shaw & Bros vs. Commissioner of Income-tax [1959] 37 ITR 271 (SC)*

***Case Law PB page 90-85***

- iii) ***CIT vs. Kapil Nagpal, DBITA 609/2014 (Delhi HC)  
Case Law PB page 96-104***
- iv) ***Goyal Gases (P.) Ltd vs. Commissioner of Income-tax [1997] 94  
TAXMAN 57 (DELHI)  
Case Law PB page 105-106***

*It is admitted position of law the suspicion can be initiating point for investigation but not the final basis of assessment/reassessment/addition.*

- i) ***PCIT v. Aditya Birla Telecom Ltd. [2019] 105 taxmann.com  
206 (Bombay)  
Case Law PB page 107-112***
- ii) ***Rustagi Engineering Udyog (P.) Ltd vs. Deputy Commissioner  
of Income-tax [2016] 382 ITR 443 (Delhi).  
Case Law PB page 113-119***
- iii) ***Principal Commissioner of Income-tax vs. Meenakshi Overseas  
(P.) Ltd [2017] 82 taxmann.com 300 (Delhi)  
Case Law PB page 120-129***
- iv) ***CIT vs. Shri Jawahar Lal Oswal, DBITA 49/1999 (Punjab &  
Haryana HC)  
Case Law PB page 130-142***
- v) ***Commissioner of Income-tax v. Neel Giri Krishi Farms (P.)  
Ltd. [2013] 218 Taxman 95 (Allahabad)(MAG.)  
Case Law PB page 143-146.***

**(ix) *The books of account not rejected:-***

*The books of account were accepted by the ld AO and provisions of section 145(3) has not been applied. The ld. AO herself accepted such sales as genuine and the profit embedded in such sales has been taken in trading a/c and considered for working out the taxable income. Thus, adding to such entire sales as income of the assessee is tantamount to double addition.*

c) ***Ld AO wrongly made the addition of Rs. 1,03,00,000/- u/s 68 of the I.Tax Act, and CIT(A) has rightly deleted it.***

i) ***Provisions of section 68 are not applicable for sales:-***

*The cash deposited in the demonetized currency added as income of the assessee by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in P&L account, therefore there is no occasion to again consider the same as income of the assessee by applying the provisions of section 68 of the Act. It is further relevant to mention here that if the intention of the legislature would be to apply the provisions of section 68 of the Act on the sale transactions also than it such case as per law it would be mandatory to have the identity, genuineness and creditworthiness of each buyer. But the law is not so and in case of sale below to certain limit the assessee was not required to prove all these ingredients of section 68 of the Act and even also in case of sale exceeding to certain limit the assessee is not required to prove the creditworthiness of buyer. Thus this also strengthen the contention of the assessee that the provisions of section 68 are not applicable on the transaction which are already credited in the P&L and the same can only made applicable on the cash credits such as loans, share application etc. It is an admitted fact that in the case of transactions of sales/purchases of goods/investments/assets the creditworthiness of the payee is not relevant for the receiver as the amount was received against the something sold to him, therefore such transactions cannot be examined with point of view of cash credits.*

***Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordia vs Income-tax Officer APPEAL NO. 4 OF 2002 NOVEMBER 7, 2006 [2008] 298 ITR 349 (Rajasthan) Case law Paper Book page 147-152 held that no addition could be made in respect of the amount standing in the books of the assessee, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.***

ii) *It is pertinent to note that while the A.O. has accepted the cash deposited in the bank accounts in the previous financial years, cash deposited in banks during the impugned F.Y. 2016-17 in the Non-demonetized currency. The ld. AO did not accept the same modus operandi with respect to the cash deposited in demonetized currency merely on the pretext that the same was deposited in demonetized currency and hence was suspicious in nature. Thus, ld.AO is blowing hot and cold in same stream accepting and rejecting the explanations offered by the assessee with respect to the transactions of identical nature at her sheer convenience merely on the basis of surmises and conjecture without any evidence or material on record. Thus, bald allegation of ld. AO that the cash deposited in demonetized currency had arisen from some undisclosed source not reflected in the books of account as against the accounted cash sales in books of account and also which is regular feature of the trade of assessee. The conclusion of ld. AO is dehors of any credible evidence/material on record is unsustainable both in law and on facts. Addition so made by the AO deeming the impugned cash deposits arising out of accounted cash sales as unexplained cash credits merely on the basis surmises & conjectures is fallacious and deserves to be deleted and ld CIT(A) has deleted it rightly.*

**d) *Ld AO wrongly held that the assessee has not filed any evidence to substantiate its sales.***

i) *As apparent above the assessee was having sufficient source of cash in hand out of amount received against/for sales made and the same is duly evident from the Audited books of accounts. During the course of assessment proceedings, the assessee submitted the following documents to substantiate its claim: -*

a) *Cash book (Copy at PB Page 39 to 45) and sales bills along with submission dated 10.12.2017 comprising the detail of sales made. From perusal of these documents the cash sales and cash balance with assessee is duly apparent.*

- b) *Copy of stock register for the FY 2015-16 and 2016-17 (Copy of the same is at PB Page 50 to 72). From perusal of stock register, it is apparent that before making the sale the sufficient stock was available with assessee and genuineness of the same also not doubted by ld. AO.*
- c) *Copy of return of VAT (Copy of the same is at PB Page 80 to 85) and VAT assessment order of proprietorship concern M/s Dinannath Raj Kumar, Jaipur (Copy at PB Page 88 to 90). The VAT department accepted the sale of the assessee.*
- d) *Copy of audit report and audited Profit and Loss Account and Balance sheet (PB page 3-11)*
- ii) *Thus the assessee duly substantiated its claim from the documentary evidence and also with the facts. In letter dated 06.06.2019 (Copy at PB Page 46 to 47) the assessee submitted to ld. AO that "There was increase of cash sale in month of Oct. and Nov.-2016 was due to Karva Chouth, Dhanteras and Diwali sales (Festival Season). That, the firm Dinanath Raj Kumar has been started in the year 2015 itself and hence the sale was low in the year F Y 2015-16 as compared to sale in 2016-17. That, During the F Y 2015-16 the mother of the assessee has expired and hence the assessee was not able to setup his business at Kanpur and hence the sale was low in the year FY 2015-16 as compared to sales in 2016-17.*

*The assessee is engaged in the business of Jewellery and gold. In the trade of the assessee many of the customers usually pay in cash and as such, there is no unusual of having the cash sales in the trade of assessee. The cash received against such cash sales is subsequently deposited into the banks from time to time as per his convenience & requirement of the assessee. The cash sale is general feature in the trade of the assessee and*

*such sales is also apparent from the cash book submitted during the course of assessment proceedings.*

- iii) The assessee is duly maintaining the day to day stock register and copy of the same was also submitted to ld. AO. (Copy at PB Page 50 to 72). From examination of the stock register it is apparent that before making the sales the assessee the sufficient stock was in hand with assessee. The ld. AO could not point out any defects in such stock register and even in the assessment order no discussion was made on such stock register, which also shows that the ld. AO duly accepted to such stock register. The value of opening and closing stock is duly apparent from the audit report and audited balance sheet also. Due to clerical mistake and oversight the qty. detail of stock could not be reported in audit report. However, from the stock register submitted during the course of assessment proceedings it is well apparent that the assessee was duly maintaining the stock register and sanctity of the same cannot be brushed aside for the single reason that the qty. of stock did not reported in audit report. It is relevant to mention here that if the assessment was supposed to be completed solely on relying on audit report than there would be no occasion of added the sales of the assessee which accepted by the auditor.*
- iv) Thus from record of the assessee and also the nature of trade of the assessee it is well evident that the cash sales & corresponding cash in hand have been a regular feature of the trade of the assessee and the same cannot be treated as unusual. The assessee also having the cash sales throughout the year, therefore the cash sales, proceed of which was subsequently deposited in bank cannot be treated as unique source of cash which never happened in past or future. Admittedly, the cash sales of previous periods were not commensurate to the cash sales of current year, which deposited in bank in demonetized currency, but the same cannot be sole ground to treating the sales as non-genuine. It is an admitted fact that the Jewellery market is customer oriented market and the demand in the trade of the assessee depends on the sentiments and liking & disliking's of*

*the customers. If something had in stock with the assessee and design etc. of the same is liked to customers, then the sale of the same obviously will be high and on the other hands if the same is disliked by the customers the sale will obviously be down. The month to month and year to year sales varies due to demand in market because of sentiments of customers according to fluctuation in gold prices, festive seasons, design of Jewellery which is in stock with assessee etc. which is not in control of the assessee.*

v) *During the course of assessment proceedings the assessee, filed the sufficient documents and submission to substantiate his claim of cash sales. On the other hand, the ld. AO could not point out any defects in such documents & submission and also could not specify the nature of details, documents etc., which were legally supposed to submit by the assessee to substantiate his claim. Therefore, the addition made by ld. AO is not as per law but the same is her sheer presumption and assumption.*

e) ***Assessment was made on surmises, conjectures and with bias pre-set mind***

(i) *At the outset we would like to submit that from perusal of the assessment order it is apparent that impugned addition u/s 68 was made by the AO in the wake of demonetization and cash deposited in demonetized currency. Though the ld. AO was duty bound to examine the genuineness of sales and source of cash deposited in bank in demonetized currency but the same exercise was made with bias pre-set mind and with sole motive to treat the same as income of the assessee in any manner. This fact is apparent from the assessment order which was framed by brushing aside & without considering the documents & submission of assessee as well as facts of assessee in right perspective, which lead to wrong addition in the income of the assessee which was not supposed to be made. The same is apparent from the fact that the amount deposited in demonetized currency out of cash balance with assessee as on 08.11.2016 is entirely added as income of the assessee presuming that as on this date the assessee did not holding any single disclosed SBN (Specified Bank Note).*

f) ***It is not compulsory or mandatory under the I. Tax Act, 1961 to collect the information related to full name, address or/and PAN of the customer to whom goods were sold in cash during the course of business below to the prescribed limit.***

i) *It is not compulsory or mandatory under the I. Tax Act, 1961 to collect the information related to full name, address or/and PAN of the customer to whom goods were sold in cash during the course of business below to the prescribed limit. It is voluntary to the customer to provide their personal information to the assessee while goods being sold. The assessee cannot enforce or compel to their customer to give their personal information and if the assessee would do it ruined to the business of the assessee.*

ii) *Further in the preceding financial year, subsequent financial years and other periods of this same financial year the same practice was being followed by the assessee where no details of name, address and PAN of customer was available with the assessee. Therefore, due to non-furnishing of address and PAN of the customer, the sale made by the assessee cannot be doubted. The cash sales of the previous months, previous years and next month or years was also made on the same trend with same set of particulars. Therefore, only the sales made and utilized for depositing the demonetized currency cannot be doubted for this reason. **It is admitted fact that each transaction should be analyzed with the point of view of the businessman, generally prevailing practice in the trade and its acceptability in the eye of law. A transaction cannot be treated as non-genuine for wants of the details which are not required to obtain and keep as per the law. The reliance is placed on the following decisions: -***

i) ***Hon'ble High Court of Bombay in the case of R.B. Jessaram Fatehchand (Sugar Dept.)v/s Commissioner of Income Tax [1970] 75 ITR 33 (Bombay) Case law Paper Book Page 153-156 held that :-***

*Section 145 of the Income-tax Act, 1961 [Corresponding to section 13 of the Indian Income-Tax Act, 1922] -*

*Method of accounting - Rejection of accounts - On assessee's inability to supply addresses of purchasers who purchased goods on cash, ITO rejected assessee's books of account showing result in respect of cash sale transactions, and made addition - AAC deleted additions but Tribunal restored ITO's orders - Whether there was no necessity whatsoever for assessee to maintain addresses of cash customers - Held, yes - Whether, therefore, rejection of book results of assessee was unjustified - Held, yes - Whether, consequently, additions made to assessee's income were liable to be deleted - Held, yes*

- ii) *Hon'ble ITAT Jaipur Bench in the case of **ACIT Circle-1 Jaipur Vs M/s Uttam Chand Deshraj (ITAT Jaipur Bench ITA No 419/JP/2010 Order dated 25/03/2011) Case law Paper Book Page 157-158** has made following findings as regard cash sales.*

*“Making some sales in cash is also no ground for rejecting the books of account. There should be some material that cash sales made by assessee either on account of sale on a lower price or sale made out of the material which is not shown in the books of account. There is no instance that cash sales have been made on lower rate than prevailing market price. In view of these facts and circumstances, we hold that there was no justification in rejecting the books of account and disturbing the trading result.”*

- 3) **Kishore Jeram Bhai Khaniya, Proprietor, M/s Poonam Enterprises v. ITO ITA No. 1220/Del/2011 ITAT Delhi Judgement dated 13.05.2014** Case law Paper Book Page 159-167

*The Hon'ble Tribunal held that*

*We find that so long as the availability of stock in there and there is nothing adverse against the cash memos issued by the assessee, such cash sales cannot be doubted. Here it is pertinent to note that the volume of such cash sales at Rs.22.06 is to be seen in the light of assessee's total turn- over of Rs.10.29 crores. It is but natural that if a customer makes cash purchase and lifts the goods, there is no duty cast upon the seller to insist for the address of the purchaser. In the light of the fact that stock record was available with the assessee, which evidenced the making of sale, we fail to appreciate as to how any addition can be made by treating cash sales as bogus.....We are dealing with a situation in which the assessee has himself offered the amount of cash sales as his income by duly including it in his total sales. Once a particular amount is already offered for taxation, the same cannot be again considered u/s 68 of the Act. In fact, such addition has resulted into double addition.”*

**g) *The ld AO has wrongly applied the provisions of section 115BBE with a motive to levy the tax on the higher slab rate.***

- (i) The addition so made taxed as per the provisions of section 115BBE of the Act while no show cause notice was given to assessee for applying this section.*
- (ii) As stated in the forgoing paras the whole purpose of the ld. AO in singling out the cash deposited in demonetized currency as arising out of unexplained sources(as against the accepted position in the past and the subsequent periods) and is to somehow trigger the provisions of section 115BBE read with section 68 of the Act to the income already offered for tax by the assessee (as cash sales) at a higher rate of tax of*

*77.25% (i.e. flat rate of 60% plus surcharge @ 25% on such tax and cess as applicable) on gross basis (without any deduction/allowance). Section 115BBE of the Act is a machinery provision to levy tax on income and it should not enlarge the ambit of section 68 of the Act to create a deeming fiction to tax any sum already credited/offered to tax as income. Section 68 of the Act traditionally applies to unexplained 'cash credit' like loans, deposits, advances, share capital, etc. and not to sums already offered to tax as income by the assessee in its return of income at the highest slab rate. Such recourse is unwarranted keeping in mind the objective to introduce section 115BBE of the Act was only to curb the practice of laundering of unaccounted money by taking advantage of the basic exemption limit.*

- (iii) *The intention of the Legislature behind introduction of section 115BBE was not to bring to tax genuine receipts already offered to tax as income by the Assessee at higher tax rates. Such an interpretation would lead to recurring attempts on the part of the revenue authorities to reject genuine explanations offered by the assessee with respect to sums credited/offered as income in its books as unsatisfactory solely to extort higher rates of taxes thereon u/s 115BBE of the Act. The A.O in exercising his powers u/s 68 of the Act is not vested with unfettered powers to reject any explanation as being not to his satisfaction merely on the basis of surmises and conjecture. The AO is bound under law to act reasonable and just while framing any satisfactory opinion surrounding the explanation offered by the taxpayer. From the facts of the case at hand, it is clear that the A.O has acted unreasonably and capriciously in rejecting the genuine explanations offered by the Assessee in respect of the impugned cash deposits as unsatisfactory solely with the aim of fastening exorbitant tax liability on the assessee under the garb of unexplained cash credit u/s 68 of the Act. Such recourse primarily hedged on surmises, conjecture, assumptions, presumptions and whims of the ld. AO is clearly unwarranted and the*

*additions so made is unsustainable in the eyes of law and thus deserves to be quashed.*

- (iv) *It is also pertinent to mention here before applying the provisions of section 115BBE of the Act the specific show caused notice did not give to the assessee and in absence of specific show cause notice the provisions of this section cannot be applied mechanically. Reliance is placed on the decision of **Hon'ble Jodhpur bench of ITAT in the case of Suraj Kanwar Devra v/s ITO 2(2), Udaipur in ITA No. 50/Jodh/2021 dated 23.11.2021***

**h) The submission on the findings/observations of ld. AO, is as under:-**

<i>Para No of AO's Order</i>	<i>Observations/findings of AO</i>	<i>Explanation of Assessee</i>
<i>Para 1 page 2</i>	<i>On perusal of details of cash sales during demonetization and same period in preceding year there is exceptional rise in sales of around 955.78% however the total sale for the entire year has decreased by 138.98%</i>	<i>The ld AO wrongly held that total sales of the current year has decreased by 138.98%. She failed to appreciate the data tabulated by her in chart at page 2 of her order. In fact the total sales during the current year has increased by 138.98%. The reason of increase was the opening of new show room in Kanpur in FY 2015-16 and it took some time to gain reputation and name. In 2016-17, at the time of Diwali, the assessee achieved good name in Kanpur and achieved good sales on the occasion of festivals, and marriages coming in next month.</i>
<i>Para 2 page 2</i>	<i>The assessee did not file evidence to substantiate its sales.</i>	<i>The ld AO made wrong and perverse findings. The assessee has filed ample documents to substantiate the sales.</i>
		<i>Particulars</i>
		<i>Copy at PB page</i>

		<i>Copy of Bank statement</i>	30-38
		<i>Copy of Cash book</i>	39-45
		<i>Summary of closing stock of FY 2016-17</i>	49
		<i>Copy of Stock register of FY 2015-16</i>	50-59
		<i>Copy of Stock register of FY 2016-17</i>	60-72
		<i>Summary of Cash deposits</i>	73
		<i>Summary of Cash Sales</i>	74
		<i>Summary of Month wise cash sales of FY 2015-16 (upto 8-11-2015 ) &amp; FY 2016-17 (upto 8-11-2016)</i>	75-76
		<i>Date wise stock position and cash position for the period from 01-10-2016 to 30-11-2016</i>	77-79
		<i>Copy of VAT returns</i>	80-85
		<i>Copy of VAT assessment order of FY 2016-17 of M/s Dinanath RajKumar Kanpur</i>	88-90
		<i>Copy of Form No. 1 &amp; 2 in respect of declaration made under Pradhan Mantri Garib Kalyan Yojana 2016</i>	91-93
		<i>Copy of Cash sale Bill</i>	<i>Mentioned at Page 87</i>
<i>Para</i>	<i>3</i>	<i>Cash Sales increased during</i>	<i>As we have stated in above paras that the</i>

<i>page 2</i>	<i>this year as compared to preceding year which creates doubts</i>	<i>assessee started new firm in Kanpur in the FY 2015-16 which took some time to establish and gain name and by the Diwali 2016 it gained good market reputation which resulted good sales near to Diwali 2016.</i>
<i>Para 4 page 2</i>	<i>Opening and Closing Stock figure not reported in audit report</i>	<i>That ,Rs. 34547822 Opening Balance as finished stock has been duly shown in Col No. 40 of Audit Report and also closing Stock of finished stock of Rs. 26352148/- has also been shown in the col No. 40 of Audit Report (PB Page 7 (backside)). However due to clerical mistake quantitative details of Stock and figure of Finished stock Rs. 75,13,415/- has not been shown in the audit report. However, the copy of stock register was filed before ld AO and no defect has been pointed out by her.</i>
<i>Para 5 (1) page 2-3</i>	<i>Majority of sales of Dinanath Rajkumar falls on 28/10/2016</i>	<i>As explained above M/s Dinanath rajkumar was new showroom opened by the assessee in 2015-16 which gained good name and reputation by Diwali 2016. Dhanteras was on 28-10-2016 which is considered as very auspicious in purchase of jewellery. This is not happened in the case of assessee only but all the jewelers witness huge sales on Dhanteras, Further the marriages were falling in next month and due to that there was huge sales.</i>
<i>Para 5 (2) page 2-3</i>	<i>The assessee has not submitted party wise details such as Pan</i>	<i>It is not compulsory or mandatory under the I. Tax Act, 1961 to collect the information related to full name, address or/and PAN of</i>

	<i>address of cash sales</i>	<i>the customer to whom goods were sold in cash during the course of business below to the prescribed limit. Detailed explanation and supporting case laws has been submitted in para (f) above.</i>
<i>Para viii at Page 3</i>	<i>The assessee has not offered any acceptable and cogent explanation regarding of source of cash deposit of Rs. 1,03,00,000/- in demonetize money.</i>	<p><i>Wrong and perverse findings made by ld AO.</i></p> <p><i>The assessee deposited Rs. 12.00 in non-demonitized currency which was declared in PMGKY 2016 for which copy of Form No 1 &amp; 2 was filed before the AO. The addition of this amount is tantamount to double taxation.</i></p> <p><i>Rs. 91.00 lacs was against sales which has already been credited in Trading Account, and the same has been taxed after deducting the expenses. The ld AO has accepted the books of account. The taxation of the same amount as unexplained cash credit u/s 68 is tantamount of double taxation and also against the decision pronounced by Hon'ble jurisdiction High Court in the case of <b>Smt. Harshila Chordia vs Income-tax Officer [2008] 298 ITR 349 (Rajasthan) Case law Paper Book page 147-152</b></i></p> <p><i>Detailed explanation against the findings made by ld AO has been submitted in para c(i) above.</i></p>
	<i>AO relied upon Supreme Court decision in the case of Srilekha</i>	<i>The cited case is not applicable for the case of assessee. The assessee has submitted ample documents such as cash Book, bank</i>

	<i>Banerjee Vs CIT</i>	<i>statement, stock register, bills of cash sales, Vat returns etc to prove cash sales. <b>Hon'ble Supreme Court in the same case has observed that the Income Tax Department cannot by merely rejecting unreasonably a good explanation, convert good "proof into no proof"</b></i>
	<i>Ao relied upon decision of Rajasthan high court in the case of Kailash Swaroop Agarwal Vs CIT , Ajmer</i>	<i>The cited case is not applicable for the case of assessee. This case relates to acceptance of loan in cash whereas our case relates to cash sales from the stock in hand. .</i>

***h) Case laws relied upon by the ld AO are on different facts and not applicable for the case of assessee.***

***a) In the case of Smt. Srilekha Banerjee and others Vs CIT, Bihar & Orissa reported in 1964 AIR 697, dated 27/03/1963 it was held that It was not correct that the assessee was not required to prove anything and that the burden was entirely upon the department to prove that the amount received from the encashment of high denomination notes was income. Thus, in this relied upon case the assessee did not submitted any evidence to prove her claim, while in the case of the assessee he submitted substantial documents to prove his claim in which the ld. AO did not pointed out any defect. Thus, the facts of this relied upon case in entirely different from the case of assessee.***

***b) The case of K Kailash Swaroop Agarwaal vs CIT, Ajmer, Hon'ble Rajasthan High Court in ITA No. 175 of 2012 was decided in the factual background of proving the ingredients of section 68 of the Act regarding the loans accepted by assessee in cash. The case of the assessee in not so, therefore the facts of this relied upon case in entirely different from the case of assessee***

***i) In support of our submission reliance is placed on following judgements: -***

- 1) **2021 (5) TMI 447 - ITAT Visakhapatnam Asst. Commissioner of Income Tax, Central Circle-1 Visakhapatnam Versus M/S Hirapanna Jewellers And (Vice-Versa) Case Law Paper Book 181-184**

*Addition u/s 68 r.w.s 115BBE - assessee had deposited the sum in high denominations of specified bank notes (SBNs) post demonetization - CIT-A deleted the addition - HELD THAT:- The assessee produced the newspaper clippings of The Hindu, The Tribune and demonstrated that there was huge rush of buying the jewellery in the cities consequent to declaration of demonetization of ₹ 1000 and ₹ 500 notes on 08.11.2016.*

*As 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 [[2010 \(4\) TMI 1070 - DELHI HIGH COURT](#)] and Vishal Exports Overseas Ltd. [[2012 \(7\) TMI 1110 - AHMEDABAD HIGH COURT](#)]*

- 2) **ITAT Delhi in Argon Global Pvt Ltd vs ACIT CC-28, Delhi ITA No 3741-3746/Del/2019 order dated 31/10/2019 case Law Paper Book Page No 258-321.**

***Finding of ITAT***

*1. Firstly, ITAT observed that both the Assessing Officer and Ld. CIT (A) erred in deeming the total cash deposits during the demonetization period (9th Nov 2016 to 30th Dec 2016) as Rs. 180.53 Cr instead of the actual deposits of Rs. 175.28 cr during the said period. While arriving at the said figure of Rs. 180.53 crores, the Revenue Authorities had erroneously considered the total cash deposits of Rs. 5.25 crores (made on 31st Dec 2016) instead of the*

*actual cash deposited during the demonetization period of Rs. 175.28 Cr.*

*2. Further, even out of Rs. 175.28 Cr, deposits of Rs. 63.41 crores were in new currency notes and non-demonetized old currency notes (Rs. 10/20/50/100). Thus, ITAT held the said amount of Rs. 63.41 crores could not be construed as cash deposited into the banks as a result of demonetization also the amount disclosed by the assessee in PMGKY scheme needed to be deleted from the addition.*

*3. With respect to the deposit of the cash on hand with the various bank, the explanation of the assessee that no such bank was accepting such a huge cash at one go and therefore assessee had to deposit the cash in various banks.*

*The assessee also submitted that that in the same bank assessee has deposited cash in its 2 different branches which itself proves that the banks were not accepting such a huge deposit.*

*Even otherwise, it was submitted correctly that merely because the cash holding as on 8/11/2016 was not deposited immediately cannot lead to conclusion that assessee did not have that cash.*

*It can merely lead to a suspicion but based on this addition cannot be made without making further enquiry and conclusively proving that assessee did not have that kind of cash available with it.*

*Even otherwise, if the assessee had to introduce his unaccounted money he would have deposited it at the first instance.*

*4. ITAT observed that assessee also filed its VAT returns, which are not found to be in variance with the accounting and tax records. Therefore, it cannot be substantiated that the assessee has backdated the transactions of the sale.*

*5. ITAT further observed that CBDT had issued various standard operating procedures under 'Operation Clean money'. ITAT opined that "...it is very important to note that whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money."*

6. *In the result the addition of Rs. 73.13 crore sustained by Ld CIT(A) on account of deposit of demonized currency was deleted by Hon'ble ITAT.*

***In appeal by the Revenue, the Hon'ble High Court Pr. CIT (Central)-3 V/s M/s Agson Global Pvt. Ltd. In ITA No. 68-73/2021 order dated 19-01-22 dismissed the bunch of appeals filed by the Revenue by observing in para 17.6 as under:***

*“17.6. Having regard to the extensive material which has been examined by the Tribunal, in particular, the trend of cash sales and corresponding cash deposited by the assessee with earlier years, we are of the view that there was nothing placed on record-which could have persuaded the Tribunal to conclude that the assessee had, in fact, earned unaccounted income i.e., made cash deposits which were not represented by cash sales. Therefore, in our opinion, the Tribunal correctly found in favour of the assessee and deleted the addition made by CIT(A) of Rs.73.13 crores, under Section 68 of the Act.”*

3) ***ITAT Chandigarh in the case of Smt Charu Agarwal & M/s Kalanidhi Jewellers Vs DCIT ITA No 310 & 311/Chd /2021 order dated 25/03/2022***

*The findings of Hon'ble ITAT is in para 10 of the order. Hon'ble ITAT after considering the decision of the Hon'ble Delhi High Court in the case of Pr. CIT (Central)-3 V/s M/s Agson Global Pvt. Ltd. In ITA No. 68-73/2021 and various other High Courts and decision of Hon'ble ITAT Vishakhapatnam Bench on identical issue in the case of ACIT v/s Hirapanna Jewellers (2021) 128 Taxmann.com 29 held that the assessee was maintaining complete stock tally, the sales were recorded in the regular books of accounts and the amount was deposited in the bank account out of the sale proceeds, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified.*

*Sales made by the assessee to cover the cash deposited in the bank post demonetization, was sufficient source of the cash deposited i.e; the sales from the existing stock available with the assessee and was well explained, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified. - Decided in favour of assessee.*

**4) 2021 (1) TMI 837 - ITAT Gauhati Nurul Islam Versus Ito, Ward-2, Nagaon) Case Law paper Book page 185-186**

*Addition u/s 68 - Cash deposits of special Bank notes of ₹ 500/- and ₹ 1000/- made during the demonetization period - According to Ld. A.R, a perusal of bank statement would reveal that there were regular bank deposits of cash and payment to the creditors (tea vendors) - HELD THAT:- As explained, the deposit of ₹ 8,75,000/- [₹ 2,00,000/-accepted by AO] cannot be said to be as result of non-genuine business receipt or a case of black money and therefore, in the peculiar facts narrated above, including the past history taken note of and the pattern of money deposited pre-demonetization and post that event as discussed, addition was not warranted and it is directed to be deleted; and further, profit embedded in ₹ 8,75,500/- need to be taxed @ 8% and it is ordered accordingly. Appeal of the assessee is partly allowed.*

**5) 2021 (12) TMI 599 - ITAT Bangalore Anantpur Kalpana Versus Ito, Ward - 1, Koppal.**

*Unexplained cash deposits in two bank accounts - Legal tender money in demonetization of currency - AO culled out, the deposits that was made of bank notes that were declared as not legal tender owing to demonetization of currency - HELD THAT:- Both AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. Addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already*

**admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation.**

*Assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources.*

*As in the case of CIT Vs. Associated Transport Pvt. Ltd. [1994 (1) TMI 18 - CALCUTTA HIGH COURT] on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources.*

**When cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee 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 - See M/S HIRAPANNA JEWELLERS AND (VICE-VERSA) [2021 (5) TMI 447 - ITAT VISAKHAPATNAM] - thus the addition made is not sustainable and the same is directed to be deleted. Appeal of the assessee is allowed.**

- 6) 2021 (2) TMI 737 - ITAT Gauhati Nilkantha Saha Versus ITO, Ward-Morigaon

*Unexplained cash credit u/s 68 - cash deposited during the demonetization period - AO acknowledges that the assessee has filed audited accounts and produced copy of the ledger of the sales and*

*purchases along with copy of the books related to the purchase and sales made by the assessee without supporting bills and invoices - HELD THAT:- As brought to notice by the Ld. A.R that assessee is into dry fish business and his accounts are audited for the last seven (7) years. - the profit embedded in sales amount has been accepted by the AO, so, question is whether separate addition is justified and whether this action of AO amounts to double addition of the same trading receipt.*

*No doubt in such a factual scenario, it amounts to double addition. When the justifiability of separate addition is to be examined, it should be borne in mind that the AO is making a 'guess' about the source of demonetized currency. And the assessee is assailing the 'guess work' with an explanation which should be tested; and if the explanation given by the assessee is a plausible/probable from a traders/business man's/prudent man's angle/view, then that cannot be brushed aside by the AO, without disproving the explanation / facts or by giving cogent reasons.*

*Statement of bank accounts of assessee (3 bank accounts) it is noted that assessee has deposited in his three bank account (pre-demonetization) an amount to the tune of ₹ 2,38,94,037/- and during (Post-demonetization period) the assessee had deposited to the tune of ₹ 2,38,94,037/- and it is found that the total bank deposit tallys with the figure shown in trading account i.e., ₹ 4,76,78,990/- (₹ 4.76 crores). So taking into account all these facts and circumstances and demonetization being declared on the night of 8/9th November, 2016, it is noted that AO has accepted the invalid currencies to the tune of ₹ 11,08,796/- because it was shown by the assessee in his regular books maintained as on 08.11.2016. The assessee's explanation in respect of ₹ 12,41,704/- is that it is the amount which has been deposited by the sundry debtors as on 08.11.2016 which is found to be correct for the*

*reason that the sundry debtors as on 08.11.2016 was to the tune of ₹ 14,93,120/- as is evident from the list of sundry debtors .*

*So on the same reasoning as adopted by the AO to have accepted ₹ 11,08,796/- (invalid currency notes) as genuine (trade receipt), I find no reason not to accept the explanation of assessee that ₹ 12,41,704/- was deposited by the sundry debtors reflected in the books as on 08.11.2016. And since the AO has accepted the sales/turnover of the assessee which were reflected in the audited books of accounts, as well as the explanation of assessee is supported by material on record, the AO/Ld. CIT(A)'s action of addition of ₹ 12,41,704/- cannot be countenanced. So on this factual finding the assessee's explanation regarding ₹ 12,41,704/- is plausible. And it is noted that the AO / Ld. CIT(A) / Ld. D.R could not disprove or controvert this fact and so it is accepted. In the aforesaid facts and circumstances, the assessee depositing invalid notes to the tune of ₹ 12,41,704/- cannot be disbelieved as from any tainted source or termed as black money. So taking into consideration the peculiar over all facts and circumstances discussed supra, it is directed that the addition of ₹ 12,41,704/- be deleted - Appeal of the assessee is allowed.*

**7) Lalchand Bhagat Ambica Ram Vs. CIT (1959) 37 ITR 288 (SC))  
Case Law paper Book page 187-199**

*which is set in somewhat similar back drop in connection with treatment of the encashment of high denomination notes by the assessee therein on the promulgation of High Denomination Bank Notes (Demonetization) Ordinance, 1946 as unexplained money on mere conjecture and surmise of the Revenue Authorities. The relevant facts of the said case are that the ITO in the course of the assessment noticed that the appellant therein had encashed high denomination notes of the value of ₹ 2,91,000. The ITO asked for an explanation, which the appellant gave stating that these notes formed part of its cash balances including cash balance in the Almirah account. The*

*appellant sought to prove the fact that the high denomination notes encashed by it formed part of its cash balances from certain entries in its accounts wherein the fact that moneys were received in high denomination notes had been noted. Portions of these entries to the effect that moneys had been received in high denomination notes were found by the ITO to be subsequent interpolations made by the appellant with a view to advance its case that the cash balances contained the high denomination notes encashed by it. The ITO rejected the appellant's explanation that the high denomination notes formed part of its cash balances and treated the sum of ₹ 2,91,000 as the appellant's secreted profits from business and included it in its total income and assessed the appellant. Before the Tribunal, the appellant stated that the said entries were made in sheer nervousness after the coming into force of the High Denomination Bank Notes (Demonetization) Ordinance, 1946, on 12th Jan., 1946, as the appellant did not know that it had specific proof in its possession of having the high denomination notes as part of its cash balances. The Tribunal held that there was no other reason to suspect the genuineness of the account books in which these interpolations were made. If the entire account books were fabricated to serve its purpose, there would be no need for the appellant to make interpolations between the lines already written in a different ink and in such an obvious manner as to catch one's eye on the most cursory perusal. The Tribunal, however, examined the cash book and taking into consideration all the circumstances which had been adverted to by the ITO held that the appellant might be expected to have possessed as part of its business cash balance of at least ₹ 1,50,000 in the shape of high denomination notes on 12th Jan., 1946, when the Ordinance above-mentioned was promulgated. The Tribunal came to the conclusion that the nature of the source from which the appellant derived the remaining 141 high denomination notes of ₹ 1,000 each remained unexplained to its satisfaction. It accordingly ordered that the addition be reduced from ₹ 2,91,000 to ₹ 1,41,000. On the said*

*facts, the Hon'ble Supreme Court held that—the Tribunal having held that books of assessee were genuine which showed a cash balance of ₹ 3,10,681 on the relevant date; the Tribunal could not have accepted the cash balance of ₹ 1,50,000 out of the value of high denomination notes of the value of ₹ 2,91,000 and treated the balance ₹ 1,41,000 as income from undisclosed sources. It was held that in doing so, The Tribunal had indulged in conjectures and surmises and acted without any evidence or upon a view of facts which could not reasonably be entertained. The relevant excerpts from the order of the Hon'ble Apex Court are reproduced hereunder:*

*If the entries in the books of account in regard to the balance in Rokar and the balance in Almirah were held to be genuine, logically enough there was no escape from the conclusion that the appellant had offered reasonable explanation as to the source of the 291 high denomination notes of ₹ 1,000 each which it encashed on 19th Jan., 1946. It was not open to the Tribunal to accept the genuineness of these books of account and accept the explanation of the appellant in part as to ₹ 1,50,000 and reject the same in regard to the sum of ₹ 1,41,000. Consistently enough, the Tribunal ought to have accepted the explanation of the appellant in regard to the whole of the sum of ₹ 2,91,000 and held that the appellant had satisfactorily explained the encashment of the 291 high denomination notes of ₹ 1,000 each on 19th Jan., 1946. [para 14]*

*The Tribunal, however, appears to have been influenced by the suspicions, conjectures and surmises which were freely indulged in by the ITO and the AAC and arrived at its own conclusion, as it were, by a rule of thumb holding without any proper materials before it that the appellant might be expected to have possessed as part of its business, cash balance of at least ₹ 1,50,000 in the shape of high denomination notes on 12th Jan., 1946,-a mere conjecture or surmise*

*for which there was no basis in the materials on record before it.  
[para 15]*

*Unless the Tribunal had at the back of its mind the various probabilities which had been referred to by the ITO it could not have come to the conclusion it did that the balance of ₹ 1,41,000 comprising of the remaining 141 high denomination notes of ₹ 1,000 each was not satisfactorily explained by the appellant. [para 18]*

*If the entries in the books of account were genuine and the balance in Rokar and the balance in Almirah on 12th Jan., 1946, aggregated to ₹ 3,10,681-13-9 and if it was not improbable that a fairly good portion of the very large sums received by the appellant from time to time, say in excess of ₹ 10,000 at a time, consisted of high denomination notes, there was no basis for the conclusion that the appellant had satisfactorily explained the possession of ₹ 1,50,000 in the high denomination notes of ₹ 1,000 each leaving the possession of the balance of 141 high denomination notes of ₹ 1,000 each unexplained. Either the Tribunal did not apply its mind to the situation or it arrived at the conclusion it did merely by applying the rule of thumb in which event the finding of fact reached by it was such as could not reasonably be entertained or the facts found were such as no person acting judicially and properly instructed as to the relevant law could have found, or the Tribunal in arriving at its findings was influenced by irrelevant considerations or indulged in conjectures, surmises or suspicions in which event also its finding could not be sustained. [para 19]*

*As the conclusion of the ITO was thus either perverse or vitiated by suspicions, conjectures or surmises, the finding of the Tribunal was equally perverse or vitiated if the Tribunal took count of all these probabilities and without any rhyme or reason and merely by a rule of thumb came to the conclusion that the possession of 150 high denomination notes of ₹ 1,000 each was satisfactorily explained by*

*the appellant but not that of the balance of 141 high denomination notes of ₹ 1,000 each.[para 20]*

*Therefore, the Tribunal in arriving at the conclusion in the present case indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in other words, perverse and the Court is entitled to interfere. [para 23]*

**8) *Hon'ble Supreme Court in the case of Mehta Parikh & Co. V/s. CIT (1956) 30 ITR 181 held as under:)* Case Law paper Book page 200-207**

*“The finding of the Tribunal that high denomination notes of the value of ₹ 30,000 represented the concealed profits of the appellant is not supported by any evidence, and is, in consequence, erroneous in point of law and liable to be set aside. 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 shown therein, that notes in question could not have been included therein. The Tribunal observes that it is unlikely that so many high denomination notes would have been held as part of the cash on hand for a such a large number of days. That, no doubt, is highly suspicious; but the decision of the Tribunal must rest not on suspicion but on legal testimony.”*

**9) *Lakhmi chand Baijnath V. CIT [1959] 35 ITR 416 (SC.)***

***Case Law paper Book page 208-211***

*Amount credited in business books can normally be presumed as business receipt. When an amount is credited in business books, it is not an unreasonable inference to draw that it is a receipt from business*

**10) Hon'ble Allahabad High Court in the case of Sri Ram Tandon Vs. CIT (1961) 42 ITR 689 ordained as under: Case Law paper Book page 212-216**

*“It appears extremely difficult to appreciate how the Tribunal thought it necessary or proper to make an estimate of 35 notes at ₹ 1,000 each to have been contained in the cash balance. The Tribunal has given no reason whatever for its finding that the assessee possessed 35 notes of ₹ 1,000 each on the day the Ordinance was promulgated. This evidently is an arbitrary expression of its own guess, which cannot be accorded the status of a finding. Equally arbitrary is the other finding that the balance of 10 notes was from an undisclosed source. After having heard counsel for the Department and after giving best consideration to the matter one is quite unable to see any reason or basis for the so called finding recorded by the Tribunal that the assessee was in possession of 35 notes on the day the Ordinance was promulgated or that 10 notes were from some undisclosed source. These cannot be recognised as finding at all. The assessee's business was not one in which large amount of petty notes might have been necessary for the purpose of business, and keeping money in large notes is evidently more convenient for counting, for making payments and for other purposes and no material has been placed to show that the explanation offered by the assessee was one which was inherently improbable or one which could not be accepted. The so-called estimate made by the Tribunal was based on no reason and was a mere guess. In fact there was no justification in the circumstances of the case for making an estimate at all. The assessee had a large cash balance which could very conveniently include the 45 high denomination notes encashed by him. The explanation offered by the assessee was not unreasonable and nothing has been said which could justify its being rejected as unreasonable. On the other hand the so-called estimate by the Tribunal is based on no reason and is purely arbitrary and cannot be upheld as legal.”*

**11) *Hon'ble Allahabad High Court in the case of Kanpur Steel Co. Ltd. Vs. CIT (1957) 32 ITR 56 (All) opined as under: Case Law paper Book page 217-219***

*“when the assessee-company had given an explanation which was reasonable, the IT authorities could have been entitled to treat the sum of ₹ 32,000 as income from undisclosed sources only if there was some other material from which such inference could have been drawn. No other material has been mentioned by the Tribunal in their appellate judgment or in the statement of the case. It further appears that the Tribunal, in holding that seven high denomination currency notes of the value of ₹ 7,000 only could form part of the cash balance and the remaining currency notes could not do so, were acting on their surmises for which there was no basis and which had no support from any material on the record. In these circumstances, it must be held that there was no material for holding that the sum of ₹ 25,000 being the value of high denomination currency notes exchanged in pursuance of the High Denomination Bank Notes (Demonetisation) Ordinance, 1946, represented income of the assessee company from some undisclosed sources.”*

**12) *Madhuri Das Narain Das Vs. CIT (1968) 67 ITR 368 (All) Case Law paper Book page 220-221***

*Section 4 of the Income-tax Act, 1961 [Corresponding to section 3 of the Indian Income-tax Act, 1922] – Income – Chargeable as – Assessment year 1947-48 – Assessee encashed 28 high denomination notes of Rs. 1,000 each after issuance of High Denomination Bank Notes (Demonetisation) Ordinance, 1946 – When asked to explain source of said notes, assessee submitted that same had come out of closing cash balance of its business – ITO disbelieved explanation and treated entire amount as assessee's income from an undisclosed source – Tribunal accepted that 22 notes could have come out of cash balance of Rs. 38,000 and odd, and remaining 6 notes could not have*

*formed such balance – Whether finding of Tribunal, being based upon surmises and conjectures, could not be upheld – Held, yes*

**13) K.S. KannanKunhi Vs. CIT (1969) 72 ITR 757**

**Case Law paper Book page 222-224**

*Thus we find that the Income-tax Officer and the Appellate Assistant Commissioner also have not considered the acceptability or otherwise of the assessee's explanation, except making an assertion that it was not acceptable. The other important aspect, namely, whether, on the facts and in the circumstances of the case, it should be inferred that these amounts constituted income of the previous year, though the explanation offered by the assessee was not acceptable, did not receive the consideration of the Appellate Tribunal or the subordinate authorities. Except some agricultural properties, whose annual income came to about Rs. 6,000 according to the assessee, it had no known source of income in India, until it started the toddy business on August 17, 1950. Nor is there any material in the case even to raise a reasonable suspicion that the assessee indulged in any activity of an income-earning nature in the accounting year or in prior years. In these circumstances, a finding that the sum of Rs. 60,518 found with the assessee must be its income from undisclosed sources during a period of about seven and a half months prior to August 17, 1950, appears a little preposterous. Whatever it may be, the explanation offered by the assessee was not on the face of it improbable, though it is entirely a matter for the fact-finding authority to accept it or not. But if the Appellate Tribunal rejects the explanation without considering its acceptability in the light of the facts and circumstances of the case, or it rejects the explanation without stating any grounds whatsoever, or upon a view of facts which could not reasonably be entertained by any person acting judicially, the case would fall within the principle laid down by the Supreme Court in Mehta Parikh & Co.'s case (supra), and the*

*finding of the Tribunal would not be valid. In our view, the same is the position in this case; the addition of Rs. 60,813 as the income of the assessee from undisclosed sources was not valid or justified.*

**14) Hon'ble Supreme Court in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 72ITR194 (SC) Case Law paper Book page 225-228**

*that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again.*

**15) Hon'ble High Court of Allahabad in the case of Gur Prasad Hari Das vs Commissioner of Income Tax [1963] 47 ITR 634 (Allahabad) Case Law paper Book page 229-231**

*Section 143 of the Income-tax Act, 1961 [Corresponding to section 23(3) of the Indian Income-tax Act, 1922] - Assessment – Addition to income - Assessment year 1947-48 – On demonetisation of high denomination notes assessee encashed 21 such notes, part of which were held, by Tribunal as his income from undisclosed sources on ground that same could not be satisfactorily explained by assessee – Whether, prima facie value represented by high denomination notes in possession of assessee must be presumed to be part of his cash balance and if department wanted to treat such value as his concealed income from some undisclosed sources, it was for department to establish that fact on basis of material in their possession – Held, yes – Whether in view of fact that Tribunal accepted assessee's case at least with regard to eight notes and further that it made its own estimate of cash balance of assessee confining some proportion of high denomination notes implying thereby possibility of assessee receiving such notes during course of his business, Tribunal committed an error in not accepting assessee's*

*explanation in toto in regard to all notes – Held, yes – Whether, in view of aforesaid, there was no material before Tribunal for holding that assessee could not have been in possession of any of remaining thirteen notes also and that those notes or any part of them represented income of assessee from some undisclosed sources – Held, yes*

- 16) Hon'ble High Court of Bombay in the case of Narendra G Goradia vs Commissioner of Income Tax [1998] 101 Taxman 571 (Bombay)/[1998] 234 ITR 571 (Bombay)/[1999] 154 CTR 365 (Bombay)**

**Case Law paper Book page 232-237**

*Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment year 1979-80 - In relevant period assessee had tendered notes of Rs. 1000 denomination valuing Rs. 2 lakhs for encashment - There was no dispute about source of money nor about fact that there was sufficient balance on date of deposit - Assessing Officer, however, made additions of part of amount for want of details of receipts of some of high denomination notes - Whether there was no justification for adding a portion of amount tendered by assessee for encashment of high denomination notes as income of assessee from undisclosed sources for alleged failure of assessee to furnish source of acquisition of amount in such notes - Held, yes*

- 17) CIT v. Vishal Exports Overseas Ltd., Tax Appeal No. 2471 of 2009 decided by Gujarat High Court on 03.07.2012**

**Case Law paper Book page 238**

*In the facts of above case the assessee was an exporter. The issue was regarding sale of Rs.70 lacs included in turn-over which was more than 500 crores. The assessee had claimed deduction u/s 80HHC of the Act. On the basis of information received by the Assessing Officer*

*from investigation he considered the entry for export of 70 lacs as bogus. He denied benefit u/s 80HHC of the Act. Further, he made addition of Rs. 70 lacs in the income u/s 68 of the Act. It was held that once the assessee has already included the amount of sale of Rs. 70 lacs in Profit and Loss Account and determined the income on that basis no further addition could be made u/s 68 of the Act as it would tantamount to double taxation of same income. The Assessing Officer could only reject claim u/s 80HHC of the Act.*

**18) CIT v/s. Kailash Jewellery House ITA No. 613/2010 decided by Delhi High Court on 09.04.2010 Case Law paper Book page 239**

*In the facts of above case cash of Rs.24,58,400/- was deposited in bank account. The Assessing Officer made the addition on the ground that nexus of such deposit was not establish with any source of income. The assessee claimed that it was duly recorded in the books on account of cash sales and was considered in the Profit and Loss Account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book was submitted to the Assessing Officer and no discrepancy was pointed out. On this basis CIT(A) deleted the addition. Tribunal also observed that it is not in dispute that 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. Therefore, cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The Hon'ble High Court dismissed the appeal filed by the Department. Promulgated*

**19) 2021 (10) TMI 1139 - ITAT DELHI Neeru Jain Versus Ito, Ward-67 (4) Delhi Case Law paper Book page**

***Addition u/s 69A - Cash deposits during the demonetization period - Assessee submitted that the savings were out of accumulated savings***

*in the form of pin money and minor cash gifts received by her from her parents and in-laws on the occasion of birthdays, anniversaries etc. - HELD THAT:- CIT(A) grant relief to ₹ 50,000/- and upheld the addition to the extent of ₹ 2,00,000/-. Before us, assessee has submitted that the deposits to be out of accumulated savings and out of the cash gifts received by her on the occasion of birthdays and anniversaries. It is also a fact that assessee's husband is an income tax payer working for an MNC.*

*In view of the CBDT Circular vide Instruction No. 03/2017 dated 21st February 2017 and relying on the decision of SMT. UMA AGRAWAL BABA KAPUR SUNARAN KA MOHALLA VERSUS I.T.O -1 (3) GWALIOR, M.P. [2021 (6) TMI 712 - ITAT AGRA], the explanation of the assessee about the source of cash deposits cannot be brushed aside without there being any evidence to the contrary.- Decided in favour of assessee.*

- 20) **2021 (9) TMI 1192 - ITAT VISAKHAPATNAM DY. Commissioner Of Income Tax Circle-3 (1) Visakhapatnam Versus Sri Jaya Prakash Babu Valluri And (Vice-Versa)**

*Cash deposits made during demonetization period, which was added back to income u/s 69A - HELD THAT:- CIT(A) observed that the assessee is maintaining regular books of accounts and the deposits were made out of the book balances and therefore, following the decision of Karthik Constructions [[2018 \(3\) TMI 39 - ITAT MUMBAI](#)] the Ld. CIT(A) held that there is no case for making the addition, accordingly deleted the addition.*

- 21) **2021 (9) TMI 627 - ITAT DELHI Muon Computing P. Ltd., Versus Ito, Ward-17 (2) , New Delhi.**

*Addition of high cash in hand - high cash on hand disclosed in the balance sheet as compared to the preceding year - HELD THAT:-*

*Revenue has not brought any material suggesting that the withdrawal made by the assessee were utilized for making payments. It is also not brought on record that the amounts so withdrawn from the bank account was utilized for any other undisclosed purposes - CIT(A) observed that despite having sufficient cash in hand, the assessee withdraw the amount. It is correct that the assessee has withdrawn higher amounts than the immediate preceding years but that cannot be sole reason for making addition purely on the basis of suspicion.*

*We failed to understand the reasoning of the Assessing Officer that the amount was withdrawn to justify the cash deposits during demonetization period i.e. between 09.11.2016 to 30.12.2016. It is also seen that the cash was withdrawn much prior to such event. So far observation regarding sharp increase in payable expenses is concerned, there is no finding by the Assessing Officer that such expenses are bogus - addition has been made purely on the basis of suspicion. Such action of authorities below cannot be affirmed - Decided in favour of assessee.*

- j) Drawing inference from the above cited cases, in the instant case, the assessee furnished a reasonable explanation with regard to the nature and source of the cash deposited in banks in demonetized currency which was not found to be false by the Department. The explanation offered by the assessee was in line with the trend of cash deposits in the past years which was accepted by the Department in the assessments framed u/s 143(3) of the Act in the past and future. No material was brought on record by the Revenue Authorities to draw an inference that the explanation offered by the Assessee was incorrect or unreasonable or that the impugned sum represented income of the assessee from undisclosed sources as against the entries recorded in the audited books of the Assessee. The cash deposited in banks against from the explained source could not be treated as undisclosed income of the Assessee u/s 68 without bringing on record any credible evidence/material in support of such allegation merely on the basis of surmises and conjecture of the ld. AO.*

h) *Without prejudice to our forgoing submission we may further submit that amendment provisions of section 115BBE of the Act as amended by the Taxation (Second Amendment) Act, 2016 are applicable from 15.12.2016 and are not retrospective in operation and therefore not applicable to the cash deposited in the bank prior to 15.12.2016. The Tax laws as the Taxation (Second amendment) Act, 2016 was amended on 15.12.2016 and received the ascent of President of India on the said date. It was submitted that though the amendment was applicable for assessment year 2017-18 but only on income referred to in said section pertaining to the date after 15.12.2016. As in case of the assessee, the cash in demonetized currency was lastly deposited on 12.12.2016 and accordingly at the material time, old provisions of section 115BBE were applicable. The amendment provisions are not retrospective in operation and are not applicable in the present case and therefore the ld. AO has been wrongly taxed the addition made u/s 68 of the Act by applying the amended provisions. In support of this the reliance is place on decision of **Hon'ble Supreme Court in case of Karim tharuvi Tea Estate Ltd. vs. State of Kerala [1966] 60 ITR 262 (SC).***

*10. Now, it is well-settled that the Income-tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into, force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.*

*18. The Surcharge Act having come into force on September 1, 1957, and the said Act not being retrospective in operation, it could not be regarded as law in force at the commencement of the year of assessment 1957-58. Since the Surcharge Act was not the law in force on April 1, 1957, no surcharge could be levied under the said Act against the appellant in the assessment year 1957-58.*

i) *In view of above submission it is submitted that entire sales of the assessee are supported by the bills, duly verifiable from books of accounts & records and the*

*same is completely genuine. The ld. AO did not specify any defects in the sale and the sale is in line of its own previous history of the assessee. The ld. AO could not brought any single evidences on record to prove his allegation to be correct. Further all the surrounding circumstances and human probability of this much cash sale are also in favour of the assessee. The assessee submitted the best possible details/information/documents/explanation to present its case before ld. AO and as explained in forgoing paras no specific defects had been pointed out by ld. AO therein. The entire assessment order is based on presumption and assumption by twisting the data and drawn the conclusion therefore as per his own whims just to make the huge addition. There is no abnormal rise in the cash sale made by the assessee. The sales are genuine and supported by the proper invoices and properly shown in the VAT return, which also accepted by the VAT authorities, therefore, the same cannot be considered as fabricated or manipulated transactions.*

*It is further relevant to mention here that ld. AO alleged that cash deposited in bank account in demonetized currency is undisclosed income of the assessee which deposited under the garb of cash sales. In this regard it is submitted that there is no evidence with ld. AO to support this allegation. The assessee is having only source of income from business of Jewellery and except to that the assessee is not having any other business. The ld. AO also could not prove the source of generation of undisclosed income. Therefore, merely on the basis of presumption and assumption no such addition can be made in total income of the assessee.*

*Thus, addition u/s 68 of Income Tax Act, 1961 is completely wrong, unjustified, perverse and not according to the settled principal of law, therefore the same deserves to be deleted and Ld CIT(A) has rightly deleted the addition.”*

5. We have heard the rival contentions and perused the material available on record and gone through the orders of the lower authorities. The assessee is an individual and deriving income from business of jewellery. The books of account of the assessee are audited by the independent Chartered Accountant and copy of

audit report and statement of profit and loss account is filed by the assessee. It is noted from the record that the case of the assessee was taken up for scrutiny for assessment u/s 143(3) and desired information by the AO were submitted by the assessee from time to time. The AO noticed that the assessee has deposited cash amounting to Rs. 91,00,000/- in its two bank accounts No. 50200017462772 account No. 02892020002124 with HDFC Bank Limited in Specified Bank Notes (SBN) during the demonetization period 12/11/2016 and 13/11/2016, and Rs. 12,00,000/- in non-demonetized currency on 28/03/2017 and this Rs. 12,00,000/- was offered for Income under "Pradhanmantri Garib Kalyan Yojna-2016" and the assessee has filed copy of Form 1 and Form 2 at APB at 91 to 93. However, the AO made the addition of Rs. 91,00,000+12,00,000 totaling to Rs. 1,03,00,000/- and the AO treated the sales as unexplained cash credit of the assessee u/s 68 of the Act and added the same to the income of the assessee and thus taxed it as per the provisions of Section 115BBE of the Act and vide her order dated 30-12-2019 assessed the income of the assessee at Rs.1,43,11,520/- as against return income of Rs.40,11,520/-. The CIT(A) has deleted the addition on the basis of her findings in para 4.2 at pages 20-26 of her order as under:-

***"4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-***

***(i) Brief facts related to the issue are that AO noticed that the appellant has deposited cash of Rs. 1,03,00,000/- in its bank account during demonetization period viz. between 09.11.2016 to 30.12.2016 out of which cash of Rs. 91,00,000/- was in the demonetized currency notes***

*(SBN i.e. Old Rs. 500 and Rs. 1000 notes). The appellant has explained it to be out of cash sales made by the appellant. AO tried to analyze the cash sale vis-à-vis cash sales in the earlier years and had also observed that the cash sale so shown during the demonetization is exceptionally high vis-à-vis cash sale in FY 2015-16 however the AO also observed that the total sales for the entire year has decreased substantially in the current FY when compared with the previous year. Accordingly the AO observed that these cash sales are not real sales and the assessee has tried to introduce his own unaccounted money in the garb of cash sales and therefore made addition of aforesaid amount of Rs. 1,03,00,000/-.*

**(ii)** *The Ld. AR has furnished detailed explanation on this issue. The crux of the explanation is that complete regular books of accounts, bills, vouchers and day to day stock register having complete quantitative details have been maintained by the appellant which have been duly audited. It was submitted that the cash sale transactions are recorded in the regular books of accounts, sales are made out of stock-in-trade and the said Stock Register was produced before the A.O alongwith sales invoices, bills, Bank statements & VAT Returns and also demonstrated correlation of such cash sales with purchase and stock of business in the course of assessment proceedings. It was further contended that the appellant has charged VAT on all bills and all such sales have been reflected in the VAT Returns of the appellant. It was further contended that cash amounting to Rs. 91,00,000/- was only deposited in demonetization currency and the balance cash of Rs. 12,00,000/- was deposited in non-demonetized currency on 28.03.2017 which too was offered for income under "Pradhan Mantri Garib Kalyan Yojana-2016" and therefore the addition of Rs. 12,00,000/- is patently wrong.*

**(iii)** *I have considered the facts of the case and it is observed that the sales are made out of stock-in-trade and the said Stock Register was produced before the AO alongwith sales invoices, bills, Bank statements & VAT Returns and also demonstrated correlation of such cash sales with purchase and stock of business in the course of assessment proceedings. Further it is also observed that the appellant has charged VAT on all bills and all such sales have been reflected in the VAT Returns of the appellant.*

*The appellant produced the VAT assessment order of Proprietorship concern M/s Dinanath Rajkumar, Jaipur wherein the VAT Department has accepted the sales declared by the appellant and therefore the initial burden cast on the appellant is discharged and therefore it cannot be disputed that the appellant does not have all the necessary documents to prove the genuineness of sales.*

**(iv)** *The AO has treated the cash deposited in the banks during the demonetization period in demonetized currency as unexplained cash credits u/s 68 of the Act although the nature and source of the cash deposits being proceeds arising out of cash sales etc. is patently evident from the entries in the audited books of account of the Assessee. It is not the case of the A.O. that the cash deposited in the bank during the demonetization period was in excess of what was available in the cashbooks. The fact that the cash deposits in banks were sourced out of cash sales is evident from the entries in the cashbooks. The books of account of the appellant have been audited by an independent reputed auditor. The cash sales & receipts are duly supported by relevant bills, which were produced before the AO in the course of assessment proceedings, and nothing adverse in connection therewith was noted by the AO.*

**(v)** *As regard the fact that the majority sales of Dinanath Rajkumar was made on 28.02.2016 whereas no such sale was evident for the entire year, the appellant contended that the firm Dinanath Rajkumar has been started in the year 2015 itself and hence the sale was low in the FY 2015-16 as compared to sale in FY 2016-17, the fact which has not been controverted by the AO.*

**(vi)** *On perusal of the details filed by the appellant before the A.O., it is observed that all the books of accounts were produced by the appellant before the A.O. It is not the case of the A.O. that the appellant did not have the sufficient stock for making the sales. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details. The ld. AO did not make any enquiry on the material submitted by the appellant. He merely proceeded on statistical analysis to make the*

*addition on account of cash deposits. He neither found any concrete and conclusive evidence of back dating of the entries of sale, evidence of bogus sales, evidence of bogus purchases, and non-existing cash in the books of account. Infact the AO did not even reject the books of accounts of the appellant under the provision of section 145(3) of the Act.*

**(vii)** *Thus ld. AO has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus. Merely analysing the data by twisting the same and giving some findings which are not alone sufficient to justify the addition, the income so assessed is not tenable in the eyes of law. Therefore there cannot be any reason for disbelieving the genuineness of the sales of the appellant merely for the reasons that the same is of abnormal amount and not commensurate with the past trends more so when the same is duly supported with sale bills and the appellant was having the sufficient stock for that much of sales and the sales have been duly incorporated in the VAT Returns and accepted by the VAT Department.*

**(viii)** *The fact also remains that the demonetization of Rs. 500/- and 1000/- note was declared by the Hon'ble Prime Minister at 8:00 PM on 08.11.2016 and it is an open fact that immediately after the announcement, all the various persons having soon to be demonetized notes almost flocked to the jewellers to purchase the jewellery in exchange of these notes. There was an article in the Economics Times wherein the secretary of Indian Bullion and Jewellers Association mentioned that Jewellers had sold as much as 15 ton of gold ornaments and bars worth around Rs. 5000 crores on the intervening night of November 8 and 9, 2016 after the announcement of demonetization. Naturally after the spread of the news of demonetization, the general public had purchased the jewellery not only for the wedding in the immediate vicinity but also for wedding and functions in late November or December and also even otherwise for future use in functions. And due to this there was heavy cash purchase in November for the purpose of utilizing the demonetized notes whereas the purchases in the month of December, 2016 has been very low. However, the purchase for both the months taken together is not exceptionally high and the increase is mainly due to total increase in*

*turnover and the specific reason of demonetization. Infact though there is rise in the cash sales during the demonetization period, however, there has been substantial decrease in sales for the entire year. It was further submitted that sales made by the appellant was fully vouched and verified and are duly recorded in the books of accounts, which were also audited. Further the sales are duly backed by purchases and opening stock available with the appellant and after these sales the stock of the appellant correspondingly got reduced.*

**(ix)** *Further, on perusal of the details, it has been noticed by me that though apparently cash sales made during the demonetization period seems to be on higher side vis-à-vis earlier years, however it is a fact that the total sales during the entire year has decreased. Further it is also a fact that due to announcement of demonetization of Rupees 500 and 1000 currency notes at 8:00 PM by the Hon'ble Prime Minister, the general people at large had flocked to the jewellers shop for purchase of jewellery for not only for immediate wedding in the family but also for weddings and functions in late November or December or even afterwards, against these soon to be demonetized notes. Moreover, the Ld. AR has rightly pointed out that on one hand the sales shown by the appellant are fully backed with vouchers and duly recorded in the books of accounts and also in the stock register while on other hand the Ld. AO has not brought any material on record to establish that these sales are bogus.*

**(x)** *As regards the addition of an amount of Rs. 1,03,00,000/- deposited by the appellant in cash in the bank account, the AO has considered that these were Specified Bank Notes. However, out of the aforesaid amount, an amount of Rs. 12,00,000/- deposited in the bank account were not specified bank notes whereas the entire amount of Rs. 1,03,00,000/- was added by the AO as income of the appellant by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in Profit & Loss Account, therefore there is no occasion to again consider*

the same as income of the appellant by applying the provisions of section 68 of the Act.

**(xi) The Hon'ble Supreme Court in the case of [CIT vs Devi Prasad Vishwnath Prasad \(1969\) 72ITR194 \(SC\)](#) (Copy at Case Law PB Page No. 225-228) held that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again.**

**(xii) 2021 (5) TMI 447 – The Hon'ble ITAT Visakhapatnam in the case of Asst. Commissioner of Income Tax, Central Circle-1 Visakhapatnam versus M/s Hirapanna Jewellers and (vice-versa)) (Copy at Case Law PB Page No. 181-184 ) held that-**

**Addition u/s 68 r.w.s 115BBE** - Assessee had deposited the sum in high denominations of specified bank notes (SBNs) post demonetization - CIT-A deleted the addition - HELD THAT:- The assessee produced the newspaper clippings of The Hindu, The Tribune and demonstrated that there was huge rush of buying the jewellery in the cities consequent to declaration of demonetization of ₹ 1000 and ₹ 500 notes on 08.11.2016.

As 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 [[2010 \(4\) TMI 1070 - Delhi High Court](#)] and Vishal Exports Overseas Ltd. [[2012 \(7\) TMI 1110 - Ahmedabad High Court](#)]

**(xiii) The case of CIT v/s. Kailash Jewellery House ITA No. 613/2010 was decided by the Hon'ble Delhi High Court on**

**09.04.2010(Copy at Case Law PB Page No. 239)** wherein it was held that “In the facts of above case, cash of Rs.24,58,400/- was deposited in bank account. The Assessing Officer made the addition on the ground that nexus of such deposit was not established with any source of income. The assessee claimed that it was duly recorded in the books on account of cash sales and was considered in the Profit and Loss Account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book was submitted to the Assessing Officer and no discrepancy was pointed out. On this basis CIT(A) deleted the addition. Tribunal also observed that it is not in dispute that 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. Therefore, cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The Hon’ble High Court dismissed the appeal filed by the Department”.

**(xiv) The case of CIT v. Vishal Exports Overseas Ltd., Tax Appeal No. 2471 of 2009** was decided by **the Hon’ble Gujarat High Court on 03.07.2012(Copy at Case Law PB Page No. 238)** wherein it was held that “In the facts of above case the assessee was an exporter. The issue was regarding sale of Rs.70 lacs included in turn-over which was more than 500 crores. The assessee had claimed deduction u/s 80HHC of the Act. On the basis of information received by the Assessing Officer from investigation he considered the entry for export of 70 lacs as bogus. He denied benefit u/s 80HHC of the Act. Further, he made addition of Rs. 70 lacs in the income u/s 68 of the Act. It was held that once the assessee has already included the amount of sale of Rs. 70 lacs in Profit and Loss Account and determined the income on that basis no further addition could be made u/s 68 of the Act as it would tantamount to double taxation of same income. The Assessing Officer could only reject claim u/s 80HHC of the Act”.

**(xv)** In view of the facts of the case, it is evident that the appellant has duly substantiated its claim from the documentary evidences and also

*with the facts which duly supported with his own previous history and trend. Further the books of accounts have not been rejected as no discrepancy was found therein and the fact remains that the AO has accepted the cash sales as he accepted the declared sales, declared purchases, declared opening and closing stock and declared profits as well. The amount of cash sales is being reflected in its trading and profit and loss account. Thus the contention of the appellant that assessing the said cash sales as unexplained cash credit u/s 68 means that the impugned sales had been taxed twice, firstly the same was treated as sales and secondly the same was treated as unexplained cash credit/money u/s 68 of the Act appears to be correct and therefore this would tantamount to double taxation of income, which is impermissible in law. Accordingly, the action of the AO in holding that the appellant could not substantiate the increase in sales with documentary evidences is not based on correct appreciation of the facts. Therefore, I find that the AO was not justified in making an addition of Rs. 1,03,00,000/- under section 68 of the Act and consequently the aforesaid addition is directed to be **deleted**. As regards applying the provisions of section 115BBE of the Act on the additions made u/s 68, it is held that since the addition on account of alleged bogus cash sales has been deleted by me, therefore no separate adjudication is required on this issue raised by **Ground of Appeal No. 3** as it will only be academic in nature. Accordingly, the **Grounds of Appeal No. 1 to 4** are treated as **allowed**.”*

We also find that the Department has raised the solitary ground for deletion of addition of Rs.1,03,00,000/- made by the AO by applying the provisions of Section 68 and taxed as per provisions of Section 115BBE of the Act. We found that all the points or allegation noted by the AO is duly considered and discussed by the Id. CIT(A) while dealing with the appeal of the assessee. The revenue did not pin point which of the findings of the Id. CIT(A) is incorrect or against the facts placed on record by the assessee. We noticed that the AO has given details of cash deposited

in bank at Page 3 of the assessment order. We found that the cash amounting to Rs, 91,00,000/- was only deposited in demonetization currency and cash Rs. 12,00,000/- was deposited in non-demonetized currency on 28.03.2017, and this amount Rs. 12,00,000/- was offered for Income under "Pradhanmantri Garib Kalyan Yojna-2016" . The assessee has filed **copy of Form 1 and Form 2 at APB Page 91 to 93 to support his contention**. Therefore, the addition of Rs. 12,00,000/- in patiently wrong, tantamount to double taxation and deserves to be deleted. We noticed that during the course of assessment proceedings, the AO examined the books of account and she has not rejected the books of account of the assessee and provisions of section 145(3) were not applied. During the year under consideration the assessee deposited Rs. 91,00,000/- in demonetized currency. The cash so deposited was accumulated cash which was received against/for sales made in the proprietorship concerns of assessee M/s Dinanath Raj Kumar, Kanpur and M/s D. N. Diamonds, Jaipur by it over the period of the year prior to demonetization, majorly during the period from 28.10.16 and 29.10.16 and such sales was part of total sales credited in trading a/c and the assessee has already offered income on such sales in Trading Account by reducing the cost of sales from sales. The AO herself accepted the sales shown in trading a/c and has not disturbed the cash sales so declared by Assessee and the sales of assessee duly supported by the sale bill and invoice and duly verifiable form books of accounts including stock register and considering availability of stock on hand, it proved that the sales made by the assessee are genuine sales recorded in the books of account. All the details required to prove the sales made by the assessee were provided in the assessment proceedings. The assessee has filed sufficient *evidence to substantiate his sales. He has filed (1) Copy*

*Cash book (Copy at APB Page 39 to 45) and sales bills along with submission dated 10.12.2017 (2) Copy of stock register for the FY 2015-16 and 2016-17 (Copy of the same is at APB Page 50 to 72 which shows that before making the sale the sufficient stock was available with assessee (3) Copy of VAT Returns APB Page 80 to 85 and VAT assessment order of proprietorship concern M/s Dinannath Raj Kumar, Jaipur at APB Page 88 to 90. The VAT department accepted the sale of the assessee. Thus the assessee substantiated its claim from the documentary evidence and also with the facts. In letter dated 06.06.2019 Copy at APB Page 46 to 47 the assessee submitted to AO that "There was increase of cash sale in month of Oct. and Nov.-2016 was due to Karva Chouth, Dhanteras and Diwali sales (Festival Season). Further the assessee has explained the AO that, the firm Dinanath Raj Kumar has been started in the year 2015 itself and during the FY 2015-16 the mother of the assessee has expired and hence the assessee was not able to setup his business at Kanpur and hence the sale was low in the year FY 2015-16 as compared to sales in 2016-17. The assessee is engaged in the business of Jewellery and gold. The higher cash sales on festival season Karva Chouth, Dhanteras and Diwali is general feature in the trade of the assessee and such sales is also apparent from the cash book submitted during the course of assessment proceedings. Looking to the above facts and circumstances of the case the sale made by the assessee is genuine which is executed after giving the goods to the customer, duly reflected in the invoice issued, assessee having sufficient stock in the books, sales is duly reflected in the books of accounts supported by payment of VAT and the revenue has not brought any positive material to prove it as bogus sales. It is not the case of the A.O. that the assessee did not have the sufficient stock for making the sales.*

Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details. As regard to not providing the name, address and PAN of the customers to whom cash sales was made the assessee explained that the sales were below the prescribed limit so it is not compulsory or mandatory under the I. Tax Act, 1961 to collect the information related to full name, address and PAN of the customer to whom goods were sold in cash during the course of business below to the prescribed limit. **The assessee further explained that** in the preceding financial years, subsequent financial years and other periods of this same financial year, the same practice was being followed by the assessee where no details of name, address and PAN of customer was available with the assessee. **We find the explanation of the assessee is genuine and the sales cannot be doubted on surmises and conjectures merely** due to non-furnishing of address and PAN of the customer. The AO did not make any enquiry on the material submitted by the appellant. She merely proceeded on statistical analysis to make the addition on account of cash deposits. We agree with the findings of Id. CIT(A) that the AO *has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus and merely having some doubt by twisting the data and giving some findings which are not alone sufficient to justify the addition the income so assessed in not tenable in the eye of law. In fact the AO* neither found any concrete and conclusive evidence of back dating of the entries of sale, evidence of bogus sales, evidence of bogus purchases, and non-existing cash balance in the books of account. The AO did not even reject the books of accounts of the appellant under the provision of section 145(3) of the Act. Therefore, the contention of the revenue on the facts and circumstance of the case is not accepted

and we see no reason to find any fault in the detailed reasoned finding in the order of the Id. CIT(A). Thus, we sustain the order of the Id. CIT(A) and based on these observations the appeal of the revenue in ITA NO. 165/JPR/2022 stands dismissed.

6. In the result, this appeal of the revenue is dismissed.

Order pronounced in the open court on 22/11/2022.

Sd/-

( राठौड़ कमलेश जयंतभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 22/11/2022.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The ITO Ward 1(2), Jaipur.
2. प्रत्यर्थी / The Respondent- Shri Raj Kumar Nowal, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 165/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

