

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 149/JP/2022
निर्धारण वर्ष / Assessment Years : 2017-18

Mahesh Kumar Gupta 121 Govind Nagar East, Street No 8 Amer Road, Jaipur	बनाम Vs.	ACIT Circle-04, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGHPG 0206 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rajeev Sogani (C.A.) &
Sh. Rohan Sogani (CA)
राजस्व की ओर से / Revenue by : Smt Runi Pal (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 14/03/2023
उदघोषणा की तारीख / Date of Pronouncement : 23/03/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 13/04/2022 [here in after referred (NFAC/ Id. CIT(A)] for assessment year 2017-18, which in turn arise from the order passed by the ACIT/DCIT, Circle-5, Jaipur [here in after referred as Id. AO] dated 03.12.2019.

2. The assessee has marched this appeal on the following

grounds:-

“1. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in making addition of Rs. 80,00,000, in the hands of the assessee under Section 68 of the Income Tax Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition made by the Id. AO and confirmed by Id. CIT(A).

2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the act of the Id. AO, in invoking provisions of Section 115BBE of the Income Tax Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief and please be granted by quashing the invocation of Section 115BBE, as being not in accordance with the relevant law.

3. The assessee craves his right to add, amend or alter any of the grounds on or before the date of hearing.”

3. The fact as culled out from the records is that the assessee is engaged in the business of wholesale and retail business of gold and silver ornaments. He has filed return of income declaring total income at Rs. 45,83,340/- on 02.11.2017. The said income tax return was processed u/s 143(1) of the I.T. Act. Subsequently, the case was selected for complete scrutiny under computer assisted selection for scrutiny (CASS) to examine the issue of abnormal increase in cash deposits during demonetization period from 09.11.2016 to 30.12.2016 as compared to average rate of cash deposit during pre-demonetization period. Accordingly statutory

notice u/s 143(2) was issued on 13.08.2018 which was duly served upon the assessee through ITBA portal.

3.1 On the scrutiny of the ITR filed by the assessee it is found that assessee has deposited cash of Rs 84,00,000/- during the period of demonetization from 09.11.2016 to 30.12.2016 in his bank accounts maintained with Bank of Baroda account No. 12860200001864 of Rs. 4,00,000/- and Yes Bank account No. 002484600002922 of Rs. 80,00,000/-. In order to verify the source of the cash deposited of Rs. 84,00,000/- the assessee vide notice u/s 142(1) dated 08.11.2019 was required to furnish the details of SBN notes deposited in the bank accounts along with the details of cash deposited during the AY 2015-16 and AY 2016-17 and AY 2017-18 during the period from 01.04.2015 to 08.11.2015, 01.04.2016 to 08.11.2016 and 01.04.2017 to 08.11.2017. The assessee was also required to furnish the month wise sale in credit and cash for AY 2016-17 and 2017-18 and month wise deposited of cash during the AY 2016-17 and 2017-18. The assessee was also required to furnish the comparative month wise stock for AY 2016-17 and 2017-18. The assessee submitted reply on different dates on ITBA portal which was examined and verified. After

scrutiny of the details submitted by the assessee the Id. AO found certain discrepancies and therefore Id. AO issued show cause notice on 21.11.2019 on the ITBA portal which is reproduced as under:

- a) On the perusal of the month wise details of cash deposited during A. Y. 2016-17 and A. Y. 2017-18 it is noticed that in the month of November 2016 you have deposited abnormal and very high cash of Rs. 82,50,000/- in your bank account against the cash deposited of Rs. 1,25,000/- in the month of November, 2015. Please furnish the reason of a huge cash deposited in the month of November, 2016 when there was cash crunch in the market.
- b) The assessee is required to furnish the copy of the sale bills issued from 22.10.2016 to 15.11.2016 along with complete details of the purchases in the following format:

Bill no. & Date	Amount of cash sale	Name and complete address of the purchasers and contact number (mobile / landline)	PAN	Description with weight & rate of item sold

Please explain whether the sale made to the purchasers is matching with the nature of business carried on by you? Explain.

3.2 On the above two issue the assessee submitted written reply of the show cause notice on ITBA on 26.11.2019 which is reproduced as under:

"1. As it has been brought to our notice that assessee has deposited cash of Rs. 82,50,000/- which is huge in comparison to the amount of cash deposited during the same period in the previous year. Your honor we would like to bring to your notice that starting from 19th of October 2016 Diwali Festival season was started and Marriage season also started from 11th of November 2016 due to which there was significant increase in retail sales during the period under consideration. Most part

of sales was retail cash sales due to festive and wedding season which resulted in huge cash in hand with the assessee. As demonetization started from 08.11.2016, assessee deposited the previous year in the month of May assessee has deposited Rs. 42,00,000/- which was also a wedding season, which helps to indicate that during peak business season sales increases substantially which generate cash in hand.

2. Copy of sales bills issued from 22.10.2016 to 15.11.2016 along with the details required as per specified format is enclosed.

3.3 The assessee filed a detailed submission of the show cause notice issued on ITBA on 26.11.2019. The Id. AO examined the submission of the assessee and found that the explanation of the assessee unacceptable and thereby held that the assessee has been regular in depositing the cash sale in the bank account on regular basis. The book shows that the assessee has deposited available cash in his bank account on 03.11.2016 of Rs. 1,50,000/- and Rs. 1,00,000/- on 07.11.2016. If the assessee would have cash generated through the cash sales that would have been deposited in the bank account on these dates or after that date. In view of these facts the Id. AO hold that the source explained by the assessee of huge cash deposited of Rs. 80,00,000/- in a single day on 15.11.2019 is not satisfactorily and it is nothing but is a colorable device of assessee trying to explain the source of the huge cash deposited in the bank account is in fact income of the assessee from undisclosed sources and not from the actual sale

made. He also stated verification of bills shows that they are below Rs. 2 lac and name, address and mobile number of purchasers are not mentioned on the sale bills except a few. The assessee expressed his inability to provide these details of the parties. In view of these reasons and based on the decisions in the case of Roshan D Hatti Vs. CIT 107 ITR 938 and P. Mohan Kala 291 ITR 278 hold genuineness of the sales bills could not be verified and stated that all the bills are fabricated and self-made issued just before the deposition of the undisclosed cash of the assessee of Rs. 80,00,000/- on 15.11.2016 and the explanation offered by the assessee in this regard not found satisfactory and hence cash deposited for an amount of Rs. 80,00,000/- added u/s. 68 of the Act.

4. Being aggrieved from the order of the assessing officer the assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee and the relevant finding of the Id. CIT(A) on the issue raised before him is reiterated here in below :

“9. I have carefully considered the action of the Assessing Officer and the submissions of the appellant. I have noted that the Assessing Officer has thoroughly examined the books of accounts, the pattern of cash deposits in the banks etc. I have particularly noted that the AO has

observed that on 03.11.2016 and 07.11.2016 the appellant had deposited Rs. 1.5 lacs and 1 lac respectively in the bank account. After duly considering the circumstances of the case, I agree with the observations of the Assessing Officer that cash amounting to Rs.80,00,000/- deposited on 15.11.2016 is unlikely to be the sale proceeds from 08.11.2016 to 14.11.2016. As the addition has a sound basis, I find no need to interfere with the action of the Assessing Officer.

10. In the result, the appeal is dismissed.”

5. As the assessee did not find any favour from the order of the Id. CIT(A), he has preferred an appeal before this tribunal on the grounds so raised and reproduced here in above in para 2. In support of the grounds so raised by the assessee the Id. AR of the assessee, filed the following written submission.

I. Assessee, an individual, is engaged in the wholesale and retail business of gold and silver ornaments through his proprietorship concern M/s KV Jewellers. Assessee, for the year under consideration, filed his return of income on 02.11.2017, at a total income of Rs. 45,83,340. Subsequently, case of the assessee was selected for scrutiny and order, dated 03.12.2019, was passed under Section 143(3), at a total income of Rs. 1,25,83,340, thereby resulting into addition of Rs. 80,00,000. Ld. AO while passing the order made additions under Section 68 and invoked the provisions of Section 115BBE.

II. Against the order passed by Id. AO, assessee preferred appeal before the National Faceless Appeal Center (“NFAC”/ “Id. CIT(A)”). NFAC, *vide* order dated 13.04.2022, in Appeal No. CIT(A)-2, Jaipur/11275/2019-20, dismissed the appeal of the assessee. Against the order passed by NFAC, the present appeal has been preferred by the assessee before Hon’ble ITAT, Jaipur Bench.

GROUND NO. 1-2: ADDITION UNDER SECTION 68 OF RS. 80,00,000 AND INVOCATION OF SECTION 115BBE

1. BRIEF FACTS

- 1.1. Assessee, during the year under consideration, had his showroom situated at Tripolia Bazar, which is considered to be hub of jewellery trade in Jaipur, Rajasthan. Assessee sold his products under the brand name of KV Jewellers. Assessee, along with his family members, has been in the jewellery business since the year 1998.
- 1.2. Assessee during demonetization period, on 15.11.2016, deposited a sum of Rs 80,00,000 in his Bank Account. The cash so deposited by the assessee was received against cash sales during the period 1.10.2016 to 8.11.2016.

2. ASSESSING OFFICER

- 2.1. Ld. AO, for the sole reason of assessee not having complete details of cash sales, disbelieved the said cash sales. Ld. AO invoked the provisions of Section 68 and disbelieved the cash sales, amounting to Rs. 80,00,000, made by the assessee and added the same under the provisions of Section 68. Ld. AO also invoked the provisions of section 115BBE for taxing the said addition under Section 68.

3. NATIONAL FACELESS APPEAL CENTRE

- 3.1. Before NFAC, elaborated submission, were made by the assessee which have also been reproduced from Page 9 to 43 of the order.
- 3.2. Ld. CIT(A), without any cogent basis, in just one para, dismissed the appeal of the assessee by simply mentioning that Id. CIT(A) agreed with the observations of the Id. AO [CIT(A) Order Page 44].

4. SUBMISSIONS

- 4.1. Elaborate submissions made by the assessee before Id. CIT(A), also reproduced by Id. CIT(A) in the order from Pages 9 to 43 may please be considered in correct perspective.
- 4.2. Assessee maintained regular books of accounts including day to day stock records. Books of accounts of the assessee were Audited under the provisions Section 44AB of the Income Tax

Act, 1961. In the Audit, there were no adverse remarks of the Auditor and the Auditor found the underlying evidences, substantiating the transactions recorded in the books of accounts, to be adequate and reasonable.

- 4.3. Cash sales in the jewellery trade is a normal practice. Assessee has been selling jewellery in cash in past also. Breakup of the cash sales *vis a vie* total sales made by the assessee, during the year under consideration and in the preceding year is as under: -

(Amt. in Rs.)		
Particulars	AY 2016-17	AY 2017-18
Total Sales	1,48,81,725	7,60,31,534
Cash Sales	78,47,769	1,86,45,067
% of Cash Sales to Total Sales	53%	25%

- 4.4. Ld. AO disbelieved the cash sales for the sole reason that details of the buyers, including their name, PAN, addresses etc, were not available with the assessee, therefore, the same were not verifiable.
- 4.5. It is submitted that law nowhere prohibits cash sales. Assessee by selling the goods in cash did not violate any of the provisions of the Income Tax Act, 1961. It is submitted that Id. AO has not mentioned any provisions of the Act/ Rules having been violated by the assessee while undertaking such cash sales. Moreover, cash sales made by the assessee were duly supported by valid Invoices.
- 4.6. Attention is drawn towards Hon'ble ITAT, Vishakhapatnam Bench in the case of Hirapanna Jewellers, I.T.A. No. 253/Viz/2020 [CLC – Pages 198 to 205]. The facts in this case are that the assessee firm was engaged in the business of trading of jewellery. During the period of post demonetisation period, it had deposited Rs. 5.72 crores (SBN) in its bank account. Out of above, Rs. 4.72 crores pertained to sales before demonetisation period. The AO, treated the sales as unexplained cash credits, as no details of sales were provided, and made addition of Rs. 4.72 crores u/s 68 r.w.s. 115BBE. Hon'ble Bench held that where assessee has 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. The relevant para 9 is reproduced hereunder:

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

- 4.7. Attention is drawn towards Hon'ble ITAT, Delhi Bench in the case of Agson Global Pvt Ltd vs ACIT (2020) 115 taxmann.com 342 [CLC Pages 206 to 279]. The facts in this case are assessee company was engaged in purchase and sale of dry fruits and other grocery items. It deposited Rs.180.53 crore post-demonetization in its Bank accounts, out of sale proceeds. During the course of assessment proceedings, assessee submitted details of closing stock, list of debtors, details of purchases and sales party-wise for year, VAT returns etc. However, AO made an addition of Rs. 150.53 crore as income u/s 68. CIT (A), restricted addition to Rs. 73.13 crores. Hon'ble Bench deleted the addition. The relevant para 126 (vii) is reproduced hereunder:

“It is not the case of the revenue that assessee has not shown the relevant stock register before the assessing officer. The assessee has maintained the complete stock tally in its accounting software. Such books of accounts are audited, quantitative records produced before the tax auditor, such quantitative records are certified by tax audit and no questions have been raised by the assessing officer. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details.”

The said decision has also been upheld by Hon'ble Delhi High Court in Agson Global (P.) Ltd [2022] 134 taxmann.com 256 (Delhi). [CLC Page 280-309]

- 4.8. Attention is also invited towards the decision of the Hon'ble Bombay High Court in the case of R.B. Jessaram Fatehchand v. CIT (1970) 75 ITR 33, wherein the Hon'ble High Court at Para 2 of the order held as under:

"In these circumstances, the reason given by the Income-tax Officer for rejecting the book results shown by the assessee's accounts or for not accepting the cash transactions as genuine cannot be accepted as good and sufficient unless there was an obligation on the part of the assessee to keep a record of the addresses of the cash customers. It could not, therefore, be said that the failure on his part to maintain the addresses was a suspicious circumstance giving rise to a doubt the genuineness of the transactions entered into by the assessee."

The Hon'ble High Court at Para 3 of the order further held as under:

"In the case of a cash transaction where delivery of goods is taken against cash payment, it is hardly necessary for the seller to bother about the name and address of the purchaser."

The Hon'ble High Court at Para 4 of the order finally held as under:

"Since, having regard to the nature of the transaction and the manner in which they had been effected, there was no necessity whatsoever for the assessee to have maintained the addresses of cash customers, the failure to maintain the same or to supply them as and when called for cannot be regarded as a circumstance giving rise to a suspicion with regard to the genuineness of the transactions. The Tribunal, therefore, was not right, in our opinion, in setting aside the order of the Appellate Assistant Commissioner and restoring that of the Income-tax Officer. There are no circumstances disclosed in the case nor is there any evidence or material on record which would justify the rejection of the book results."

- 4.9. Ld. AO, unnecessarily emphasising the need of complete identity of buyers in respect of cash sales, held the same to be non-genuine (contrary to the legal provisions) and further

erred in invoking the provisions of Section 68 in respect of such cash sales. Attention is drawn towards the judgment of the Hon'ble Jurisdictional High Court in the case of Smt. Harshila Chordia v. ITO (2008) 298 ITR 349 [CLC Pages 310 to 215] wherein the Hon'ble High Court held as under:

“So far as question No. 2 is concerned, apparently when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of account of the assessee would not attract section 68 because the cash deposits becomes self-explanatory and such amounts were received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition of Rs. 6,98,000 would not arise.”

“We, therefore, hold that no addition was required to be made in respect of Rs. 6,98,000, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.”

- 4.10. Ld. AO invoked provision of Section 68 in respect of sales. Section 68 deems non-income to be income. In the instant case, the credits by way of sales were already offered for tax. Hence, Section 68 *per se* cannot be invoked. Provisions of Section 68 can only be invoked in cases where an assessee is unable to explain the source of a particular receipt to the satisfaction of the Assessing Officer. These provisions have no application in case where an amount already disclosed by the assessee as his income, while filing the Return of Income on which no further addition has been made by the Ld. AO, during the course of assessment proceedings.
- 4.11. Section 68 creates deeming fictions, whereby certain amounts which are not considered as income by the assessee, are deemed to be income of the assessee. A deeming fiction of income cannot apply to an item which is already treated as income by the assessee himself. The question of deeming an item to be income can only arise if the item is not otherwise an income. Section 68 converts non-income into income and has no application where income is already offered for tax.

4.12. Hon'ble Delhi High Court, in the case of Keshav Social and Charitable Foundation (2005) 278 ITR 152, considered a situation where the assessee, a charitable trust, had disclosed donations received by it as its income, and claimed exemption u/s. 11. The Assessing Officer, on finding that the assessee was unable to satisfactorily explain the donations and the donors were fictitious persons, held that the assessee had tried to introduce unaccounted money in its books by way of donations and, therefore, the amount was to be treated as cash credit u/s. 68. The Delhi High Court held that section 68 did not apply, as the assessee had disclosed such donations as its income.

4.13. If the contention of the lower authorities is accepted that the same income would be taxed twice, once when being offered for tax by the assessee as part of cash sales and subsequently as addition under Section 68, which is impermissible in law.

4.14. Reliance is placed on the below mentioned judicial pronouncements, wherein, under identical set of facts, as in the present case, additions made under Section 68 on account of alleged bogus cash sales were deleted:-

4.14.i 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 MANU/IV/0034/2021 : (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 no 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.

- 4.14.ii ITAT, Jaipur Bench, in the case of Motisons Jewellers Ltd., ITA Nos. 161 and 178/JP/2022 [CLC – Page 1-93], vide order dated 29.09.2022, dismissed the appeal of the Department. Hon'ble ITAT relied upon the decision of Hon'ble Rajasthan High Court in the case of Smt. Harshil Chordia Vs. ITO reported at MANU/RH/0851/2006 : 298 ITR 349 (Rajasthan-HC) and held as under:-

“...Thus, the fact of the case on hand is similar to the jurisdictional high court decision cited by the Ld. AR of the assessee. The Ld. AR of the assessee also relied upon the coordinate Jaipur ITAT decision also on the issue and the revenue not prove the sale made by the assessee 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. Therefore, the contention of the revenue based 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 Ld. CIT(A). Thus, we sustain the order of the Ld. CIT(A) and based on these observations the appeal of the revenue in ITA No. 161/JPR/2022 stands dismissed...”

- 4.14.iii ITAT, Jaipur Bench, in Chandra Surana, ITA No. 166/JP/2022 [CLC Page 94-105] held that *“...It is also observed from the assessment order that the AO had not rejected the books of account of the assessee as no contrary material was available with him to reject the books of account of the assessee. As regards the addition of Rs. 2,90,93,500/- made by the AO by applying the provisions of Section 68 of the Act, it is noted that provisions of Section 68 are not applicable on the sale transactions recorded in the books of*

accounts as sales are already part of the income which is already credited in P & L account. Hence, there is no occasion to consider the same as income of the assessee by invoking the provisions of Section 68 of the Act..."

- 4.14.iv ITAT, Chandigarh Bench in the case of Roop Square Pvt Ltd ITA No. 198 and 249/Chand/2021 [CLC Page 183 to 190]
- 4.14.v ITAT, Kolkata Bench in the case of Senco Alankar, ITA No. 10/Kol/2021 [CLC Page 191-197]
- 4.15. It is submitted that Id. AO without enquiring the matter further, just for lack of name and addresses, reached to an adverse conclusion. It is submitted that assessee maintained complete stock records. Each item of sale, including the alleged non-genuine cash sales, is identifiable in the stock records. Ld. AO has not found any defect in the said stock records. Complete set of the documents in respect of the entire alleged non-genuine cash sales were placed before the lower authorities. Following details were submitted in order to substantiate the sales made by the assessee:-
 - 4.15.i Bill wise detail in respect of cash sales during the period from 03.11.2016 to 08.11.2016, along with the Sales Bills. [AO Order Page 3]
 - 4.15.ii Copy of the Monthly summary of Stock Register. [PB : 94]
 - 4.15.iii Copy of Sales Register from the books of accounts of assessee for the relevant previous year. [PB : 92]
 - 4.15.iv Copy of cash book for the relevant previous year [PB : 34-91].
 - 4.15.v Copies of VAT Return filed by the assessee, for the year under consideration. [PB : 30-33]
 - 4.15.vi Tax Audit Report
 - 4.15.vii Audited Financial Statements [PB : 1-5]
- 4.16. Assessee was a registered VAT dealer and all such sales had been reflected in the VAT returns of the assessee.
- 4.17. It is worthwhile to note that Id. AO has accepted the opening stock, purchase, as well as the closing stock at the year-end

to be genuine and correct. It is also worthwhile to mention that the Id. AO has not rejected the books of accounts of the assessee by invoking the provisions of Section 145(3). Ld. AO has not brought any material on record to establish that the sale bills were bogus or any evidences indicating that sales were bogus. Ld. AO is wrong in not accepting the declared cash sales as not verifiable which are recorded in books of accounts which were found to be correct and complete.

4.18. It is submitted that the assessee during the year under consideration had undertaken cash sales of Rs. 1,86,45,067. Out of the total cash sales, cash sales amounting to Rs. 80,00,000 has been found to be non-genuine. Explanation offered to substantiate the cash sales has been arbitrarily rejected by the Id. AO (although for part cash sales, same explanation accepted). The ill reasoned and arbitrary rejections of explanation, in terms of requirements of Section 68, have been held to be illegal by various courts. Reliance is placed on the following judicial pronouncements:

4.18.i In CIT vs P. Mohanakala (2007) 291 ITR 278 (SC), the Apex Court while dealing with the true nature and scope of Section 68 of the Act has held that the opinion of the assessing officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The court further held that the opinion of the assessing officer is required to be formed objectively with reference to the material available on record. Hence, application of mind is sine qua non for forming the opinion.

4.18.ii The Apex Court in Dalgobinda Paricha v. Nimai Charan Misra, AIR 1959 SC 914 defined opinion to mean something more than mere retailing of gossip or of hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question.

4.18.iii In S.R. Bommai v. Union of India AIR 1994 SC 1918 while construing the expression "if the President...is

satisfied” under Article 356(1) the Court at para 74 held that it is not the personal whim, wish, view or opinion or the ipse dixit of the President dehors the material but a legitimate inference drawn from the material placed before him which is relevant for the purpose.

4.18.iv The Apex Court in the Lal Chand Bhagat Ambica Ram v. CIT (supra) approvingly noted the decision of the Hon’ble Allahabad High Court in the case of Kanpur Steel Co. Ltd. vs CIT (1957) 32 ITR 56 and summarised the findings in the following words:

“(i) that the burden of proof lay upon the Department to prove that the sum of Rs. 32,000 represented suppressed income of the assessee from undisclosed sources, and the burden was not on the assessee to prove how it had received these high denomination currency notes; for, until the Demonetisation Ordinance came into force high denomination currency notes could be used as freely as notes of any lower denomination and no one had any idea that it should be necessary for him to explain the possession of high denomination currency notes, the assessee has naturally not kept any statement regarding the receipt of these currency notes, and it was for the first time on January 12, 1946, when the Ordinance came into force, that it became necessary for the assessee to explain its possession of these currency notes; and (ii) that the explanation given by the assessee that the notes formed part of the cash balance of Rs. 34,000 and odd was fairly satisfactory and was not found by the Tribunal to be false; the statement of sales was hardly relevant to the question; the Department, in relying on the entries relating to the bills of each day, committed an error and no inference should have been drawn from them; that any one single transaction did not exceed Rs. 399 did not preclude the possibility of payment in high denomination notes for such transaction ; therefore, the Tribunal rejected the explanation of the assessee on surmises, and there was no material for the Tribunal to hold that the sum of Rs. 25,000 represented suppressed income of the assessee from undisclosed sources.”

4.19. It is not compulsory or mandatory under the Income 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.

4.20. In this regard, attention is drawn towards the below mentioned judicial pronouncements:-

4.20.i Mahendra Kumar Agarwal, ITA No. 172/JP/2022, Jaipur ITAT [CLC – 106-143]

“...As regards not providing the name, address and PAN of the customers to whom cash sales was made, the assessee has explained that the sales were below the prescribed limit so it is not compulsory or mandatory under the Income 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 and such practice was accepted by the AO. We find the explanation of the assessee is genuine and the sales cannot be doubted merely on surmises and conjectures on the ground of 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 sales, 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 circumstances of the case is not accepted and we see no reason to interfere in the order of the Id. CIT(A). Thus, we sustain the order of the Id. CIT(A) with the observations above. The appeal of the revenue stands dismissed...”

4.20.ii Similar observations were made by ITAT, Jaipur Bench, in the case of Raj Kumar Nowal, ITA No. 165/JP/2022, Jaipur Bench, [CLC Pages 144 to 182]

4.21.Ld. AO at Page 4 of his order has stated that the opening balance of cash amount with the assessee was Rs. 11,03,263 on 21.10.2016. Thereafter, 112 cash sale bills were issued by the assessee for sale of Rs. 70,80,378.

4.21.i It is submitted that such period, from mid of October 2016 till the time when demonetization was announced, the assessee had peak season of sales.

4.21.ii Diwali was on 30.10.2016 and thereafter, marriage season had started from November 2016. As a result, there was certain rise in sales.

4.21.iii Moreover, in business, it is difficult to maintain the same consistency of sales. There may be occasion where there may be huge sales and demand, and there may be occasion where there may be muted sales and demand.

4.21.iv Moreso, where the assessee was operating from the walled city of Jaipur, which is considered to be the hub of jewellery trade in not only Jaipur, but also the state of Rajasthan.

4.22. The lower authorities have observed that the assessee deposited cash of Rs. 1,50,000 on 03.11.2016 and Rs. 1,00,000 on 07.11.2016. Further, it has been observed that if the assessee had cash generated through cash sales, the same would have been deposited in the bank account.

4.22.i It is submitted that depositing or not depositing the available cash in the bank account is the prerogative of

the businessman who has to factor in lot many eventualities.

- 4.22.ii Simply for the reason that cash was not deposited by the assessee on the said date cannot lead to the inference that assessee indulged in the bogus cash sales.
- 4.23.Ld. AO at page 6 of his order has relied upon certain decisions. The said decisions are factually different from the case at hand. The assessee has distinguished the case laws before the Id. CIT(A), which have been reproduced at page 42 and 43 of the Id. CIT(A) order. The same may please be considered.
- 4.24. The provisions of Section 115BBE were inserted in the ITA by Finance Act, 2012, with effect from 1.04.2013. Section 115BBE taxed the unexplained credits, money, investment, expenditure, etc., which were deemed as income under Section 68, Section 69, Section 69A, Section 69B, Section 69C or Section 69D, at the rate of 30% (plus surcharge and cess), without allowing any deduction for any expenditure or allowance.
- 4.25. Thereafter, the provisions of sub-section (1) of Section 115BBE were substituted by Taxation Laws (Second Amendment) Act, 2016, w.e.f 1.04.2017 i.e. AY 2017-18 ("Amendment -115BBE"). Although, Taxation Laws (Second Amendment) Act, 2016 received the assent of the President of India only on 15.12.2016. Search on the assessee was carried out on 21.07.2016.

- 4.26. Chronology of various events, as discussed hereinbefore, is as under :-

Particulars	Date
115BBE Introduced for the first time in the Income Tax Act. Rate of Tax 30%	01.04.2013
Cash sales by the assessee	01.10.2016 to 08.11.2016
Amendment -115BBE introduced in Lok Sabha	28.11.2016

Amendment -115BBE passed by Lok Sabha	29.11.2016
Amendment -115BBE received President assent	15.12.2016

4.27. Attention is drawn towards the STATEMENT OF OBJECTS AND REASONS presented before the Hon'ble Parliament while introducing "The Taxation Laws (Amendment) Bill, 2021". Relevant Para 5 is reproduced below to emphasise that law cannot take effect on transaction which have taken place before the relevant law getting assent of the President:

"5. The Bill proposes to amend the Income-tax Act, 1961 so as to provide that no tax demand shall be raised in future on the basis of the said retrospective amendment for any indirect transfer of Indian assets if the transaction was undertaken before 28th May, 2012 (i.e., the date on which the Finance Bill, 2012 received the assent of the President). It is further proposed to provide that the demand raised for indirect transfer of Indian assets made before 28th May, 2012 shall be nullified."

4.28. Thus, the law, applied by the Id. AO did not see the light of the day, when the transactions of cash sales took place. The said law for the first time was introduced on 28.11.2016.

4.29. On comparison of the amended provision with the earlier provision, it is clear that the above-stated clause (a) of sub-section (1) of section 115BBE retains the essential features of the earlier provision with the difference that the rate of tax is ENHANCED from 30% to 60%. Simultaneously, Section 2(9) of Chapter II of the Finance Act, 2016 was amended by inserting the Seventh proviso to provide for a levy of surcharge at the rate of twenty five per cent of tax u/s.115BBE. Thus, the rate of tax after the amendment to Section 115BBE was 77.25% [60% + 25% Surcharge + 3% Cess], as against 30%.

4.30. Withdrawal or modification of provision with retrospective effect, depriving the assessee of the vested statutory right or which has the effect of imposing a levy with retrospective effect for the PERIOD for which there was no such levy,

unless there be strong and exceptional circumstances justifying such modification, cannot be held to be reasonable or rational.

- 4.31. The amendment, to Section 115BBE, cannot, in any way, be considered to be introduced to overcome any defects of the law, previously in place, nor it can be considered to be clarificatory in nature, explaining the intention of the law already in place. *Per contra*, such amendment has resulted into increase in tax burden on the assesseees.
- 4.32. Hon'ble Supreme Court in the case of Vatika Township (P) Ltd. [2014] 367 ITR 466 (SC) observed that of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities, which is based on the principle of law known as *lex prospicit non respicit* : law looks forward not backward. Thus, legislation which modify accrued rights, or which imposes obligation or impose new duties or attach a new disability have to be treated as prospective, unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation.
- 4.32.i Hon'ble Apex Court, in the said case was considering the time period, (within the relevant previous year) of applicability of the new inserted *proviso* to Section 113 levying surcharge over and above the tax rate of 30% in case of block assessments;
- 4.32.ii *Proviso* was introduced *vide* Finance Act, 2002, with effect from 1.06.2003. Thus, the law stood enacted as on 1.04.2003 and, accordingly, as per normal principles should have applied on all searches carried out during Financial Year 2002-03 (AY 2003-04).
- 4.32.iii Hon'ble Apex Court was pleased to hold that amendment would apply prospectively and would be applicable on searches conducted after 1.06.2002.
- 4.32.iv The facts of the issue involved in the present appeal are identical. Therefore the issue is squarely covered by the judgement of Hon'ble Supreme Court in Vatika Township (P) Ltd (*Supra*). Accordingly, the amended

provision of Section 115 BBE should apply on incomes accruing after the law having received assent of the President.

4.33. In the case of Govind Das (1976) 1 SCC 906 (SC), following observation was made by the Hon'ble Supreme Court while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force:-

"...11. Now it is a well-settled Rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general Rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that

'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.....' [Emphasis Supplied]

4.34. Hon'ble Delhi High Court in the case of New Skies Satellite BV [TS-64-HC -DEL (2016)] held that amendments though originally notified as clarificatory may turn out to be substantive in fact and such a substantive amendment is incapable of being given retrospective effect. Relevant extracts of the said order is reproduced hereunder for the sake of ready reference:-

"...Undoubtedly, the legislature is competent to amend a provision that operates retrospectively or prospectively. Nonetheless, when disputes as to their applicability arise in court, it is the actual substance of the amendment that determines its ultimate operation and not the bare language in

which such amendment is couched. A clarificatory amendment presumes the existence of a provision the language of which is obscure, ambiguous, may have made an obvious omission, or is capable of more than one meaning. In such case, a subsequent provision dealing with the same subject may throw light upon it. Yet, it is not every time that the legislature characterizes an amendment as retrospective that the Court will give such effect to it. This is not in derogation of the express words of the law in question, (which as a matter of course must be the first to be given effect to), but because the law which was intended to be given retrospective effect to as a clarificatory amendment, is in its true nature one that expands the scope of the section it seeks to clarify, and resultantly introduces new principles, upon which liabilities might arise. Such amendments though framed as clarificatory, are in fact transformative substantive amendments, and incapable of being given retrospective effect. An important question, which arises in this context, is whether a “clarificatory” amendment remains true to its nature when it purports to annul, or has the undeniable effect of annulling, an interpretation given by the courts to the term sought to be clarified. In other words, does the rule against clarificatory amendments laying down new principles of law extend to situations where law had been judicially interpreted and the legislature seeks to overcome it by declaring that the law in question was never meant to have the import given to it by the Court? The general position of the courts in this regard is where the purpose of a special interpretive statute is to correct a judicial interpretation of a prior law, which the legislature considers inaccurate, the effect is prospective. Any other result would make the legislature a court of last resort. United States v. Gilmore 8 Wall [(75US) 330] 19LEd396 (1869)] Peony Park v. O’Malley [223F2d668 (8th Cir 1955)] It does not mean that the legislature does not have the power to override judicial decisions which in its opinion it deems as incorrect, however to respect the separation of legal powers and to avoid making a legislature a court of last resort, the amendments can be made prospective only[Ref County of Sacramento v State (134 Cal App 3d 428) and In re Marriage of Davies (105 Ill App 3d 66)]...”

4.35. Section 92B of the ITA setting out the meaning of International Transaction was introduced by Finance Act, 2001 w.e.f. 01.04.2002. Subsequently, an explanation was added to section 92B, increasing the scope of "International Transaction" by Finance Act, 2012 with retrospective effect from 01.04.2002. As such Explanation increased the scope of section 92B, it was considered, in the below mentioned judgments, to have a prospective effect even though introduced with a view to give a retrospective effect:-

4.35.i Rusabh Diamonds (2016) 158 ITD 0564 (Mumbai)

4.35.ii Hiraco Jewellery (India) Pvt. Ltd., I.T.A. No.7297/Mum/2014 (Mumbai)

4.35.iii Gitanjali Exports Corporation Limited (2016) 178 TTJ 529 (Mumbai)

4.35.iv Siro Clinpharm Private Limited (2016) 177 TTJ 609 (Mumbai)

4.36. Hon'ble ITAT, Jaipur Bench, in the case of KGK Enterprises [2017] 88 taxmann.com 264 (Jaipur - Trib.) accepted the above proposition and held that Explanation to section 92B enhancing its scope to be applicable from A.Y. 2013-14 onwards.

4.37. It is submitted that when the assessee made cash sales, the amended provisions of section 115BBE were not in existence.

4.38. Where an amendment, as under 92B, although was introduced having a retrospective effect, was held, by the courts, to have a prospective effect, by the same analogy, an amendment to Section 115BBE, putting additional burden on the assessee, introduced on 15.12.2016, w.e.f 01.04.2017 (A.Y 2017-18), should not be made applicable on any act committed between 01.04.2016 to 14.12.2016.

4.39. The amendment to Section 115BBE is penal in nature, which aims to penalize the assessee, if additions referred to in Section 68 to 69A are made. Penal statutes which create offences or which have the effect of increasing penalties for existing offences will only be prospective by reason of the constitutional restriction imposed by ARTICLE 20 of the CONSTITUTION OF INDIA. Therefore, if an Act creates a new offence, it will bring into its fold only those offenders who

commit all ingredients of the office after the Act comes into operations. This rule of construction against retroactivity of penal laws is not restricted to criminal offences punished with imprisonment, but also applies to laws which provide for other penal consequences, such as fines and penalties.

4.40. Attention is also drawn towards the decision of Full Bench of Hon'ble Patna High Court in the case of Loknath Goenka [2019] 417 ITR 521 (Patna) (FB)

4.40.i Hon'ble High Court held the tax is charged on the point of time of accrual of income;

4.40.ii In the case before Hon'ble High Court, the substantial question of law for decision was whether law relating to clubbing of minor son's share of income under Section 64(1)(iii) which was introduced by Taxation Law (Amendment) Act, 1975, w.e.f 1.04.1976 would be applicable for previous years coming to an end on 10.08.1975 and on 31.12.1975

4.40.iii Those were the years where there was no law prescribing uniform previous year. In the case before the Hon'ble High Court, the issue was related to Assessment Year 1976-77. The precise issue was whether newly introduced law, although applicable for the relevant assessment year, could be made applicable on the previous years relevant to the same assessment year, but ending well before the introduction of law.

4.40.iv Hon'ble High Court was pleased to decide at Para 17 of the order:-

"...Under the new provision, i.e. Section 64(1)(iii) a new liability has been prescribed and not the rate for ascertaining the liability. Such new liability under the Income Tax Act, 1961 cannot be given a retrospective effect..."

4.40.v Hon'ble High Court held that tax rate existing as on the point of time of accrual of income would be relevant for charging the tax on such accrued income.

4.41. Thus, as per the facts of the present case, provisions of Section 115BBE cannot be invoked as the income has been voluntarily declared by the assessee, in its return of income.

Sale is income offered for tax against which deduction of purchases are claimed.

4.42. Thus, the amended provisions of Section 115BBE, should not be made applicable on the assessee for the following reason:-

4.42.i At the time of cash sales by the assessee Company, the amended provisions were not in place.

4.42.ii The amendment to section 115BBE, being onerous on the assessee, should not be given a retrospective effect.

4.42.iii Where any non-income is converted by AO to income, as per Section 68 to 69B then only Section 115BBE can be made applicable. In the present case, assessee himself offered amount for taxation.

In view of the above, application of Section 68, read with Section 115BBE, by the Id. AO, to the amount of Rs. 80,00,000 accounted for sales by the assessee, is illegal and deserves to be quashed.”

6. The Id. AR of the assessee in addition to the written submission submitted that the addition made by the Id. AO is against the law as the sales is duly recorded in the books of account and without rejecting or finding any defects in the books of account no addition can be made. Thus, addition of Rs. 80,00,000 made u/s. 68 is nothing but adding the same income twice. The demonetization was announced on the night on 08.11.2016 and cash has been deposited into the bank account on 15.11.2016. The cash is duly supported on the sale bills and same is recorded in the audited books of account. The said books were never found defective and not rejected. During the assessment proceeding

assessee has submitted purchase register, sales register, details of the stock, cash book and submitted the entire other details called for by the AO from the assessee. The assessee also has the cash sale for the other period for marriage season which has not been doubted. Demonetization was announced in the night on 08.11.2016 whereas these days from 19th October, 2016 Deepavali festival were on and Marriage seasons were to start in November, 2016. So, on account of these reasons the selling of goods worth Rs. 80,00,000/- made by the assessee cannot be doubted merely during these period cash was deposited in the demonetized currency. The Id. AO has not rejected the books, not doubted about the availability of the stock with the assessee to support the sales so made. The sales were ranging below Rs. 2 lac the assessee cannot be obligated to maintained the detailed name, address and mobile number of the customer. Even the Id. CIT(A) has not given separate finding on the written submission so made by the assessee and Id. CIT(A) has merely confirmed the view of the Id. AO without considering the detailed submission filed in the proceeding before him. The Id. AR further argued that cash deposited is duly recorded in the books of account, the source of these cash is on account of receipt of sales proceeds, amount

deposited is part of sales proceeds, the sales is supported the payment of the indirect taxes so paid by the assessee, the sale is already part of the sales tax records of the assessee. To support all these contentions before us the Id. AR of the assessee filed the following records:

S. No.	Particulars	Page No.
1	Copy of Audited Financial Statements of the assessee, for the year under consideration.	1-5
2	Written submissions filed by the assessee, before the Id. AO, during the course of assessment proceedings.	6-9
3	List of Bank Accounts maintained by the assessee, along with Bank Book, forming part of the Books of Accounts of the assessee.	10-25
4	Written submissions filed by the assessee, before the Id. AO during the course of assessment proceedings.	26-29
5	Copy of VAT return of the assessee for the year under consideration.	30-33
6	Copy of Cash book forming part of the books of accounts of the assessee for the year under consideration	34-91
7	Copy of sales register of the assessee for the year under consideration.	92
8	Copy of purchase register of the assessee for the year under consideration.	93
9	Copy of stock summary of the assessee for the year under consideration.	94

7. Thus, the provision of section 68 cannot be applied to the income which is already recorded in the books of account and the source of receipt is explained out of the stock already available with the assessee. To support these contentions the Id. AR of the assessee has relied upon the following case laws :

S. No.	Particulars	Page No.
1	Copy of the order of ITAT, Jaipur Bench in the case of Motisons Jewellers Ltd., ITA No. 161 and 178/JP/2022	1-93
2	Copy of the order of ITAT, Jaipur Bench in the case of Chandra Surana, ITA No. 166/JP/2022	94-105
3	Copy of the order of ITAT, Jaipur Bench in the case of Mahendra Kumar Agarwal, ITA No. 172/JP/2022	106-143
4	Copy of the order of ITAT, Jaipur Bench in the case of Raj Kumar Nowal, ITA No. 165/JP/2022	144-182
5	Copy of the order of ITAT, Chandigarh Bench in the case of Roop Square Pvt. Ltd. ITA No. 198 and 249/Chand/2021.	183-190
6	Copy of the order of ITAT, Kolkata Bench in the case of Senco Alankar, ITA No. 10/Kol/2021	191-197
7	Copy of the order of ITAT, Visakhapatnam Bench in the case of Hirapanna Jewellers ITA No. 253/Viz/2020 and CO No. 02/Viz/2021.	198-205
8	Copy of the order of ITAT, Delhi Bench in the case of Agson Global(P) Ltd. 115 taxmann.com 342 (Delhi)	206-279
9	Copy of the order of High Court of Delhi in the case of PCIT vs. Agson Global (P) Ltd. 134 taxamnn.com 256 (Delhi)	280-309
10	Copy of the order of High Court of Rajasthan in the case of Smt. Harshita Chordia 298 ITR 349 (Rajasthan)	310-315

8. The Id. DR is heard who read and relied on the relevant findings of the lower authorities and also on the report of the Id. AO bearing dated 03.03.2023 the same is reproduced here in below :

“Kindly refer to your office letter No. 564 dated 01.02.2023 and subsequent reminder issued vide No. 610 dated 01.03.2023 on the

above subject. The comments of this office on the points as desired in your letter are given as under:

2. The case of assessee was selected for scrutiny through CASS and one of the reason of selection was "Large cash deposits during demonetization period". The assessee had made cash deposit of Rs. 80,00,000/- in SBN on 15.11.2016 in his account with Yes Bank. As per the cash book the assessee was having cash in hand of Rs. 3,74,213/- only on 30.09.2016 which had increased to Rs. 48,96,227/- as on 31.10.2016 and to Rs. 83,76,531/- as on 15.11.2016. This was made possible by showing cash sales of Rs.83,23,912/- during the months of October and November, 2016 which is quite abnormal considering the volume of cash sales in the past e.g. cash sales of Rs. 1,25,000/- only were made in the same two months in the year 2015. The inconsistency in the cash book of the year 2016-17 vis-à-vis that of 2015-16, is shown as under:

Description	Amount in Rs.
Cash sales during the months of October & November, 2016	83,23,912/-
Cash sales during the months of October & November, 2015	13,20,118/-
Cash deposits made in Bank a/c during the months of October & November, 2016	82,50,000/-
Cash deposits made in Bank a/c during the months of October & November, 2015	1,25,000/-
Cash Deposit in Bank a/c during the period from 1.04.2016 to 30.11.2016	1,05,80,000/-
Cash deposit in Bank a/c during the period from 1.04.2015 to 30.11.2015	58,80,000/-

3. In order to ascertain genuineness of the cash sales shown during the months of October and November, 2016, the AO had called for the name, complete address and contact number of the buyers to whom sales had been shown during demonetization period, however, the assessee failed to submit such details. Hence the increased/ abnormal volume of cash sales shown in these months were not considered genuine and the cash to this extent was not considered available to be deposited in Bank on 15.11.2016.

3.1 In the reply submitted before the Hon'ble Tribunal, the appellant has contended that the law nowhere prohibits the cash sales. Due to exceptional circumstances caused as a result of demonetization on 08.11.2016, the assessee was under obligation to keep the details of the buyers from whom SBN were received against cash sales. It cannot be denied that the unexplained money kept in the SBN could be

introduced in books of accounts in the garb of cash sales. Since the assessee has not maintained address and contact no of the buyers, he has failed to prove genuineness of the inconsistent cash sales shown in books of accounts.

4 The Id. CIT(A) has confirmed the finding of the AO while in para -9 of his order which is given as under:

"I have noted that the Assessing officer has thoroughly examined the books of accounts, the pattern of cash deposits in the bank etc. I have particularly noted that the AO has observed that on 03.11 2016 and 07.11 2016 the appellant had deposited Rs. 1.50 lacs and 1 lac respectively in the bank account. After duly considering the circumstances of the case, I agree with the observations of the Assessing officer that cash amounting to Rs. 80,00,000/- deposited on 15.11.2016 is unlikely to be the sale proceeds from 08.11.2016 to 14.11.2016. As the addition had a sound basis. I find no need to interfere with the action of the Assessing officer."

Point 4(A)

As regards making addition u/s 68 of the Act, in the assessment order the AO has given clear finding that the cash sales shown during the months of October, 2016 and November, 2016 are not genuine and did not consider such cash available for deposit in bank a/c. As such the books of accounts stands rejected by the AO as regards the source of cash deposits of Rs. 80,00,000/- made in bank account on 15.11.2016. The mention of section 145(3) of the Act is not relevant here as the declared trading results have not been disturbed. In view of such facts, the decisions relied upon by the assessee/appellant are not relevant.

Point 4(B)

As mentioned in preceding para, the AO has not accepted the abnormal cash sales shown in the months of October and November, 2016 and hence the cash sales to the extent of Rs. 80,00,000/- have also not been accepted.

Point 4(C)

During the year under consideration the assessee has declared gross profits @ 11.71% on Turnover as against the GP rate of 14.04% declared in just preceding year. The declared cash sales to the extent of Rs. 80,00,000/- have not been considered genuine by the AO. The AO has already rejected the version of assessee regarding the source of the impugned cash deposit of Rs. 80,00,000/-. It has been held that the source of such cash deposit as shown in books of accounts is not genuine and hence the same has been held unexplained u/s 68 of the IT Act and correctly taxes u/s 115BBE of the Act."

8.1 In addition to the above Id. DR submitted that the Deepavali and Marriage season were not on the day of demonetization. The

sales for the corresponding period is also lower and sudden increase in sales is not genuine and the assessee has not given the details of the bills below Rs. 2 lac in the desired format to the AO and thus she supported the finding of the lower authorities.

9. We have considered the rival contention and perused the orders of the lower authorities and the material available on record, arguments advanced by both the parties and gone through the judicial decision relied upon to drive home to the contentions so raised before us. It is not in dispute the nature of business of the assessee that he is engaged in the wholesale and retail business of gold and silver ornaments. It is also note in dispute that in this line of business sale of jewellery in cash is normal trade practice. The books of 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 assessment u/s 143(3) on the basis of CASS and desired information by the AO were submitted by the assessee from time to time. After completion of assessment the AO vide his order dated 03-12-2019 assessed the income of the assessee at

Rs.1,25,83,340/- as against return income of Rs. 45,83,340/- thereby making a single addition of Rs. 80,00,000 out of the total cash deposited being the demonetized currency for an amount of Rs. 84,00,000/-. The assessee is selling the jewellery in cash in past year also and the Id. AR of the assessee in his submission explained that in fact in the year under consideration the overall sales as % to total sales has reduced and to support this contention he has submitted the relevant data and the same is reiterated here in below:

(Amt. in Rs.)

Particulars	AY 2016-17	AY 2017-18
Total Sales	1,48,81,725	7,60,31,534
Cash Sales	78,47,769	1,86,45,067
% of Cash Sales to Total Sales	53%	25%

9.1 The Id. AR of the assessee further submitted that out of total sales of Rs. 1,86,45,067/- made in cash the Id. AO has disputed only a sum of Rs. 80,00,000/-. The said sum is picked as unexplained as the assessee has deposited a sum of Rs. 84,00,000/- being the demonetized currency in the bank account considering the sales shown by the assessee as not genuine. Out of total sales of Rs. 1,86,45,067/- made in the year under consideration only a sum of Rs. 80,00,000 not considered as

genuine. The only reasons that was advanced that the details of the buyers showing complete name, address and phone were not verifiable. The sales shown by the assessee is supported by the following documents which were not doubted by the Id. AO:

- a) Bill wise detail in respect of cash sales during the period from 03.11.2016 to 08.11.2016, along with the Sales Bills. [AO Order Page 3]
- b) Copy of the Monthly summary of Stock Register. [PB : 94]
- c) Copy of Sales Register from the books of accounts of assessee for the relevant previous year. [PB : 92]
- d) Copy of cash book for the relevant previous year [PB : 34-91].
- e) Copies of VAT Return filed by the assessee, for the year under consideration. [PB : 30-33]
- f) Tax Audit Report Audited Financial Statements [PB : 1-5]

None of these records were disputed by the Id. AO. We have also seen that even the Id. AO has not dealt with the specific submission of the assessee and he has merely written one paragraph confirming the view of the Id. AO without dealing with the various contentions raised and judicial decision cited by the assessee even the Id. CIT(A) has not dealt with any of the judgement relied upon the Id. AR of the assessee while dealing with the appeal of the assessee.

9.2 The Id. AR of the assessee vehemently submitted that law nowhere prohibits cash sales to the assessee. Assessee by selling

the goods in cash did not violates any provision of the Income Tax Act and even the Id. AO has not mentioned any of the law provision to disbelieve the sales so made by the assessee. All the sales made by the assessee is supported by a commercial invoice duly complied with the value added tax (VAT) provision and the related VAT is also paid by the assessee. The invoices issued is also reported in VAT return filed and the sales has been accepted by the VAT authority without any adverse remark and in fact even the Id. AO has not made any adverse remark on the sales register and cash book submitted by the assessee to support the contentions of having been sold the goods/jewellery in cash.

9.3 The bench noted the Id. AR of the assessee has relied upon the various judgment and the some of the judgment which has direct bearing on the dispute and having similar facts are considered one by one in brief. Decision in the case of Hirapana Jewellers in ITA no. 253/Viz/2020 where in it is held that since the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s. 68. The second decision relied upon is in the case of Agson Gobal Private Limited 115 taxmann.com 342 wherein it is held that “ “It is not the case of the

revenue that assessee has not shown the relevant stock register before the assessing officer. The assessee has maintained the complete stock tally in its accounting software. Such books of accounts are audited, quantitative records produced before the tax auditor, such quantitative records are certified by tax audit and no questions have been raised by the assessing officer. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details.”

9.4 As regards the applicability of section 68 in this case we have persuaded the decision of Hon'ble Delhi High Court in the case of Keshav Social and Charitable Foundation 278 ITR 152 wherein the court considered a situation where the assessee, a charitable trust, had disclosed donations received by it as its income, and claimed exemption u/s. 11. The Assessing Officer, on finding that the assessee was unable to satisfactorily explain the donations and the donors were fictitious persons, held that the assessee had tried to introduce unaccounted money in its books by way of donations and, therefore, the amount was to be treated as cash credit u/s. 68. The Delhi High Court held that section 68

did not apply, as the assessee had disclosed such donations as its income.

9.5 The bench has also noted that the Id. AO accepted the opening stock, purchase, as well as the closing stock at the year-end to be genuine and correct. It is also worthwhile to mention that the Id. AO has not rejected the books of accounts of the assessee by invoking the provisions of Section 145(3) and even there is no whisper in the order about any defects in the books of account. The Id. AO has not brought any material on record to establish that the sale bills were bogus or any evidences indicating that sales were bogus. The Id. AO is wrong in not accepting the declared cash sales as not verifiable which are recorded in books of accounts which were found to be correct and complete. We have also noted that the assessee has undertaken cash sales of Rs. 1,86,45,067. Out of the total cash sales, cash sales amounting to Rs. 80,00,000 has been found to be non-genuine and added under section 68 of the Act. Explanation offered to substantiate the cash sales has been arbitrarily rejected without holding that the sales is duly recorded in the books and is also supported by the various records produced in the assessment proceedings. Here we note

that similar view is taken in the case of CIT vs P. Mohanakala (2007) 291 ITR 278 (SC), the Apex Court while dealing with the true nature and scope of Section 68 of the Act has held that the opinion of the assessing officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The court further held that the opinion of the assessing officer is required to be formed objectively with reference to the material available on record. Hence, application of mind is sine qua non for forming the opinion. The only reason placed by the Id. AO in his order that the 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 has not been given. It is voluntary to the customer to provide their personal information to the assessee while goods being sold and even the law does not mandate to the assessee up to an amount of Rs. 2 lac. This view is also taken by co-ordinate bench of this Jaipur bench in the case of Mahendra Kumar Agarwal in ITA No. 172/JP/2022 the relevant finding is reiterated here in below:

“...As regards not providing the name, address and PAN of the customers to whom cash sales was made, the assessee has explained that the sales were below the prescribed limit so it is not compulsory or mandatory under the Income 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 and such practice was accepted by the AO. We find the explanation of the assessee is genuine and the sales cannot be doubted merely on surmises and conjectures on the ground of 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 sales, 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 circumstances of the case is not accepted and we see no reason to interfere in the order of the Id. CIT(A). Thus, we sustain the order of the Id. CIT(A) with the observations above. The appeal of the revenue stands dismissed..."

9.6 As regards the fact that as on 21.10.2016 the opening cash balance was Rs. 11,63,263/- and thereafter, 112 cash sales bills were issued by the assessee for an amount of Rs. 70,80,376/- till the time demonetization announced. To counter this fact the Id. AR in his submission stated that Diwali was on 30.10.2016 and thereafter marriage season started and as result the cash sales rise during these periods. The case law cited by the Id. AO was

distinguished by the Id.AR in the submission filed before the Id. CIT(A). The said finding has not been disputed by the revenue in the appeal before us.

9.7 In the light of the detailed discussions and finding that has been recorded by us in the preceding para we are of the considered view that the action of the Id. AO making an addition under section 68 for an amount of Rs. 80,00,000/- as unexplained cash deposit without rejecting the books of account is unwarranted based on the discussion so recorded here in above. Even the Id.AO has not find any defects in the details submitted by the assessee and audited books were considered and accepted while finalizing the assessment. Similar view has been taken by this co-ordinate bench of Jaipur in the case of Chandra Surana in ITA No. 166/JP/2022 wherein the similar view has been taken. The relevant finding is reproduced here in below;

2.6 We have heard both the parties and perused the materials available on record. From the assessment records, it is noted that the AO made an addition of Rs.2,90,93,500/- in declared income by holding that said amount of cash deposited by the assessee in his bank account during the demonetization period is nothing but the undisclosed income of assessee which was shown under the garb of cash sales and thus it is liable to be added u/s 68 of the Act and taxable @ 60% under the provision of Section 115BE of the Act. It is also noted from the order of the Id. CIT(A) at para 4.1 wherein the Id. CIT(A) has described para 1.4 of assessee written submission that complete regular books of accounts, bill, vouchers and day to day stock register having complete quantitative

details have been maintained by the assessee. The said books of accounts are audited. A copy of audited statement of account alongwith complete quantitative details have been submitted alongwith the return of income. The assessee maintained manual itemwise stock register. The said stock register was bulky and so could not be produced in e-proceedings but was produced before the AO in course of hearing as is evident from submission dated 27-09-2019. The fact of maintenance of stock register manually is stated in Tax Audit Report also. Thus the cash sales transaction is recorded in regular books of accounts, sales are made out of stock-in-trade. The assessee also filed copies of sales invoice No. 82 to 158 of Bangaluru and 110 to 216 of Koklata outlets before AO which were of 28-10-2016 and these were earlier produced before Investigation Wing in F.Y. 2016-17 i.e. after the sales were made and same were verified by the Investigation Wing also. This view of the Id. CIT(A) indicates that the assessee has maintained regular books of accounts, bills, vouchers and day to day stock register having complete quantitative details and said books of accounts are audited. The assessee vide submission dated 27-09-2019 had produced stock record during the course of hearing. The cash sales transactions are recorded in regular books of accounts and the sale are made out of stock in trade for which no adverse finding had been observed by the AO except for the change in the methodology in issuing bills as mentioned at page 7 to 8 of the assessment order. Further the Id. CIT(A) observed that the AO had treated the cash deposited in the bank during the demonetization period in demonetized currency as unexplained cash credit u/s 68 of the Act although the nature and source of the cash deposits being proceeds arising out of cash sales etc. was evident from the entries in the audited books of accounts of the assessee. In this case, the books of account of the assessee had been audited by an independent auditor. The cash sales and receipts are duly supported by relevant bills which were produced in the course of assessment proceedings before the AO and it is not the case of the AO that the assessee did not have sufficient stock for making the sales. Hence, it cannot be said that the figures of sales and purchases are not supported by the quantitative details and the AO did not make any enquiry on the material supplied by the assessee. Thus the AO neither brought any material on record to establish that the sale bills are bogus nor provided any evidence that such sales are bogus. It is also an open fact that the demonetization of Rs.500/- and Rs.1000/-note was declared by the Hon'ble Prime Minister at 8 PM on 8-11-2016 and after this announcement the persons reached the jewellery shop to buy jewellery in exchange of notes. Thus all such scenario indicates that the assessee had duly substantiated its claim from the documentary evidences and also with the facts. It is also observed from the assessment order that the AO had not rejected the books of account of the assessee as no contrary material was available with him to reject the books of account of the assessee. As regards the addition of Rs.2,90,93,500/- made by the AO by applying the provisions of Section 68 of the Act, it is noted that

provisions of Section 68 are not applicable on the sale transactions recorded in the books of accounts as sales are already part of the income which is already credited in P&L account. Hence, there is no occasion to consider the same as income of the assessee by invoking the provisions of Section 68 of the Act. In view of the above deliberations and case laws relied upon by both the parties, we find that the AO was not justified in making an addition of Rs.2,90,93,500/- u/s 68 of the Act which has rightly been deleted the Id. CIT(A) and we concur with his findings. Thus the appeal of the Revenue is dismissed.

9.8 Respectfully following the consistent view and after considering the factual matrix of the cash on hand in our considered view the addition made cannot sustain and therefore, we vacate the addition of Rs. 80,00,000/- made under section 68 of the Act as the same cannot be made without rejecting the books of account of the assessee regularly maintained by the assessee and the said cash deposited is duly supported by the entries passed in the books of account and part of the sale accepted by the AO.

In terms of these observations ground no. 1 raised by the assessee is allowed.

10. Since, we have decided the ground no. 1 in favour of the assessee the second ground for levy of additional tax u/s. 115BBE become educative in nature.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 23/03/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 23/03/2023

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Mahesh Kumar Gupta, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-04, 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. 149/JP/2022 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar