

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" 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. 46/JP/2023
निर्धारण वर्ष/Assessment Years : 2017-18

Mukesh Soni 35, Near Govind Dev Ji Temple Janta Market, Jaipur	बनाम Vs.	Income Tax Officer Ward 5(1), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BEEPS 1058 F		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Dheeraj Borad (CA)
राजस्व की ओर से/ Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 12/04/2023
उदघोषणा की तारीख/Date of Pronouncement : 26/04/2023

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 29/11/2022 [here in after (NFAC)] for assessment year 2017-18 which in turn arise from the order dated 10.12.2019 passed under section 143(3) of the Income Tax Act, by the ITO, Ward- 5(1), Jaipur.

2. The assessee has marched this appeal on the following

grounds:-

“1. That on the facts and in law the learned CIT(A) erred in sustaining the additions of Rs. 32,71,000/- made by the A.O. u/s. 69A of the I.T. Act in the relevant assessment order, which sustaining of the additions of Rs. 32,71,000/- by the learned CIT(A) are most arbitrary, unjust and untenable in fact and in law and in the alternative highly excessive w.r.t facts and circumstances of the case.

2. That the learned CIT(A) erred in sustaining the invoking of provisions of section 69A r.w.s. 115BBE of the I.T. Act whereby the learned AO levied tax @ 60% plus 25% S.C., etc. on the additions made by the A.O., which sustaining by the learned CIT(A) of invoking of provisions of section 69A r.w.s. 115BBE of the I.T. Act by the AO and levying tax @ 60% plus 25% S.C., etc. on the additions of Rs. 32,71,000/- made by him is most arbitrary, unjust and untenable in fact and in law.

3. That the learned CIT(A) ought to have appreciated that the learned AO failed to discharge the burden of proof which squarely lay upon him for not treating the cash sales made by the assessee during the period 01.10.2016 to 08.11.2016 at Rs. 29,65,000/- as genuine and consequentially treating the cash deposited at Rs. 32,71,000/- in the bank accounts during the period of demonetization as undisclosed income in the shape of SBNs.

4. That the action of the learned CIT(A) while sustaining addition of Rs. 32,71,000/- is not justified because he (the learned CIT(A)) failed to appreciate that the AO in one side is not rejecting books of accounts meaning thereby that he (the AO) is accepting the assessee's books of accounts as correct and complete and on the other side by not treating the cash sales of Rs. 29,65,226/- from 01/10/2016 to 08/11/2016 as genuine he (the AO) is adding the sum of Rs. 32,71,000/- deposited in bank as unexplained cash.

5. That the appellant craves leave to add, alter, amend and substitute one or more grounds of appeal as and when necessary.”

3. The fact as culled out from the records is that the assessee filed his e-return of income on 07.11.2017 and income declaring total income of Rs. 3,17,090/- after deduction chapter VIA. The case was selected for complete scrutiny through CASS and notice

u/s 143(2) was issued on 24.09.2018 which was duly served upon the assessee through speed post & E-mail thereafter, notices u/s 142(1) issued along with questionnaire on 12.06.2019 which was duly served upon the assessee through E-mail. In compliance to notices u/s 143(2)/142(1), the assessee was furnish written reply from time to time and necessary details on the various queries were submitted through online i.e. The assessee running business of jewelers. The information has examined. During the assessment proceeding the assessee furnish the information which was check it was notice that the assessee has furnish the copy of bank statement and other which was examined.

3.1 As per information available on record it is found that the assessee has in three bank accounts as detailed below deposited cash totaling to Rs. 33,71,000/-:

Sr NO	Name of Bank	Account NO.	Amount Deposited
1	HDFC Bank Current A/c.	50200014338710	32,00,000
2	Kotak Mahindra Bank SBAC	02710110014243	1,00,000
3	The Rajasthan State Co-op Bank Ltd.	1004101110153170	71,000
	Total		33,71,000

3.2 The above amount was deposited in the demonetization period. The assessee was asked to furnish the information / details and source of cash deposited by the assessee, assessee was also asked to furnish the copy of cash book and other information i.e. copy of stock register. These have been examined and it is found the assessee has huge cash deposited during demonetization period. Based on these facts a detailed show cause notice was issued to the assessee dated 04.12.2019 asking the assessee to substantiate the deposit of cash by filling various details. The assessee filed online reply on 22.11.2019 and 28.11.2019. On scrutiny of information filed assessing officer noted that the assessee has deposited cash of Rs. 1,30,000/- and Rs. 4,56,000/- before demonetization period and after demonetization period respectively. Whereas, during the demonetization period Rs. 33,71,000/ has been deposited that too on 15.11.2016, 01.12.2016 and 06.12.2016. Against the cash deposit, the analysis of cash sales is that before demonetization period, cash sales is Rs. 29,65,226/- and out of which Rs. 29,65,226/- is in 01.10.2016 to 08.11.2016 during demonetization period is Rs. 55,580/- and after demonetization period is Rs. 3,15,340/-, it clearly shown that sales have been inflated more than many times in 01.10.2016 to

08.11.2016 in comparison to sales from 09.11.2016 to 31.03.2017, which is highly abnormal and unreasonable. In view of these observations the assessee was asked to explain the discrepancy with documentary evidence to explain the reason of unreasonable and unjustified cash deposit of Rs. 33,71,000/- in three days on 15.11.2016 and 01.12.2016 and 06.12.2016 during demonetization period, whereas during pre-demonetization period from 01.04.2016 to 08.11.2016 cash was deposited to Rs. Nil only. Similarly, during post-demonetization period from 31.12.2016 to 31.03.2017, cash was deposited for Rs. 2,35,000/- only. As regards to cash sales, from 01.04.2016 to 08.11.2016, cash sales was Rs. 29,65,226/- out of which it was for Rs. 29,65,226/- from 01.10.2016 to 08.11.2016 and from 01.04.2016 to 30.09.2016 it was Rs. Nil only. Similarly, from 31.12.2016 to 31.03.2017 cash sales was Rs. 3,15,340/- whereas during demonetization period cash sales was Rs. 55,580/- only. In view of these observations assessee was required to explain as to why the cash deposit of Rs. 33,71,000/- should be treated as unexplained income for the year under consideration.

3.3 In compliance the assessee has furnished a detailed reply stating that:

"With reference to the captioned above it has been stated in your notice that there has been alleged abnormal increase in cash sales during the period from 01.10.2016 to 08.11.2016 in comparison to cash sales during the period from 01.04.2016 to 30.09.2016 and for the period from 01.01.2017 to 31.03.2017. The assessee finds herself unable to furnish any reply on such behavior of the customers walking to the shop of the assessee, particularly in view of Deepawali season. Number of customers walking to the shop of the assessee and the volume of goods purchased by each such customer is absolutely extreneous factor and is beyond the control of the assessee. Whatever your good self has stated in your notice is merely your assumption and there is absolutely no material with you to prove the same. If there is any material available with your good self kindly share the same with the assessee to submit her response to the same. Further it is also submitted that law does not prescribe any particular way in which the business of the assessee must grow or decline. So far as the assessee is concerned he has complete evidence in connection with purchases of the goods sold by her and the cash available with her has accumulated out of genuine sources only. It is also further submitted that the assessee on her own has accounted for all such accumulation through disclosed income in the form of sales and therefore to transpose the same with some other head viz. unaccounted income on the basis of your assumptions only is illegal and hence you are sincerely requested not to please make addition as proposed in the notice and oblige. It is also not out of place to state that during the previous year 2015-16 the assessee had declared cash sales of Rs 24.98 Lacs and during this relevant previous year such cash sales are to the tune of Rs. 35.76 lacs which is slightly high as compared to immediately preceeding years and hence no doubts as raised by your good self are sustainable. Further in response to your allegation of depositing cash for Rs 33,71,000.00 during the demonetization period it is submitted that such cash has been deposited out of available cash balance in book of accounts and as explained already in previous replies that assessee is into trading of gold ornaments and bullion where in majorly cash has been preferred for obtaining the consideration of sale of goods. That except wholesalers it is practically not possible to demand for cheques from customer on account of sale of gold ornaments and bullions. That aforementioned cash has been deposited in banks out from sale proceeds of gold ornaments and Bullion Sale and opening cash in hand kept out of pas earnings which can be verified from cash book already submitted by us in reply dated 30/11/2019. Further for cash which has been deposited in

savings account it is submitted that such cash been generated from the withdrawal made from firm M/s Baywala Gold and out of personal source of income i.e salary which has been received in cash from M/s Baywala Jewellers. Further other than these assessee also has opening balance of cash to account the source of deposition of cash. That for your kind consideration we hereby enclose copy of all sales bills which evident the source of cash. That it is important to note that every year assessee is depositing cash and its just that quantum depends upon the sale of goods."

3.4 Considering the reply but not found acceptable by the assessing officer because the total sale for the year 35,76,276/- out of this cash sale from 01.10.2016 to 08.11.2016 at Rs. 29,65,000/- before this period cash sale is Nil. Which is abnormal and unreasonable, the sales from 01.10.2016 to 08.11.2016 has increased so abnormally in comparison to rest of the period of F.Y 2016-17. It all shows manipulation in accounts for converting the undisclosed income in the shape of old notes into disclosed income. Therefore, I added at Rs. 32,71,000/- as unexplained cash deposited to the total income of the assessee.

4. Being aggrieved, from the order of the assessing officer the assessee carried the matter in appeal before the Id. CIT(A). Apropos to the ground no. 1,2,3 & 5 raised by the assessee disputing the addition the relevant finding of the Id. CIT(A) is reiterated here in below:

“4.3 I have carefully considered the matter. The assessee claimed to be a trader in bullion. In the meantime, assessee also disclosed income of Rs.1,28,000/- under the head, salary income. Assessee also claimed to be in business of job work. The AO had already pointed out pertinent abnormalities in the claims of assessee. Opening balance of stock of gold was stated to be Rs.26,64,640/-. There is no explanation regarding the source of the alleged stock or whether there was actual stock in existence. The stock claimed to be lying with assessee since 01.04.2016 was stated to have been sold only from 20.10.2016 in cash. During the month of October 2016, assessee claimed to have purchased gold on 4(four) occasions, all less than Rs.20,000/- in value. On 28.10.2016, assessee claimed to have sold on 14 occasions. It appears that the figure of opening stock as on 01.04.2016 at Rs.26,64,640/- and hectic sale starting from October 20,2016 is a make-belief story. According to the AO, there was hardly any cash sale before October, 2020 and after demonetization was announced. On examination of banks statements, it is seen that there was cash deposit of Rs.32,00,000/- in HDFC accounts on 15.11.2016. The deposit was followed by cheque payment of Rs.50,000/- on the same day and RTGS transfer of Rs.30,75,000/- on 16.11.2016. The cash deposit and immediate transfer to other party gives an indication that the claim of bullion trading receipt being deposit in bank account is not plausible. In the return of income, job work receipt was mentioned to be Rs.3,30,800/- In the written submission dated 28.11.2019 filed before the AO, Job work expenses was stated to be Rs.80,900/- only. It is not possible to earn job work receipt of Rs.3,30,800/- by incurring expenses of Rs.80,900/- only. Assessee also claimed that cash in hand as on 31.03.2015 was NIL and that as on 31.03.2016 was Rs.4,09,177/-. It is not understood how assessee generated that much of cash in hand and also having opening stock of gold in excess of 25 lakh when his income was barely above basic exemption limit. Appellant had given lengthy written submission. But his story just does not add up. In view of this, grounds taken are dismissed.”

5. As the assessee not satisfied with the order of the Id. CIT(A), the appeal was filed with this tribunal. To support the various grounds raised by the assessee Id. AR of the assessee filed a detailed written submission.

“Sub: Written submissions by the appellant assessee in regard to above appeal

BRIEF FACTS OF THE CASE

The humble appellant craves leave to refer to and rely upon the brief facts of the case which form part of the paper book being simultaneously filed.

SUBMISSIONS IN REGARD TO ALL THE GROUNDS OF APPEAL

GROUND OF APPEAL NO. 1 & 4

In both these grounds of appeal the appellant has challenged the addition of Rs. 32,71,000 made by the A.O. and sustained by the learned CIT(A) vide the impugned order. In this regard it is respectfully submitted as under:-

1. That both the lower authorities erred in ignoring various papers and documents including the under mentioned papers and documents filed online electronically in E-proceedings before the AO::-
 - a) Source of SBNs of Rs. 33,71,000/- deposited in bank during the period 08.11.2016 to 31.12.2016
 - b) Copy of cash book, stock register, sale bills, purchase bills, sales register, purchase register and detailed ledger of purchases, bank statements for the period 01.04.2016 to 31.03.2017
 - c) Details of month wise cash sales/cash receipts as income from job work and cash deposits from 01.04.2015 to 08.11.2015 and 01.04.2016 to 08.11.2016
 - d) Details of opening and closing stock inventory in terms of quantity and value
 - e) Copy of sales tax (VAT) assessment order/VAT returns for the year under consideration
i.e. FY 2016-17 and immediately preceding financial year 2015-16.
 - f) Details of cash deposited of Rs.33,71,000/- in bank during the period 08.11.2016 to 31.12.2016
 - g) Details of cash in hand as on 31.03.2015 & 31.03.2016
 - h) Details of cash deposited in banks during the period 01.04.2015 to 31.12.2015 and 01.04.2016 to 31.12.2016
 - i) Copy of accounts of purchases and sales including purchase return and sales return for the previous year ended on 31.3.2017
 - j) Details of cash work done including applicable taxes during the period 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017
 - k) Copy of accounts of expenses under each head claimed in trading & profit & loss account for the previous year ended on 31.03.2017.
2. That, both the lower authorities also erred in not taking into consideration following facts and circumstances of the case:-
 - a) All the books of accounts are duly audited by a Chartered

Accountant and there is no adverse observation of the auditors at any stage.

- b) There is no change in the method of accounting nor in the method of valuation of closing stock.
- c) That each and every entry in the books of accounts is supported by bills & vouchers.
- d) The assessee has regularly kept and maintained books of accounts consisting of Cash Book, ledger, stock register, bills and vouchers, purchase and sales registers, bank statements and other relevant records

3. That, this action of the A.O. as well as of the learned CIT(A) are in utter disregard of law and particularly against the CBDT instructions No. 03/2017 dated- 21/02/2017 which clearly say that the assessing officer is required to take into consideration the record of the assessee such as stock register, bank statements, sales tax return etc. before arriving at a conclusion. Here it may be submitted that the A.O. and CIT(A) both being subordinate officers of the CBDT are under obligation to strictly follow the instruction, notifications, circulars etc. issued by the CBDT. However both the lower authorities without taking into consideration these CBDT Instructions made/sustained the addition.

4. That both the lower authorities have not pointed out any inherent defects in the books of accounts nor have they rejected the books of accounts and rather they have accepted the books of accounts as correct and complete. So much so the relevant assessment order has been framed by taking the figures of net profit on the basis of audited final accounts. The consensus of judicial opinion is that without challenging/rejecting the books of accounts no addition can be made.

5. That the learned CIT(A) failed to appreciate that the assessee had uploaded on the Income Tax site all his sale/purchase invoices, cash book, stock register, purchase/sale register etc in support of cash sales made by him and cash in hand as per cash book of the assessee and the amount deposited in his bank accounts after 09/11/2016. It is further submitted that there is no finding by the lower authorities that in issuing cash invoices the appellant has disregarded the provisions of section 269ST which inter alia says that it will be infringement of law if a cash invoice exceeding Rs. 2,00,000/- is issued at one point of time.

6. It is further submitted that sale transactions in cash cannot be taxed u/s. 68 of the Act because the sales against cash were not in the form of credits or loan at any given point of time. Cash memos were immediately issued to the buyer and delivery was made then and there against SBN's and thus sales are recorded properly in the books of accounts. Just because the amounts were received from the buyers in cash (i.e. SBN), the appellant cannot be penalised because there is no restriction under the Act to accept cash against sale upto Rs. Two lakh at one point of time. It is reiterated that in appellant's case none of the cash sale exceeded the limit of Rs. Two lakh.

7. Besides it is further submitted that sec. 68 is not applicable in assessee's case because no credit was appearing in the books of

accounts of the assessee in the name of the buyer which could be termed as cash credit and it is quite evident from the books of accounts particularly cash book of the assessee. Further the SBN's were received against sale of gold ornaments and/or bullion, opening cash balance, income from job work and cash withdrawn from the bank.

8. That by making cash sales, doing income from job work, withdrawing money from the bank and having opening cash balance and deposit of these sale proceeds etc. in bank as per details filed during assessment proceedings the assessee has not made infringement of any provision of Income tax Act, 1961 including the Demonetization law.

9. That in compliance to various notices issued during assessment proceedings to assessee u/s 142(1) or 143(2) the assessee inter alia filed details of opening stock of each month, purchases and sales made in each month, closing stock remaining at the end of each month; details of month wise cash sale and cash deposit in bank.

10. Further both the lower authorities failed to appreciate that the assessee has regularly maintained stock register for every item dealt by him on day to day basis containing requisite details for the whole year. The stock register maintained by the appellant contained complete quantitative records relating to purchase and sales and the sales were properly accounted for and reduced from the stock register. No difference was found by the A.O nor by the learned CIT(A). in the stock register nor in the stocks of the assessee. Purchases, sales and the stock are inter linked and inseparable. Every purchase increases the stock and every sale decreases the stock and as such to disbelieve the sales the A.O. should have pointed out defects in the stock register or purchases or sales or in maintaining books of accounts but the A.O. has not pointed out any kind of defect in purchases, sales, stock registers and books of accounts etc. It is respectfully submitted that once there is no defect in the purchases and sales and the same are matching within flow and the out flow of stock there is no reason to disbelieve the sales. In assessee's case the A.O. has accepted the purchases, sales and the stocks. Besides the A.O. has not disturbed the closing stock which has direct nexus with the sales. It is submitted that the movement of stock is directly linked to the purchase and the sales. Audit report u/s, 44AB and the financial statements stood already filed with the return of income and it clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. Moreover the A.O. did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the purchases and the sales and the stocks. Moreover the disallowance/addition made by the A.O. and sustained by the CIT(A) is based on surmises and conjectures and not on any positive material. Higher courts have more than once held that suspicion howsoever strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence. The assessee craves leave to refer to and rely upon various judicial pronouncements given in the annexed list.

11. That the total sales during F.Y. 2016-17 relevant to year under

appeal i.e. AY 2017-18 have duly been included in the VAT returns filed by the assessee before the state government authorities and assessee has deposited VAT on these sales. Copy of all the VAT returns filed by the assessee online in RVAT Act stood filed before the A.O. The Hon'ble bench will kindly appreciate that there is no difference between the turnover as per RVAT returns/assessment order and the books of accounts of the assessee. In other words total sales including cash sales made by the assessee as per his books of accounts duly tallies with the turnover assessed by the VAT authorities of state Govt.

12. That as regards adverse observations of the AO in the assessment order particularly in page 5 of the assessment order that there has been abnormal increase in cash sales during the period from 01/10/2016 to 02/11/2016 (demonetization provisions came into effect on 08/11/2016) in comparison to cash sales during the period from 01/04/2016 to 30/09/2016 and for the period from 01/01/2017 to 31/03/2017 the assessee craves leave to submit as under:-

i) That increase or decrease of sales depends on various factors including behavior of the customers coming to the shop of the assessee and specific time prevailing at the time of visit of the customer to the assessee shop i.e. time of festivals like Navratri, Diwali etc. It is respectfully submitted that number of customer walking to the shop of the assessee and the volume of goods purchased by each such customers is not in the control of businessman (here the appellant) and rather it is beyond his control.

ii) That the appellant craves leave to submit that during the immediately preceding previous year i.e. 2015-16 relevant to AY 2016-17 the assessee's gross receipts were of Rs. 80,61,915 and during the previous year relevant to year under appeal the sales are to the tune of Rs. 1,07,40,467 which are slightly higher as compared to immediately preceding assessment year i.e. AY 2016-17 and hence the apprehension of the learned AO is unfounded, baseless and based on surmises and conjectures and it cannot become a basis for treating the cash deposit of Rs. 32,71,000 as unexplained cash deposit.

iii) Legal consensus in this regard is that the additions based on suspicion should not be sustained.

iv) That there is not an iota of evidence with the learned A.O. which goes to prove that the sales are unverifiable.

v) That the learned A.O. has accepted the purchases shown by the assessee in his books of accounts. It is respectfully submitted that once the purchases have been accepted then the corresponding sales cannot be disturbed without there being any conclusive evidence/finding with the A.O.

vi) That judicial consensus is that merely because of difference in ratio of cash sales between two periods of the previous year of the year under assessment or difference in ratio of preceding assessment years as compared to the year under assessment an AO cannot have resort to the provisions of section 68 of the Act for making additions in the total income in its support reliance is placed on judgment of ITAT Delhi bench

in the case of Agons Global Pvt. Ltd. vs. ACIT in ITA No. 3741, 3742, 3743, 3744, 3745, 3746/Del/2019 and various other judgments including that of hon'ble ITAT, Jaipur Bench, Jaipur which from part of judicial pronouncements annexed herewith.

13. That it is not in dispute that cash sales of Rs. 29,65,226 are credited in the sale account and after deducting the cost as well as direct expenses from the sales, resultant gross profit is credited to Profit and Loss Account and the net profit so arrived at after deducting indirect expenses from the gross profit forms part of the total income and the same is disclosed by the assessee in its return of income filed u/s 139(1) of the IT Act. As against this correct factual position the AO has arbitrarily and wrongly subjected to tax u/s 68 of the IT Act total amount of cash deposit of Rs. 32,71,000 in bank accounts during 09/11/2016 to 31/12/2016 and thus it amounts to double additions once as sale duly forming part of assessee's regular book of accounts and again as unexplained cash credit u/s 68. Under such facts and circumstances amount of cash sales cannot be treated as undisclosed income because no duplicate addition can be made in law in respect of the same transaction once as sales forming part of trading account and again as disallowance/ addition u/s 68 of the IT Act. Reliance is placed in this regard on various judgments mentioned in the annexed list forming part of judicial pronouncements herewith :-

14. It is respectfully submitted that it is an established fact that only cash credits can be considered u/s. 68 and not trade receipts. In this regard the appellant craves leave to refer to and rely upon the judgment of Hyderabad Bench "A", of income tax appellate Tribunal, Hyderabad in ITA No. 264/Hyd/2011 in the case of M/s. S.B. Steel Industries and also on other judicial pronouncements mentioned in the list of judicial pronouncements annexed herewith.

15. In support of sanctity of regular books of accounts including invoices of cash sale the appellant craves leave to refer to and rely upon various judgments mentioned in the list of judicial pronouncement annexed herewith including the cases of Vijay Traders vs. CIT reported in 74 ITR 279 (Mys. H.C.) and The Hon'ble Bombay High court in the case of R.B. Jessaram Fatehchand (Sugar Department) vs. CIT, Bombay city II reported in (1970) 75 ITR 33 wherein the hon'ble court observed that 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.

16. It is further submitted that treatment of cash deposit of Rs. 32,71,000 (Out of total cash deposit of Rs. 33,71,000 during demonetization period) as unexplained income and consequentially adding it in the total income of assessee u/s. 68 of the IT Act is in utter disregard of provisions of section-4 of the IT Act which says that levy of Income tax is not on gross receipts but it is on profits and gain properly so called.

17. It is further submitted that profits and gains which are liable to be taxed u/s 28 are what are understood to be such under ordinary

commercial principles . At the same time section 30 to 43C expressly provide what can be deducted in computing business income [reliance is placed on the judgement of Calcutta co. ltd. v/s CIT (1959) 37 ITR 1 (S.C.)]

18. That the action of the A.O. in treating the cash sales of Rs. 29,65,226 made during the period 01/04/2016 to 02/11/2016 as afterthought and thereby coming to the conclusion that the cash deposit in bank in the form of SBN's of Rs. 32,71,000/- as unexplained is unjustified, arbitrary and without any basis.

19. It is respectfully submitted that an identical issue in respect of same assessment year i.e. A.Y. 2017-18 in regard to cash deposit in SBNs in bank during the demonetization period 09/11/2016 to 31/12/2016 came before the Co-ordinate Bench of ITAT, Jaipur Bench, Jaipur in the case of M/s Moti Sons Jewellers. The co-ordinate bench of Income Tax Appellate Tribunal, Jaipur Bench, Jaipur in ITA No. 161/JP/2022 for A.Y. 2017-18 in the case of ACIT, Central Circle-2, Jaipur Vs. M/s Motisons Jewellers Ltd. and ITA No. 178/JP/2022 for A.Y. 2017-18 in the case of M/s Motisons Jewellers Ltd. Vs. ACIT, Central Circle-2, Jaipur vide the common appellate order dated 29/09/2022 dismissed the department appeal no. 161/JP/2022 by concluding vide para no. 15 and 16 at page no. 94, 95 and initial three lines of page 96 that we sustain the order of the Id. CIT(A) and based on these observations the appeal of the revenue in ITA NO. 161/JPR/2022 stands dismissed. (pg 95 and 96). Vide the above mentioned common appellate order dated- 29/09/2022 the Co-ordinate bench, namely ITAT Jaipur Bench, Jaipur in IT Appeal No. 178/JP/2022 for A.Y. 2017-18 in the case of Motisons Jewellers Ltd. versus the ACIT, Central Circle-2 ,Jaipur appeal of the appellant was allowed. The humble appellant craves leave to refer to and rely upon the above mentioned appellate order passed by the Co-ordinate bench in ITA No. 161/JP/2022 and ITA No. 178/JP/2022.

GROUND OF APPEAL NO. 2

This ground of appeal is against invoking of provisions of section 68 r.w.s 115BBE of the IT Act and levying income tax at the rate of 60% [as against highest normal rate of income tax @ 30%], further levy of 25% of tax on alleged unexplained income and levies of other taxes, education fees and in this regard it is submitted as under:-

1. Section 68 is not applicable in this case because there are proper entries in the books of accounts including stock register in relation to cash sale, cash balance, cash deposit in bank etc.
2. Income has already been included in the trading/profit and loss account by way of sale in this very previous year i.e. P.Y. ended on 31/03/2017 relevant to A.Y. 2017-18 and the same forms part of the audited books of accounts. Total income shown in the return of income for A.Y. 2017-18 has thus been computed on the basis of audited final accounts of the previous year relevant to AY 2017-18 by inter alia taking

into consideration cash sales of Rs. 29,65,226 made during the period 01/04/2016 to 02/11/2016, cash deposited in bank during 09/11/2016 to 31/12/2016 and as such it will result into double addition.

3. It is respectfully submitted that changes in section 115BBE through taxation law amendment bill 2016 cannot be made retrospective. The high rate of tax can be made applicable after the date of taxation law bill promulgated in the gazette of India and cannot be made applicable to the transaction made prior to amendment. It is worthwhile to mention that section 115BBE was amended on 15/12/2016 and cash sales against SBNs has been taken into consideration upto the date of 02/11/2016. In other words cash sales against SBNs has been made upto 02/11/2016 only and not on and after 02/11/2016.

4. Provisions of section 68 cannot be applied in respect of cash deposits which have been duly recorded in the books of account and have already been considered as business income shown in the return of income filed by the assessee. It is further submitted that when section 68 is not applicable in the facts of the case the issue of applicability of section 115BBE of the act should not have arisen at all.

5. In the instant case the assessee duly explained the source of cash deposit which is out of cash sales effected by him upto 02/11/2016 i.e. much before the date of amendment of section 115BBE on 15/12/2016, opening cash balance as on 01/04/2016 and cash withdrawn from the banks during the period 01/04/2016 to 08/11/2016 and cash receipts of job works.

6. That The provisions of section 115BBE are applicable only on the income taxable u/s. 68, 69, 69A, 69B, 69C or 69D of the Act. But in the present case source of cash deposit of Rs. 33,71,000 in Bank is income from business of trading of gold ornaments and bullion. Reliance is placed in this regard on various judgments forming part of judicial pronouncements annexed herewith.

7. The appellant also craves leave to refer to and rely upon the submissions made by him in these written submission earlier under Ground of appeal No. 1 and 4.

GROUND OF APPEAL NO. 3

1. That the learned AO failed to discharge the burden of proof which squarely lay upon him for describing the genuine cash sales of Rs. 29,65,226 made during the period 01/04/2016 to 08/11/2016 as an afterthought act of the assessee to introduce his unaccounted money

2. That the burden of proof of not accepting the apparent as real lies on the AO but he has failed to discharge this burden of proof. So much so the AO has not given a single instance of issuing in genuine sales invoice.

3. The appellant has given necessary evidence on the basis of its books of accounts, stock register, sale/purchase invoices, sale/purchase registers, cash books, bank statements and other relevant records that the cash deposited by him in bank accounts upto 31.12.2016 were out of

sale proceeds in cash amounting to Rs. 29,65,226 upto 08.11.2016 and the cash in hand as per books of accounts as on 01.04.2016 and cash withdrawals made from the banks before 08.11.2016 and the cash receipts of job work and as such the assessee should be deemed to have discharged the primary onus which lay upon him and there after onus is shifted on the department to prove that cash amount deposited in bank represent assessee's undisclosed income and the humble appellant craves leave to submit that the learned AO has fully failed to discharge the burden of proof which squarely lay upon him. Reliance is placed on the judgment of Apex Court in the leading case of CIT vs. Orissa Corporation Pvt. Ltd. 159 ITR 78.

GROUND OF APPEAL NO. 5

This ground of appeal is consequential in nature and may please be decided accordingly.”

6. In addition to the above written submission the Id. AR of the assessee submitted that before the assessing officer the assessee submitted all the details that the assessing officer has requested to submit vide submission dated 22.11.2019 & 28.11.2019. None of the details, information placed on record found defective and in fact there is no adverse observation on the details submitted. The AR of the assessee also relying the instruction no. 03/2017 dated 21.02.2017 issued by the CBDT Id. AR of the assessee submitted that the assessee is sufficient having the stock supported by stock register, none of the person to whom the sales is made is established as bogus, quantitative details, details of month wise purchase and sales, were submitted and not found any defect by the assessing officer. The Id. AR of the assessee drawn our

attention to the detailed letter dated 28.11.2019 where in the assessee has submitted following important details so as to substantiate the cash deposit

**Extract of the details submitted vide letter dated
28.11.2019**

"6. Copy of accounts of purchases and sales including purchase return and sales return for the F. Y. 2016-17.

That for your kind consideration we hereby enclose copy of purchase register and sale register to verify the purchases and sale made by the assessee. Further no purchases and sales has been returned by the assessee. Details has been attached as per Annexure-3.

7. Details of Cash work done including taxes made during the below mentioned period:-

S.NO		DESCRIPTION	AMOUNT
A	(a)	TOTAL CASH WORK DONE IN F.Y. 2015-2016	2,498,757.00
	(b)	TOTAL CASH WORK DONE IN 1-4-2015 TO 8-11-2015	2,272,729.00
	(c)	TOTAL CASH WORK DONE IN 9-11-2015 TO 31-12-2015	226,028.00
B	(a)	TOTAL CASH WORK DONE IN F.Y. 2016-2017	3,576,276.00
	(b)	TOTAL CASH WORK DONE IN 1-4-2016 TO 8-11-2016	3,205,356.00
	(c)	TOTAL CASH WORK DONE IN 9-11-2016 TO 31-12-2016	55,580.00
C	(a)	Percentage increase between B(a) and A(a)	43.12
	(b)	Percentage increase between B(b) and A(b)	41.04

8. Details of month wise cash sales and cash deposits from 01.04.2015 to 08.11.2015.

S.no	Month wise	Opening balance cash in hand	Cash sales	Income from job work	Cash deposited in bank	Cash withdrawal from the bank	Closing balance cash in hand
1	Apr-15	-	-	126,037.00	-	-	84,857.00
2	May-15	126,037.00	-	117,563.00	-	-	163,640.00
3	Jun-15	163,640.00	-	121,326.00	-	-	247,806.00
4	Jul-15	247,806.00	-	69,710.00	-	-	298,626.00
5	Aug-15	298,626.00	-	35,670.00	-	-	308,546.00
6	Sep-15	308,546.00	1,134,521.00	80,573.00	695,000.00	-	795,160.00
7	Oct-15	795,160.00	432,267.00	40,619.00	277,600.00	-	969,796.00
8	01-11-2015 To 08-11-2015	969,796.00	114,443.00	-	-	-	1,084,239.00

9. Details of month wise cash sales and cash deposits from 01.04.2016 to 08.11.2016

S.NO	MONTH WISE	OPENING BALANCE CASH IN HAND	CASH SALES	GROSS RECEIPT FROM GOLD SMITH WORKS	CASH DEPOSITED IN BANK	CASH WITHDRAWAL FROM THE BANK	CLOSING BALANCE CASH IN HAND
1	Apr-16	409177.00	0.00	18260.00	-	-	385687.00
2	May-16	385687.00	0.00	36270.00	-	-	400787.00
3	Jun-16	400787.00	0.00	36950.00	-	97750.00	527587.00
4	Jul-16	527587.00	0.00	36870.00	-	-	523427.00
5	Aug-16	523427.00	0.00	36700.00	-	-	528977.00
6	Sep-16	528977.00	0.00	37740.00	-	-	497385.00
7	Oct-16	497385.00	2,368,330.00	17820.00	-	-	2767375.00
8	01-11-2016 To 08-11-2016	2767375.00	596,896.00	19,520.00	-	-	3203791.00

10. Details of items wise comparative chart of the GP/NP/Gross receipts/sales for the year under consideration in comparison to the last two years.

S.NO	PARTICULARS	2015-2016	2016-2017
1	Gross Receipts	8061915.00	10740467.00
2	Gross Profit	519611.00	415445.00
3	Net Profit	374769.00	347091.00
4	G.P. Ratio	6.99%	3.99%
5	N.P. Ratio	5.04%	3.33%

That as M/s Baywala Gold is incorporated in FY 2015-2016 hence figures of FY 2014- 2015 is not available.

11. Detailed reason for increasing cash in hand in FY 2016-17 till 08-11-2016.

That increase in cash balance in the FY 2016-2017 till 08-11-2016 is due to sales of goods and sale is dependent of various factor ike diwali season, marriages etc. That assessee does not have any control over the sale as the same is driven by the demand and supply.

12. Details of Opening and Closing stock inventory in Quantity and value with method of valuation.

That for your kind consideration we hereby provide details of opening and closing stock in quantity and value. Details have been provided herein below:-

S. No.	Particulars	Quantity	Value	Method
1	Opening Stock	977.425 gms	26,64,640.67	
2	Closing Stock	1017.360 gms	29,80,131.84	Stock has been valued at cost FIFO Basis

13. Maintenance of Stock register and copy of stock statement.

That it is submitted that the quantitative detail of stock is maintained by the assessee and for your kind verification we hereby enclose stock statement as per Annexure-4.

14. Copy of Sales tax assessment orders/VAT returns etc for the year consideration.

That for your kind consideration we hereby enclose copy of VAT assessment order for the year under consideration. Details has been attached as per Annexure-5.”

The Id. AR based on the above detailed information placed on record supported the deposit of cash made in the bank account

and submitted that the same is accounted cash and not unexplained money. The Id. AO has not verified anything which is placed on record merely the addition is made on assumptions and guesswork without contradicting the facts placed on record. The Id. AR of the assessee further submitted that the finding of the Id. CIT(A) is also not speaking one but has confirmed the action of the Id. AO merely holding that :

“It is not understood how assessee generated that much of cash in hand and also having opening stock of gold in excess of Rs. 25 lac when his income was barely above basic exemption limit. Appellant had given lengthy written submission. But his story just does not add up. In view of this, grounds taken are dismissed. “

The Id. AR of the assessee thus, submitted that even the Id. CIT(A) has not dealt with the submission and case law relied upon and given the order which is non speaking.

7. The Id. DR is heard who has relied on the findings of the lower authorities and submitted that the assessee failed to support the sudden increase in cash sales just few days of demonetization and all invoices are below Rs. 2,00,000/-. The assessee is merely job worker and has also done sales of bullion is not free from the doubt. Based on these Id. DR supported the findings of the lower authorities.

8. We have heard the rival contentions and perused the material placed on record. The bench noted the non-disputed facts which is that the assessee is a proprietor of Baywala Gold having registration under Vat, the sales of gold is supported by enough golds though the same is carried forward from previous year and the same is disclosed by the assessee while filling the ITR. There is no adverse observation on the details of the purchases, sales and quantitative details placed on record. Even the same is supported by the Value added tax return submitted by the assessee. The Id. Assessing Officer, has examined these details but could not prove any of the details / information incorrect. The assessee submitted details of purchase, sales, details of cash sales/work in F. Y. 2015-16 & 2016-17 the same is comparable in terms of percentage 41.04 & 43.12 respectively for these two years. All these information even though placed on record of the Id. CIT(A). The order of the Id. CIT(A) does not deal with the records and the various legal judicial precedent cited by the assessee in the proceeding before the first appellate authority. The bench noted that it is not in disputed that cash sales of Rs. 29,65,226/- is credited in the sales register produced before the Id. AO. The resultant profit considering this sales has already been form part of

net profit so arrived in the profit and loss account so submitted and same is disclosed by the assessee in its return of income filed u/s. 139(1) of the Act. Without disputing these facts and without disproving the said sales and profit subjected to tax the amount u/s. 68 of the Act. Based on these set of facts once the sales recorded in the books is not disputed ignoring that sales recorded in regular books of account making a separate addition is duplication of the same amount recorded in the books and for the same amount the assessee cannot be subjected to twice as the provision of section 4 of the Act empower the Id. AO to tax profit and not the gross receipts. Once the sales is not disputed by the lower authority then in that cash charging the gross amount of receipt is in violation of basic structure of the Act. The bench observed that there is no adverse observation about the sales recorded by the assessee is bogus and same is not supported by sufficient evidence. Thus, once the sales recorded by the assessee is in accordance with the law without disputing the same again the addition of out of the sales proceeds for an amount of Rs. 33,71,000/- is nothing but the addition based on assumptions, presumption and theories against the set of records. The bench has also observed the Id. AO has called for the required details as listed in the CBDT instruction and

has not recorded any of the details to be untrue. Based on these factual aspect of the case on hand we found that once the revenue has accepted the fact that the assessee made the sales out of the stock that available merely the same is made in cash and before the period of demonetization is not correct, revenue has ignored the fact that the period of sales was marriage and Diwali where the probability of sales in cash cannot be denied. Thus, when the cash sales is established and not doubted the cash deposited out of that cash sales against cannot be added u/s. 68 of the Act without disproving the sales found recorded in the books. The similar view is taken by the co-ordinate bench in ITA No.161/JP/2022 in the case of ACIT CC- Jaipur Vs. M/s Motisons Jewellers Limited and relevant finding in that case is reiterated here in below:

14. We have considered the rival contention and perused the orders of the authorities and the material available on record arguments advanced by both the parties and also gone through the judicial decision relied upon by both the parties to drive home to their contentions. The assessee is a limited company and deriving income from manufacturing and trading of jewellery. The books of assessee's are audited by the independent Chartered Accountant and copy of audit report and statement of profit and loss account is filed by the assessee company. 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 29-12-2019 assessed the income of the assessee at Rs.16,45,24,988/- as against return income of Rs.5,37,53,418/- . During the course of assessment proceedings, the AO rejected the books of account of the assessee by applying the provisions of Section 145(3) and estimated the net profit rate of 2.59% being average Net Profit of last three years and applied the same on

the sales of Rs.1,96,92,45,899/- i.e. to say Rs.2,09,09,94,399 – Sales as per books and Rs.12,17,48,500 – Cash deposited in Bank. It is further noted that the AO reduced the amount of Rs.12,17,48,500/- deposited in the demonetization currency which was against sales, realization from debtors and advances against sales, out of total sales of Rs.2,09,09,94,399- declared by the assessee. Hence, the AO computed the net profit of the assessee at Rs.5,10,03,468/- as against Rs.5,19,80,398/- declared by the assessee. It is also noted that the assessee had deposited the amount of Rs.12,17,48,500/- in the demonetized currency which was out of cash balance available with the assessee from sales made by it, amount realized from sundry debtors and advance received against sales which the AO treated 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. In first appeal, the Id. CIT(A) vide para 6.2 of his order partly deleted the addition made by the AO by observing as under:-

- i) deleted the addition of Rs. 12,17,48,500/- made by Id. AO under section 68 of the Act alleging the cash deposited in bank a/c in demonetized currency as unexplained cash credit.
- ii) Upheld the rejection of books of accounts and also upheld the estimation of NP rate of 2.59% as against NP rate of 2.36% declared by the assessee.
- iii) Initially in the original order dated 04.02.2022 the Id. CIT (A) confirmed the addition of Rs. 31,53,287/-, which by passing the rectification/corrigendum order dated 11.07.2022 modified and sustained Rs. 47,72,297/- by estimating the net profit of Rs. 5,41,56,755/- (by applying the NP rate 2.59% on declared turnover of Rs. 2,09,09,94,399/-) as against Net profit of Rs. 4,93,84,458/- declared by the assessee.

15. We also find that the Department has raised the solitary ground for deletion of addition of Rs.12,17,48,500/- made by the AO by applying the provisions of Section 68 and taxed as per provisions of Section 115BBE of the Act. All the points or allegation noted by the Id. 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 and against the facts placed on record by the assessee. The Id. AR of the assessee during the course of hearing taken us to all the points raised by the AO so as to prove that the contention raised by the AO to prove that the sales made by the assessee company as on the date of demonetization is correct and possible looking to the strength of staff, space of demonstration and parking and the considering availability of stock on hand as proved that the sales made by the assessee company is 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. As regards the receipt of the cash from the customer the Id. AR of the assessee relied upon the findings of the jurisdiction high

court judgement in the case of Smt. Harshil Chordia Vs. ITO reported at 298 ITR 349 (Rajasthan-HC). In this case the Jurisdictional Hon'ble High Court have held that

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.

16. Thus, the fact of the case on hand is similar to the jurisdictional high court decision cited by the Id. AR of the assessee. The Id. 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 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. 161/JPR/2022 stands dismissed.

On being consistent we hold that once the sales amount recorded in the books of account is not proved wrong the separate addition is not warrant considering the consequent to the sales cash deposited into the assessee's bank account. Based on these observations we vacate the addition of Rs. 32,71,000/- and we allow the ground no. 1,3 & 4 raised by the assessee.

9. Since we have considered the case of the assessee on merits therefore, ground no. 2 for rate of tax to be charged becomes educative in nature and therefore the same is not required to be adjudicated.

10. Likewise ground no. 5 being general in nature it does not require adjudication.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 26 /04/2023

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:- 26/04/2023

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Mukesh Soni, Jaipur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward 5(1), 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. 46/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar