

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.352/Del/2021  
निर्धारणवर्ष/Assessment Year:2017-18**

|                                   |                    |   |
|-----------------------------------|--------------------|---|
| DCIT<br>Circle 4(2)<br>New Delhi. | <u>बनाम</u><br>Vs. | Bawa Jewellers Pvt. Ltd.<br>A-24, Tagore Market, Kirti Nagar,<br>West, New Delhi. |
|                                   |                    | <b>PAN No. AAACB4823D</b>   |
| <b>अपीलार्थी Appellant</b>        |                    | <b>प्रत्यर्थी/Respondent</b>  |

|                    |  |
|--------------------|--|
| <b>Revenue by</b>  | <b>Sh. Kanv Bali, Sr. DR</b>                                   |
| <b>Assessee by</b> | <b>Sh. Hiren Mehta, CA<br/>&amp;<br/>Sh. Nirbhay Mehta, CA</b> |

|   |                   |
|---|-------------------|
| <b>सुनवाईकीतारीख/ Date of hearing:</b>  | <b>18.05.2023</b> |
| <b>उद्घोषणाकीतारीख/Pronouncement on</b> | <b>09.06.2023</b> |

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax(Appeals)-2, New Delhi dated 09.09.2020 for the AY 2017-18 in deleting the addition made u/s 68 of the Act in respect of cash deposits made by the assessee into its bank accounts during demonetization period.

2. Brief facts are the assessee company which is engaged in the business of manufacture of gold and diamond jewellery filed its return of income on 29.09.2017 declaring income of Rs.1,21,28,780/-. The case was selected for scrutiny through CASS as the assessee made large cash deposits during the demonetization period.

3. During the assessment proceedings, the Assessing Officer noticed that the assessee company has deposited cash of Rs.21,69,98,000/- from 09.11.2016 to 31.12.2016 during demonetization period and the assessee was asked to produce relevant documents in support of its cash deposits. The assessee furnished month wise cash sales, cash deposits, purchases, opening cash in hand, advances from debtors, closing cash balances in hand. Assessee also submitted that generally the showroom will be closed around 8.30 pm but after Prime Minister's Speech on 08.11.2016 that 1000 and 500 currency notes would no longer be a legal tender after 12:00 midnight of 08.11.2016 there was a huge rush of customers pouring in the showroom to purchase which the assessee had never seen before. It was also submitted that the customers did not bother to look for the design of the jewellery and they were just ready to pick the products which were below Rs.2 lakhs as no

one wanted to share the PAN details, contact details etc. The assessee submitted that the cash generated from out of cash sales was deposited in parts in its banks namely Kotak Mahindra Bank and Federal Bank Ltd. The assessee also furnished comparison chart showing cash sales, cash deposits, turnover and closing stock for the FYs 2015-16, 2016-17 and 2017-18 and submitted that there is no unprecedented trend in the financial transactions of the assessee company and there was a marginal increase in the cash sales.

4. The assessee submitted that for the FY 2015-16 the cash sales were Rs.31,85,57,163/- out of total turnover of Rs.44,98,39,568/- and the ratio of cash sales to turnover was 70.82%. Similarly the cash sales for FY 2016-17 were Rs.42,84,00,142/- out of total turnover of Rs.58,09,41,333/- and the ratio of cash sales to turnover was 73.74%. Therefore, the assessee submitted that there was a marginal increase in cash sales for the FY 2016-17. The assessee also submitted that cash sales is a common phenomena in the business of the assessee company which is into manufacture of gold and diamond jewellery and the company is regularly depositing cash into bank account.

5. The assessee further submitted that cash deposits during the FY 2015-16 was Rs.37,21,51,000/- when turnover was at

44,98,39,568/- and the ratio of cash deposits to turnover was 82.73%, whereas the cash deposits of the assessee company during the FY 2016-17 was Rs.47,76,87,500/- when turnover was 58,09,41,333/- and the ratio of cash deposits to turnover was 82.22%. Therefore it was submitted that in cash deposits also there was consistency and regularity. The assessee also contended that the closing stock for the FY 2015-16 and 2016-17 was Rs.19,42,54,866/- and 19,33,74,529/- respectively and the company generally keeps good stock holding always various kinds of designs, patterns in various weight and sizes. It was submitted that assessee has been maintaining stocks from past few years which can be seen from the audited balance sheet from the last 4-5 years.

6. However, the AO on analyzing cash deposits during demonetization period for the FY 2016-17 in comparison to FY 2015-16 he came to the conclusion that it is not in line of the normal business and observing that there is increase in cash deposit at 168% and cash sales at 111% he concluded that cash deposits amounting to Rs.21,69,98,000/- during demonetization period i.e. from 01.04.2016 to 08.11.2016 is not justified. However, the AO has allowed credit for the cash deposits in accordance with turnover over ratio growth. AO has arrived at ratio growth in respect of the

turnover for the FY 2016-17 over 2015-16 at 29.15% and since cash deposits during 09.11.2015 to 31.12.2015 was 08,09,50,000/- he has calculated the growth rate of turnover cash deposits at Rs.10,45,46,925/- for the period from 09.11.2016 to 31.12.2016. This was allowed as proven. The AO also allowed 1,25,00,000/- which was deposited under Pradhan Mantri Garib Kalyan Scheme, 2016 and arrived at the addition to be made u/s 68 at Rs.9,99,51,075/- after considering deposits of Rs.10,45,46,925/- and Rs.1,25,00,000/- as explained out of cash deposits of Rs.21,69,98,000/-. This was treated as unexplained and brought to tax u/s 68 of the Act. On appeal the Ld.CIT(Appeals) deleted the addition made u/s 68 of the Act, against which order the Revenue is in appeal before us.

7. At the time of hearing, the Ld. DR strongly supported the orders of the Assessing Officer and the Ld. Counsel for the assessee placed reliance on the orders of the Ld.CIT(Appeals). The Ld. Counsel for the assessee further submits that the Ld.CIT(A) following the decision of the Tribunal in the case of Agson Global Pvt. Ltd. vs. ACIT dated 31.10.2019 deleted the addition on identical facts and this decision of the Tribunal was also affirmed by the Delhi High Court in the case of Pr. CIT vs. Agson Global Pvt. Ltd.

(441 ITR 550). The Ld. Counsel also relied on the following decisions:

1. *ACIT vs. Hirapanna Jewellers [189 ITD 608 (Visakhapatnam)]*
2. *Smt. Charu Aggarwal vs. DCIT [140 Taxman.com 588 (Chd.)]*
3. *Anantpur Kalpana vs. ITO [138 Taxman.com 141 (Bangalore)]*

8. Heard rival submissions, perused the orders of the authorities below and the decisions relied on. During the demonetization period the assessee company had deposited cash of Rs.21,69,98,000/- into its bank accounts maintained with Federal Bank Ltd. and Kotak Mahindra Bank Ltd. The AO has observed that the total cash deposited in the banks with respect to two consecutive financial years (with reference to the date of demonetization), total cash deposited in bank from 09.11.2015 to 31.12.2015 amounted to Rs. 8,09,50,000/- as against Rs. 21,69,98,000/- for the period 09.11.2016 to 31.12.2016. The AO observed that the total turnover for FY 2015-2016 was Rs.44,98,39,562/- and for FY 2016-2017 was Rs. 58,09,41,333/-. Thus, there was a growth rate of 29.15% in sales on year to year basis. The AO held that the assessee can be given benefit of this growth rate in cash sales for corresponding demonetization year. The AO further observed that during demonetization period there was a jump of 168% in total cash deposits and the cash sales jumped

to 111% during the period 01.04.16 to 08.11.16 than that of previous financial year i.e. 2015-16. Finding of the AO is tabulated below: -

|     |   |                   |
|-----|---|-------------------|
| 4.1 | a) Total cash deposit in bank FY 2015-16                    | Rs.37,21,51,000/- |
|     | b) Total cash deposit in bank from 01.04.2015 to 08.11.2015 | Rs.22,15,79,000/- |
|     | c) Total cash deposit in bank from 09.11.2015 to 31.12.2015 | Rs.8,09,50,000/-  |
| 4.2 | a) Total cash deposit in bank in FY 2016-17                 | Rs.47,76,87,500/- |
|     | b) Total cash deposit in bank from 01.04.2016 to 08.11.2016 | Rs.19,12,59,500/- |
| 4.3 | a) Percentage increase between 4.2(a) and 4.1(b)            | 28%               |
|     | b) Percentage increase between 4.2(b) and 4.1(b)            | -14%              |
|     | c) Percentage increase between 4.2(c) and 4.1(c)            | 168%              |

#### Cash Sales

|     |   |                   |
|-----|---|-------------------|
| 5.1 | a) Total cash sales in FY 2015-2016               | Rs.31,85,57,163/- |
|     | b) Total cash sales from 01.04.2015 to 08.11.2015 | Rs.18,26,21,904/- |
| 5.2 | a) Total cash sales in FY 2016-2017               | Rs.42,84,00,142/- |
|     | b) Total cash sales from 01.04.2016 to 08.11.2016 | Rs.38,59,60,848/- |
| 5.3 | a) Percentage increase between 5.2(a) and 5.1(a)  | 34%               |
|     | b) Percentage increase between 5.2(b) and 5.1(b)  | 111%              |

The AO has also given an allowance of Rs. 1,25,00,000/- which was reflected under Pradhan Mantri Garib Kalyan Yojana (PMGKY), 2016. The AO further added Rs. 9,99,51,075/- to the total income of the assessee company, as the assessee company failed to discharge the onus of proving genuineness of the cash deposited in bank accounts u/s 68 of the Act.

9. The Ld.CIT(Appeals) after analyzing the details of cash deposits, cash sales, turnover and the averments in the assessment order and also the evidences furnished by the assessee deleted the addition observing as under: -

*“4.10 From the analysis of the closing stock for the said period, it is evident that the appellant has sufficient stock-in-hand to justify sales. It is noted that the appellant during the course of assessment proceedings, had provided a quantitative details as on 31.07.2017 of the stock position before the A.O. The A.O has not pointed out any discrepancy with respect to the quantitative details of stocks available with the appellant. It is noted that the appellant furnished quantitative details of closing stock before the AO on 24.12.2019. No discrepancy in this regard has been noted by the AO. The inference in this regard is that the quantitative details have been accepted.*

*4.11 The appellant was also asked to justify sales which had been claimed with respect to the VAT return filed by it for the relevant financial year. It is noted that the total sale which was reflected in the VAT return amounting to Rs.54,53,36,094/-. it may be noted that the appellant revised the VAT return and filed the same on 28.10.2016 for first quarter of F. Y 2016-17. This was before demonetization. Hence, the same has no adverse implications for the facts of the present case. As against this, in the return of income under the provisions of Income-Tax Act, total turnover was shown at Rs.54,53,36,094/-. Further, during the course of the assessment proceedings, appellant filed voluminous details with respect to:-*

- a) Copies of bank statements and source of deposit therein, which was squarely attributed to cash sales effected ;*
- b) Details of cash deposited for the FY 2015-16, 2016-17 and 2017-18;*
- c) Details of purchases, gross sales and cash deposit;*
- d) Cash book and quantitative details.*

4.12 Therefore, from the above, it is noted that neither the A.O pointed out any shortage in the closing stock vis-a-vis the sales effected, nor any discrepancy in the information submitted before the income tax and the VAT authorities.

4.13 During the course of the appellate proceedings, the appellant was asked to furnish a comparative chart regarding cash-sales. The same is enumerated hereunder :-

| S.No. | Particulars                                 | 2015-16   | 2016-17   | 2017-18   |
|-------|---|-----------|-----------|-----------|
| (i)   | Cash Sales                                  | 318557163 | 428400142 | 231663110 |
| (ii)  | Cash Deposit                                | 372151000 | 477687500 | 287020100 |
| (iii) | Turnover                                    | 449839568 | 580941333 | 451016448 |
| (iv)  | Cash Sales Ratio,<br>Cash Sales/Turnover    | 70.82%    | 73.74%    | 51.36%    |
| (v)   | Cash deposit ratio cash<br>deposit/turnover | 82.73%    | 82.23%    | 63.64%    |

From the above tabulated data it can be seen that ratio of cash sales to turnover has not increased significantly. There is a mere increase of 3% which can be justified due to the demonetization and discontinuation of the old currency. Furthermore, it is submitted that the cash deposit ratio which is 82.73% in FY 2015-2016 and 82.23% in FY2016-2017 establishes the fact that there was regular deposition of cash in bank accounts owned by the assessee company. All these cash deposits are out of cash sales made from regular books of accounts. As far as FY 2017-18 is concerned the cash sales decreased slightly due to after effects of demonetization.

4.14 It was also noted that the cash in hand as on 09.11.2016, amounting to Rs. 21,33,29,127/- was deposited in the various bank accounts on 11.11.2016, 13.11.2016 and 15.11.2016. This shows no time lag between sales and deposit. This is also an important pointer to the fact regarding sales effected and deposits made.

4.15 Similarly, the appellant was asked to provide an analysis of the trend in GP, which is seen to be consistent. The same is enumerated hereunder: -

| Particulars    | 31.03.2018   | 31.07.2017   | 31.03.2016   | 31.03.2015   |
|----------------|--------------|--------------|--------------|--------------|
| Total turnover | 45,10,16,448 | 58,09,41,333 | 44,98,39,568 | 40,29,00,621 |
| Gross Profit   | 3,80,49,895  | 4,46,08,482  | 3,04,83,358  | 2,71,43,369  |
| GP ratio       | 8.44         | 7.68         | 6.78         | 6.74         |
| Net Profit     | 45,11,764    | 39,42,612    | 18,06,067    | 18,53,211    |
| NP Ratio       | 1.00         | 0.68         | 0.40         | 0.46         |
| Stock in Trade | 24,25,37,182 | 19,33,74,529 | 19,42,54,866 | 14,64,12,576 |

|                               |       |       |       |       |
|-------------------------------|-------|-------|-------|-------|
| Stock in Trade/Turnover Ratio | 53.78 | 33.29 | 43.18 | 36.34 |
|-------------------------------|-------|-------|-------|-------|

4.16 From the analysis of the cash deposit ratio and also the GP ratio, nothing adverse is inferred. In fact, it is also not in dispute that the A.O also has accepted sales figures and the extrapolation by AO is based on the sales recorded by the appellant in its books. What has been estimated is the quantum of cash transaction which has been effected vis-a-vis the total turnover of the appellant between two corresponding periods. On the other hand, the appellant has brought out that the total cash sales for the year and the percentage of cash sales to the total turnover is almost identical to the corresponding previous financial year. It has justified the cash sales for the current year on the ground that it is regular and consistent with preceding year. What is important in this context is the fact that the entire sales have been recorded in the books of the appellant, which has not been disputed by the AO. In the context of the above facts, it would be instructive to analyze various judicial pronouncements on the subject, having a bearing on the facts of the case.

(i) The Hon'ble IT AT Delhi in the case of *Singhal Exim Pvt. Ltd. vs. ITO (ITA No.6520/Del/2018)* had an occasion to examine similar facts. The observation of the Hon'ble Tribunal are enumerated hereunder:

- > In the first paragraph above, the Assessing Officer mentioned "the amount of Rs.59,11,29,517/- is hereby disallowed u/s 68 of the Act and added back to the total income of the assessee company". It seems that the Assessing Officer has probably not understood the scope of Section 68. Section 68 is not for the purpose of allowability or disallowability of any deduction and moreover, the question of disallowance may arise in respect of any expenditure or allowance claimed by the assessee. In respect of a sale consideration, there cannot be any question of any disallowance. In the second paragraph above, the Assessing Officer has alternatively applied Section 69C. Section 69C is also for unexplained expenditure. Admittedly, there is no question of any unexplained expenditure in the case under appeal before us and therefore, Section 69C is also not applicable.

- > *Further, we find the stand of the Assessing Officer to be contradictory. On one hand, he mentioned the high sea sales to be not genuine and on the other, he has accepted the business income disclosed by the assessee. Admittedly, the business income disclosed by the assessee has been worked out after considering the purchases and sales of mobile phones. The sales included the high sea sales also. Once the Assessing Officer has accepted the trading results, he has accepted the sales including high sea sales. Therefore, his stand while making the addition under Section 68 or 69C is contradictory to his stand taken while accepting the business income which is not permissible in law.*

*The Hon'ble ITAT has held that on one hand, the AO has accepted the sales as genuine by accepting the trading result disclosed by the assessee, and on the other hand, has held the high-sea sales to be 'not genuine'. The Hon'ble ITAT has held that there is an inherent contradiction in the same. The order of the A.O in the present case also suffers from the stated contradictions, as stated hereinabove.*

*(ii) The second issue is with respect to the whether Section 68 will be made applicable to the facts of the present case. It is not in dispute that the sales have been duly recorded in the books of account. The same was also reflected in the audited report, ITR and also in the VAT return. The VAT return filed have not been revised. The A.O has not questioned the quantum of sales reflected by the appellant. The A.O has resorted to an estimation, based on comparative figures between cash sales and total turnover by resorting comparative percentage analysis. Hon'ble ITAT in Singhal Exim Pvt. Ltd. vs. ITO (supra) have made the following observations: -*

*“Coming to the cash payment of sale consideration, we are of the opinion that it certainly raises the doubt but again, when there are documentary evidences from the government agencies like custom authorities, the genuineness of sales cannot be doubted. Moreover, at the relevant time, there was no law which prohibited receipt of sale consideration in cash.”*

(iii) *The ratio of the decision is applicable to the facts so far as sales effected in cash is concerned. In the case of Kishore Bhai Kanhaiya (ITA No. 1220/Del/2011), the Hon'ble ITAT Delhi was examining the issue of cash sales. It was held that the appellant was maintaining a stock register in respect of the items dealt with by him. The stock admittedly before the AO, who did not point out any deficiency in the same. There is no law which prohibits cash sales. In a similar case has held that the A.O made an addition of Rs. 22.06 lakhs u/s 68 of the Act, which contemplates making an addition of any sum is found credited in the books of the assessee, is not proved to the satisfaction of the A.O. It is only when such a sum is not proved that the Assessing Officer proceeds to make an addition u/s 68 of the Act. We are dealing with a situation in which the assessee has himself offered the amount of cash sales as his income by duly including it in his total sales. Once a particular amount is already offered for taxation, the same cannot be again considered u/s 68 of the Act. In fact, such addition results into double addition. The Hon'ble Gujarat High Court had approved the ITAT order in the case of Vishal Exports Overseas Ltd. ITA No. 2471/2009 holding that where the A.O has accepted the sales realization as income, addition on the same account u/s 68 of the Act would be tantamount to double taxation of the same income.*

(iv) *Similarly, the ratio of decision of Hon'ble ITAT, Hyderabad in the case of S.B. Steel Industries (ITA No. 264/Hyd/2011), has held that it is an established fact that only cash credits can be considered u/s 68, but, not trade receipts. The Hon'ble Tribunal took into consideration the decision of the coordinate bench of ITAT in the case of ITO vs. Rajender Kumar Kataria (106 TTJ 712) (Jodhpur) that held the amount received by the assessee were cash credits but recovery from the dates which were available in the books of account. Since the assessee has furnished details debtors and also entries made in the books of account, the invocation of Section 68 was held to be not applicable to trade recovery made by the assessee during the year. In the present case, the cash deposited in the bank is nothing but in the nature of trade-receipts only.*

(v) The A.O in the present case has based her estimation on the sales effected. The cash proceeds of the business, recorded in the books, deposited in the bank was offered to tax addition of the receipts of business, u/s 68 has resulted in double addition. The Hon'ble ITAT, Ahmadabad in the case of Shree Sanand Textile Ltd. ITA No. 995/Ahm./2014, the Hon'ble ITAT noted that the provision of Section 68 of the Act can be attracted where there is a credit found in the books of accounts and the assessee failed to offer any explanation or the offer made by the assessee is not satisfactory in the opinion of the assessing officer. The assessee has explained to the authorities below that the impugned amount represents the sale which has not been doubted by the authorities below. Thus, in the considered view of the Hon'ble ITAT, the impugned amount cannot be treated as unexplained cash credit under section 68 of the Act, merely on the grounds that the assessee failed to furnish the details of the existence of the parties. Further, the Hon'ble Tribunal also held that the provisions of section 68 cannot be applied in relation to the sales receipt shown by the assessee in its books of accounts. It is because the sales receipt has already been shown in the books of accounts as income at the time of sale only. The Hon'ble Tribunal also held that there was no iota of evidence having any adverse remark on the purchase shown by the assessee in the books of account. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/finding. Hon'ble Delhi High Court in the case of Akshit Kumar vs. ACIT [ITA No. 6527/Del/2017] has held that neither any item in the trading account, nor gross profit has been rejected, sales cannot be discarded completely to hold that is unexplained money. In a similar case pertaining to CIT vs. Jindal Dyechem Industries Pvt. Ltd. it was held that the AO has not proved that the assessee received something over and above what was entered in the books of accounts maintained. No specific defect was pointed out in the audited accounts. In such circumstances, it was not upto him to add back assessee is return of fictional income.

(vi) The Hon'ble Delhi High Court in the case of CIT vs. Kailash Jewellery House [ITA No. 613/2010],

*decided the appeal of the revenue, which had appealed against the order of the CIT(A) and ITAT, on the grounds that the amount of Rs.24,58,400/- received in cash in the bank account, the assessee failed to establish any nexus of such deposit to any source of income. While dismissing the appeal of the revenue, the Hon'ble Court has made the following observations, which are relevant to the facts of the present case*

*A. At the level of CIT(A), it was held that*

- > Cash sales were duly recorded in the books and they found a place in the profit and loss account;*
- > The assessee had furnished books of account and no discrepancy was pointed out*

*B. At the level of ITAT, it was held that it was not disputed that the sum was credited in the sales account. It was also duly included in the profit disclosed by the assessee in the return of income. The Hon'ble Court endorsed the views of the Tribunal that in such cases, it could not be treated as undisclosed income and no addition could be made once again in respect of the same.*

*In the present case, the AO has not pointed out any defects. Books of account have been accepted. No defects have been pointed out. In the absence of the same, resorting to an estimation, based on statistical extrapolation cannot be accepted.*

*(vii) The Hon'ble ITAT, Delhi in the case of Agson Global Pvt. Ltd. vs. ACIT [ITA No. 3741 to 3746/Del/2019] and [ITA No. 5264 to 5269/Del/2019], in its order dated 31.10.2019 have allowed the appeal of the appellant, which was based on an issue emerging out of demonetization event. The principles laid down also have a bearing on the facts of the present case. The assessee (Agson Global) was engaged in the trading of dry fruits and kirana items. The cash received against sales is subsequently deposited into banks from time to time. Cash sales and corresponding cash deposits into the bank accounts of the assessee have been a regular feature of the assessee's business. The*

*nature and source of cash deposited between 09.11.2016 to 30.12.2016 was matter of investigation, subsequent to search and seizure operation carried out u/s 132 of the Act on 21.03.2017. The following observations have been made by the Hon'ble Tribunal :-*

*i) "Drawing inference from the above cited cases, in the instant case, the Assessee furnished a reasonable explanation with regard to the nature and source of the cash deposited in banks during the demonetization period which was not found to be false by the Department. The explanation offered by the Assessee was in line with the trend of cash deposits in the past years which was accepted by the Department in the assessments framed u/s 143(3) of the Act in the past. No material was brought on record by the Revenue Authorities to draw an inference that the explanation offered by the Assessee was incorrect or unreasonable or that the impugned sum represented income of the Assessee from undisclosed sources as against the entries recorded in the audited books of the Assessee. Once the books of account of F.Y. 2016-17 were accepted by the Department and the cash sales recorded therein were considered in arriving at the assessed income of the Assessee for the impugned financial year, the cash deposited in banks against such cash sales could not be treated as undisclosed income of the Assessee u/s 68 without bringing on record any credible evidence/material in support of such allegation merely on the basis of surmises and conjecture of the Revenue Authorities.*

*ii) The whole purpose of the Departmental Authorities in singling out the cash deposited during the demonetization period as arising out of unexplained sources(as against the accepted position in the past and the subsequent periods) is to somehow trigger the provisions of section 115BBE read with section 68 of the Act to the income already offered for tax by the Assessee (as cash sales) at a higher rate of tax of 77.25% (i.e. flat rate of 60% plus surcharge @ 25% on such tax and cess as applicable) on gross basis (without any deduction/allowance). In fact the treatment of the*

*cash deposits as unexplained cash credits u/s 68 by the A.O has resulted in double taxation of the same amount, once in the form of cash sales already offered to tax by the Assessee at the rate of tax applicable to companies and again by way unexplained cash credit on deposits arising from such sales u/s 68 at higher rates specified u/s 115BBE. Section 115BBE of the Act is a machinery provision to levy tax on income and it should not enlarge the ambit of section 68 of the Act to create a deeming fiction to tax any sum already credited/offered to tax as income. Section 68 of the Act traditionally applies to unexplained 'cash credit' like loans, deposits, advances, share capital, etc. and not to sums already offered to tax as income by the assessee in its return of income at the highest slab rate. Such recourse is unwarranted keeping in mind the objective to introduce section 115BBE of the Act was only to curb the practice of laundering of unaccounted money by taking advantage of the basic exemption limit. The reason and purpose of the provision was explained by the explanatory memorandum to the Finance Bill 2012 as under:-*

*1) "Under the existing provisions of the Income-tax Act, certain unexplained amounts are deemed as income under section 68, section 69, section 69A, section 69B, section 69C and section 69D of the Act and are subject to tax as per the tax rate applicable to the assessee. In case of individuals, HUF, etc., no tax is levied up to the basic exemption limit. Therefore, in these cases, no tax can be levied on these deemed income if the amount of such deemed income is less than the amount of basic exemption limit and even if it is higher, it is levied at the lower slab rate.*

*2) In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, it is proposed to tax the unexplained credits, money, investment, expenditure, etc., which has been 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 as applicable). It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years."*

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

*iv) In view of the above, it is prayed that the addition made by the A.O (and partly sustained by the CIT (A)) u/s 68 on account of cash deposited in*

*banks during the demonetization period may kindly be deleted.”*

*4.17 From the above discussion, with respect to the facts on record and judicial pronouncements on the subject, the following can be concluded:*

- i) The AO did not question the sales figure and accepted books of account. In the absence of any adverse finding with respect to the acceptability/veracity of books of account, the action of AO cannot be sustained. Making an addition u/s 68 of an amount, which is already accounted for as sales would be tantamount to double addition;*
- ii) The appellant has filed VAT return, which matches with turnover shown in Income Tax Return and the appellant has established existence of adequate stock to effect sales. In the absence of any adverse findings by the AO, addition made, purely based on the principle of estimation cannot be approved of;*
- iii) The action of the AO in arriving at the conclusion that the appellant failed to discharge the onus of proving the genuineness of the cash deposited in the bank account amounting to Rs.9,99,51,075/- u/s 68 of the Act is erroneous;*
- iv) The AO is method of arriving at her conclusions is not supported by evidence adduced by the appellant, both during the course of assessment as well as appellate proceedings. Moreover, the appellant's contention is backed by judicial pronouncements, as discussed hereinabove.*

*4.18 Accordingly, the addition made by the AO based on the legal proposition laid down and taking into account facts of the case, is deleted and grounds of appeal preferred by the appellant are allowed.”*

10. It is observed that the AO did not point out any defects in the books of account, no discrepancies were found in the stocks, sales and purchases. The AO's conclusion is that there are huge deposits

in the bank account during demonetization period and the assessee could not explain such deposits. The assessee has amply demonstrated with evidences that the cash sales and the cash deposits during FYs 2015-16 and 2016-17 were almost same and there is only a minimal increase in cash deposits during the FY 2016-17 relevant to the AY 2017-18. The Ld.CIT(A) has passed a well reasoned order considering all the submissions of the assessee and the averments of the AO.

11. We further observed that the Vishakhapatnam Bench of the Tribunal in the case of ACIT vs. Hirapanna Jewellers (189 ITD 608) held as under: -

*“Purchases, sales and the Stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/stocks. Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. The assessing officer accepted the sales and the stocks. He has not disturbed the dosing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales. Audit report u/s 44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. The assessee has furnished the trading account, P& L account in page No. 7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared the exorbitant profits. Though certain suspicious features were noticed by the AO*

*as well as the DDIT (Inv.), both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the assessee. Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence, (para 7)*

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

*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'bte Gujarat High Court in the case of Visha/ Exports Overseas Ltd. (supra), Hence, we do not see any reason to interfere with the order of the Ld. CU(A) and the same is upheld, (para 9)"*

12. In the case of Smt. Charu Aggarwal vs. CIT (140 taxmann.com 588) the Chandigarh Tribunal held as under: -

*“10.3 In the instant case the assessee maintained the proper books of account in regular course of business which were duly audited by the independent Chartered Accountant under section 44AB of the Act, all the sales & purchases and stocks were recorded in the books of account which had not been doubted by the AO. The sales shown by the assessee had been accepted by VAT/ Sales Tax Department, the book result shown by the assessee were in the same line as had been accepted by the Department in the preceding years, the cash sales made by the assessee had been credited in the books of account and reduction in the stock has not been doubted, even during the course of search just after the dosing of the year under consideration, neither excess nor shortage of stock was found in the stock register maintained by the assessee, the identity of the purchasers to whom cash sales had been made was disclosed in the sale bills where the name, address and PAN was mentioned. It is also not a case that there was sudden spurt in the sale only in the month of October 2016 as the chart furnished by the assessee before the Ld. CIT(A) clearly revealed that the cash sales were on higher side in another months of different preceding years. The AO made the addition on the basis of difference in the cash sales from 01-10-2016 to 29-10-2016, only on this basis that the said difference was there in the computer and the pen-drive found from the residential premises of the part time accountant of the assessee but no opportunity to cross examine the said accountant was given to the assessee and moreover, no specific defect was pointed out in the proper books of account maintained by the assessee in the regular course of business and nothing is brought on record to substantiate that the sales from 01-10-2016 to 29-10-2016 were not made, out of the existing stock available with the assessee. In the present case the assessee explained that the exhibitions were held in every year and the sales were normally higher in certain month and that in the month of October 2016 the cash sales was on the higher side as lots of festivals like Diwali, Dhanteras, Bhaiya Duj and Karwa Chauth etc. fell in that period. The said explanation cannot be brushed aside considering the trend of the society in India wherein people make the purchases of jewellery during the festive season.*

10.4 On a similar issue the ITAT Chandigarh Third Member Bench in the case of *Bansal Rice Mills (supra)* held that "since the sales proceeds have already been accounted for in the trading account no addition could be sustained even if the said deposits could be treated as bogus sales as complete stock tally was there".

10.5 In the present case also the assessee was maintaining complete stock tally, the sales were recorded in the regular books of accounts and the amount was deposited in the bank account out of the sale proceeds, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified.

10.8 Similarly the Hon'ble Patna High Court in the case of *Lakshmi Rice Mills (supra)* held as under:

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

10.9 Further 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.

10.11 In the present case also the opening stock, purchases & sales and closing stock, declared by the assessee has not been doubted, the sales were made by the assessee out of the opening stock and purchases and the resultant closing stock has been accepted, the safes had not been disturbed either by the AO or by the sales tax/VA TDepartment and even there was no difference in the quantum figures of the stock at the time of search on 12/04/2017, therefore, the sales made by the assessee out of the existing stock were

*sufficient to explain the deposit of cash (obtained from realization of the sales) in the bank account and cannot be treated as undisclosed income of the assessee.*

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

13. In the case of Anantpur Kalpana vs. ITO (130 taxmann.com

141) the Bangalore Bench of the Tribunal held as under: -

*“9. I have carefully considered the rival submissions. Both the AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It is also on record that the assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of Associated Transport (P.) Ltd. (supra) on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon'ble Vishakapatnam Tribunal in the case of Hirapanna Jewellers (supra) on identical facts held that when cash*

*receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted.”*

14. We further observe that the decision of the Delhi Tribunal in the case of Agson Global Pvt. Ltd. vs. ACIT (supra) has also been affirmed by the Delhi High Court in the case of PCIT vs. Agson Global Pvt. Ltd. (441 ITR 550), wherein the Hon’ble High Court at para 17.6 held as under: -

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

15. In view of the above discussion and affirming the order of the Ld.CIT(A), we hold that the AO has made addition u/s 68 erroneously. The ground raised by the Revenue is rejected.

16. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 09.06.2023

Sd/-  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

Dated: 09.06.2023

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**