

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 1407/MUM/2021

(Assessment Year 2017-18)

DCIT, CC 1(1)
903, 9th Floor, Pratishta
Bhavan, Old C.G.O. Bldg,
(Annexe), M.K. Road,
Mumbai-400020

(Appellant)

Vs.

M/s Mangal Bullion Pvt. Ltd.
202, 2nd Floor, Chintamani
Arcade, Opp. Bombay Bullion
Bldg. Dhanji Street,
Mumbai-400003

(Respondent)

PAN No. AAGCM2672M

ITA No. 331/MUM/2022

(Assessment Year 2017-18)

M/s Mangal Bullion Pvt. Ltd.
202, 2nd Floor, Chintamani
Arcade, Opp. Bombay Bullion
Bldg. Dhanji Street,
Mumbai-400003

(Appellant)

Vs.

ACIT, CC 1(3)
905, 9th Floor, Pratishta
Bhavan, Old C.G.O. Bldg
(Annexe), M.K. Road,
Mumbai-400020

(Respondent)

PAN No. AAGCM2672M

Assessee by : Shri Rajiv Khandelwal, AR
Revenue by : Shri Chetan M Kacha and Shri
Minal Kamble, SR DRs

Date of hearing: 09.06.2023

Date of pronouncement : 14.07.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the cross appeals filed by M/s Mangal Bullion Pvt. Ltd. ("The assessee/appellant") and the Deputy



Commissioner of Income Tax, Center Circle 1(3) Mumbai, for assessment year 2017-18 against the appellate order passed by the Commissioner of Income Tax (Appeals)-47, Mumbai (the "CIT(A)"), dated 21.05.2021 wherein the appeal filed by the assessee against the assessment order passed under section 143(3) of the Income Tax Act ("the Act") passed by the Assistant Commissioner of Income Tax Center Circle 1(3), Mumbai on 26.12.2019 was partly allowed.

02. In ITA No. 1407/Mum/2021 the Ld. AO has raised the following grounds of appeal;

1. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A)-47, Mumbai has erred in deleting the addition to the tune of Rs. 1,76,35,114/- made by the Assessing Officer as unexplained cash credit on account of failure of the assessee to satisfactorily explain the cash sales.*
2. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A)-47, Mumbai had erred in partially deleting the addition to the tune of Rs. 1,76,35,114, when the Pr. CIT(A)-47, Mumbai himself found the remaining sales of Rs.33,29,886/- as implausible?*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A)-47, Mumbai had erred in partially deleting the addition to the tune of Rs. 1,76,35,114/- on account of unexplained cash sales, when the assessee neither had any past history of cash sales nor has shown cash sales post application of Specified Bank Notes Ordinance, 2016?*

4. *The Appellant craves leave to add, to amend and / or to alter any of the grounds of appeal, if need be.*
03. In ITA No. 331/Mum/2022 the Assessee has raised the following grounds of appeal;
1. **Addition made u/s 68 of Rs. 33,29,886/- as Unexplained Cash Credit**
The Ld. CIT(A) erred in confirming the addition made by Ld. Assessing Officer (hereinafter referred to as the "Ld. AO"] u/s 68 to the extent of Rs. 33,29,886/- as unexplained cash credits. Such addition is bad in law & erroneous in facts and therefore liable to be deleted.
 2. **Addition made u/s 69A of Rs. 33,29,886/- as Unexplained Money**
The Ld. CIT(A) erred in confirming the addition made by Ld. Assessing Officer (hereinafter referred to as the "Ld. AO"] u/s 69A to the extent of Rs. 33,29,886/- as unexplained money. Such addition is bad in law & erroneous in facts and therefore liable to be deleted.
 3. **Passing the order against violation of natural justice**
The Ld. CIT(A) erred in passing the order without providing proper opportunity of hearing to the appellant. Thereby, passing the order without proper opportunity of hearing is erroneous and liable to be set aside.
 4. *The Appellant craves leave to add, alter, rescind or amend any of the above grounds of appeal.*
04. The Brief fact of the case shows that assessee is a company engaged in the business of trading in Diamonds, Gold and Jewellery, it filed its return of income of



assessment year 2017-18 on 30.10.2017 declaring loss of ₹76,550/-. This return of income was picked up for scrutiny assessment. Necessary notice was issued.

05. During the Course of assessment proceedings the Ld. AO noted that assessee has deposited cash to the tune of ₹2,09,65,000/- in its account with Bharat Co-operative Bank, vile parle, Mumbai. Therefore, the assessee was issued show cause notice to submit the complete details in respect of source of cash deposits. The assessee submitted vide a letter dated 11.12.2019 stating that assessee is engaged in the business of wholesale retail trading of polished diamond/ gold and gold jewelry. The source of cash deposit of ₹2,09,65,000/- is on account of retail sale and wholesale of gold bar and gold ornaments. The Assessee has sold gold to the retail customers in cash from 08.11.2016 and is in receipt of cash, which has been deposited in the bank account. It was explained that source of cash deposit of sale of gold to the walking and retail customers. It was stated that the retail customers visited the shop of the assessee in order to purchase gold and diamonds. The assessee has collected the permanent account no. from the retail customer. However, the permanent account no. is collected from who have purchased diamond and gold and gold jewelry worth ₹2 lakh and above. It was further stated books of account of assessee are audited and the sale proceeds are credited to the profit loss account. Assessee explained that source of cash deposit is customers whose transaction is



supported by the PAN, and transaction is sale. Therefore, the above cash deposited may be treated as explained.

06. The Ld. AO categorically noted that assessee has shown to have business in trading of diamond and gold at 3 places in the country Mumbai, Surat and Jaipur. The assessee's Jaipur Branch has not shown any substantial turnover. However, Surat branch has shown huge cash in respect of trading in diamond. The assessee company's Mumbai Branch has also disclosed an abnormally high sale of gold and gold jewellery in cash.
07. The details filed by the assessee also show cash sales are only from 01.11.2016 and there is no such history of cash sales prior to November 2016. Further, after 08.11.2016 again assessee has not made any sales in cash. Therefore the specific 142(1) notice was issued to the assessee. The assessee's response to that notice, assessee reiterated the submission early made. The Ld. AO rejected the same. The Ld. AO held that assessee has disclosed sudden increase in cash sales starting from 01.11.2016 ending before 09.11.2016. After 09.11.2016 there is no cash sale. Therefore, the cash sales shown by 8 days of November 2016 are highly suspicious. Further, the sale bills also shows that the customers who have purchased in cash have never come to assessee to purchase prior to the November 2016. The cash books of the assessee also do not show any prior huge cash in hand but in this period only. Further, according to the AO it is very difficult to agree as why assessee would pay interest on borrowed



fund where cash to the extent of ₹02,09,65,000/- is lying idle in the books . AO further noted that the assessee has deposited specified bank note in the bank account on 3 occasions. On 18.11.2016 ₹7,80,000/-, on 28.11.2016 ₹02,00,00.000/- and 01.12.2016 ₹01,85,000/-. Therefore, the cash was received by the assessee on sale of gold from 01.11.2016 to 09.11.2016 but was deposited in the last days of month of November substantially. The Ld. AO further stated that specified bank notes ceased to be the legal currency from midnight of 08.11.2016 and assessee did not care to deposit ₹2,00,00,000/- lying in its hand up to 28.11.2016. The Ld. AO also of the view that cash sales of ₹73,47,440/- was made at Surat Branch and ₹72,50,000/- have been transferred from Surat to Mumbai. According to the Ld. AO this money was transferred from Surat to Mumbai but the assessee did not deposit till 28.11.2016 and why assessee was not having any bank account in Surat when it has branch in that city. The Ld. AO doubted that alleged cash has been brought from Surat to Mumbai. The Ld. AO further examined the sale bills and found that all the cash purchases done by the assessee's customer from 01.11.2016 to 08.11.2016 are from Mumbai as well as Surat. The Ld. AO categorically pointed out that same of the parties have purchased diamond in cash from Surat branch and gold or diamond from Mumbai . In certain cases (At least 3) these customers have purchased in cash from Mumbai and Surat on the same date. He tabulated at page no. 7 of his order such instances. Accordingly, he held that the bill issued for



cash sales are all bogus bills without actual sale of diamond gold or Jewellery, accordingly, cash deposits at ₹ 02,09,75,000/- was considered as unexplained cash credit. The same is assessed as total income of the assessee as per assessment order dated 26.12.2019 u/s 143(3) of the Act.

08. Assessee aggrieved and preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) passed an order on 25.01.2021 and gave finding as per Para no. 5.5. With respect to the sales by the assessee at Surat and Mumbai branch in case of 7 persons to the addition to the extent ₹33,29,886/- was held to be unexplained and addition to that extent was sustained. With respect to the balance sales the Ld. CIT(A) relying heavily on the decision of Visakhapatnam Bench in case of Heerapanna Jewelers for assessment year 2017-18 and several other judicial precedents deleted to the addition to the extent of ₹1,76,35,114/-. The main reason for deleting this addition was that the assessee has established the sales with the bills and outgo of stocks. The sale was duly accounted for in the books of account and no abnormal profit was shown. He further held that Ld. AO did not find any defects in books of account with respect to the sales and stock details. Therefore, he did not find any reason to suspect that the sales are bogus. Accordingly, out of the total addition of ₹02,09,65,000/- addition to the extent of ₹33,29,886/- is confirmed and to the extent of ₹01,76,35,114/- is deleted.



09. Accordingly, both the parties' are in appeal before us. The assessee is challenging the confirmation of addition of ₹33,29,886/- and the AO is challenging the deletion of addition of ₹01,76,35,114/-.
010. The Ld. Departmental Representative contesting the appeal of the AO submitted that the Ld. CIT (A) has not given any finding that why there is no cash sale subsequent to demonetization period and prior to the demonetization period. Those customers have neither purchased gold nor purchased Jewellery from the assessee prior or subsequent to these purchases. The assessee has never sold the jewellery and gold to the extent of ₹ 2,00,000/-. Further, The SBN notes were kept in hand for almost 20 days. There is no explanation about transfer of cash from Surat to Mumbai and how it was transported. Despite sale being transported on the day has not been deposited into bank account immediately but after 20 days. All these questions have not been answered by the Ld. CIT(A).
011. Coming to the appeal of the assessee the Ld. Departmental Representative vehemently submitted that the parties have purchased Gold and Jewellery in cash at Surat as well as Mumbai. Three cash purchases have been made on same date at both the places. He submitted that preponderance of probability , with respect to gold purchased by the customer at Surat branch and at Mumbai Branch in cash on the same date shows that it is bogus.



012. The Ld. Authorized Representative submitted a paper book containing 336 pages. He extensively referred to a letter dated 9.12.2016 placed at page no. 45 of the paper book. He submitted that assessee has submitted the complete details of cash sales stating name and address of the parties along with their PAN. Further, the permanent account no. of the customer/parties in cash sales above Rs. 2 lakh are also collected and produce before the Ld. AO. Stock register was also produced before the Ld. AO showing the reduction of stock by sale. Therefore, none of the sale is shown to be bogus by the AO. There is no infirmity in the stock resister produced; he also referred to the details of cash sales made by persons at Mumbai office and at the Surat office. He further submitted that none of the cash sales is less than Rs. 2 lakhs, all the cash sales above Rs.2 lakhs are supported by permanent account no. of the customers. Despite this, the Ld. AO has treated the same to be bogus. He, therefore, extensively referred to the decision of co-ordinate bench in 128 taxmann.com 291 of Heera panna Jewelers and also the decision of co-ordinate bench in case of M/S Mangal Jewels Pvt. Ltd. ITA No 1408/mum/2021. It was further claimed that the parties who have purchased from Surat and from Mumbai on same date is doubted by the Ld. CIT(A). He submitted that identical details are furnished before the AO for other sales also which is accepted by the Ld. CIT(A). He, submitted that there is no much distance between Surat and Mumbai which is hardly four hours, therefore, it cannot be said that a person cannot purchase gold and



diamond at Mumbai in morning and at Surat in afternoon. In any case sales are ₹2 lakhs and above as recorded in Para no 5.5 of the AO. Assessee has already submitted permanent account no. of these persons. There was no prohibition of sales of Jewellery in cash. The only requirement was to obtain the KYC in the form of permanent account no. Therefore, the addition confirmed by the Ld. CIT(A) is also not in accordance with the law.

013. We have carefully considered the contentions and perused the orders of lower authorities. We have also carefully considered the reply dated 19.12.19 placed at page no. 45-336 pages paper book at the page 329 to 333. The assessee has given copies of cash books wherein sales of Jewellery are recorded. We find that cash sales from 1.11.2016 to 08.11.2016 are all in excess of ₹2 lakhs for which assessee had provide the copies of bills wherein the complete address of the customers are mentioned. The bills are supported by the permanent account no of those parties. The copy of permanent account no. cards is also produced before the Ld. AO, before the Ld. CIT(A) as well as before us. This fact has not been denied by any of the lower authorities. The sales of the assessee at Mumbai branch has also been recorded in the stock register on the day on which sales have been recorded. Therefore, the sales register of the assessee and stock register of the assessee coupled with the cash books are completely matching. With respect to the Surat sales cash book is placed before us at page no 334 of the paper book. None



of the sales made in cash to the customer is not supported by the address and pan card of such persons. The Ld. AO also could not show that gross profit shown by the assessee is abnormally high or abnormally low. The sales credited in the profit and loss account though made in cash have also resulted into profit to the assessee which has already been offered for taxation. No doubt if the assessee fails to show source of cash receipts or any sum credited in the books of account of the assessee, even though it may be sale, same can be added u/s 68 of the Act, if assessee fails to show nature and sources of such credit to the satisfaction of the Id AO. However, here assessee has shown source of cash by sales bills and permanent account no. of buyers and the consequent reduction in the stock is also shown. Therefore, the nature and source of credit in the books of account have been explained by the assessee. Further, with respect to the purchases made by the customers in cash from Surat and Mumbai also, we find that out of these seven instances only three instances are pertaining to the purchases at both branches on the same day. It is not improbable that a person purchases gold and diamonds at two places on the same day looking at the distance between two cities. Even otherwise if the AO has a doubted with respect to these seven parties whose permanent account no. and address given by the assessee, at least inquiry should have been made. The LD AO has not made any such inquiries with those customers. We find that assessee has reasonably explained the nature and source of cash sales



credited in his books of account. Further, the allegation of the AO that those parties to whom assessee has sold gold and Jewellery in cash was neither the customer of the assessee prior nor post demonetization. Arguably this answer could have been obtained by the AO had he examined any of the customers whose permanent account no. and address are provided to him. The issue would have been different had AO made inquiry by issue of summons u/s 131 or inquiry u/s 133(6) which would not have been responded or satisfactory explanation was not available. Such is not the case before us. Identical issue has been dealt with by the coordinate bench in Heera panna Jewelers [Supra] and M/S Mangal Jewels Pvt. Ltd. [supra].Therefore, this issue is clearly covered in favour of the assessee by these judgments also. It is not the case that bills of sales of Jewellery doesn't contend the complete address of the parties. Giving the complete address in cash memo/cash sales above Rs.50 mandatory requirement of GST ACT. In this case such facts do not exist. Further cash transfer from Surat to Mumbai has been recorded in both branches cash book. Addition cannot be made in the hands of assessee merely for the reason that those customers have not transacted with the assessee post or pre demonetization. This could be the trigger point for investigation, but LD AO , despite having complete address and PAN of customers did not make any such inquiry. In view of this, we confirm the order of LD CIT(A) to the extent addition deleted by him and reverse the order of the CIT(A) to the extent, he confirmed the



addition. Therefore respectfully following the decisions of the coordinate benches cited above, we direct the Id AO to delete the addition of ₹33,29,886/- and the order of the Id CIT (A) is confirmed for deletion of addition of ₹01,76,35,114/-.Accordingly, Ground no 1 -3 of appeal of Id AO are dismissed. Ground nos. 1 and 2 of appeal of Assessee are allowed.

014. Ground no 3 of appeal of assessee was not pressed hence, dismissed.

015. Accordingly, the appeal of the AO is dismissed and the appeal of the assessee is partly allowed.

Order pronounced in the open court on 14.07. 2023.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 14.07. 2023

Aniket Singh Rajput, Stenographer

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai