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

BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

ITA NO. 1564/MUM/2022 (A.Y:2017-18)

DCIT – 6(1)(2) Room No. 538B, 5th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	*v.*	M/s. Bandari Gold and Jewellers Pvt. Ltd., 407, BussaUdyog Bhavan Tokersi, Jivraj Road, Sewree Mumbai - 400015 **PAN: AADCB1291J**
(Appellant)		**(Respondent)**

ITA.No. 1619/MUM/2022 (A.Y. 2017-18)

M/s. Bandari Gold and Jewellers Pvt. Ltd., 407, 4th Floor Udyog Bhavan Tokersi, Jivraj Road, Sewree Mumbai - 400015 **PAN: AADCB1291J**	*v.*	CIT(A) Room No. 401, 4th Floor C-Block, Civic Center Delhi
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Shri Vimal Punamiya**
Department Represented by	**:**	**Dr. Mahesh Akhade**
Date of Conclusion of Hearing	**:**	**17.05.2023**
Date of Pronouncement	**:**	**19.07.2023**

O R D E R

PER S. RIFAUR RAHMAN (AM)

1. These appeals are cross appeals filed by assessee and revenue respectively against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 19.04.2022 for the A.Y. 2017-18.

2. Brief facts of the case are, assessee is a private limited company and is engaged in business of wholesale and retail trading of gold bar, ornaments and diamond studded jewellery, silver jewellery and articles and is duly registered under various Statutory Authorities namely CST/VAT/TCS/TDS/GST/ROC. Assessee has e-filed his return of income for A.Y. 2017-18 on 31.10.2017 declaring total income at ₹.74,44,000/-. Subsequently, Survey was carried out in the case of the assessee company on 01.12.2016. Based on the information that the Assessee had large cash deposits in bank account during the demonetization period.

3. During the course of Survey action carried out at premises by investigation wing, Mumbai, the officers team have physically verified the stock kept. There was no discrepancy found between physical stock

and stock in books. The Assessee had deposited an amount of ₹.10,72,20,000/- in its bank Accounts namely Yes bank, Union Bank of India and ING Vysya Bank in Specified Bank Notes (SBNs) during the demonetization. The Assessing Officer has made a total addition of ₹.11,64,20,000/- u/s. 68 of the Act vide the Assessment Order under section 143(3) of the Act. Total income assessed by Assessing Officer as per Assessment Order u/s 143(3) of the Act:

Sr	**Particulars**	**Amount (Rs.)**
	Income As Per Return	74,44,000/
1.	Addition on account of Unexplained cash credit u/s 68	10,72,20,000/-
2.	Addition on account of Unexplained cash credit u/s 68	92,00,000/-
	Total assessed income	12,38,64,000/-

4. Being aggrieved, assessee preferred an appeal before the Ld.CIT(A) and challenged additions made by the Assessing Officer of ₹.11,64,20,000/-. Assessee has filed detailed submissions before the Ld.CIT(A), after considering detailed submissions, Ld.CIT(A) partly allowed the appeal filed by the assessee by deleting the addition of-₹.10,72,20,000/- and the balance amount of ₹.92,00,000/- was sustained.

5. Aggrieved by the order of Ld.CIT(A), revenue as well as assessee are in appeal before us.

6. First, we proceed to dispose the appeal of the revenue in ITA.No. 1564/Mum/2022 (A.Y. 2017-18), revenue has raised following grounds in its appeal: -

> *'1) "Whether on the facts and circumstances of the case, and in law, the Ld. CIT (A) has erred by deleting the addition of Rs.10,72,20,000/- made u/s.68 of the I.T Act, 1961?"*
>
> *2) "The appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the AO restored."*
>
> *3) "The appellant craves leave to amend or alter any ground or to submit additional new ground which may be necessary."*

7. At the time of hearing, Ld. DR brought to our notice relevant facts of the case and submitted a written submission, relied on the order of the Assessing Officer and his submissions. For the sake of clarity, the written submissions filed by the Ld.DR are reproduced below:-

> *Ld.DR submissions filed vide letter dated: 16.12.2022*
>
> *2. The hearings in the abovementioned case were held on 13.12.2022 and 15.122022. The assessee is a Pvt. Ltd. Company engaged in the business of manufacturing and selling of Gold jewellery on wholesale basis. It was found that the assessee had deposited cash of Rs.10.72 crores in the bank accounts in specified bank notes during the period of demonetisation. A Survey u/ s. 133A of the I. T. Act was conducted at the business premises of Assessee on 1.12.2016. During the Survey, it was found that the*

Assessee has shown sale of gold coins and gold jewellery of Rs.10.72 crores in cash from 1.11.2016 to 8.11.2016. It is found that the entire sale was shown in cash below Rs.2 lakhs to total 701 parties. It is also found that the stock has not been maintained properly. Statements of the Directors, Shri Jayesh Bhandari and Shri Pankaj Bhandari were recorded u/s. 131 of the I T Act, 1961.

Shri Pankaj Bhandari, in answer to Question No.27 of his statement recorded during the Survey on 1.12.2016 has stated that the entire cash sale was actually made on 8.11.2016 after the announcement of demonetisation of Rs.500 and Rs.1000 notes. In order to show the sale as genuine cash sales, the invoices were raised from 1.11.2016 to 8.11.2016.

3. During the assessment proceedings, the AO had issued Summons u/ s. 131 to 15 parties out of 701 parties to whom the cash sales have been shown. However, all these 15 Summons were returned back with the remark 'undelivered' by postal authorities. Accordingly, notice u/ s. 142(1) was again issued by the AO to the Assessee on 14.12.2019 requesting the Assessee to produce these parties for verification. However, the assessee has not produced these parties for verification. The assessee has also not produced the CCTV footages regarding recordings from 1.11.2016 to 8.11.2016. It was explained that the data is stored in the System only for 15 days.

4. The AO held that the Assessee has not explained the cash sales of Rs.10.72 crores satisfactorily in view of the following:

1. Stock details were not maintained properly.

2. The Director, Shri Pankaj Bhandari has accepted that the entire sale of Rs.10.72 crores has been made on 8.11.2016. However, to appear the sale as genuine, the same has been recorded in the Books of Accounts from 1.11.2016 to 8.11.2016. The entire sale is in cash and each bill is below Rs.2 lakhs.

3. Summons issued u/ s. 131 to the 15 parties have been returned back undelivered.

4. The Assessee has not produced these parties for verification.

4.1 The AO relying on the decisions of Hon'ble Supreme Court in the case of Sumati Dayal (214 ITR 801) and Durga Prasad More (82 ITR 540), has held that the sales made to the 701 parties within four hours is beyond human probabilities. The assessee has

not discharged its liability to substantiate the genuineness of cash sales. Hence, addition of Rs.10.72 crores is made u/ s. 68 of the I T Act, 1961,

5. The Ld.CIT(A) has allowed the appeal of the Assessee mainly on the following grounds

a. The assessee company was maintaining the stock almost constantly the same and therefore there was nothing with the AO in the assessment proceedings to conclude that there was some after thought on the part of the appellant company.

b. The Books of accounts were not rejected u/ s. 145(3) of the I T Act.

c. No incriminating documents/ Papers were found/ impounded in the Survey operation showing that there was no evidence in support of the allegations made. There was no discrepancy found between physical stock and stock as per Books.

d. The AO did not point out a single mistake in the stock position as well as the cash position.

e. The AO failed to make an enquiry whatsoever in relation to the cash sales.

6. During the hearing before Hon'ble Bench held on 13.12.2022, I have pointed out the following facts :

i). The Assessee is in the business of manufacturing of Gold Jewellery and selling the same on wholesale basis.

ii). As per the submission , the Assessee is having office area of approximately 1800 sq. feet only.

iii). The cash sales of Rs.10.72 crores is shown to have been made to 701 parties. Each sale is below Rs.2 lakhs. I have also submitted the list of 701 parties.

iv). The attention of Hon'ble Members was invited to the fact that in this list of 701 parties, many parties are not from Mumbai city. As per the detail mentioned, many parties are from Gujarat, Rajasthan, Delhi and from different cities of Maharashtra.

v). Shri Pankaj Bhandari during the statement recorded in the Survey u/s. 131 of the I T Act on 1.122016, in the answer to Question No.27 has stated that the entire cash sale has actually been made on 8.11.2016 after the announcement of demonetisation. However, for the purpose of giving the colour of genuineness, the invoices were raised from 1.11.2016 to 8.11.2016. Therefore, the accounting entries made in the Books regarding sales are incorrect and hence the Books/Stock position shown by the assessee are not reliable .

vi). Demonetisation was announced by the Hon'ble Prime Minister on 8.11.2016 at 8.00 p.m. and as per the demonetisation scheme, specified notes of Rs.500 and Rs.1000 will not be legal tender from 9.11.2016. Thus, the assessee has got only 4 hours i.e. from 8.00 pm to 12.00 pm on 8.11.2016 to sell the gold in demonetised specified notes. Practically even 4 hours were not available to the assessee, considering the fact that the demonetisation was announced at 8.00 pm and the purchasers will not come to the assessee's premises sharply at 8.00 pm. Even it is assumed that that the Assessee started selling the gold from 8.30 pm onwards to 12.00 pm. , the assessee had merely 3 1/2 hours i.e. 210 minutes only,

vii). In this period of 210 minutes, the Assessee claims that, 701 parties had visited the business premises of the assessee from all across the Country, each carrying cash below Rs.2 lakhs for the purchase of gold jewellery.

Considering the fact that the assessee is having office area of only 1800 sq.ft., it is impossible to accommodate such a huge crowd at the assessee's premises. It is practically impossible for the assessee to sell the gold, collect the cash and issue bills to 701 parties in about 200 minutes. As per the assessee's claim this entire process of selling to one party is carried out within 15 to 20 seconds. It is highly improbable that 701 parties from across the Country came to the assessee and purchased gold below Rs.2 lakhs. The facts and circumstances clearly demonstrates that,the explanation given by the assessee is beyond any human probabilities. It is impossible to sell gold items to 701 parties within a period of 200 minuts.

viii). Further, It was pointed out that the AO has issued summons to 15 parties out of 701 parties. However, all these 15 parties, the addresses given by the assessee were incorrect. The AO has also asked the assessee to produce

these parties for verification. However, the assessee has not discharged its obligation. Considering the fact that the addresses given by the assessee were incorrect, there was no further scope for the Assessing Officer to carry out investigations. This fact shows that the observation of the CIT(A) that the AO failed to make any enquiry is factually incorrect.

ix) In fact, if the CIT (A) is of the opinion that , A.O had not carried out adequate enquiries, then it was the Cit(A)'s legal duty to direct the A.O to conduct inquires and submit remand report. Reliance is placed on the observations of the Hon'ble Delhi High Court in case of Jansampark Advertising and marketing (P) Ltd (56 taxmann.com 286) as under

> *"38 The provision of appeal, before the CIT(Appeals) and then before the ITA T is made more as a check on the abuse of power and authority by the AO. Whilst it is true that it is the obligation of the AO to conduct proper scrutiny of the material, given the fact that the two appellate authorities above are also forums for fact finding, in the event of AO failing to discharge his functions properly, the obligation to conduct proper inquiry on facts would naturally shift to the door of the said appellate authority. For such purposes, we only need to point out one step in the procedure in appeal as prescribed in section 250 of the Income tax Act wherein, besides it being obligatory for the right of hearing to be afforded not only to the assessee but also the AO, the first appellate authority is given the liberty to make, or cause to be made "further enquiry", in terms of sub-section (4) which reads as under .-*
>
> *"The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals)"*
>
> *39 The further inquiry envisaged under section 250(4) quoted above is generally by calling what is known as "remand report". The purpose of this enabling clause is essentially to ensure that the matter of assessment reaches finality with all the requisite facts found"*

x). Regarding the observations of the Ld.CIT(A) that Books of Accounts were not rejected u/s. 145(3) of the I T Act, reliance is placed on the decision of Hon'ble Himachal

Pradesh Hi h Court 100 Taxmann.com 181 in the case of I.M.J. Essential Oil Company vs. CIT Simla. The findings of Hon' ble Court are as under :

> *"16. The said Section mandates fulfilment of the following essential ingredients: (a) A sum is found credited in the books of the assessee (b) for which the assessee offers no explanation about the nature and source thereof (c) the explanation offered if any, (d) is not (e) in the opinion of the Assessing Officer (f) satisfactory (g) then the sum so credited may be charged to income tax as income of the assesses in the relevant year.*
>
> *17. In the instant case, undisputedly, in the relevant year(s) there has been cash sales made across the counter, which was credited in the books of accounts maintained for the relevant year(s). Further, the assessee was asked to furnish information regarding the nature and source hereof, which he did so, but in the opinion of the Assessing Officer was found to be not satisfactory and as such, the said sum was charged to the income off the assessee in the relevant year(s).*
>
> *18. The core issue which arises for consideration is as to whether explanation offered by the assessee with respect to the nature and source thereof, was in the opinion of the Assessing Officer satisfactory or not?*
>
> *19. "To contend that in the absence of rejection of books of accounts, the Assessing Officer erred in carrying out the assessment under section 143(3) of the Act, in our considered view is legally unsustainable. Section 68 categorically does not refer about rejection of books of account. In fact it is also not the mandate of chapter XIV containing section 143, that the officer must reject the books of account maintained by the assessee. It is not a case of Best Judgment Assessment. In the instant case, certain entries reflected in the books of account, which on the basis of explanation furnished by the assessee were found not be satisfactory, the Assessing Officer carry out the assessment under sub section 3 of section 143 of the Act."*

Hence in view of the above decision of the Himachal Pradesh High Court, the sales credited in the book of accounts are

taxable u/s 68 of the I.T.Act , if the Assessing Officer is not satisfied with the explanation provided by the Assessee and for this there is no need to reject the books of account.

7. The Hon'ble Member had pointed out that the Ld.CIT(A) has accepted the stock position shown by the assessee. In this regard, it was argued that the AO has specifically mentioned in the Assessment Order that, the stock details were not maintained properly. Bogus bills were prepared for sale of such bogus stock on 8.11.12016. Thus, the AO has given categorically finding regarding the stock position of the Assessee. The Ld.CIT(A) has merely accepted the contention of the Assessee without verification of facts in details.

7.1 In this regard, the Hon'ble Bench had directed the AR of the assessee to submit the stock position of assessee and the case was part heard on 15.12.2022. The AR of the assessee has submitted the stock register for the period 01.4.2016 to 13.01.2017.

In this regard ,it was submitted by me before the Hon'ble Bench that, the assessee has given stock position of 24 carat gold coin vide page No. 16 to 29 of his submission. It is seen from these pages that, the assessee has shown purchases of 24 ct. gold coin as under :

Date	Particulars	Quantity
25-0ct-16	24 CT GOLD BAR	5000.000 GRM
26-0ct-16	24 CT GOLD BAR	5000.000 GRM
27-Oct-16	24 CT GOLD BAR	2626.000 GRM
29-Oct-16	24 CT GOLD BAR	4975.000 GRM

Against these purchases, the assessee has shown sale of gold coin in cash from 01.11.2016 to 8.11.2016. It shows that the assessee has shown the cash sales of gold coins from 1.11.2016 to 8.11.2016 and for these sale the purchases are shown to be made on 25th to 29th October.

7.2 The Hon'ble member pointed that, the A.O had not doubted the Purchase. In this regard, it was argued that, the A.O has categorically stated in the Assessment order that, the stock position is incorrect, the sales are bogus . Stock position is affected by the sales and purchase. Once the A.O raised the doubts regarding stock position, it is clear that the purchases are also doubtful. Just because the A.O has not specifically mention this line in the

Assessment order, it can't be presumed that the purchase are genuine.

7.3 If the Hon'ble ITAT hold that the A.O has not verified the purchase, being the final fact finding authority, it is kindly requested to direct the A.O for the same. Purchase of old coin •ust before the announcement of demonetisation and sale of the same within 200 minutes clearly demonstrates that the purchase of gold coins had been manipulated.

Reliance is placed on the observations of the Honble Delhi High Court in case of Jansampark Advertising and marketing (P) Ltd (56 taxmann.com 286) .

7.4 In this regard, it was argued as under

i) The assessee is in the business of manufacturing and selling of gold jewellery on wholesale basis.

ii) The fact shows that the assessee is never in the business of trading in gold coins. The sale of gold coins is shown only for the period from 1.11.2016 to 8.11.2016. There is no transaction of gold coin after this period also.

iii) Shri Pankaj Bhandari (Director) has categorically accepted in the statement recorded u/ s 131 of the I.T. Act that, the entire cash sale is made on 8.11.2016 i.e. only after the announcement of demonetisation scheme. The invoices have been raised from 1.1.12016 to 8.11.2016 for the only purpose to appear the same as genuine sale.

iv) The admission of Shri Pankaj Bhandari clearly shows that the stock position and sales shown by the assessee are fabricated and hence not reliable.

7.5 The issue of cash sales is summarised as under-

(i) The assessee is not in the business of trading the gold coins.

(ii) The assessee has shown the cash sale of gold coins only after demonetization

(iii) The purchases shown for the same are immediately before the sales.

(iv) The sales booked from 1.11.2016 to 8.11.2016 are incorrect.

Thus the stock position shown by the assessee has been manipulated and hence not reliable.

The above fact shows that the observations of the ld.CIT(A) that, the company was maintaining the stock almost constantly the same is factually incorrect and clearly demonstrates that the ld.CIT(A) has not verified the stock register of the assessee but merely accepted the same without any verification.

8. The arguments made during the hearing are summarised as under :-

1. The Assessee is manufacturer and seller of gold Jewellery. The assessee has shown sale of gold coins in cash after demonetization on 8.11.2016.

2. It has not sold any gold coins before the demonetization or after 8.11.2016. The purchases for the same are shown to have been made one week prior.

3. No explanation has been submitted by the assessee why it has purchased gold coins immediately before the announcement of demonetization when the assessee is not in the business of trading gold coins. The entire stock of gold coins has been sold on 8.11.2016 itself. The stock is NIL thereafter.

4. Shri Pankaj Bhandari has admitted that the cash sales has been made only after demonetization, however the invoices have been raised from 1.11.2016 to 8.11.2016. These facts shows that, the books of accounts of the assessee have been fabricated and not hence reliable.

5. The assessee has shown cash sales to 701 parties from 8.00 p.m. to 12.00 p.m. on 8.11.2016.

6. The address submitted by the assessee of these 701 parties shows that most of the parties are from the distant places in the Mumbai city and from various parts of the country.

7. The assessee is having office premises of 1800 sq.ft only. It is beyond any human probabilities to sell such gold items to 701 parties in the span of around 200 minutes considering the facts and circumstances in the assess case.

8. All the cash sales are below Rs 2,00,000/- .

9. The AO has issued summons to the 15 such parties. However, the summons were returned back.

10. The assessee has not produced these parties for verification before the Assessing Officer in spite of the same requested by the AO.

11. The assessee has produced only the cash sale bills and the stock book as an evidence to establish the genuineness of the sales.

12. No any other evidence has been produced by the assessee to substantiate its claim.

The above facts clearly shows that the stock position and purchases shown by the assessee has manipulated. The sales shown are beyond any human probabilities. Reliance is placed on the decision of the Hon. Supreme Court in the case of Sumati Dayal vs CIT (80 Taxman 89) and Durga Prasad More vs CIT (82 ITR 540).

The cash sales shown by the assessee is nothing but a colourable device adopted by the assessee by fabricating the facts with the sole intention to defraud the revenue.

9. The conduct of the assessee is abnormal with the sole motive to cause harm to well intentioned demonetization scheme. The withdrawal of legal tender character was one of the significant step in weeding out fake currency and to curb black money in the country. However, giving accommodation entries in the guise of bogus cash sales is nothing but an attempt to give a setback to well intended and well thought policy of Government of India.

In view of the above, it is humbly requested to the Hon'ble Bench to set aside the order of ld. CIT(A) and confirm the addition made by the AO."

Ld.DR SUBMISSIONS VIDE LETTER DATED 30.05.2023

"Please refer to my earlier submission dated 16.12.2022 and hearing held on 17.05.2023. In continuation of my earlier submission dated 16.12.2022, it is submitted as under-

2. The assessee has made cash deposits of Rs. 10.72 crores during post demonetisation period. The explanation given by the assessee is that, cash sales of gold was carried out on 08.11.2016 Le. on the day of announcement of demonetisation. To support its claim, the assessee has submitted a list of 701 parties, to whom the assessee

has sold gold. The assessee has also submitted these sales bills. Thus, the explanation / documentary evidence submitted by the assessee is the sales bills of alleged sales carried out to these 701 parties. The assessee further submitted that the sales have been done, out of the stock available with the assessee.

3. During the hearing, it has been demonstrated on the basis of facts of the case that the explanation given by the assessee regarding the sales carried out to 701 parties within the available time period of approximately 200 minutes is beyond any human probabilities. Considering the fact that it is practically impossible to sell the gold to 701 parties within a period of 200 minutes, which have been discussed during the hearing and also mentioned in my earlier submission dated 16.12.2022, the contention of the assessee is beyond any human probabilities. Reliance was also placed on the decision of Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT (82 ITR 540).

4. The fact shows that these sales bills generated by the assessee are nothing but a colourable devise deployed with the sole intention to camouflage the real transaction. The facts in the assessee's case are mentioned in para 8 (page 9) of my earlier submission dated 16.12.2022. The facts clearly shows that the entire transaction is fabricated and a make-believe.

5. During the hearing, the assessee's AR contended that the assessee was having stock of gold and the same was sold. The attention of the Hon'ble Members was drawn to the stock book submitted by the assessee before the Hon'ble Bench. The transaction is as per page nos. 6 to 29 of stock book. As per this, it is seen that the assessee has shown purchase of 25 carat gold bar vide journal entry dated 25th, 26th, 27th & 29th October, 2016 i.e. immediately before the demonetisation. The sale of gold coins is shown from 1st November, 2016 to 8th November, 2016 and the stock is shown as Nil as on 8th November, 2016. As per the stock book submitted by the assessee, it has carried out the sale of gold coins from 1st November to 8th November, 2016. However, as per the statement of Shri Pankaj Bhandari, the cash sales have been made only after the demonetization. However, the invoices have been raised from 01.11.2016 to 08.11.2016 so as to show that the transaction is genuine. This admission by Shri Pankaj Bhandari itself shows that the stock book entries of sales are fabricated. Hence the stock book submitted by the assessee is not reliable.

6. During the Survey carried out on the assessee, statement of Shri Pankaj Bhandari was recorded on 01.12.2016. The copies of statement have already been submitted before the Hon'ble Bench. Shri Pankaj Bhandari was asked in question no. 31 of his statement

to explain regarding the stock position. The relevant extract is reproduced below:

> *"Q.31. On physical verification of stock during the course of survey proceedings at this premises, four 100 grams gold bars of 24CT (total 400 grams) are found. Please reconcile the same with stock as per books of accounts.*
>
> *Ans. The stock register is maintained in tally by Mrs. Gunbala Bhandari and as she has not been well for last few days, the stock register is not updated. I will submit the reconciliation of stock as per books and stock found on physical verification in a week's time."*

7. The explanation given by Shri Pankaj Bhandari clearly demonstrates that the stock register on the date of survey was not complete and update. Kindly again refer to question no. 22 of his statement, which is again reproduced below:

> *Q.22. I am showing you the ledger extract of stock summary of 22 CT gold ornaments taken from your tally accounts. As per the stock register in tally accounts there is only outward of 3049.8 grams of gold in the name of Shri Mahendra C. Jain without any inward entry and therefore, the closing stock is reflected as (-)3049.8 grams. The ledger extract is annexed as Annexure-3 to this statement. Please explain the reason for the same.*
>
> *Ans. As stated by me in the earlier question that the transaction was without any actual sale of gold ornaments, therefore, the stock is appearing negative in the books. There is no corresponding purchase for this transaction."*

8. The above facts clearly shows that the stock position shown by the assessee was incomplete and hence not reliable.

9. During the assessment proceeding, also, the AO has given clear-cut finding in para no. 4 of the assessment order that the assessee has not given the documentary evidence for stock and sales effected. Thus, the AO has clearly pointed out discrepancies in stock book.

10. In view of the above facts, the explanation given by the assessee regarding the purchases made by the journal entry is not reliable. Thus the stock book submitted by the assessee is fabricated and hence cannot be relied upon.

11. Without prejudice to the above facts, if the Hon'ble members are of the view that the AO has not verified the purchases during the assessment proceedings, in that case, it is kindly requested to set-aside this issue to the AO for verification of the purchase. The reliance is placed on the decision of Hon'ble Delhi High court in the case of Jansampark Advertising & Marketing Pvt. Ltd. (56 Taxmann.com 286).

Submitted for your Honour's kind perusal."

8. Ld. DR prayed to set aside the order of the Ld.CIT(A) and that of the order of the Assessing Officer be restored.

9. On the other hand, Ld. AR filed his written submissions and submitted as under: -

"A. Demonetization banning of Rs. 500 & Rs. 1000 notes. (People holding these notes could deposit the same in their bank and post office accounts from 8th November, 2016 till 30th December, 2016)

a. Demonetization was announced by the Prime Minister on 08/11/2016. The Prime Minister declared that use of all Rs. 500 andRs. 1000 bank notes would be invalid post-midnight of 08/11/2016.

b. Demonetization resulted in cash deposits in large magnitude. General Public was allowed to deposit the demonetized bank notes between the period 09/11/2016 to 30/12/2016.

B. The assesse company has deposited cash of Rs. 10,72,20,000/- between in two banks post demonetization i.e. Yes Bank Ltd, Union Bank of India and ING Vysya Bank as per table below:-

Date	**Particulars**	**Amount (Rs.)**
10.11.2016	Yes Bank Ltd	50,00,000
10.11.2016	Union Bank of India	3,00,000
10.11.2016	ING Vysya Bank	3,98,00,000
10.11.2016	nion Bank of India	10,00,000
10.11.2016	Union Bank of India	5,00,000
10.11.2016	Union Bank of India	30,00,000
10.11.2016	Union Bank of India	10,00,000
10.11.2016	Union Bank of India	10,00,000
10.11.2013,	Union Bank of India	10,00,000
11.11.2016	ING Vysya Bank	4,88,00,000
11.11.2016	ING Vysya Bank	14,20,000
13.11.2016	ING Vysya Bank	44,00,000
	Total	10,72,20,000

(Copy of Bank Statement in paper book page no.----)

C. THE ASSESSE HAS SUBMITTED FOLLOWING TO THE LD. AO DURING ASSESSMENT PROCEEDINGS (PART OF PAPER BOOK)

1. Assessee has name, address and PAN of purchases above ₹ 2,00,000/-(Pg No 101-102 Of Paper Book)

2. Assessee has name, address and PAN of Sales above Rs.2,00,000/- (Pg No 111-112 Of Paper Book)

3. All Purchases of assessee were accepted.

4. Without Purchases sales cannot take place.

5. All cash sales and credit sales entered in books.

6. The assesse has maintained books of account in form of Computerised Ledger, Cash Book, Bank Book, Sales register, purchase register and stock book.

7. Assessee accounts duly Audited by Tax Auditor and VAT Auditor.

8. Assessee purchases are sold to customers and balance are lying asclosing stock.

9. Copy of cash statement for AY 2016-17, 2017-18 and 2018-19. (PgNo. 43-98 of Paper Book)

10. Copy of Stock Statement for AY 2016-17 and AY 2017-18. (Pg. No. 121 of Paper Book)

11. Copy of Monthly purchase and sales chart for existing and previousyear.

D. As your Honor is aware, Transactions in relation to which permanent account number is to be quoted in all documents for the purpose of clause (c) of subsection (5) of section 139A of the Act. Rule 114B of the Income Tax Rules, 1962 lists the transactions wherein the PAN needs to be quoted. Item No 18 states as under:

Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. Nos. 1 to 17 of this Table, if any. – Amountexceeding two lakh rupees per transaction:

It is therefore clear from the above table that there is no requirement / compulsion as per Rule 114B to submit the PAN and address of the sales or purchase by any person below Rs. 2 lakhs.

With regards to PAN details for gold purchase, it is pertinent to note the following:

- *If any person buying gold worth Rs.2 lakhs and above, he need to provide your Permanent Account Number.*
- *PAN will be traded as the buyer's identity. Sellers must collect tax at source on such sales which will be different*
- *from Tax Deducted at Source, The tax rate is specified and must be collected and deposited with the Government.*
- *Furnishing PAN details does not mean that buyer have to pay tax& filereturn. It is merely a means of establishing financial identity.*

Upon reading the above analysis, it is revealed that PAN requirement made mandatory to IDENTIFY the person who is making transactions above Rs. 2 Lakh in cash. And based on that Identity the department's system can retrieve the Financial Identity & other details to keep track on that person's financial transaction & related income tax compliance. However, upon careful reading of Section 139A& Rule 114B, it is nowhere mention that the person making transaction of more than Rs. 2 Lakh is liable to file the Income Tax Return U/s 139 mandatorily.

Where the act prescribes a rule, it has to be strictly and mandatorily followed and further if the Statute has conferred a power to do an act and has laid down the method in which that power is to be exercised, it necessarily prohibits the doing of the act in any other manner than that has been prescribed.

In support of such legal proposition, the following judicial pronouncementsare relied upon

i. *Bharat Hari Singhania (1994] 207 ITR 1 (SC)]*

ii. *Chandra kishoreJha v. Mahavir Prasad [1999] 8 scc 266 (SC)]*

iii. *Orissa Rural Housing Development Corpn. Ltc. v. ACIT [2012] 204 taxman 673 (orissa High Court)*

iv. *Singharasingh (1963) air 358, 1964 scr (4) 485 (Supreme Court)*

v. *Medplus Health Services (P.) ltd* v. Income Tax Officer [2016] 48 ITR (T) 396 (Hyderabad – Trib.)

Thus considered one could conclude that Assessing Officer is bound by the rules of the Income Tax rules 1962 and should exercise his/ her authority within the boundary of rules enshrined by parliament vis-à- vis income tax rules 1962. Hence it is then in order to state that the assessee has fulfilled the criteria as prescribed by the Act/ Rules andnothing more can be insisted for from the assessee.

In this connection, the Appellant wishes to highlight the law as it stands on the issue for your kind consideration

It is abundantly clear that there is no requirement / compulsion as per Rule 114B to submit the PAN and address of the sales or purchase by any person below Rs. 2 lakhs

We would like to justify our legal position in term of above sections that we have collected a Valid PAN from the buyers as liability casted upon us U/s 272B. Furthermore, if we would have been failed to collect the PAN as required, then in that case we would like to be facing penal liability of Rs. 10000/-. But we are not liable for any person who have done non-compliance of the provisions of Section 139. The buyer himself is liable for non-compliance of section 139. It is pertinent to mention here that Appellant is engaged in business of retail selling, wholesale selling and reselling of gold bar & ornaments. As per industry practice, huge volume of jewellery business is traded in Cash. Receipts of such cash out of

this sale proceeds have been deposited on the above dates as convenient to us by availability of time. Further, it is not a business practice that each and every time, when you sale good in cash, you take declaration from customer whether he/she is a regular income tax return filler. And this is also not a mandatory in any law in force in India. Further, how a seller can assess or ascertain that the buyer is regular income tax return filler or a non-filler. We are only concerned with the business transaction with the buyer, not with his personal financial liabilities & compliance status. Hence, if a genuine buyer turns out later on a non-filler, the seller is not supposed to be liable for the same. Hence the argument meted out in not in line with the legal matrix and hence is perverse and unsustainable in any court of law;

It is submitted that the entire sale including the sale pointed out by Ld ACITS supported by corresponding purchase whose payment has been made through banking channel. The Ld. ACIT has also not disputed the purchase because complete ledger of purchase as well as sale account was furnished to the DCIT CIRCLE 6(1)-2 at the time of assessment itself.

- *Further, the Appellant hereby addressed each and every issue highlighted in the Assessment Order, extract of which is stated below for your kind consideration:*

E. With reference to the Assessment Order

Para No.	*Points Raised*
3.3	*Subsequently, summons u/s 131 of the Income Tax Act, 1961 was issued to 15 parties out of the 701 parties on the addresses given by the assessee on sample test check basis. However, all the summons were returned back undelivered by Postal Authorities.*

- *As your Honor is aware, Section 131 gives the same power to an AO to enforce the attendance of any person including any officer of the banking company and examining him on oath as are vested in a Court under the CPC, 1908 when trying a suit. Order 16, Rule 10 of the CPC deals with this type of situation, where a person does not appear despite service of valid notice of the authorities, enjoying the power of Civil Court. Sub-rule (2) says where the Court sees reason to believe that such evidence or production is material and that such person has without lawful excuse, failed to attend or produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to*

produce the document at the time and place to be named, therein; and a copy of the proclamation may be affixed on the outer door or conspicuous part of the house in which he ordinarily resides. Sub-rule (3) of Rule 10 says that in lieu of or at the time of issuing such proclamation or at any time afterwards, the Court may in its discretion issue a warrant either with or without bail for the arrest of such person and may make an order for the attachment of the property to such amount as it thinks fit not exceeding the amount of cost of attachment and of any fine which may be imposed under Rule 12. Once the AO has invoked the provisions of Section 131 of the IT Act, he will enjoy all powers of a Civil Court under the CPC for enforcing the attendance of a person for recording his statement and that powers include issuance of proclamations and bailable and non-bailable warrants when he is satisfied that the witness is avoiding the service or not complying the summons issued to him;

Merely because summons issued to some of the creditors could not be served or they failed to attend before the DCIT CIRCLE 6(1)-2, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Hon'ble Supreme Court in the case of Orissa Corporation The initial onus lies on the Appellant to prove the genuineness of the transaction along with identity of the client. Having done so, the onus shifts on the AO to disprove the claim by establishing that the evidence filed by was false and by bringing new adverse material on record and failure to do so at the end of AO would certainly vitiate the addition made u/s 68. When the summons issued to the alleged clients could not be complied with, without any further effort and verification, the Ld. DCIT proceeded to make an addition u/s 68 merely relying on the information based on suspicion which is not a proper approach. To establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the AO under s. 131 by the alleged creditors will not be sufficient to draw an adverse inference against the assessee

However the Appellant has been able to satisfy the requirements in terms of Identity, and Genuineness of the transaction as statutorily mandated per Rule 114B [complete Name, Address, PAN], the said argument is a observation lacking in content so as to justify an addition to income.

Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence. The LD ACIT has not been able to advance any evidence to prove his hypothesis.

- *Respectfully taking note of decision of Hon'ble Supreme Court in thecase of CIT vs Lovely Export wherein it has been held that*

if the share application money is received by the assessee company from alleged bogus shareholders whose names are given to the AO, then the department is free to proceed to reopen their individual assessment in accordance with law but no such exercise has been conducted by the AO in the instant case. Hence, we are unable to see any perversity, ambiguity or any other valid reason to interfere with the impugned order and we uphold the same."

Sr.No	***Case Law***	***Citations***
1.	*ITAT Ahmadabad Rohini Builders vs DCIT*	*We have considered the rival submissionsand have also gone through the order passed by the AO, the relevant portion of which we have also extracted in para 2 above. The CIT(A) more or less confirmed the additiononthe reasoning given by the AO in the assessment order. A perusal of the chart given by us in para 3 above indicates that out of 21 creditors the AOhas recorded the statements of only six creditors viz., creditors at Sr. Nos. 1,2,3,4,6 and 7. However, in respect of all the 21 creditors the assessee has furnished their complete addresses along with GIR Numbers/Permanent Account Numbers as well as confirmations along with the copies of assessment orders passed in the cases of creditors at Sr. Nos. 1, 2, 4, 5, 6,7, 9, 10, 11, 12 and 16. In the remaining cases where the assessment orders passed were not readily available, the assessee has furnished the copies of returns filed by the*

Sr.No	***Case Law***	***Citations***
		creditors with the Department along with their statement of income. All the loans were received by the assessee by account payee cheques and the repayments of loans have also been made by account payee cheques along with the interest in relation to those loans. It is rather strange that although the AO has treated the cash credits as non- genuine, he has not made any addition on account of interest claimed/paid by the assessee in relation to those cash credits, which have been claimed as business expenditure and has been allowed by the AO. It is also pertinent to note that in respect of some of the creditors the interest was credited to their accounts/paid to them after deduction of tax at source and information to this effect was given in the loan confirmation statements by those creditors filed by the assessee before the AO. Thus, it is clear that the assessee has discharged the initial onus which lay on it in terms of s. 68 by proving the identity of the creditors by giving their complete addresses, GIR Numbers/Permanent Account Numbers and the copies of assessment orders wherever readily available. It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank account of the creditors and

Sr.No	***Case Law***	***Citations***
		the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source as held by the Hon'ble BombayHigh Court in the case of Orient Trading Co. vs. CIT (1963) 49 ITR 723 (Bom). The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques. Merely because summons issued to some of the creditors could not be served or they failed to attend before the AO, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Hon'ble Supreme Court in the case of Orissa Corporation (supra). In the said decision the Hon'ble Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR Numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of

Sr.No	***Case Law***	***Citations***
		creditworthiness and mere non- compliance of summons issued by the AO under s. 131 by the alleged creditors will not be sufficient to draw an adverse inference against the assessee. In the case of six creditors who appeared before the AO and whose statements were recorded by the AO, they have admitted having advanced loans to the assessee by account payee cheques and in case the AO was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under s. 69.
2.	*Bombay High Court has held that in CIT v. creative world tele films ltd (2011) 333 ITR 100*	*The question sought to be raised in the appeal was also raised before the Tribunal and the Tribunal was pleased to allow the judgment of the apex Court in the case of CIT vs. Lovely Exports(P) Ltd. (2008) 216 CTR (SC) 195. Wherein the apex Court observed that if the share application money is received by the assessee-company from alleged bogusshareholders, whose names are given to the AO, then the Department can always proceed against them and if necessary reopen their individual assessments. In*

Sr.No	***Case Law***	***Citations***
		the case in hand, it is not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given thecheque number, name of the bank. It was expected on the part of the AO to make proper investigation and reach theshareholders. The AO did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable In our considered view, the AO ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by assessee to the AO. In the above circumstances, the view taken by the Tribunal cannot be faulted.

F. with reference to the Assessment Order

Para No.	*Points raised*
4.2	*During the course of assessment proceedings, the assessee submitted that it has sold gold to various people on 08.11.2016 and since there was no sale of more than Rs. 2,00,000/-, the assessee did not take PAN of the parties. The assessee also stated that it took advantage of the opportunity as people just wanted to*

Para No.	*Points raised*
	dispense their cash due to demonetization announcement. Therefore, all cash were received in 500 & 1000 Rs. Notes. The assessee also submitted that it had a stock of gold worth more than Rs. 10 crore in its office before announcement of demonetization. With regard to specific query for CCTV footage and entries in visitors register, the assessee stated that it has CCTV camera in the office, however, they keep the data only for 15 days in the system and no visitor book is being kept at the society premises

- *The Appellant wishes to lay emphasis on the fact that the Closed circuit Television cameras are configured retain data for 15 days only and the footage gets overwritten every fortnight. This has been clearly explained in the Appellants submissions and this fact can be checked up at any retail out let, as this is a standard business practice.*

- *As regards Visitor book, being a retail outlet there is no practice of entering names as even otherwise in contemporary times this practice is not adopted by any Retail outlet. This also has been explained in the submissions.*

- *It is common knowledge that post demonetization was announcedthere was a general rush to buy Jewellery and Gold which was neverwitnessed till date. We wish to provide certain links so as to enable youto appreciate the ground reality.*

Enclosed Article by Economic Times India Times for you referenceas a part of paper book page no. 257-265

G. Event happening on and after the date of Demonetization

- *Jewellers sold 15 tonnes of gold ornaments and bars, worth around Rs 5,000 crore, on the intervening night of November 8 and 9 after the government demonetised Rs 500 and Rs 1,000 denomination notes, said Surendra Mehta, national secretary of India Bullion & Jewellers Association (IBJA). IBJA has 2,500 jewellers registered with it from across the country.*

- *"We estimate gold worth Rs 5,000 crore, or around 15 tonnes, was sold between 8 pm on November 8 and 2-3 am the next day, after announcement of demonetization. Buyers flood stores to convert cash into gold*

- *No sooner did Prime Minister Narendra Modi concluded his 'surprise' address on November 8 on National Television, jewellery shops in different parts of India saw heavy rush with people wanting to buy gold coins and jewellery with 500 and 1,000 denomination currency notes. "There was a gold rush in late night hours in some pockets of Ahmedabad, Vadodara and Rajkot towns. Not all the jewellers were operational but only limited showrooms were open.*

- *Enclosed Article by Fashion Network for you reference as a part of paper book page no. 257-265*

- *Somasundaram PR, managing director of the WGC's Indian operations, said on Tuesday Prime Minister Narendra Modi's move to scrap 500 and 1,000 rupee banknotes a 'demonetisation' crackdown on corruption and tax evasion will boost larger jewellery retailers' market share from 30 percent in 2015. Enclosed Article by My Gold Guide for you reference as a part of paper book page no. 257-265*

- *Among the many challenges India faced in 2016, the gold bull market was one of the biggest hit. Besides the Budget 2016 blow where excise duty was imposed on jewellery, which left business conditions volatile in the first quarter, demonetisation was a policy decision no one saw coming. The decision by the Narendra Modi Government to discontinue the use of INR 500 and INR 1000 notes was backed by the reasoning that the action would "curtail the shadow economy and crack down on the use of illicit and counterfeit cash to fund illegal activity and terrorism," according to a leading publication. The precious metal saw an immediate gold buying rush on the eve of demonetisation, following the PM's announcement. Individuals from all corners of the country rushed to invest their old notes in gold, as sellers too enjoyed an influx in sales and offered competitive prices. This suddenly lifted gold's price to a 3 year high.*

The department has found that to escape tax authorities black money holders bought gold from jewellers so that they don't have to deposit their unaccounted money in the banks after demonetisation.

Enclosed Article by Economic Times India Times andBusiness Today for you reference as a part of paper book pageno. 257-265

H. In this connection, the Appellant wishes to highlight the law as it stands onthe issue for your kind consideration:

- *It is abundantly clear that there is no requirement / compulsion as perRule 114B to submit the PAN and address of the sales or purchase by any person below Rs. 2 lakhs;*

We would like to justify our legal position in term of above sections that we have collected a Valid PAN from the buyers as liability casted upon us U/s 272B. Furthermore, if we would have been failed to collect the PAN as required, then in that case we would like to be facing penal liability of Rs. 10000/-. But we are not liable for any person who have done non-compliance of the provisions of Section 139. The buyer himself is liable for non-compliance of section 139. It is pertinent to mention here that Appellant is engaged in business of retail selling, wholesale selling and reselling of gold bar & ornaments. As per industry practice, huge volume of jewellery business is traded in Cash. Receipts of such cash out of this sale proceeds have been deposited on the above dates as convenient to us by availability of time. Further, itis not a business practice that each and every time, when you sale good in cash, you take declaration from customer whether he/she is a regular income tax return filler. And this is also not a mandatory in any law in force in India. Further, how a seller can assess or ascertain that the buyer is regular income tax return filler or a non-filler. We are only concerned with the business transaction with the buyer, not with his personal financial liabilities & compliance status. Hence, if a genuine buyer turns out later on a non-filler, the seller is not supposed to be liable for the same. Hence the argument meted out in not in line with the legal matrix and hence is perverse and unsustainable in any court of law;

- *It is submitted that the entire sale including the sale pointed out by Ld DCITS supported by corresponding purchase whose payment has been made through banking channel. The Ld. DCIT has also not disputed the purchase because complete ledger of purchase as well as sale account was furnished to the AO at the time of assessment itself.*

- *It may be worthwhile to mention that the books of Accounts have not been rejected by the Ld ACIT under Section 145(3) of the Act. The books of accounts regularly maintained by the Appellant including quantitative details have not been rejected by the Ld. A.O u/s 143 of the Act except the alleged Sales. No other major discrepancy has been noticed in the books. Books of accounts are duly audited. Purchases made by the assessee are not in dispute. The Appellant is into the business since many years and is consistently showing the gross profit and net profit. Alleged*

supplier of goods are duly registered under Value Added Tax Act. Payment made through banking channel. Quantity maintained in the alleged bills are part of quantitative records maintained by the assessee. There is no drastic change in the gross profit and net profit rate. Since the Purchases have not been doubted there ought to be corresponding Sales. However, some of the ingredients for testing the genuineness of Sales are missing but for this reason itself total Sales cannot be disallowed else abnormal and distorted profits will appear in the profit and loss account. Hence, we Appeal that that the disallowance of entire disputed Sales cannot be made.

- *Suppliers have not been doubted, Sales have not been doubted.*

- *The Appellant placed reliance on the following judgments rendered in the context of Bogus Purchases, however the Appellant desires to emphasis the principle involved which remains the same.;*

1. CIT vs. BalchandAjit Kumar 263 ITR 610 (MP-HC)

2. Man Mohan Sadani Vs. CIT 304 ITR 52 (MP-HC)

3. CIT vs. Simit P. Sheth 38 com385 (Guj-HC)

4. CIT vs. Bholanath Poly Fab Pvt. Ltd 355 ITR 290 (Guj-HC)

5. CIT vs. Nangalia Fabrics Pvt. Ltd 40 com206 (Guj-HC)

6. DCIT vs. Rajeev G. Kalathi ITA No.6727/Mum/20 12

7. ACIT Vs G.V. Sons ITA No. 2239/Mum/2012 & 2240/Mum/2012

8. ITO vs. Eagle Implex ITA No.5697/Mum/2010

9. Madhukant B. Gandhi vs ITO ITA No. 1950/Mum/2009

10. CIT vs. President Industries 258 ITR 654 (Guj-HC)

11. CIT Vs. Leaders Valves (P) Ltd 285 ITR 435 (P&H-HC)

12. Hiralal Chunilal Jain vs. ITO ITA No.4547/Mum/2014 dated 13.01.2016.

13. Ganpatraj A Sanghvi vs. ACIT ITA No.2826/Mum/2013

14. ITO vs. Shri Deepak Popatlal Gala ITA No.5920/Mum/2013

15. Ramesh Kumar & Co vs. ACIT ITA No.2959/Mum/2014)

16. ACIT vs. Ramila Pravin Shah ITA No.5246/Mum/2013

17. ITO vs. Paresh Arvind Gandhi ITA No.5706/Mum/2013 dated29.5.2015

18. CIT vs. Pokhraj P Doshi 43 com46 (Guj)

19. CIT vs. Nikunj Eximp Enterprises(P) Ltd 35 com384 (Bom-HC)

20. Confirmed by Hon'ble Apex Court vide civil appeal No. 14828/20 13 on 30.08.20 13

21. Himalaya Distributors vs. ITO 239 DTR 267 (Pune-ITAT)

22. P. Malliwaql vs. JCIT 10 SOT 319 (Hyd-ITAT) (TM)

23. RajmalLakhichand vs. ACIT 79 ITD 84 (Pune-ITAT)

24. The judgment of Hon'ble High Court of Bombay in the case of PCIT V/s M/s. Mohommad Haji Adam & Co ITA No. 1004 of 2016 dated 11.2.2019 and also on the recent decision of Co- ordinate Bench, Mumbai in the case of V.R. Enterprises V/s ITO ITA No.4650/Mum/2018 order dated 16.05.20 19

Furthermore, as your Honor is aware, Section 131 gives the same power to an AO to enforce the attendance of any person including any officer of the banking company and examining him on oath asare vested in a Court under the CPC, 1908 when trying a suit. Order 16, Rule 10 of the CPC deals with this type of situation, where a person does not appear despite service of valid notice of the authorities, enjoying the power of Civil Court, Sub-rule (2) says where the Court sees reason to believe that such evidence or production is material and that such person has without lawful excuse, failed to attend or produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at the time and place to be named, therein; and a copy of the proclamation may be affixed on the outer door or conspicuous part of the house in which he ordinarily resides. Sub-rule (3) of Rule 10 says that in lieu of or at the time of issuing such proclamation or at any time afterwards, the Court may in its discretion issue a warrant either with or without bail for the arrest of such person and may make an order for the attachment of the property to such amount as it thinks fit not exceeding the amount of cost of attachment and of any fine which may be imposed under Rule 12. Once the AO has invoked the provisions of Section 131 of

the IT Act, he will enjoy all powers of a Civil Court under the CPC for enforcing the attendance of a person for recording his statement and that powers include issuance of proclamations and bailable and non- bailable warrants when he is satisfied that the witness is avoiding the service or not complying the summons issued to him

I. Analysis of Provision of section 145 and section 68 of the IncomeTax Act, 1961

Section 145: Method of accounting.

(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with thestandards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.

Section 68: Cash credits.

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the 25/Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

(a) the person, being a resident in whose name such credit is recorded inthe books of such company also offers an explanation about the nature andsource of such sum so credited; and

(b) Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.1"

Upon perusal of Section 145(3) above, it is observed that correctness of Sales cannot be challenged without pointing out any specific mistake or deficiency in the books of account or without recording a firm finding that the profits and gains cannot be properly deduced from such books of accounts. In this regards, the Appellant have correctly shown sale transactions as revenue from operation in the book of accounts as per notified accounting standards prescribed. Further, the same sale is being reduced from inventory in the books of accounts. The same books is audited and tax audit report has been uploaded with Revenue Department. The inventory details are also matching in between tax audit and books of accounts.

Further, the amount received in bank account against sale of gold is also duly recorded in the books of accounts. As per explanation provided inearlier paras, it is clear that, the Appellant have duly explained that the Appellant had received of against sale of gold and consequently, the sale bills is properly issued against the sale

J. The Appellant urges the below sum up Submissions for kind consideration:

To prove the sale transaction as genuine and actually taken place, the Appellant have put all the fact along with documentary evidences, which are supposed to be essential to prove any generic sale transaction in common parlance of any business for a businessman.

There is no cash trail or any material vis a vis trail of monies; Sale were recorded in the books of accountsas well as statutory audit and tax audit report along with quantitative details of stocks, hence it clearly shows that the books of accounts are properly maintained by the company per prescribed method in section 145.

Therefore, the assessee had rightly included the amount of surrender in the sales and offered the income arising out of it as

business income and therefore, section 115BBE was not applicable. [Hon'ble Rajasthan High Court in the case of Pr. CIT vs. Bajargan Traders in ITA.Mo.258 of 2017, SMC Bench of ITAT . Jodhpur in the case of LovishSingha land Others vs. Income Tax Officer in I.T.A.No,143/Jodh/2018 Jaipur Tribunal in the case of ACIT VS. Sanjay Bairathi Gems Ltd,in ITANO.157/JP/2017]

JUDICIAL PRECEDENTS COVERING THE GROUNDS ABOVE

1. The Appellant has relied upon plethora of judgments', including the decision of Hon'ble Supreme Court in the case of CIT vs Lovely Exports Pvt Ltd (2008) 216 CTR 195 (SC). In the case laws relied upon by the Appellant, the issues has been dealt as under:- "If the share application money is received by the assessee company from alleged bogus shareholders, whose names are givento the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."

2. However, there is no bar in making cash sales and in case the assessee is not able to furnish the address of the buyers, the additions cannotbe made under section 68 on this count. The aforesaid principle has been upheld in the following decisions:

a. Bombay High Court R.B. Jessaram Fatehchand (Sugar Deptt.) v. CIT [1970] 750 ITR 33 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 there was no necessity whatsoever for the assessee to have maintained the addresses of cash customers, the failure to maintain the same or to supply them as and when called for cannot be regarded as a circumstance giving rise to a suspicion with regard to the genuineness of the transactions. Kishore Jeram Bhai Khaniya Vs Income Tax Officer (ITAT Delhi) (ITA No. 1220/Del/2011)

b. The Vishakapatnam ITAT in the matter of M/S Hirapanna Jewellers I.T.A. No.253/Viz/2020 and CO No.02/Viz/2021, A.Y.2017-18 dated 12.05.2021 has held on identical facts and of the case has held as under:

In the instant case, the facts clearly support that the assessee has made the sales and there were sufficient stocks to meet the sales. Thus, the facts of the assessee's case are clearly distinguishable. The Ld.DR further relied on the decisions of Kale Khan Mohammad Hanif, 50 ITRI (SC), wherein, the Hon'ble Supreme Court held that the AO is permitted to make addition of unexplained cash credits even though the income is estimated on sales. In the instant case,

the AO had accepted the sales and no unexplained cash credits were found, thus, the case law relied upon by the Ld.DR is also distinguishable on the facts of the case. The Ld.DR relied on the decision of CIT VS P.Mohanakala, 161 Taxmann 169, CIT vs Devi Prasad Vishwanath Prasad 72 ITR 194(SC) both the cases refer to the sums found credited in the books of account but not offered as income, whereas in the instant case the assessee admitted the same as sales and offered for taxation, hence, the case laws has no application in the assessee's case. The Ld.DR also relied on the decision in Naresh Kumar Tulshanus. 5th ITO, ITAT Bombay (supra), the decision was related to the addition u/s 69A representing huge deposit of cash in bank for which the initial source was declared as past profits and subsequently explained as withdrawal from partnership firm without relevant matching entries in the banks,therefore, the coordinate bench of ITAT held that withdrawal of such huge amount in high denomination was not practicable. The Ld.DR also relied on the decision of J.M.J.Essential Oil Company Vs. ITO, 100 taxmann.com 181 in the cited case, the assessee effected large sales in one month of each year continuously for two years and the assessee is eligible for deduction u/s 80IC and the AO observed that the assessee was inflating the sales and claiming the huge deductions. No such cash inflow is involved due to demonetization. Whereas in the assessee's case there were no such deduction or the exempt income and the profits were also not abnormal. The assessee explained the reason for huge sales with evidence and thus the case law relied up on by the DR is distinguishable. The Ld DR relied on various case laws and all the case laws more or less are related to the additions made u/s 68 as unexplained cash credit and in none of the cases the assessees have admitted the same as income. Therefore, we find that the case laws relied up on by the Ld.DR has no application in the instant case and the same are distinguishable.

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

The assessee filed cross objections supporting the order of the Id. CIT(A). Since, the appeal of the revenue is dismissed, the cross objection filed by the assessee becomes infructuous, hence, dismissed."

The Ld. Delhi Tribunal in the case of AGONS GLOBAL P LTD v/s ACIT (Appeal No 3741 to 3746/Del/2019 has held that mere addition made on this ground that there is deviation in ratio is not proper. When the assesse had regular cash sale and depositof cash in bank accounts and if nothing incrementing is found contrary then addition u/s 68 of such cash sale would tantamount to double taxation.

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% (ie. 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

116. 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 maykindly be deleted.

c. The Ld. Indore Bench in the case of DEWAS SOYA LTD, UJJAIN v/s Income Tax (Appeal No 336/Ind/2012 has held that the claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit and loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act. This view has been held by the Hon'ble Supreme Court in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 721TR194 (SC) that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus

has been discharged by it and the same income cannot be taxed again.

d. Reliance can also be placed on the decision of Hon'ble Supreme Court in the case of CIT vs Durga Prasad More (1969) 721TR807 (SC) in which it was held "If the amount representedthe income of the assessee of the previous year, it was liable to be included in the total income and an enquiry whether for the purpose of bringing the amount to tax it was from a business activity or from some other source was not relevant".

e. Reliance can be placed on the decision of Hon 'ble Rajasthan High Court in the case of Smt. Harshila Chordia vs ITO (2008) 298 ITR 349 in which it was held that "Addition u/s 68 could not be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them".

f. In the decision of Hon'ble ITAT, Nagpur Bench in the case of Mis Heera Steel Limited vs ITO (2005) 4 IT J 437 is also worth Ito be mentioned here that wherein it was held that "Both the lower authorities failed to appreciate the case of the assessee that these were the trade advances and not cash credits and against such advance, the assessee has supplied the material in due time as per details available on record. In view of the above, there is no justification for the revenue authorities to treat these cash advances as unexplained cash credit u/s 68", Reliance can also be placed on the decision of Hon'ble M.P. High

g. Court in the case of Addl. CIT vs. Ghai Lime Stone Co. (1983) 144 ITR 140(MP).It is evident from these judicial rulings that trade advances or cash received against which goods is supplied subsequently is not a cash credit as contemplated by section 68.

h. Reliance can further be placed on the decision of the ITAT, Mumbai Bench in the case of ITO vs. Surana Traders, (2005)93 TTJ 875: (2005)92 ITD 212, the relevant observation of the Mumbai Bench were as under: "So merely because for the reasons that the purchaser parties were not traceable, the assessee could not be penalized. In the sales documents, the assessee has made available all necessary details, i.e. the total weight sold as well as the rate per kilogram. Undisputedly, the assessee has maintained complete books of accounts along with day to day and kilogram to kilogram stock register. These were produced before the A O by the assessee. The assessee also submitted stock tally sheet along with the audited accounts. The audit report of the assessee also bears ample testimony in favour of the assessee. The factum of the

assessee having maintained stock register and quantitative details have beenmentioned by the A 0 in the assessment order. No mistake were pointed out by the AO in these records maintained by the assessee-Since the purchases have been held to be genuine, the corresponding sales cannot, by any stretch of imagination be termed as hawala transaction. It is the burden of the department to prove the correctness of such additions. When, in such like cases, a quantitative tally is furnished, even if purchases are not available no addition is called for."

i. Shree Sanad Textiles Industries Ltd. V. DCIT (Ahmedabad ITAT) ITA No. 1166/Ahd/2014 in paras 9.6/9.7 it was held that "We also note 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."

We are also aware of the fact that there is no iota of evidence having any adverse remark on the purchase shown by the assessee in the books of accounts. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/finding. In view of the above we are not convinced with the finding of the learned CIT(A) and accordingly we set aside the same with the direction to the AO to delete the addition made by him."

j. New Pooja Jewellers v. ITO (Kolkata ITAT) ITA No.1329/Kol/2018 in Para 15 it held that "Be it as it may, in the normal course, we would have restored the issue to the file of the AO for fresh verification of the claim of the assessee that it had received advances from customers on the occasion of Ramnavami Nayakhata. In other words, we would have given the AO more time to conduct enquiries and investigation. In this case we find that these advances have subsequently been recorded as sales of the assessee firm and that these sales have been accepted as income by the AO during the year. He has not disturbed the sales of the assessee. When a receipt is accounted for as income, no separate addition of the same amount as income of the assessee under any other Section of the Act can be made as it would be a double addition. In the result, we delete the addition made and allow its claim of the assessee

k. CIT v. Vishal Exports Overseas Limited (Gujarat High Court) Tax Appeal No. 2471 of 2009 in Para 5/7 it was held that 5. Revenue carried the matter in appeal before the Tribunal. The Tribunal did not address the question of correctness of the C.I.T. (Appeals)'s conclusion that amount of Rs. 70 lakhs represented the genuine export sale of the assessee. The Tribunal however, upheld

the deletion of Rs.70 lakhs under section 68 of the Act observing that when the assessee had already offered sales realisation and such income is accepted by the Assessing Officer to be the income of the assessee, addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income.7. In view of the above situation, we do not find any reason to interfere with the Tribunal's order

l. CIT v. Smt. Harshil Chordia v. ITO (Rajasthan High Court) 2008 298 ITR 349 Raj- Para 23 held that 23. 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.

m. In a recent decision the Ld Delhi Tribunal in the case of Gordhan, Delhi v/s DCIT dated 19/10/2019 held that "no addition can be made u/s 68 on the sole reason that there is a time gap of 5 months between the date of withdrawals from bank account and redeposit the same in the bank account, Unless the AO demonstrate that the amount in question has been used by the assesse for any other purpose. In my view addition is made on inferences and presumptions which is bad in law."

n. Like wise in the case of ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi) also held that merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account ofcash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee,there was any other purposes it is used by the assessee of theseamounts

o. CIT vs. Goa Sponge and Power Ltd (13/02/2012) Tax Appeal No. 16 of 2012 (High Court-Bombay) "Once the authorities have got all the details, including the name and addresses of the shareholders, their PAN/GIR number, so also the name of the Bank from which the alleged investors received money as share application, then, it cannot be termed as "bogus". The controversy is covered by the judgements rendered by the Hon'ble Supreme Court in the case of Lovely Exports Pvt Ltd, vs. CIT, (2008) 216 CTR (SC) 195, as also by this Court in CIT vs. Creative World Tele

films Ltd, (2011) 333 ITR 100 (Bom). In such circumstances, we are of the view that the Tribunal's finding that there is no justification in the addition made under Section 68 of the Income Tax Act,,1961neither suffers from any perversity nor gives rise to any substantial question of law."

p. CIT vs. Creative World Tele films Ltd (2011) 333 ITR 100 (Born-High Court) "The question sought to be raised in the appeal was alsoraised before the Tribunal and the Tribunal was pleased to aollow the judgment of the apex Court in the case of CIT us. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195. Wherein the apex Court observed that if the share application money is received by the assessee-company from alleged bogus shareholders, w hose names are given to the AO, then the Department can always proceed against them and if necessary reopen their individual assessments. In the case in hand, it is not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the AO to make proper investigation and reach the shareholders. The AO did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable In our considered view, the AO ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the AO. In the above circumstances, the view taken by the Tribunal cannot be faulted."

q. CIT vs. Steller Investment Ltd (2001) 251 ITR 263 (SC) (civil appeal) "That the increase in subscribed capital of the respondent company could not be a device of converting black money into white with the help of formation of an investment company, on the round that, even if it be assumed that the subscribers to the increased capital were not genuine, tinder no circumstances could the amount of share capital be regarded as un disclosed income, an appeal was taken by the Department to the Supreme Court. The Supreme Court dismissed the appeal holding that the Tribunal had come to a conclusion on facts and no interference was called for."

r. CIT vs. Nav Bharat Duolex Ltd (2013) 35 Taxmann.com289 (All-HC) "We have considered the arguments of the counsel for the parties. CIT(A) found that five companies subscribing the equity shares amounting to Rs. 25,00,000/- were identified and they had submitted their bank statements, cash extracts and returns filing receipts. As such identity of the share applicant companies and purchase of share had been proved by the assessee. Supreme Court in the cases of CIT v. Steller Investments Ltd. [2001] 251 ITR 263 and Lovely Exports ca se has held that the identity of the

shareholder alone is required to be proved, in case of the capital contributed by the shareholders. Accordingly CIT(A) and the Tribunal has not committed any illegality in allowing the appeal of the assessee. We do not find any illegality in the judgment oftheCIT(A) and the Tribunal."

t. CIT vs. Jay Dee Securities Finance Ltd (2013) 32Taxmann.com91 (All-High Court) The Tribunal recorded findings that the assessee had produced the return of income filed by the relevant shareholders who had paid share application money. The assessee had also produced the confirmation of shareholders indicating the details of addresses, PAN and particulars of cheques through which the amount was paid towards the share application money. The Tribunal thereafter. relied upon the judgment of the Supreme Court in CIT V. Lovely Exports (P) Ltd wherein it was held that if the assessee produces the names, addresses, PAN details of the shareholders then the onus on the assessee to prove the source of share application money stands discharged. If the Assessing Authority was not satisfied with the creditworthiness of the shareholders, it was open to the Assessing Authority to verify the same in the hands ofthe shareholders concerned, The Tribunal has relied upon an order of the Supreme Court in case of CIT v. Divine Leasing & Finance Ltd. In view of the decision of the Supreme Court, we dismiss the appeals with observations that the department is free to proceed to reopen their individual assessments of the shareholders whose names and details were given to the Assessing Officer."

u. ACIT vs. Venkateshwarlspat Pvt Ltd (2009) 319 ITR 393 (Chhatisgarh-High Court) "If the share applications are received by the assessee from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as the undisclosed income of the assessee,"

v. Mod Creations Pvt Ltd vs. ITO (2013) 354 ITR 282 (Del-High Court) "Held, allowing the appeal, (i) that the assessee had discharged the initial onus placed on it. In the event the Revenue still had a doubt with regard to the genuineness of the transactions in issue or as regards the creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the Assessing Officer that the credits were a circular route adopted by the assessee to plough back its own undisclosed income into its accounts, could be of no avail. The Revenue was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The Revenue would be required to bridge the gap between the suspicions and

proof in order to bring home this allegation. The Tribunal without adverting to the principle laid stress on the fact that despite opportunities, the assessee and/or the creditors had not proved the genuineness of the transaction. Based on this it construed the intentions of the assessee as being mala fide. The Tribunal ought to have analysed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the Assessing Officer. If the Assessing Officer had any doubt about the material placed on record, which was largely bank statements of the creditors and their income-tax returns, it could gather the necessary information from The sources to which the information was attributable If it had any doubts with regard to their creditworthiness, the Revenuecould always bring the sum in question to tax in the hands of the creditors or sub-creditors."

W. CIT vs. Al Anam Agro Foods (P.) Ltd (2013) 38 Taxmann.com 375 (All- High Court) Tribunal, however, held that since identity of share holders stood proved on record, amount of share application money could not be added to income of assessee. According to Tribunal, in such a case amount could be taxed in hands of persons who had invested"

X. CIT vs. Dwarkadhish Investment (P) Ltd (2011) 330 ITR 298 (Del-High Court) "Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke s. 68-Revenue has all the power and wherewithal to trace any person-Moreover, it is settled law that the assessee need not to prove the 'source of source- In the instant case, the Tribunal has confirmed the order of the CIT(A) deleting the impugned addition holding that the assessee has been able to prove the identity of the share applicants and the share application money has been received by way of account payee cheques."

y. CIT Namastey Chemicals 33Taxmann.com271 (Guj-High Court) "In the present case also, the respondent assessee has received share application money from different sub scribers. It was found that large number of subscribers had responded to the letters issued by the Assessing Officer or summons issued by him and submitted their affidavits. In some cases such replies were not received through posts. Rs. 9 lacs represented those assessees who denied having made any investment altogether. The issue thus would fall squarely within the ambit of the judgment of the Supreme court in the case nf Lovely Exports(supra). No error of law can be stated to have been committed by the Tribunal. Tax Appeal is therefore dismissed."

Z. CIT vs. Peoples General Hospital Ltd (2013) 356 ITR 65 (MP High Court) "Held, dismissing the appeals, that it the assessee had received subscriptions to the public or rights issue through banking channels and furnished complete details of the shareholders, no addition could be made tinder section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidarsor fictitious persons or that any part of the share capital represented the company's own income from undisclosed sources. It wasnobody's case that the non-resident Indian company was a bogus or non-existent company or that the amount subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the Creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was tobe seen. Thus, the addition was rightly deleted."

aa. CIT VS. Shree Rama Multi Tech Ltd (2013) 34 Taxmann.com 177 (Guj-HC) "It is noted that Commissioner (Appeals) as well as the Tribunal have duly considered issue and having found complete details of the receipts of share application money, along with the form names and addresses, PAN and other requisite details, they found complete absence of the grounds noted for invoking the provision of section 68. Moreover, both rightly had applied the decision of CIT vs. Lovely Exports (P) Ltd to the case of the assessee. Therefore, no reason was found in absence of any illegality much less any perversity too to interfere with the order of the both these authorities, who had concurrently held the due details having been proved. The assessee company had presented the necessary worth proof before both the authorities and it was not expected by the assessee company to further prove the source of the deceased."

bb. CIT Nikunj Eximp Enterprises (P.) Ltd (2013) VS. 35Taxmann.com384 (Bom) "Whether merely because suppliers had not appeared before Assessing Officer or Commissioner (Appeals), it could not be concluded that purchases were not made by assessee Held, Yes. Further, there were confirmation letters filed by thesuppliers, copies of invoices for purchases as well as copiesof bank statement all of which would indicate that thepurchases were in fact made. In our view, merely because the suppliers have not appeared before the Assessing Officer orthe CIT(A), one cannot conclude that the purchases were notmade by the respondent-assessee"

cc. CIT vs. Samir Bio-Tech Pvt Ltd (2010) 325 ITR 294 (Del High Court) "Identities of the subscribers are not in doubt. The transactions have also been undertaken through banking channels inasmuch as the application money for the shares was given through account payee cheques. The creditworthiness has also been established, as indicated by the Tribunal. The subscribers have given their complete details with regard to their tax returns and assessments. In these circumstances, the Department could not draw an adverse inference against the assessee only because the sub scribers did not initially respond to the summons. The subscribers, however, subsequently gave their confirmation letters as would be apparent from the impugned order. The identity of the subscribers stands established and it is also a fact that they have shown the said amounts in their audited balance sheets and have also filed returns before the IT authorities. The decision of the Tribunal deleting the addition cannot be faulted."

FURTHER DECISIONS ON CASH SALES BEING DOUBLY TAXED ASUNEXPLAINED CASH CREDITS ARE AS UNDER:

1. Delhi High Court - CIT vs Kailash Jewellery House (ITA613/2010)

2. ITAT Delhi - Kishore Jeram Bhai Khaniya Vs ITO (ITA No.1220/Del/2011)

3. Gujarat High Court - CIT vs Vishal Exports Overseas Limited (TaxAppeal No. 2471 of 2009)

4. ITAT Kolkata - New Pooja Jewelers vs ITO [ITA NO. 1329/Kol/2018]

5. Madhya Pradesh High Court - CIT vs Jaora Flour and Foods (P) Ltd., [2012] 344 ITR 294

In view of the above, the appeal of the revenue deserves to be rejected."

10. Ld. AR of the assessee prayed that in view of the above contentions, the appeal of the revenue be dismissed.

11. Considered the rival submissions and material placed on record, we observe from the record that the survey action was initiated only

based on the fact that the assessee has deposited huge cash immediately after demonitisation. During survey, the team has observed certain discrepancies due to incomplete records found during the survey. Subsequently, statements were recorded and proper books were submitted during the assessment proceedings. We observe from the record that the assessee has deposited cash from 10.11.2016 to 13.11.2016. These cash deposits are proceeds of sales recorded during the above said period. In support of the above, the assessee has submitted details of parties to whom the purchase/sales were effected for more than the value of ₹.2 lakhs., the details include their name, PAN and address, which is placed on record in Page Nos. 101 to 112 of the paper book. The assessee also reconciled the gold stock with the above sales and purchases recorded during this period and submitted before Assessing Officer for subsequent three assessment years. These cash collection and bank deposits were also reconciled and submitted before Assessing Officer for the periods AY 2016-17 to 2018-19. The Assessing Officer has not found any discrepancies in the above statement and the stocks are matching with the audited financial statement submitted before him. Further we observe that the assessee has followed the procedure of declaring the details of persons from whom the transaction value is above the limit prescribed under rule

114B of the I T Rules and their PAN details has to be submitted. With regard to transaction values less than 2 lakhs, there is no requirement to declare the details of the parties. In this case, the assessee has followed the procedure accordingly.

12. Before us, Ld. DR submitted that the stock registers maintained by assessee are not reliable by bringing the stock variation noticed during survey action to the extent of 3049.80 grams. Further, he submitted that the sales were effected within four hours of declaration of demonetization to the 701 parties which is not believable. In our view, the fact remains that assessee is in the business of manufacturing and selling gold jewelleries. The possible method of conversion of currencies by buying the gold and gold jewels cannot be denied. The assessee has demonstrated that it has sold the gold/jewellery during this period. The revenue has not brought any contrary findings that the assessee has deposited the cash other than sale of jewelleries. The Assessing Officer finds fault on the recordings of sales. The revenue has not found any other material to show that assessee has deposited the cash from other possible income.

13. We observe that the assessee has already demonstrated that the sales and purchases effected by it are properly reflected in its books of account and there is no discrepancies found by the tax authorities and there may be certain discrepancies found during the survey but at the time of assessment, the tax authorities have complete details before them and they have to proceed to complete the assessment based on the information available on record rather than relying on certain discrepancies in the records and statements recorded during survey. The additions has to be supported by the evidences. In the given case, the assessee has submitted the relevant information during the assessment proceedings the sources for the cash deposits are only sale of gold/gold jewelleries. When all the information is already submitted and the cash deposits are matching with the financial statements submitted before the authorities, the Assessing Officer cannot still consider it to be undisclosed deposits. Therefore, we rely on the decision of ITAT Visakhapatnam in the case of Hirapanna Jewellers (supra), which held that:-

> *"In the instant case, the facts clearly support that the assessee has made the sales and there were sufficient stocks to meet the sales. Thus, the facts of the assessee's case are clearly distinguishable. The Ld.DR further relied on the decisions of Kale Khan Mohammad Hanif, 50 ITRI (SC), wherein, the Hon'ble Supreme Court held that the AO is permitted to make addition of unexplained cash credits*

even though the income is estimated on sales. In the instant case, the AO had accepted the sales and no unexplained cash credits were found, thus, the case law relied upon by the Ld.DR is also distinguishable on the facts of the case. The Ld.DR relied on the decision of CIT VS P.Mohanakala, 161 Taxmann 169, CIT vs Devi Prasad Vishwanath Prasad 72 ITR 194(SC) both the cases refer to the sums found credited in the books of account but not offered as income, whereas in the instant case the assessee admitted the same as sales and offered for taxation, hence, the case laws has no application in the assessee's case. The Ld.DR also relied on the decision in Naresh Kumar Tulshanus. 5th ITO, ITAT Bombay (supra), the decision was related to the addition u/s 69A representing huge deposit of cash in bank for which the initial source was declared as past profits and subsequently explained as withdrawal from partnership firm without relevant matching entries in the banks, therefore, the coordinate bench of ITAT held that withdrawal of such huge amount in high denomination was not practicable. The Ld.DR also relied on the decision of J.M.J. Essential Oil Company Vs. ITO, 100 taxmann.com 181 in the cited case, the assessee effected large sales in one month of each year continuously for two years and the assessee is eligible for deduction u/s 80IC and the AO observed that the assessee was inflating the sales and claiming the huge deductions. No such cash inflow is involved due to demonetization. Whereas in the assessee's case there were no such deduction or the exempt income and the profits were also not abnormal. The assessee explained the reason for huge sales with evidence and thus the case law relied up on by the DR is distinguishable. The Ld DR relied on various case laws and all the case laws more or less are related to the additions made u/s 68 as unexplained cash credit and in none of the cases the assessees have admitted the same as income. Therefore, we find that the case laws relied up on by the Ld.DR has no application in the instant case and the same are distinguishable.

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

The assessee filed cross objections supporting the order of the Id. CIT(A). Since, the appeal of the revenue is dismissed, the cross objection filed by the assessee becomes infructuous, hence, dismissed."

14. Therefore, respectfully following the above decision and Ld DR also heavily relied on the findings during survey. Hence, we do not see any reason to interfere with the findings of Ld CIT(A) in this regard and accordingly, we dismiss the grounds raised by the revenue.

15. In the result, appeal filed by the revenue is dismissed.

ITA.NO. 1564/MUM/2022 (A.Y. 2017-18)

16. Assessee has raised following grounds in its appeal: -

"1. THE CIT (APPEAL) ERRED IN CONFIRMING THE ADDITION OF RS. 92,00,000 INSPITE OF THE INCOME ALREADY SHOWN IN THE SALES TURNOVER OF THE APPELLANT. The learned CIT (APPEAL) did not consider the fact that the said sum was part of the Total Sales of the Company and hence it cannot be said to be unexplained. He also ignored the fact that the sum he is adding to the Total Income is already part of the Total Income.

2. THE LEARNED CIT (APPEAL) CONSIDERED THE ADDITTION OF RS. 92,00,000 U/S 68 AND ACCORDINGLY LIABLE TO TAX 115BBE."

17. Ld. AR of the assessee brought to our notice relevant facts of the case and filed its written submissions. For the sake of clarity, it is reproduced below: -

"The assessee has preferred an appeal too against the amount of Rs.92,00,000 which was dismissed by the Ld. CIT(A) by raising the above mentioned grounds. Further, the Appellant hereby addresses issue highlighted in the Assessment Order. Extract of the same has been reproduced below.

Addition made of cash deposits of around Rs. 92,00,000/- in his current account with Bombay Mercantile Co-op, Bank

Para 2.13 The Appellant's Director has made a category admission of Income representing the said amount and the source there of has also been clearly mentioned. We wish to reproduce the said extract as under with a request to treat the said monies as income from other sources in view of the admissions made. Furthermore, the special rate of taxation also shall not be applicable in view of the admission made by the Appellant's Director vide his sworn Statement dated 01.12.2016 Since, the assessee has already admitted the sales as revenue receipt being income from other sources, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House (Supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra)

Para 2.14 For the sake of ready reference, the relevant provisions of Section 115BBE are reproduced hereunder: 115BBE. (1) Where the total income ofan assessee,-

(a) includes any income referred to in section 68, section 69, section 69A,section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or (b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the income-tax payable shall be the aggregate of (i) the amount of income-tax calculated on the income referred to in clause

(a) and clause (b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).]

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance for set off of any loss) shall be allowed to

the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1).] We find that a separate surrender of Rs. 92 lacs has been made by Director of the Appellant company during the search action. However, so far as the surrender of Rs. 92 lac, the AO has not pointed out any unexplained credit in the books of account, any unexplained investment, any unexplained money, bullion or jewellery, any unexplained expenditure or any amount of loan repaid in the assessment order in this respect. Therefore, the provisions of Section 68, 69, 69A, 69B, 69C and 69D are not attracted on the surrendered amount of Rs. 92 lacs. However, in actual neither any unexplained investment nor any unexplained expenditure or otherwise any unexplained asset was found during the search action so far as the aforesaid surrender of Rs. 92 lacs was concerned. In view of this, since the aforesaid surrender is not covered under the provisions of Section 68, 69, 69A, 698, 69C and 69D, the provisions of Section 115BBE are not attracted in this case.

In this regard, we submit the following

From the chronology of the transactions, it is evident that the source of amount of Rs. 92,00,000/- is the cash sales. The same has been offered to tax by considering the the cash sales while computing the computation of income and tax thereon. Also appropriate Income Tax has been paid on the same.

Further the amount of Rs. 92,00,000/- was given to Shri. Mahendra Champalal Jain as on 01.11.2016 for purchase of goods. The cash amount given to Shri. Mahendra Champalal Jain is the proceeds from cash sales during the period.

Since the goods were not supplied by Shri. Mahendra Champalal Jain hence the amount of Rs. 92,00,000/- was returned to the assessee. Shri. Mahendra Champalal Jain returned the said amount through banking channels of the Kotak Mahindra Bank. Shri. Mahendra Champalal Jain transferred the said amount via RTGD through Account no. 679011004795 in two parts.

Rs. 60,00,000/- on 16.11.2016; and

Rs 32,00,000/- on 17.11.2016.

It is important to note that, the assessee confirms the statement of Shri Mahendra Champalal Jain before the Tax Authorities about receipt of the said amount towards purchases. The assessee under oath and before the Tax Authorities recorded u/s 131 of the Actconfirms the payment of Rs 92,00,000 to Shri Mahendra

Champalal Jain towards purchases related to assessee's business activities, (Statement part of Paper Book page no)

To summarize the above, it can be said that, assessee paid the cash to Shri. Mahendra Champalal Jain on 1st November 2016, an advance towards purchases. When Shri. Mahendra Champalal Jain was unable to supply the goods, he returned the said amount of Rs 92,00,000/- on 16th and 17th of November 2016 via NEFT.

In is pertinent to note that it is an industry wide practice to pay cash forpurchases.

The income has been already disclosed in the sales turnover of the appellant and the said sum is a part of the total sales which directly forms a part of total income of the company hence, it cannot be said to be unexplained cash credit.

Hence, Ld. AO has erred in considering the amount of Rs. 92,00,000/- as unexplained cash credit under section 68, therefore we would request your honour to delete the addition made by Ld. A.O.

Common submission for all Ground No. 1 of Departmental Appeal and Ground No. 1 & 2 of Assessee's Appeal

"Books of accounts" is defined in the Act and reads as under:-

2(12A) 'Books or Books of account' includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print- outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device;"

BOOK OF ACCOUNTS MAINTAINED AND ADDITION MADE U/S 68 FOR UNSATISFACTORY EXPLANATION

The assesse had explained to the Ld. AO that amount deposited during demonetisation period is from cash sales and such transaction is duly recorded in the books of the assesse but Ld. AO has not considered explanation of the assesse satisfactory and made addition u/s 68.

Further, it has also been explained to the Ld. AO that the source of said amount of Rs. 92,00,000/- given to Shri. Mahendra Champalal Jain for purchase of material is the cash sales during the period.

In such a situation addition is not tenable in the eyes of law because assesse had RECORDED such transaction in his books of

accounts and offered to tax. Thus, the addition needs to be quashed.

Cash sales cannot be ascribed to bogus sales without bringing evidence on record, when assessee had filed Sales & Purchase details like Sales Register, Purchase Register, Sales and Purchase Invoices, Stock Register and the Ld. AO had not made any further enquiry.

When cash deposited is reflected as cash sales in books of accounts and the Ld. AO has not rejected the books of accounts u/s 145(3), he cannot make any separate addition for cash deposited.

The assesse had also submitted following documentary evidences during assessment proceedings:-

1. Copy of Relevant Bank Statement of the assessee

2. Copy of ITR Acknowledgement, Computation of Total Income &

Balance sheet with schedules of the assessee.

3. The assessee's books of Accounts are audited and were submitted to the learned AO and there were no adverse remarks of the auditors in the said Report. (Page No. 27-39 of Paper book). Therefore, thetransaction entered into by the assessee cannot be doubted.

4. Monthwise details of sales and purchases for AY 2017-18 (Page No.71-72 of Paper Book)

5. Details of parties wherein sale made above Rs. 2,00,000/- i.e Name, Postal Address, PAN and amount of sales. (Page No. 113-120 of Paper Book)

6. Details of parties wherein Purchase made above Rs. 2,00,000/- i.e Name, Postal Address, PAN and amount of purchase. (Page No. 109- 108 of Paper Book)

7. Monthly stock summary (Page No. 121 of Paper Book)

8. Monthly Cash Statement (Page No. 47-95 of Paper Book) The appellant has discharged its onus of proving nature and source of cash deposits which are duly recorded in the books of account and disclosed in the returns and tax has been paid on it.

Therefore, the Appellant humbly submits that the addition made under section 68 of the Act needs to be deleted.

Sr.No.	Citation	Observation
1.	Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC),	The Hon'ble Court decided the matter in favour of assessee on the ground that it was clear on the record that the appellant maintained its books of account according to the mercantile system and they were maintained in its cash books showing the cash balances. The books of account of the appellant were not challenged by the Assessing officer. If the entries in the books of account were genuine and the balance in cash is matching with the books, it can be said that the assessee has explained the nature and source of such deposit.
2.	CIT vs Devi Prasad Vishwnath Prasad (1969) 72ITR194 (SC)	Honorable Apex court held that -"It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again."
3.	CIT vs Durga Prasad More (1969) 72ITR8O7(SC)	Held that "If the amount represented the income of the assessee of the previous year, it was liable to be included in the total income and an enquiry whether for the purpose of bringing the amount to tax it was from a business activity or from some other source was not relevant".
4.	Lakshmi Rice Mills v. Commissioner of Income-tax [1974] 97 ITR 258 (PAT.)	Section 69A of the Income-tax Act, 1961 - Unexplained moneys – Assessment year 1946-47 - Whether when books of accounts of assessee were accepted by revenue as genuine, and cash balance shown therein was sufficient to cover high denomination notes held by assessee, assessee was not required to prove source of receipt of said high denomination notes which were legal tender at that time - Held, yes.
5.	Smt. Harshila Chordia vs ITO (2OO8) 298 ITR 349 (Raj.)	Wherein it was "Addition u/s held that 68 could not be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them"
6.	CIT v. Vishal Exports Overseas Limited (Gujarat High Court) Tax Appeal No. 2471 of 2OO9	The Tribunal however, upheld the deletion of Rs.70 lakhs under section 68 of the Act observing that when the assessee had already offered sales realisation and such income is accepted by the Assessing Officer to be the income of the assessee, addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income.
7.	ITO vs. Surana Traders, (2005)93 TTJ 875 (2005)92 ITD 212 Hon'ble Mumbai ITAT	Held that - " So merely because for the reasons that the purchaser parties were not traceable, the assessee could not be penalized. In the sales

Sr.No.	Citation	Observation
		documents, the assessee has made available all necessary details, i.e. the total weight sold as well as the rate per kilogram. Undisputedly, the assessee has maintained complete books of accounts along with day to day and kilogram to kilogram stock register. These were produced before the A 0 by the assessee. The assessee also submitted stock tally sheet along with the audited accounts. The audit report of th assessee also bears ample testimony in favour of the assessee. The factum of the assessee having maintained stock register and quantitative details have been mentioned by the AO in the assessment order. No mistake were pointed out by the AO in these records maintained by the assessee-- Since the purchases have been held to be genuine, the corresponding sales cannot, by any stretch of imagination be termed as hawala transaction. It is the burden of the department to prove the correctness of such additions. When, in such like cases, a quantitative tally is furnished, even if purchases are not available no addition is called for."
8.	SMT. Teena Bethala v/S ITO (ITA NO 1383/Bang/2019) dated 28/08/2019	On reading of section 69A a (supra), it is clear that the onus is upon the AO to find the assessee to be the owner of any money, bullion, jewellery or valuable article and such money, bullion, jewellery or valuable article was not recorded in the books of account, if any, maintained by the assessee for any source of income. In these circumstances, the AO can resort to making an addition under section 69A of the Act only in respect of such monies/ assets/ articles or things which are not recorded in the assessee's books of account. In the case on hand, the cash deposits are recorded in the books of account and are reportedly made on the receipt from a creditor Further, the PAN and address of the creditor as well as ledger account copies of the creditor in the assessee's books of account have also been field before the AO. In these circumstances, it is evident that the AO has not made out a case calling for an addition under section 69A of the Act. Probably, an addition under section 68 of the Act could have been considered; but then that is not the case of the AO. The assessee, apart from raising several other grounds, has challenged the

Sr.No.	Citation	Observation
		legality of the addition being made under section 69A of the Act. In support of the assessee's contentions, the learned AR placed reliance on the decision of the ITAT Mumbai Bench in the case of DCIT Vs. Karthik Construction Co. in ITA No. 2292/Mum/2016 dated 23.02.2018, wherein the Bench at para 6 thereof has held that addition under section 69A of the Act cannot be made in respect of those assets / monies / entries which are recorded in the assessee's books of account.
9.	DCIT VS. M/s. Karthik Construction CO. ITA no.2292/Mum./2016	Held that therefore, the only thing which requires to be examined in the present appeal is whether the addition made under section 69A of the Act can be sustained. A reading of section 69A of the Act makes it clear, addition can only be made when the assessee is found to be in possession of money bullion jewellery, etc., not recorded in his books of account. It is not the case of the Department that the loan repayment made during the year was either not recorded in the books of account or the source of fund utilized in repaying the loan is doubtful. That being the case, the addition under section 69A of the Act cannot be made. Therefore, the decision of the learned Commissioner (Appeals) has to be sustained.
10.	Shree Sanand Textiles Industries Ltd. V. DCIT vide ITA No. 1166/AHD/2014	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. We are also aware of the fact that there is no iota of evidence having any adverse remark on the purchase shown by the assessee in the books of accounts. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/finding. In view of the above we are not convinced with the finding of the learned CIT(A) and accordingly we set aside the same with the direction to the AO to delete the addition made by him.

Sr.No.	Citation	Observation
11.	New Jewellers ITA No. Pooja Vs ITO 1329/Kol/2018	Held that these sales have been accepted as income by the AO during the year. He has not disturbed the sales of the assessee. When a receipt is accounted for as income, no separate addition of the assessee amount as same income of the under any other Section of the Act can be made as it would be a double addition. In the result, we delete the addition made and allow its claim of the assessee.
12.	Nilkantha Narayana Singh's case (supra); Kanpur Steel Co. Ltd. v. CIT [1957] 32 ITR 56 (All), approved Lalchand Bhagat Ambica Ram V. CIT [1959] 37 ITR 288 (SC); in Asstt. CIT v. Dr. Anil Kumar Verma [IT Appeal No. 274 (Agra) of 2013, dated 4-9-2019]; Salem Sree Ramavilas Chit Co. (P.) Ltd. v. Dy. CIT [2020] 114 taxmann.com 492 (Mad)].	Once the is assessee able to explain the sources of deposits in the bank based on the cash book, which is not disputed and rejected by the Revenue, no addition on the basis of the bank deposits can be made out
13.	ITO v. Vishan Lal's ITA 634/LKW/2014; Subash Chand Sharma v. ITO -ITA No.327/Agra/2017, dtd. 31.5.19	The assessee has no other sources of income The gross receipts and the income earned there from, as admitted in the assessee's Income Tax return under the head "business", are accepted by the Revenue
14.	Regular Cash sale converted as unexplained credit	AGONS GLOBAL P LTD v/s ACIT (Appeal No 3741 to 3746/Del/2019 has held that mere addition made on this ground that there is deviation in ratio is not proper. When the assesse had regular cash sale and deposit of cash in bank accounts and if nothing incrementing is found contrary then addition u/s 68 of such cash sale would tantamount to double taxation.

Sr.No.	Citation	Observation
		DEWAS SOYA LTD, UJJAIN v/s Income Tax (Appeal No 336/Ind/2012 has held that The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act.

Thus, where the assessee is carrying on business regularly, the naturalinference is that all the receipts relate to business and the cash deposits inthe banks have emanated from the business activities based on which noaddition is sustainable in law."

HUMBLE PRAYER

The transaction involving advance given for purchase is genuine and duly supported by documentary evidence. Hence, the addition of Rs. 92,00,000/- made by the Ld. AO requires to be deleted as the same was on assumption basis which does not have any stand in law and requires to be deleted.

The cash deposits are genuine and duly supported by documentary evidence. Hence, the addition of Rs. 10,72,20,000/- made by the Ld. AO requires to be deleted as the same was on assumption basis which does not have any stand in law and requires to be deleted. Therefore, we request your honor to kindly rely on CIT(A) order for grounds raisedin the Departmental Appeal.

In view of the above facts, circumstances and the referred judicial pronouncements, the Respondent humbly requests your Honour to consider the above submission and extend a sympathetic consideration.

18. On the other hand, Ld. DR objected to the submissions made by the assessee. Ld. DR relied on his submissions made in the revenue appeal and prayed that the additions may be sustained based on the findings of Ld CIT(A).

19. In the rejoinder, Ld. AR of the assessee submitted as under: -

> *'1. The Ld. DR is not appreciating the fact the assessee has fully disclosed the sales and offered the same in the Return of Income and paid tax thereon. Instead of appreciating the larger picture, the L.D. DR is getting into the nitty gritty of the questions which are irrelevant in context to larger scheme of things such as, time frame of sales, CCTV footage, etc. as if the assessee has committed a crime under the provisions of the Indian Penal Code*
>
> *2. The assessee has submitted all the correct records including stock details, purchase and sales records with the Ld. A.O. at the time of Assessment. Neitherany objection has been raised nor have the same been rejected.*
>
> *3. The LD. DR alleges that summons to 15 buyers were returned back undelivered. On 8/11/2016 the assessee's motive was to maximize the sales. The assessee did not verify addresses and names of each buyer. Even today we do not verify, we note down the address provided by the buyer. We rely on their truthfulness.*
>
> *4. The Ld. DR is just trying to pressurize the assessee with baseless and fictitiousaccusations.*
>
> *5. The Ld. DR has predetermined that the assessee has entered in to a bogus transaction. With such pre-set mind the LD. DR is unable to visualize and think beyond the parameter that the assessee in fact is saying the truth and has provided correct and genuine records before the court.*

6. The Ld. DR is fixated on the circumstance that the sales to 701 parties in 3-4 hours of time is not possible. The fact is that it was an opportunity in disguise and the assessee took the advantage of such opportunity.

7. Further, the situation at that time when demonetization was announces was filled with panic. The public went in to their safe mode where the only instincts were to buy precious metals such as Gold and Silver. Sales of Gold was maximum as it is expensive and more appreciated across India.

8. Every day lakhs of people visit Mumbai from out of Maharashtra. Eventsoccurring on the evening of 08/11/2016 led few of them to the assessee'sbusiness premises.

9. Ld. AO verified the books of accounts for more than 8 months before passing theAssessment Order.

10. The Hon'ble Commissioner of Income Tax (Appeals) is an adjudicating Authority whereas Ld. A.O. is an investigating authority. The Ld. A.O. is educated position of the Deputy Commissioner of Income Tax who has minutely studied the case for more than 8 months and the finally passed the order on 19/12/2019.

11. Further, the Hon'ble CIT(A) has pointed out the fact that Ld. A.O. did not point out a single mistake in the stock position as well as the cash position. It was none of the case of the Ld. AO that there was/ were any such mistake/s in the books of account of the appellant company. There was no whisper in the entire impugned Assessment Order dated 19.12.2019 pointing out any such discrepancy as there is no rejection of the books of account u/s 145(3) of the Act mentioned even not cursorily in the impugned Assessment Order dated 19.12.2019.

12. There are no basis of Ld. DR's arguments. The Ld. DR is implicating that since the sales were transacted in cash hence, the stock position is fabricated. There is no basis in the Ld. DR's conclusion. The assessee is in a business of Gold and a jeweller where cash sales are bound to happen. The important question being, how did Ld. DR arrive at the conclusion that the stock position is fabricated just on the basis that the assessee has cash sales during the year.

13. Bases on the arguments before your Honour on 13/12.2022 and 15/12/2022 the Ld. DR is twisting the facts by saying that the assessee has sales in gold coins after demonetization. The actual facts are that the demonetization was announced on 8/11/2016. The demonetization was applicable after the clock. strikes 12 at midnight of 8/11/2016 and date changes to 9/11/2016. Yes, the assessee has sold gold coins but not after demonetization was applicable. The assessee sold the gold items till the old currency of Rs. 500 and Rs. 1,000 notes were a legal tender and not after.

14. On 10th December 2016 when the said statement had been recorded, the said sales were accounted in the books of account as cash sales and also included in the total sales of Rs. 145,96,92,338/-

15. Further the cash book presented before the Ld. Assessing Officer (AO)also shows Rs. 92,00,000/- as cash sales which has been verified bythe assessing officer.

16. The total sales as mentioned above including the cash sales also matches with the audited balance sheet and the VAT Audit Report and proper vat has also been paid on the sales.

17. The Ld. Commissioner of Income Tax (Appeal) in his order has stated that the undisclosed income of Rs. 92,00,000/- has been accounted as sales. When the income has been accounted as sales then how can the same be treated as undisclosed income. It was unbooked at the day of survey. The same was duly accounted in accordance with the accounting policies in the books of accounts.

18. Mr Pankaj Bhandari in his statement recorded under oath, has categorically stated that the Assessee has collected an average of 10% extra over and above the prices from its customers. The Ld. CIT(A) has conveniently ignored that part of the statement.

19. It is pertinent to note that the assessee has disclosed total cash sale for AY 2017- 18 as Rs. 11,64,35,000/-. The breakup the said sales have been tabulated below.

Month	*Amount (Rs.)*
October	*92,00,000*
November	*10,72,35,000*
Total	*11,64,35,000*

The above is an extract of Month wise sales register. A copy of the entire month wise Sales Register for the period AY 2017-18 has been attached herewith Page No. 6-

It is pertinent to note that the same has been produced before the Ld. AO and Ld. CIT(A) in the assessee's submissions and the same has been very conveniently ignored by the both Ld. AO and Ld. CIT(A). Also, the same is a part of Paper Book Volume I Page No. 40.

20 The Ld. AO and the Ld. CIT(A) has failed to appreciate the fact that the Assesseehas disclosed the cash sales for the period of October 2016 and November 2016.

21. It is very evident from the above that the cash sales amounting of Rs 11,64,35,000 includes the cash sales of Rs. 10,72,35,000 and Rs.92,00,000/-.

22. Further, the entire amount of cash sales forms a part of assessee's total Sales ofRs, 1,45,96,92,338/- for the period AY 2017-18.

23. Furthermore, it is evident from the Profit and Loss A/c of the assessee that the entire income earned from sales amounting to Rs, 1,45,96,92,338/- for the period AY 2017-18 by the assessee has been offered to tax. (A signed copy of the P&L A/c has been attached herewith Page 7). Also, the same is a part of Paper Book Volume I Page No. 6.

24. The said facts of the transactions are fully conceivable. The motive that that given time was to earn money by taking advantage of the situation which the assessee did, by accounting in a windfall sales and disclosed the same in theReturn of Income and also paid tax thereon. Therefore, the assessee has no malafide intentions of defrauding the revenue. On the contrary the assessee has given a true and fair view of its books of accounts and paid all the applicable taxes.

25 In light of the submissions above, the assessee does not have any unaccounted income and the contention of the Ld. DR is fictitious and baseless thereforerequest your Honour to accept the assessee's plea.

HUMBLE PRAYER

The transaction involving advance given for purchase is genuine and duly supported by documentary evidence. Hence, the addition of Rs. 92,00,000/- made by the Ld. AO requires to be deleted as the same was on assumption basis which does not have any stand in law and requires to be deleted.

The cash deposits are genuine and duly supported by documentary evidence. Hence, the addition of Rs. 10,72,20,000/- made by the Ld. AO requires to be deleted as the same was on assumption basis which does not have any stand in law and requires to be deleted. Therefore, we request your honor to kindlyrely on CIT(A) order for grounds raised in the Departmental Appeal.

In view of the above facts, circumstances, the Respondent humbly requests yourHonour to consider the above submission while considering the appeal."

20. Considered the rival submissions and material placed on record, we observe from the submissions made by the assessee that the cash deposits made by Shri Mahendra Champalal Jain is out of cash sales already declared by the assessee in their books of account. This cash was given to Shri Mahendra C Jain on 01.11.2016 for purchase purpose and which was subsequently returned by him on 16.11.2016 and 17.11.2016 of ₹.60 lakhs and ₹.32 lakhs respectively. The above transactions were accepted by the assessee before tax authorities on oath. This being a factual matter and the cash sales is already declared in the books then it cannot be considered as undisclosed or unexplained cash credit in the books of the assessee. Therefore, we are inclined to

remit this particular issue to the file of Assessing Officer to verify the cash sales relevant to deposit of above cash in the bank account of Shri Mahendra C Jain and also verify the refund of the same in the assessee's book. If it is found proper, the addition made u/s 68 of the Act needs to deleted. Therefore, we remit this issue back to the file of Assessing Officer. It is needless to say that the assessee may be given proper opportunity of being heard. Hence the grounds raised by the assessee are allowed for statistical purpose.

21. In the result, appeal filed by the assessee is allowed for statistical purpose.

22. To sum-up, appeal filed by the Revenue is dismissed and appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 19th July, 2023.

Sd/-	**Sd/-**
(SANDEEP SINGH KARHAIL)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai / Dated 19/07/2023
Giridhar, Sr.PS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum