

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.815/Mum/2022
(A.Y. 2017-18)**

Income Tax Officer 4(3)(1) Room No. 648, 6 th Floor, Aayakar Bhavan, M.K. Road, Maharashtra 400 020	Vs.	M/s Zee Bangles Pvt. Ltd. 124, Mahavir Swami Mandir, Zaveri Bazar, Opp Kharakuwa Zaveri Bazar, Mumbai - 400002
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACZ6000G		
Appellant	..	Respondent

Appellant by :	Anil Kumar Das
Respondent by :	Vimal Punamiya

Date of Hearing	12.06.2023
Date of Pronouncement	18.07.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the Revenue is directed against the order of CIT(A) NFAC, Delhi, dated 05.12.2021 for A.Y. 2017-18. The Revenue has raised the following grounds before us:

- “1. On the facts and in the circumstances of the case, the Ld. CIT(A) NFAC was not justified in facts and in law in deleting the addition made on account of specified currency notes deposited during demonetization period since the assessee company did not furnish details of cash deposits made in earlier year or subsequent year as per clear finding recorded in the assessment order vide Table-4.”*
2. Fact in brief is that return of income declaring total income at Rs.29,54,846/- was filed on 29.10.2017. The assessee was engaged in the business of jewellery making and selling on both retail and wholesale basis. The case of the assessee was subject to scrutiny

assessment and notice u/s 143(2) of the Act was issued on 11.08.2018. During the course of assessment proceedings the assessing officer pointed out that assessee company had deposited substantial cash in bank account during the demonetization period 09.09.2016 to 30.12.2016 in the financial year 2016-17 relevant assessment year 2017-18. On query, the assessee explained that the amount of cash deposit made during the period 09.11.2016 to 30.12.2016 was out of sales made to various parties. It was also explained that an amount of Rs.10,00,000/- declared by the assessee under PMGKY scheme, and the amount of Rs.6,94,00,000/- was pertained to the sales made by the assessee. The AO asked the assessee to provide name/address and PAN of the parties to whom the sales have been made. The assessee explained that it has maintained the complete detail along with PAN of the transactions exceeding Rs.2,00,000/- and in case sale is less than of Rs.2,00,000/- from one person/party from which detail of PAN/address is not required to be maintained. The AO had not agreed with the submission of the assessee and observed that no genuine cash sale had taken place. Therefore, the assessing officer had treated the cash deposited of Rs.6,92,00,000/- as undisclosed out of books and added to the total income of the assessee u/s 69 of the Act.

3. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. The relevant operating part of the decision of Id. CIT(A) is reproduced as under:

“2.3 I have gone through the assessment order and considered the submission filed by the appellant. The issue is regarding cash deposit in assessee's bank accounts. The Appellant is engaged in business of gold bullion and gold jewellery as a wholesaler and retailer AO issued show cause notice to the assessee to explain the source of the deposit Assessee in response explained that the cash deposit is out of sales/counter sales of less than Rs.2,00,000/- from one person/party wherein according to Income tax Act details of address and PAN are not required to be maintained by appellant company. Hence, confirmations from such persons/ parties could not be made available. Total cash deposit was Rs.7,04,00,000. The AO added the cash deposit of Rs. 6,92,00,000/- (as reduced by amount of Rs.10,00,000/- declared in PMGKY

and Rs. 2,00,000/- deposited in new currency) as unexplained money under section 69A of the Income Tax Act, 1961 to the total income of the assessee. From the facts as described in the assessment order and as coming out from assessee's submission, it is a dealer in bullion. Sales are made in cash as well as in cheque. In respect of sales below Rs.2 lakh, assessee is not required to keep the details. Assessee has duly maintained name, address and PAN of purchases above Rs. 2,00,000/-. These details were provided to the AO who seems to have not given credence. Same has been provided at Pg No 73-76 Of Paper Book filed during the appellate proceedings. Assessee has also maintained name, address and PAN of Sales above Rs. 2,00,000/- which were also provided to the AO and which have been made part of submission at pages No 77-85 Of Paper Book All Purchases of assessee have been accepted. It is undenied that without purchases sales are not possible. All cash as well as credit sales are duly recorded in books which has been accepted. The assessee has maintained books of account which are duly audited by Tax Auditor as well as VAT Auditor. The stock remaining after the sales out of purchase have been maintained. Copy of cash statement for FY 15-16 (AY 2016-17). FY 16-17 (AY 2017-18) and FY 17-18 (AY 2018-19) were also made available which is part of submission at page No. 64-69 of Paper Book. Also Copy of Stock Statement for AY 2016-17, 2017-18 and 2018-19. and copy of monthly purchase and sales chart for existing and previous year are also provide. If assessee has maintain books of account depicting the generation of cash and has shown that the cash received from customers has been deposited in bank account, the cash deposit cannot be treated as unexplained. On examining the book results of the assessee, following state of affairs emerges.

The total sales and cash sales have increased from previous years sales:

A.Y.	Total Sales less VAT	Cash Sales	GP Rate
2016-17	1,69,29,51,602	6,95,91,355	1.05%
2017-18	2,41,79,75,146	8,32,34,729	0.90

During the immediately previous AY 16-17, assessee has made total sales of Rs.169.29 crore of which mere Rs.6,95 cr. was made in cash. Such a small percentage of cash sales can always be expected and there is nothing unusual. During AY 17-18 under consideration out of total sales of Rs.241.79 cr. cash sale is Rs.8 32 cr. AO has alleged that assessee failed to provide with confirmations of parties to whom the sale in cash has been effected. Assessee has failed to provide with even partial confirmations of parties to whom sales have been effected This is pertinent to mention here that there is an abrupt, abnormal and unusual cash sales shown by assessee company which is just before the period of demonetization. On going through the stock statement it is seen that total purchase during the year 16-17 was 862047 kg out of which the purchase relating to November and December 2016, i.e. the period of de-notification was 172772 kg which is 20% of total sales. Had the sale uniform in all months, it should be 16% in two months. So some rise in sales during de-notification period is there. However, it may be noted that November month is also the month of festivals during which the sale is greater than other years. In next, financial year 17-18, total sale was 1917111 kg out of which, the sale during November and December 2017 was 510052 kg which is 26.6%. Thus if 26% sale in two months of November and December 2017 has been accepted, there is no reason to doubt the sale of 20% during corresponding months of the

year 2016. The appellant has provided details of all sales above Rs 2 lakh which he is legally bound to kept. It is not right on the part of the AO to insist for providing details of sales below Rs 2 lakh which the assessee is not required to maintain. Section 69A reads as Unexplained money, etc. 69A Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year." Section 69A provides that in case an assessee is found to be owner of any money, bullion, jewellery or any other valuable article and same is not recorded in the books of account, it can be considered to be deemed income of the assessee in case he is not able to provide explanation or his explanation is not satisfactory in the opinion of the Assessing Officer. In the present case the same cannot be applied where the assessee has himself declared the amount of cash deposits in the return of income after duly entering the same in the books of account. The provisions of Section 69A of the Act cannot be applied in respect of cash deposits which have been duly recorded in the books of account and have already been considered as income in the return of income filed by the assessee. In assessee's case the assessee has duly recorded the cash sales of Rs 6,92,00,000/- in his books of account and has also considered it as income in the return of income and taxes have also been paid on the said amount. The onus is on the AO to prove the cash deposits are not part of sale consideration. There is nothing in the assessment order to suggest that assessee was in possession of bullion which was unexplained. Thus as per above explanation the provisions of above section 69A are not applicable to the assessee and the issue for applicability of section 115BBE of the Act also does not arise. In the case of Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC) honourable SC 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. There are similar decisions in this line. In line in view of the above facts, the addition made by the AO is deleted and assessee's appeal is allowed."

4. During the course of appellate proceeding before us the ld. Departmental Representative (D.R) supported the order of assessing officer and referred page no. 5 of the assessment order stating that assessee has deposited cash in the bank account during the demonetization period which could not be explained.

On the other hand, the ld. Counsel contended that assessee is engaged in the business of gold bullion & gold jewellery and 90% of the

sales made was effected through cheques. He further explained that cash deposit out of sales/counter sales was of below Rs.2,00,000/- from one person/party for which details of address and PAN were not required to be maintained. The ld. Counsel further submitted that assessing officer has not rejected the books of account of the assessee and assessee purchased gold subject to payment of custom duty and detail of gold purchased and sold along with closing stock were properly maintained in the books of account. The ld. Counsel further submitted that total sale of the assessee company was comparatively increased from Rs.169,29,51,602/- in assessment year 2016-17 to Rs.241,79,75,146/- in the assessment year 2017-18. He further stated that total cash sale in A.Y. 2016-17 was of Rs.695,91,355/- compared to cash sale of Rs.832,34,729/- made in the A.Y. 2017-18. The percentage of cash sale during the year under consideration was 3.44% compared to percentage of cash sale of Rs.4.11% made in the previous year. The ld. Counsel has also placed reliance on the number of judicial pronouncements referred in his written submission as. (i) ACIT Vs. Hirapanna Jewellers, ITA No. 253(Viz) of 2020 dated 12.05.2021; (ii) Easy Pay Pvt. Ltd. Vs DCIT Circle 2(1)(1) High Court of Gujarat; (iii) PCIT Vs. Adamine Construction (P) Ltd; (iv) Bajaj Sons Ltd. Vs. DCIT, ITA No. 1127/Chd/2019 dated 24.05.2020; (v) Hari Narain Gattani V. DCIT, ITA No. 186/JP/2020 dated 09.10.2020; (vi) PCIT Vs. Bajargan Traders High Court of Rajasthan; (vii) ACIT Vs. Rahil Agencies, ITA No. 4413/Mum/2014; (viii) ITO Vs. Surana Traders IT Appeal No. 4096 (Bom) of 1999; (ix) New Pooja Jewellers Vs. ITO, Ward -44(3) ITa No. 1329/Kol/2018; (x) Pr.CIT. Vs. Agson Global (P) Ltd. IT Appeal Nos. 68 to 73 of 2021.

5. The ld. Counsel has supported the detailed findings of the Ld. CIT(A) and submitted that assessee has filed sales and purchase details from sale register, purchase register, sales and purchase invoices stock register, etc., however, AO has not disproved with any relevant

evidences the claim of the assessee that source of cash deposit was made out of sale of the assessee company.

6. Heard both the sides and perused the material on record. The assessee is engaged in the business of gold bullion and gold jewellery on wholesale and retail basis. During the year under consideration the assessee has made total sale less VAT at Rs.241,79,75,146/-. Out of total sale of more than Rs.241 crores, the assessee has reported cash sale to the amount of Rs.832,34,729/- which was about 3.44% of the total sale effected during the year under consideration. The AO has treated the cash sale amount deposited in the bank account as undisclosed amount deposited during demonetization period and added to its total income u/s 69A of the Act. The assessee has filed sale and purchase bill like sale register, purchase register, sales and purchase invoices, stock register etc. The assessee has maintained the books of account in the form of computerised ledger, cash book, bank book, sale register, purchase register and stock book. The assessee also explained that the cash deposited was out of sales/counter sales of less than of Rs.2,00,000/- from one person/party wherein in detail of address supported with documentary evidences and PAN were not required to be maintained by the assessee company. The assessee has maintained the complete detail along with PAN of the transaction exceeding Rs.2,00,000/- as per the detail placed on the paper book at page no. 73 to 76 of the paper book. The assessee has also placed before the authority below the month wise purchase details along with the purchase register from April 2016 to March 2017 out of which the assessee has made month wise sale from April 2016 to March 2017. The assessee has also placed on record as per page 63 of the paper book monthly stock statement showing month wise opening stock, inward because of purchases and outward because of sale along with closing stock. The assessee has substantiated by giving evidences on the basis of its books

of accounts, stock register, and other relevant record that amount deposited by assessee was out of the sale proceeds. We have also noticed as mentioned in the finding of Id. CIT(A) that during the immediately preceding assessment year 2016-17 assessee has made total sales of Rs.169.29 crores out of which Rs.6.95 crores was made in cash and during the assessment year 2017-18 out of total sale of Rs.241.79 crores cash sale of Rs.8.32 crores was made which showed in assessment year 2016-17 the percentage of cash sale to the total sale was 4.11% whereas during the assessment year 2017-18 it had come down to 3.44% which showed that during the year under consideration compared to earlier year there was no abnormally high cash sale made by the assessee. In the paper book the assessee has placed copies of document filed during the course of assessment proceedings. The assessee has filed the details alongwith explanation i.e copy of stock statement for the A.Y. 2016-17 to A.Y. 2018-19, copies of stock statement for the A.Y. 2016-17 to A.Y. 2018-19, copies of cash statement for AY. 2016-17 to AY. 2018-19, copies of monthly purchase and sales for the year under consideration and the previous year, copies of month wise purchase register, copy of month wise sale register, copy of name, address and PAN of purchase above Rs.2,00,000/- copy of name address and PAN of sales above Rs.2,00,000/- copies of sale bills etc. The assessee has also placed at pages 126 to 135 of the paper book, copies of replies filed before the AO dated 20.06.2019, 29.11.2019, 3.12.2019 and 18.12.2019 respectively. The assessee has given the detail of cash deposited in the A.Y. 2016-17 A.Y. 2017-18 and cash deposited in A.Y.2018-19 as placed at page no. 64 to 69 of the paper book filed before the A.O during the course of assessment proceedings. The assessee has also reconciled such cash deposit with the purchases and stock positions as referred supra in this order. The assessee had explained with relevant supporting evidences that the source of cash

deposit was out of sales made during the financial year relevant to the assessment year under consideration. The AO has not disproved the genuineness of the purchase and stock position submitted by the assessee in support of its claim that sale was made out of sufficient stock of goods available with the assessee. The assessee has demonstrated from the material placed in the paper book that the stock position was matched with the sale and purchase of the goods made during the year under consideration. It is also noticed that assessee had not declared exorbitant profits during the year since gross profit rate of 0.90% pertaining to A.Y. 2017-18 was less than the gross profit rate of 1.05% declared in the previous year.

7. Looking to the facts and circumstances as elaborated supra the AO has neither disproved the genuineness of purchase/availability of stock of jewellery corresponding to the sales nor the claim of the assessee that source of cash deposit was made out of the cash sale effected during the year under consideration. We have also perused the judicial pronouncements relied upon by the assessee in the case of ACIT Vs. Hirapanna Jewellers, ITA No. 253(Viz) of 2020 dated 12.05.2021 wherein held as under:

"[2021] 128 taxmann.com 291 (Visakhapatnam - Trib. [2022] 96...

INCOME TAX: Where AO made addition under section 68 on account of huge cash amount deposited by assessee-jeweller in its bank account post demonetization, since assessee had explained source of said cash deposits as sales of jewellery, produced sale bills and admitted same as revenue receipt as well as offered it to tax and assessee also represented outgo of stocks which was matching with sales, impugned addition was to be deleted."

We have perused the decision in the case of Essay Pay Pvt. Ltd. vs. ACIT, High Court of Gujarat similarly Gujarat High Court has held that reopening of the assessment u/s 147 of the Act was not valid when the assessee as fully explained the source of cash deposit in the bank account during the demonetization.

8. We have perused the decision of Hon'ble High Court in the case of Agson Global Pvt. Ltd. Vs. Pr.CIT wherein held as under:

“INCOME TAX: Where AO made addition under section 68 on account of cash deposit made by assessee post-demonetization, since assessee placed material on record to prove that cash deposits made with banks were in correspondence with cash sales and growth in sales compared to earlier two years showed similar trend, it could only be concluded that there was growth in assessee's business and impugned addition was to be deleted.”

After considering the facts and circumstances and finding of various courts we find absolutely no prima facie material to take contrary view and the ld. CIT(A) has rightly considered the material placed before him. The A.O has not brought on record any clinching evidences to prove that cash sale made by the assessee was not genuine as the same was supported with corresponding purchases relevant bills and invoices and stock position as discussed supra in this order.

9. We also find that ld. CIT(A) has rightly held that Sec. 69 provides that in case the assessee is found to be owner of any money, bullion, jewellery or any other valuable article and same is not recorded in the books of account, it may be considered to be deemed income of the assessee in case he is not able to provide explanation or his explanation is not satisfactory in the opinion of the assessing officer. The same cannot be applied to the case of the assessee since the assessee has himself declared the amount of cash deposited in the return of income after duly entering the same in the books of account. Regarding applicability of the provision of section 69A of the Act we have perused the provisions of Section 69A of the Act which is reproduced as under

“69A Power to issue directions for blocking for public access of any information through any computer resource. –

(1) Where the Central Government or any of its officer specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2) for reasons to be

- recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.*
- (2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.*
- (3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine.]”*

It is clear that Sec. 69A of the Act is applied when the assessee is found to be owner of any money which is not recorded in the books of account. However, in the case of the assessee, it has maintained books of accounts duly audited in accordance with section 44AB of the Income Tax Act which was also furnished with the return of income filed by the assessee. The assessee has demonstrated from the purchase books, sale books cash book supported with relevant invoices that source of cash deposited was out of the cash sales made during the A.Y. relevant to the assessment year under consideration. The ld. Counsel has also placed reliance on a number of judicial pronouncements on the proposition that addition u/s 69A of the Act cannot be made i.e: Lalchand Bhagat Ambica Ram Vs. CIT (1959) 37 ITR 288 (SC); Lakshmi Rice Mills Vs. CIT (1974) 97 ITR 258 (PAT); DCIT Vs. M/s Karthik Construction Co. ITA No. 2292/Mum/2016.

10. After considering the facts as discussed above, we find the AO has failed to justify in applying section 69A to the case of the assessee when the assessee itself declared the cash sales in its return of income duly recorded in the audited books of accounts maintained by the assessee. Therefore, the CIT(A) has correctly held that provision of Sec. 69A of the Act cannot be applied in respect of cash deposited which have been duly recorded in the books of account and had already been declared income in the return of income filed by the assessee. Therefore, the grounds of appeal of the revenue is dismissed.

11. In the result, the appeal of the revenue stand dismissed.

Order pronounced in the open court on 18.07.2023

Sd/-
(Sandeep Singh Karhail)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 18.07.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
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