

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B': NEW DELHI**

**BEFORE,**

**SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER**

**AND**

**SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1597/Del/2022  
(ASSESSMENT YEAR 2017-18)**

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| ACIT<br>Circle-49(1)<br>New Delhi | Vs. | M/s Goel Jewellers Overseas<br>Corp<br>2213, Gurudwara Road<br>Karol Bagh<br>New Delhi-110 005<br><b>PAN-AAGFG 6440E</b> |
| <b>(Appellant)</b>                |     | <b>(Respondent)</b>  |

**Cross Objector No.131/Del/2022  
Arising out of ITA No.1597/Del/2022  
(ASSESSMENT YEAR 2017-18)**

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| M/s Goel Jewellers<br>Overseas Corp<br>2213, Gurudwara Road<br>Karol Bagh<br>New Delhi-110 005<br><b>PAN-AAGFG 6440E</b> | Vs. | ACIT<br>Circle-49(1)<br>New Delhi |
| <b>(Cross Objector)</b>  |     | <b>(Respondent)</b>               |

|               |  |
|---------------|--|
| Appellant by  | Mr. Vivek Kumar Upadhyay, Sr. DR                                   |
| Respondent by | Dr. Rakesh Gupta, Mr. Somil Agrawal<br>and Mr. Deepesh Garg, Advs. |

|                       |            |
|-----------------------|------------|
| Date of Hearing       | 10/08/2023 |
| Date of Pronouncement | 24/08/2023 |

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

The appeal in ITA No. 1597/Del/2022 by Revenue is filed against the order of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi [“Ld. CIT(A)”, for short], dated 31/03/2022 for Assessment Year 2017-18 and the assessee filed Cross Objection No. 131/Del/2022 by supporting the order of the CIT(A).

2. The Grounds of Appeal of the Revenue are as under:

*“1. The Ld. CIT (A) grossly erred in deleting the addition of Rs.3,89,52,097/- under section 68 of the IT Act, 1961.*

*2. Whether, the Ld. CIT (A) is correct in law in deleting the additions made under the provisions of section 68 of the Income Tax Act, 1961 and treating cash deposit as sales, when assessee during the course of assessment proceedings failed to provide any justification for difference in cash sales of AY 2017-18 from AY 2016-17 and AY 2018-19.*

*3. Whether the Ld. CIT (A) is correct in concluding that AO did not bring any material on record against assessee in respect of cash sales which was deposited by the assessee in the bank, when assessee itself is non cooperative during the course of assessment and filed partial reply during the course of assessment proceedings.*

*4. Whether Ld. CIT (A) is correct in concluding that books of accounts was accepted by the AO, when assessing officer specifically mentioned in the assessment order that month wise cash sales figures is more than the other FYS.*

*5. The appellant contends that he may be allowed to add, amend, alter, forgo any of the grounds at the time of hearing.*

*6. The above grounds are independent and without prejudice to one another.*

3. The Grounds of Cross Objection of the assessee are as under:-

*“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has rightly deleted the addition of Rs.3,89,52,097/- made by Ld. AO on cash deposited in its bank account by holding as under:-*

- That once the assessing officer accepts the books of accounts of the appellant and the entries in the books of accounts are matched, there is no case for making the addition as bogus sales.*
- That there were sufficient stocks with the appellant to meet the sales and there were sufficient purchases to support the stocks.*
- That not taking the address when there is rush and pressure on the sales men is understandable. So, a lapse of not taking full details of customers which is not mandatory under the law cannot be any import in drawing adverse conclusion against the sales made, when all other parameters like purchases, stock register, sufficiency of stock for sales made are accepted.*
- That the entries pertaining to cash sales and corresponding bank accounts have been duly reflected in the books of accounts of the appellant.*
- That the Books of accounts of the appellant have not been doubted by the assessing officer u/s 145(3) of Income Tax Act, 1961.*
- That the cash receipts represent the sales which the appellant has already offered for taxation.*
- That there is no case for making the addition u/s 68 and tax the same u/s 115BBE again.*

*2. That the cross objector craves the leave to add, amend, modify, delete any of the ground(s) of cross objection before or at the time of hearing.*

4. Brief facts of the case are that, the assessee engaged in the business of manufacturing, export and retail sale of jewellery, filed its return of income for AY 2017-18 at a total income of Rs.19,27,857-. Assessee's case was selected for the scrutiny and notices u/s 143(2) and 143(1) of the Act were issued along with the questionnaires and the assessee complied to all the notices. The AO had raised specific query with regards to cash deposited by the assessee during

the demonetization period, i.e from 09.11.2016 to 31.12.2016 and asked the assessee to explain the source for the same. AO noticed that the assessee had deposited total Cash amounting to Rs.4,57,89,000/- in the Bank accounts during the demonization period and after going through the cash deposits during the entire year, the A.O. notice that there was a steep increase in cash sales during the month of October 2016, as compared to the figure of cash sales in corresponding period of preceding year as compared to the figures of cash sales in the succeeding years. The assessee filed details reply but the A.O. did not accept the explanation and the concluded that there were excess sale during the month of October 2016 prior to the demonization period from 09/11/2016 to 31/12/2106 and the A.O. concluded that cash sales shown just before demonization period are bogus/non genuine cashless and were used as a device to introduce unaccounted money lying with the assessee before demonization in his books of accounts, therefore, the A.O. added Rs. 3,89,52,097/- as Assessee's income from undisclosed sources u/s 68 of the Act. Aggrieved by the assessment order dated 28/12/2019, the assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 31/03/2022 allowed the Appeal of the assessee by deleting the addition made by the A.O. Aggrieved by the order of the CIT(A) the Department of Revenue filed an Appeal in ITA No. 1597/Del/2022 and by supporting the order of the CIT(A), the assessee filed C.O. No. 131/Del/2022.

5. The Ld. Departmental Representative submitted that the CIT(A) committed error in deleting the additions made u/s 68 of the Act, though the assessee failed to provide any justification for difference in cash sales for Assessment Year 2017-18 from Assessment Year 2016-17 and Assessment Year 2018-19. Further submitted that the CIT(A) committed error in concluding that books of accounts was accepted by the A.O. when the Assessing Officer specifically mentioned in the assessment order that month wise cash sales figure is more than other Financial Years. Thus, the Ld. Departmental Representative relying on the orders of the Assessing Officer, prayed for setting aside the impugned order of the CIT(A).

6. Per contra, the Assessee's Representative supporting the Cross Objection and contesting the Appeal of the Revenue, submitted that once the A.O. accepts the books of accounts, of the assessee and the entries in the books of accounts are matched, A.O. cannot make addition as bogus sales, the A.O. ignored the fact that the assessee was having sufficient stocks to meet the sales and there were sufficient purchases to support the stocks. The cash receipts represent the sales were already been offered to taxation, therefore, making addition u/s 68 of the Act will become double taxation on the assessee. Thus, Assessee's Representative by supporting the order of the CIT(A), sought for dismissal of the Appeal filed by the Revenue.

7. We have heard both the parties and perused the material available on record. The only issue involved in the grounds of appeal of the Revenue is regarding addition made by the A.O. u/s 68 of the Act to the tune of Rs. 3,89,52,097/- which has been deleted by the CIT(A). During the assessment proceedings, the A.O. did not find difference in the stock/Inventory register or the stocks maintained by the assessee, no adverse recording or findings have been made vis-a-vis any difference noticed by the A.O. in the stock, thus, in the absence of any defect or infirmity in the stock data, the A.O. has no reason to disbelieve the sales. Though, the A.O. found certain suspicious features in the books in terms of sudden spike in cash sales as compared to earlier and succeeding years, but the A.O. was not able to point out any defect in the books of account or audit financial statement of the assessee. The suspicion, however, strong it may be the same cannot be accepted as final truth without bringing on record some tangible evidence. Mere surmise cannot replace an evidence to prove the wrong doing if any by the assessee. Once, the A.O. accepts the books of accounts and the entries in the books of account are matched, there is no case for making the addition as bogus sales. The Hon'ble High Court in the case of Lal Chand Bhagat Ambica Ram Vs. CIT (1959) 37 ITR 288 (S.C) held that the assessee maintained the books of accounts according to the mercantile system and there was sufficient cash balance in its cash books and the books of account of the assessee were not challenged by the Assessing Officer . If the entries in the books of accounts are 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.

8. The another reason for making the addition by the A.O. that the assessee has not obtained full address details of the customers who have purchased jewellery below the amount of Rs. 2 lacs. Taking full address and PAN of the customers who have purchased the jewellery below 2 lakhs is not mandatory under law and not taking the address and the PAN details during demonization rush and pressure on the sales of the jewellery which is otherwise not mandatory under law cannot be ground for drawing adverse inference against the sales made by the assessee specially when all the other para meters like purchase, stock register, sufficient of stock for sale made are accepted. Considering the fact that entries pertaining to cash sales and corresponding bank accounts have been duly reflected in the books of accounts, the stock position shown in the books of accounts have also been accepted by the A.O. and there is no allegation on the assessee of non availability of stocks or fictitious purchases and A.O. has also not rejected the Assessee's books of account u/s 145(3) of the Act, we find no ground to interfere with the observations and conclusion of the CIT(A) and find no merit in the grounds of Appeal of the Revenue, accordingly, the Grounds of Appeal of the Revenue are dismissed.

9. In the result, the Appeal filed by the Revenue in ITA No. 1597/Del/2022 is dismissed.

10. Since, we have dismissed the Appeal filed by the Revenue by upholding the order of the CIT(A), the C.O. No. 131/Del/2022 filed by the assessee has become in-fructuous. Accordingly, C.O. No. 131/Del/2022 filed by the assessee is dismissed.

Order pronounced in open Court on 24<sup>th</sup> August, 2023.

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Dated: 24/08/2023

*Pk/R.N, Sr.ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI