

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

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

ITA No.183/Mum/2023

(Assessment Year: 2017-18)

Sanjay Sumermal Soni
A/201, Salasar Aarti,
Temba Road,
Bhayander West,
Thane-400101

Vs.

Income Tax Ward
2(2), Thane,
Room No. 208, 2nd Floor,
Qureshi Mansion,
Gokhale Road,
Naupada-Thane West,
Thane 400602

(Appellant)

(Respondent)

PAN No. BDEPS5367L

Assessee by : Shri R.M. Jain, AR
Revenue by : Shri Swapnil Sawant, DR

Date of hearing: 01.08.2023
Date of pronouncement : 28.08.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Mr. Sanjay Sumermal Soni for assessment year 2017 - 18 in ITA number 183/M/2023 against the appellate order passed by National faceless appeal Centre, Delhi (the learned CIT - A) dated 24/11/2022 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) of the income tax act, 1961 (the act) dated 24/12/2019 passed by the income tax officer Ward 2 (2) Thane was dismissed. Therefore, the assessee is aggrieved and has preferred this appeal.



02. The only grievance of the assessee is an addition of cash deposit made during demonetization period of ₹ 15,691,401 made by the learned assessing officer which is confirmed by the learned CIT – A under section 68 of the income tax act.
03. The brief fact shows that assessee is an individual engaged in the trading activity of gold ornaments in the name and style of M/s Nirosha Jewels. Assessee filed his return of income on 30/10/2017 declaring a total income of ₹ 942,610. This return was picked up for scrutiny. Necessary notices under section one 43 (2) of the act were issued to the assessee. The learned AO on analysis of the bank statements submitted by the assessee found that assessee has made cash deposit of ₹ 15,990,000 in old currency (specified banknotes) during the demonetization period in his Axis bank, Fort, Mumbai's account in account number 914XXXXXXXXX8776. The learned assessing officer questioned the assessee and asked to submit information. The assessee submitted that identical question has been asked by The Deputy Director of Income Tax (Investigation), Thane as per letter dated 6/12/2016 wherein the assessee submitted that he has deposited cash in his current account maintained with that bank account out of the cash sale proceeds generated on 8/11/2016 at midnight. He submitted that after the announcement of demonetization there was panic buying of the gold and bullion. He submitted that only requirement was to obtain permanent account number



card for customers buying jewelry for more than Rs 2 lakhs. cash sales proceeds were deposited in the bank account on 11/11/2016 of ₹ 87 lakhs and on 15/11/2016 of ₹ 7,290,000. The reason for depositing the amount in installment is that that the bank was not able to accept the entire cash on hand on 11/11/2016 due to heavy rush. Therefore, the assessee submitted that the amount of Rs. 156,91,401/- is cash sales which has been accounted by the assessee in its sale proceeds. The learned AO examined the details submitted by the assessee and found that there are certain discrepancies therein. The main discrepancy notice by the learned assessing officer is that cash is of ₹ 15,800,644 was only between 9/11/2016 to 31/3/2017.

04. The learned assessing officer held that the assessee submissions are not reliable as assessee has not stated the reasons for having such a cash sale on single day as assessee sold within 3 Hours 25 minutes. Further he prepared the bills within two minutes for each bill. Assessee sale exactly at the midnight of 8/11/2016 and collected cash from customers within the time in specified banknotes. In the sales bill assessee did not collect making charges. The sales bill was prepared all of 22 carat gold based on this the learned assessing officer passed an assessment order under section 143 (3) of the act on 24/12,019 determining the total assessed income



of the assessee of ₹ 16,634,011 against the returned income of ₹ 942,610.

05. Aggrieved assessee preferred an appeal before the learned CIT – A wherein as per Para number 11 the learned CIT – A, the addition holding that the assessee failed to prove the real identity of the customers and genuineness of the transaction in respect of assets transaction. The onus was on the assessee to furnish satisfactory condition of the transactions with proper documentary evidences. The learned CIT – A further noted that assessee has prepared cash memo all below the limit of rupees to lakhs avoid the provisions of rule 114D. Further the claim of the question is an afterthought to justify huge cash deposits in the bank account during demonetization period. The learned CIT – F for the project reliance on several judicial precedents placed before him. Accordingly, the addition of ₹ 15,691,401/- made under section 68 of the income tax act was confirmed.
06. The assessee is in appeal before us. The assessee submitted that he maintains the stock of register of gold bar, gold annulment for the respective period which have shown the transaction of gold. We stock statements were available before the lower authorities however none of them disputed this fact but has not considered that the amount of quantity of gold sale has been reduced from the closing stock. He further referred to the business of purchase of gold prior to the demonetization period. He submitted that the purchase gold was found from genuine



parties, copy of the bills for produced before the lower authorities were not disputed. Therefore, this now is an admitted fact that assessee was having enough stock to sale the gold. Furthermore, the assessee has produced all the sales bill before the new authorities, none neither of the customer was examined more questioned. Assessee has collected out to bat at the rate of 1.20% and also deposited the same with the methodology. Each of the invoice of sale has been signed by the customer in confirmation of having purchased goods from the assessee. The sale consideration has been shown in the profit and loss account as income. The cash book submitted before the lower authorities was not at all disputed. The bat return produced before the lower authorities were neither questioned by the wet authorities and nor by the income tax authorities. If the sale is considered to be not genuine as held by the lower authorities, the respective increase in the closing stock will automatically increase and it will not have any impact on the profitability. Further assessee has completely explained the nature and source of the sales by the assessee. The nature of the receipt is sales and source of sale is deduction of stock from the books of the assessee which has been given the customers and the customers have signed invoices in confirmation of buying those gold ornaments. Assessee is a trader in 22 carat gold ornaments and therefore the sales of 22 carat gold ornaments. It is not the case of the lower authorities that assessee has in stock of less than 22 carat and sale has

been shown of 22 carats. It was further stated that according to the provisions of rule 114B of the income tax rules assessee is obliged if the amount of sale or purchase exceeds 2 lakhs of rupees per transaction to give the permanent account number. When the assessee has purchased stock, it has submitted the permanent account number of the sellers. Further, in case of sale all the sales are less than 2 lakhs of rupees and therefore there is no obligation on the assessee. He further submitted that in whole country it is a matter of common knowledge that there was a huge rush in the jeweler shops buying gold by paying specified banknotes. It is undeniable that assessee is also in the business of the same jeweler and therefore it is not unusual that assessee has sold ornaments within that short span. It is not the case of the revenue that assessee was not having the stock of gold. In the end he relied on several judicial precedents leading one is assistant Commissioner of income tax versus Herapanna Jewelers 53/V/2024 for AY 17 – 18 wherein on identical facts and circumstances the addition has been deleted he further relied on the decision of the honorable Bombay High Court in case of R B Jessa ram versus CIT's to 5 ITR 33 wherein it has been held that if the assessee is unable to furnish the address of purchaser purchased goods on cash, no addition can be made in the hands of the assessee because that is not the requirement of the law. In view of this the addition is not sustainable.

07. The learned departmental representative supported the orders of the lower authorities.

08. We have carefully considered the rival contention and perused orders of the lower authorities. We find that assessee is a jeweler. On the date of demonetization assessee has sold gold in cash amounting to Rs 1,59,90,000. The same cash is deposited in the Axis bank account of the assessee in 2 tranches. It is to be noted that assessee has shown the total turnover of Rs. 8.90 crores and the gross profit of ₹ 23.24 lakhs have been shown. Out of the total turnover of ₹ 8.90 crores, the turnover of Rs. 1,59,90,000 is in dispute. Assessee has maintained regular books of accounts and also such books of accounts are supported by the stock register. Assessee has maintained all such records by which the learned AO has accepted the total turnover of ₹ 8.90 crores also for turnover of ₹ 1.59 crores. Sales of the assessee are supported by invoices, removal of that stock from the stock register, confirmation of the buyer of collecting the jewelry. It has been shown by the assessee that stock is available with the assessee before the demonetization. Assessee is also supported such stock by immediate purchases in earlier time by giving the copies of invoices, names and address of the seller as well as the confirmation of the sellers. Therefore the purchase of gold which is sold during the demonetization period was already available in the stock register of the assessee. Therefore, undisputedly, assessee was having availability of stock in its books of account and stock register prior to the sale. When demonetization happened, assessee sold the gold in cash. None of the invoices prepared by the

assessee were more than Rs. 2 lakhs. Therefore there was no obligation on the part of the assessee to obtain the permanent account number of the buyers. Such requirement applies only in case of the sale where such transaction is in excess of Rs 2 lakhs. With respect to the sale shown by the assessee, it has produced invoices before the learned assessing officer. Such invoices contain the name of the buyer as well as the confirmation of the buyer for delivery of the gold ornament. Cash sales shown by the assessee has been offered as sale consideration. Appropriate profit on such sale has been also offered in the profit and loss account and also for taxation. The appropriate VAT has been collected on such sales and has been deposited with the VAT authorities. The vat return was also produced before the income tax authorities.

09. It is not the case of the learned assessing officer that assessee was asked to produced the buyers. The learned AO also did not show that assessee was further statutory required to give more information than what has been already submitted. Even the learned assessing officer has not recorded the statement of the assessee to examine the situation prevalent on that date. The close circuit camera recording would also have substantiated or proved the claim of the assessee otherwise. It is also important that in response to someone by the investigation wing, the stand of the assessee is same. Therefore, no fault can be found with the claim of the assessee, unless the assessing officer further makes an investigation on that issue. In

absence of any evidence of bogus sales, when identical information is available for sales recorded by the assessee prior to demonetization as well as post demonetization is accepted by AO, there is no reason that details produced by the assessee for demonetization sale is rejected. Mere statistics of preparation of number of bills, transactions cannot be used to invoke the provisions of section 68 of the income tax act when no independent enquiry by the AO is made. The necessary ingredient of section 68 of the act such as nature and source of the credit is explained by assessee. There is no probing by the AO on these two ingredients. Further honourable Bombay High Court has also held that if the assessee failed to produce the parties to whom assessee has sold goods, merely that fact cannot result into an addition in the hands of assessee. To make the addition, the learned assessing officer should have thrown back onus on the assessee by making an independent enquiry. The simplest thing that could have been done was whether the assessee was having the adequate stock prior to the demonetization or not. The AO failed to do that also. The learned CIT – A also did not make any enquiry by himself or through AO. In view of above facts and circumstances, the addition in the hands of the assessee cannot be sustained.

010. Assessee has relied upon several judicial precedents wherein on identical facts and circumstances the addition made in the hands of a jeweller on disproportionate sale shown on the date of demonetisation and deposit of cash in the bank account of such jeweller in specified



banknotes. In all such cases, the coordinate bench has deleted the addition made. The learned departmental representative could not show us any judicial precedent wherein such addition is confirmed and is comparable with the facts in the case of the assessee. As held by coordinate bench in Assistant Commissioner of Income Tax, Central Circle - 1, Visakhapatnam vs. Hirapanna Jewelers [2021] 128 taxmann.com 291 (Visakhapatnam - Trib.) Where AO made addition under section 68 on account of huge cash amount deposited by assessee-jeweler in its bank account post demonetization, since assessee had explained source of said cash deposits as sales of jeweler, 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.

011. Further the above decision of the coordinate bench has been followed in case of several other cases such as

- i. [2023] 151 taxmann.com 340 (Delhi - Trib.) [27-03-2023] [27-03-2023] Fine Gujranwala Jewellers vs. Income-tax Officer
- ii. [2023] 152 taxmann.com 492 (Amritsar - Trib.) [15-02-2023] [15-02-2023] Ganesh Rice Mills vs. Deputy Commissioner of Income-tax
- iii. [2023] 151 taxmann.com 338 (Amritsar - Trib.) [31-01-2023] [31-01-2023] Balwinder Kumar vs. Income-tax Officer



- iv. [2022] 145 taxmann.com 545 (Mumbai - Trib.)[26-07-2022] [26-07-2022]R. S. Diamonds India (P.) Ltd. vs. ACIT
- v. [2022] 140 taxmann.com 588 (Chandigarh - Trib.)[25-03-2022] [25-03-2022] Smt. Charu Aggarwal vs. Deputy Commissioner of Income-tax

012. In the result, respectfully following the judicial precedents cited before us, we reverse the order of the lower authorities and direct the learned assessing officer to delete the addition of ₹ 15,691,401/- towards cash deposit made during demonetization period. Accordingly ground number 2 of the appeal is allowed.

013. Ground number 1 is challenging the observation of the principles of natural justice, no arguments were advanced before us, and therefore same is dismissed.

014. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 28.08.2023.

Sd/-
(MS. KAVITHA RAJAGOPAL, JM
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.08.2023

Sudip Sarkar, Sr.PS/ Dragon

Copy of the Order forwarded to:

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



BY ORDER,

True Copy//

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