

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**(DELHI BENCH 'H' : NEW DELHI)**  
**BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER**  
**AND**  
**SH.ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 1455/Del/2021, A.Y. 2017-18**

M/s. Rama Hygienic Products Pvt. Ltd. H. No. 77078, Rama Royal Res, Siyana Road, Milk Mohsangarh, Bulandsahar, UP-203001 PAN : AAACR4597A	Vs.	ACIT, CC-14, Delhi
Appellant		Respondent

**ITA No. 2006/Del/2021, A.Y. 2017-18**

ACIT, CC-14, Delhi	Vs.	M/s. Rama Hygienic Products Pvt. Ltd. H. No. 77078, Rama Royal Res, Siyana Road, Milk Mohsangarh, Bulandsahar, UP-203001 PAN : AAACR4597A
Appellant		Respondent

Assessee by	Dr. Rakesh Gupta, Adv, & Sh. Somil Agarwal, Adv.
Revenue by	Sh. Amit Katoch, Sr. DR

Date of hearing:	26.07.2023
Date of Pronouncement:	27.09.2023

## ORDER

### Per Anubhav Sharma, JM :

The appeals are preferred by the Assessee and Revenue against the order dated 19.08.2021 of Commissioner of Income Tax (Appeals)-26 (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 10441/19-20 arising out of an appeal before it against the order dated 31.12.2019 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle-14, New Delhi (hereinafter referred as the Ld. AO).

2. The brief facts of the case are that return of income was filed by the assessee declaring income of Rs. 17,41,450/- and the return was picked up for scrutiny selection on basis of cash deposit during demonetization period 9.11.2016 to 30.12.2016 wherein assessee had deposited Rs. 2,16,87,500/- in its bank accounts. Assessee had made a submission that the cash was deposited out of cash balance available from cash sales and as the assessee is in the business of wheat flour, maida etc. accordingly, it is regular business practice to receive cash and all the cash deposited is out of cash in hand.

2.1 The Ld. AO has not accepted the aforesaid explanation on the ground, primarily, based on the comparison from the previous year 2015-16 and 2016-17, he considered the deposits to be abnormal. Then he found the cash retention was on the higher side. Ld. AO considered the comparative sales in month of October, 2016, and from 1st to 8<sup>th</sup> November, 2016 as suspicious and abnormal. He observed that the increase in sales in this period has been shown because Vat returns having been filed for October and thus, concluded in **para 5** as follows ;

*“5. Thus, in view of the above facts and from the figures of cash in hand submitted by the assessee for the last year it is seen that the assessee was having opening cash in hand from Rs. 80 lakhs to Rs. 1 crore on monthly basis and also as the assessee was maintaining cash in hand of about cash sales of 4-5 days thus, cash deposit of Rs. 1 Crore at max. can be attributed as the cash in hand and the remaining amount of Rs. 3.04 Crores is treated as unaccounted cash deposited by the assessee and accordingly added in the income of the assessee u/s 68 r.w.s. 115BBE of the I.T.Act. The satisfaction of the Assessing Officer and therefore, Rs. 2,16,87,500/- is deemed to be income of the assessee for FY 2016-17. Therefoere, the amount of Rs. 2,16,87,500/- is hereby trated as unexplained money and the same is added to the total income of the assessee u/s 68 of the IT Act. The income of Rs. 2,16,87,500/- is to be taxed u/s 115BBE of the Act at the rate of 60%. Since, the income of the assessee determined includes income u/s. 68 of the IT Act; penalty proceedings u/s 271AAC of the Act is initiated separately in respect of unexplained income.”*

3. Ld. CIT(A) after taking into consideration all the circumstances restricted the addition to Rs. 38.25 lakhs accordingly, the assessee is in appeal raising following grounds ;

*“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs.2,16,87,500/- fully as made by Ld. AO by treating it as alleged income of assessee u/s 68 and taxing the same u/s 115BBE and further erred in sustaining the same to the extent of Rs.38,25,000/- and that too on estimated basis and by recording incorrect facts and findings and without observing the principles of natural justice and without appreciating the facts and circumstances of the case.*

*2. That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the addition of Rs.2,16,87,500/- fully as made by Ld. AO by treating it as alleged income of assessee u/s 68*

*and taxing the same u/s 115BBE, is bad in law and against the facts and circumstances of the case.*

*3. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

3.1 The Revenue is in appeal raising following grounds ;

*“i. That the Ld. CIT(A) has erred on facts of the case by ignoring the cash deposit of Rs. 1,78,62,500/- out of total deposit of Rs. 2,16,87,500/- during demonetization period.*

*ii. Whether on the facts and circumstances of the case and in law the ld. CIT(A) has erred in restricting addition of the Rs. 2,16,87,500/- on account of cash deposit during demonetization to Rs. 35,50,000/- despite the fact that assessee failed to furnish complete cash book but only cash book related to 2-3 days and this failed to satisfy the AO about the true nature and source of cash deposit.*

*iii. (a) The ld. CIT(A) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves leave to add, amend any/ all the grounds of appeal before or during the course of the hearing of the appeal.”*

4. Heard and perused the record.

5. On behalf of assessee it was submitted by the Ld. AR that Ld. CIT(A) has recorded factual findings at pages 48-64 of the appeal order by recording inter alia as under:

1. That Ld. AO had used figures of some other case and Ld. AO has based his analysis on partly wrong data.

2. That the assessee was not required under the statute to file VAT returns of October, 2016 and November, 2016 till 08.11.2016.
3. The cash sales in the year under appeal is at same percentage as that of AY 2015-16.
4. The cash sales for FY 2016-17 was Rs. 22.24 crores as compared to slightly higher cash sales of AY 2016-17 at Rs. 23 crores.
5. Total sales, cash sales for AYs 2017-18 and 2016-17 are in trend.
6. The VAT returns up to the period September, 2016 were filed in time and were never revised and thus there could be no possibility of manipulation in amount of cash sales.
7. The cash in hand as on 31.10.2016 was Rs. 98.69 lakhs and assessee had cash in hand of more than Rs. 1 crore on 29 occasions upto 30.10.2016 with maximum cash in hand of Rs. 1.79 crores on 23.10.2016.
8. Assessee did not have any stock deficit upto 08.11.2016 and even creditors/purchases are in trend in various months for FY 2016-17 including October, 2016 and November, 2016.
9. Ld. AO has not brought on record any evidence which could point the manipulation of data for the month of October, 2016.

6. It was submitted that the addition was made by Ld. AO on surmises and conjectures without any basis, material or evidence and which was partially sustained by Ld. CIT(A) also by using surmises and conjectures.

6.1 He submitted that the books of account of the assessee are audited and accepted by both the authorities, purchases were accepted, stocks were accepted and cash sales too have been accepted and thus results could not be disturbed.

6.2 The emphasis of Ld. AR was on the fact that the cash sales are part of sales credited to profit and loss account and is part of income disclosed and addition made and partially sustained would make that addition as double addition. He relied the following judicial decisions for aforesaid submission:

- **Shree Sanand Textiles Industries Ltd. vs. DCIT**, ITA No. 995/2014, dated 06.01.2020 (Ahd.)
- **CIT vs. Kailash Jewellery House**, ITA No. 613/2010, dated 09.04.2010, (DHC)

- **CIT vs. Vishal Exports Overseas Ltd**, ITA No. 2471/2009, dated 03/07/2012(Guj).
- **Kishore Jeram Bhai Khaniya vs. ITO**, ITA No 1220/2011, dated 13.05.2014 (Del)
- **PCIT vs. Agson Global (P) Ltd.**, (2022) 441 ITR 550 (Del)
- **ACIT vs. Hirapanna Jewellers**, (2021) 189 ITD 608 (Visakha)

7. Ld. DR however relied the order of Ld. AO to submit that issue was well examined by AO and Ld. CIT(A) has not considered that fact that in order to justify the cash sales other parameters were also tempered with as VAT reports were filed delayed.

8. Now giving thoughtful consideration to the matter on record and the submissions we are of view that the grounds in appeals are interconnected so both appeals are taken up together for determination of the grounds. It can be appreciated from the order of Ld. AO that assessee had taken a plea that being into business of wheat flour there was regular practice to receive cash and all the cash deposited is out of cash in hand. The Ld. AO however disbelieved the explanation and comparing the sales and cash sales of 2015-16 and 2016-17 had made the addition. As before Ld. CIT(A) in appeal he asked assessee to submit data on various accounts in the desired formats. He had sought data of following facts;

1. *Comparable details of sales made by the appellant during the F.Y. 2015-16 and 2016-17,*
2. *Month wise cash sales from 01.04.2016 to 31.03.2017,*
3. *Month wise cash sales and cash deposits from 01.04.2016 to 31.03.2017,*
4. *Month wise cash sales and cash deposits from 01.04.2015, 31.03.2016,*
5. *Cash deposits in bank between 09.11.2016 to 30.11.2016,*
6. *Total deposits in the bank including SBNS,*
7. *Daily cash sales and cash in hand details from 01.06.2016 to 30.06.2016,*

8. *Daily cash sales and cash in hand details from 01.09.2016 to 30.09.2016,*
9. *Daily cash sales and cash in hand details from 01.10.2016 to 31.10.2016,*
10. *Daily cash summary from 8<sup>th</sup> November 2016 to 30<sup>th</sup> November, 2016,*
11. *Month wise creditors, purchase and finish good details of 01.04.2016 to 31.03.2017,*
12. *Month wise creditors purchase and finished good details of 01.04.2015 to 31.03.2016.*
13. *Monthwise creditor purchase and finished good details of 01.04.2014 to 31.03.2015.*
14. *Finished goods stock summary from 10.10.2016 to 08.11.2016.*
15. *Details of cash above 1 crores in F.Y. 2015-16*

9. The Ld. CIT(A) has drawn some very comprehensive conclusions on the basis of aforesaid specific information sought by him to examine the books in reference to purchase, sales, stocks and cash deposited. It will be appropriate to reproduce the relevant extracts here as bellow;

*“7. The AO had alleged that data of month of October, 2016 could have been subjected to manipulation, as the VAT return was not filed for this month till 08.11.2016.*

*7.1 It is observed from the above data that*

- (i) *The total sales as well as the percentage of cash sales (58%) in the total sales is almost flat in the year compared to the preceding year. Even the gross cash sales of the FY 2016-17 at Rs. 22.24cr. are comparable to the gross cash sales of the FY 2015-16 which were at Rs. 23 cr (Table 1).*
- (ii) *The cumulative cash sales up to October, 2016 are 65.72% of the total sales, compared to 69.10% in the corresponding period in the preceding year. There has been 1.72 times increase in the total sales up To -'October, 2016 and 1.64 times increase in the cash sales compared to the corresponding period in the preceding year.*
- (iii) *There had been general trend of increasing cash sales, however, the cash sales in the month of August, 2016 were lower than the corresponding period.*  
*Further, the increase in cash sales in the months of June & Sep, 2016 were at 2.74 times and 2.92 times respectively compared to preceding year. The appellant had filed the VAT returns for the period upto September, 2016 before the announcement of demonetization, therefore, there cannot be any allegation of manipulation of this data, particularly the cash sales data upto September,*

2016.

(iv) *It is observed that the increase in the cash sales in the month of October, 2016 was 1.9 times compared to the corresponding period in the preceding year. This data of sales is in line with the past months trend in the F.Y. 2016-17 as per the table above. Even in absolute terms the cash sales of October, 2016 at Rs. 3.02 crores are as per the trend of cash sales of earlier months in the current year, as the appellant had cash sales of Rs. 3.53 crore in the month of September, 2016 and had cash sales of more than Rs. 2.5 crores in the months of May & June, 2016. The appellant has not revised any of the VAT returns filed by it. The appellant cannot manipulate the sales data of retruns filed before demonetization up to the month of September, 2016. In these facts, the cash sales made by the appellant in October, 2016 is found to be in line with the increase in cash sales of earlier year and the trend of earlier months in the current year.*

(v) *The appellant had shown cash in hand of Rs. 98,69,664/- as on 31.10.2016. The appellant was asked to give the data of cash in hand of more than Rs. 1 crore. This data had been collated at Table 16 above. It is observed that the appellant had cash in hand of more than Rs. 1 crore on 29 occasions upto 30.10.2016, with maximum cash in hand of Rs. 1,79,02,854/- as on 23.10.2016. The appellant had cash in hand of more than Rs. 1 crore on 8 occasions during the year in the months up to September, 2016. Therefore, the cash in hand of Rs. 98,69,664/- shown by the appellant is not an outlier and is in line with the cash in hand held in earlier months, even upto September, 2016.*

(vi) *The appellant did not have any stock deficit upto 08.11.2016 in the year and even creditors/purchases are in trend for F.Y. 2016-17 in various months, including Oct/Nov, 2016.*

7.2 *In these facts & circumstances, it is observed that there are no indicators of any manipulations in the cash sales or cash in hand position as on 31.10.2016. Infact, all the indicators discussed above point that the data of cash sales and cash in hand is as per the trend of cash sales in earlier year as well as in the earlier months of F.Y. 2016-17. Further, the AO had not brought any evidence on record or analysis of data in the assessment order, which could point the manipulation of data for the month of October, 2016. **In these facts & circumstances, it is held that there is no manipulation observed in the data for the month of October, 2016 and the cash in hand of Rs. 98,69,664/- as on 31.10.2016 is from the regular business affairs of the appellant.***

10. Now when considered in the light of order of Ld. AO it is very apparent that Ld. CIT(A) has satisfied himself of trading results including quantified details of stock. There is substance in the contention of Ld. AR that once sales

stood accepted, by Ld. AO, which has been also considered and offered for taxation, how could the cash deposited out of the very same cash sales can be regarded as unexplained cash credits. The bench is also of the view that when the nature of business is accepted by the Tax authorities to be of substantial cash component in purchase and sales, both, then without there being evidence to the contrary, cash flow as accounted in books should be accepted. There is no matter to show there was any discrepancy in the cash balances, withdrawals, cash expenditures. Merely on assumptions Ld. AO could not have considered that deposits in demonetization period to be out of books or tempered books.

**The ground thus raised by the Revenue has no substance.**

11. Now coming to the addition sustained by the Ld. CIT(A) it will be beneficial to again reproduce the discussion of ld. CIT(A) and see how justified he was to sustain certain part of additions as made by Ld.AO. Ld. CIT(A) observes;

*“8. The AO had alleged that data for 1 to 8th November, 2016 could have been subjected to manipulation by the appellant, as the VAT return was not filed for this month till 08.11.2016.*

*8.1 In continuity to the discussion made in Para 7.1(i) to 7.1(iii), it is observed as under:*

*(i). The appellant had made cash sales between 1 to 7th November, 2016 in the range of 20-26 lakhs per day, whereas the sales on 08.11.2016 had been shown at Rs. 47.55 lakhs. The average cash sales between the period 1 to 7th November, 2016 is at Rs. 23.49 lakhs. The appellant had explained that the sales on 08.11.2016 actually represents the average sales of more than two days, due to following reasons:*

*" However; the cash sales on 08.11.2016 was quite higher because of the fact that after the announcement of demonetization the general public made a lot of purchases in cash due to the reason that such prohibited currency will be of no use from next day and there was panic and uncertainty of availability of new legal tender on the very next day and also the people were not certainty of availability of such new currency. Furthermore it is also again submitted that the assessee company is dealing in basic household*

*products such as wheat, flour, Maida, breads and other such daily household need consumable items which are essential goods needed on daily basis."*

*During the first 8 days of Nov., 2016, the appellant had shown cash sales in the range of Rs. 20-26 lakhs except that of Rs. 47,55,360/- on 08.11.2016. The appellant had explained that there were extraordinary cash sales in the late hours on 08.11.2016 after announcement of demonetization. The average daily cash sales of the appellant during the period 1 to 8 Nov., 2016 is at Rs. 26,51,250/-. If we exclude the abnormal cash sales on 08.11.2016, the average daily cash sales of the appellant during the period 1 to 7 Nov., 2016 is at Rs. 23,50,663/-. However, the average cash sales for continuous 7 days in other months is never in the range of Rs. 23,50,663/- as reported in the first 7 days of Nov., 2016. It is observed from the daily cash sales data submitted by the appellant that the appellant had cash sales of Rs. 23,15,625/- on 02.06.2016, of Rs. 22,69,625/- on 04.06.2016, of Rs. 23,56,140/- on 01.09.2016, of Rs. 24,88,440/- on 02.09.2016, of Rs. 25,31,906/- on 03.10.2016, of Rs. 23,58,640/- on 04.10.2016 & of Rs. 24,24,694/- on 05.10.2016. This average 7 days sales in the vicinity of the instances cited is at Rs.13.89 lakhs/day in June 2016 (1 to 7th), at Rs. 12.22 lakhs/day in Sept. (1 to 7th), 2016 & Rs. 19.26 lakhs/day in Oct., 2016 (1 to 7th). Thus, the average daily cash sales of the appellant during the period 1 to 7 Nov., 2016 is on higher side as compared to the other cash sale instances in the earlier months. Further, the cash sales of Rs.47.55 lakhs (about 200% more than the average of last 7 days) made on There will definitely be higher sales on 08.11.2016, considering the fact reported in various newspapers, that there was huge influx of people to exchange their demonetized currency with some tangible asset. Further, the public was scared to use the SBNs on 08.11.2016, as they may not be usable after that and there could have been issues of shortage of daily household use items, dealt in by the appellant.*

*9. The amount of Cash deposited in SBNs after demonetization had been claimed to be at Rs. 2,08,87,500/- instead of the cash deposited in SBN of Rs. 2,16,87,500/- considered by the AO in the assessment order. In support of the contention of the appellant, the appellant has submitted a certificate from the Bank at Paper Book page no. 37. Date wise details of cash deposits of Rs. 2,08,87,500/- have been reproduced in Table No. 5 & 6 above. **In view of these facts, the amount of deposit made by the appellant in SBNs is considered at Rs. 2,08,87,500/- and not Rs. 2,16,87,500/-, as considered by the AO. It is further observed that the appellant had***

***deposited all the SBNs between 10.11.2016 to 12.11.2016.***

*10. The appellant had built up cash in hand from Rs. 98.69 lakhs as on 31.10.2016 to Rs. 234.82 lacs as on 07.11.2016. The appellant had deposited only Rs. 4.5 lakhs between 01.11.2016 to 06.11.2016. The appellant has shown cash deposit of Rs. 59.62 lakhs on 07.11.2016 and cash in hand on 07.11.2016 was at Rs. 194.19 lacs. The appellant had shown sales of Rs. 47.55 lacs on 08.11.2016 had not deposited any cash on 08.11.2016, thereby having the cash in hand of Rs. 2.41 crores as on 08.11.2016 out of which Rs. 2.08 crores were in SBNs. The appellant had submitted the reasons for enhanced cash in hand between 01 to 08th Nov, 2016 compared to the cash in hand in other months, which is reproduced as under:*

*" With regards to the reason for accumulation of cash balance during the period 1<sup>st</sup> November to 8<sup>th</sup> November 2016 it is being submitted as under*

*a) Appellant generally maintains sufficient cash balance as a regular trade practice during the festival periods. In the financial year under consideration festival season started in October, 2016 and ended in November, 2016, the appellant maintain cash as it may required to make various payments for purchases and other expenses in cash in festival period due to high demand and supply. Moreover, the base raw material of the appellant is agriculture produce which require payment in cash.*

*b) Various Bank holidays from 30<sup>th</sup> Oct 2016 to 1<sup>st</sup> Nov 2016 i.e for three consecutive days on account of festival Diwali falling on 30<sup>th</sup> October, 2016 due to which sales made during this period in cash got accumulated with the appellant and the cash balance of Rs. 100,48,847/- as on 30.10.2016 during this period of three days as the appellant could not deposit the cash.*

*c) It is also submitted that the bank was again closed on 6<sup>th</sup> Nov (Sunday) due to which the appellant again could not deposit the cash on these two days also and suddenly on 8<sup>th</sup> Nov 2016 the Government announces demonetization. Moreover, during this festival session the attendance of staff is also very less and due to security reasons the same could not be deposited on regular basis.*

d) *Thus just because the Government announced the demonetization it cannot be said that the cash in hand with the appellant has been generated from other source other than cash sales .Moreover there was no law which prohibited receipt of sale consideration in cash.*

f) *In 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 stock register. These were also produced before the Assessing officer by the Appellant .The books of account of the appellant are duly audited by Chartered accountant.*

*The cash sales on 08.11.2016 was quite higher because of the fact that after the announcement of demonetization the general public made a lot of purchases in cash due to the reason that such prohibited currency will be of no use from next day and there was panic and uncertainty of availability of new legal tender on the very next day and also the people were not certainty of availability of such new currency. Furthermore it is also again submitted that the assessee company is dealing in basic household products such as wheat, flour, Maida, breads and other such dailyhousehold need consumable items which are essential goods needed on daily basis.*

*2. It has been observed that the details of cash sales for first seven days and the balance period given on page 6-7 Chart -2 under point no 3 - Detail of Cash sales during first 7 days as percentage of total Sales of of our submission filed online which was prepared by our junior accountant have some clerical accounting errors may not be considered.*

*12. That the cash book for the period 01.11.2016 to 08.11.2016 has also been furnished in this regard it is also submitted that the assessee had deposited the entire available cash balance as on 08.11.2016 into their bank account subsequent to the demonetization of Indian currency being announced in the country. Therefore, the said cash balance as on 08.22.2016 includes the sale receipts and other cash in hand retained to meet out the daily expenses and specially for the purpose of procuring raw materials from the farmers. Thus, the entire cash deposited in the bank account of the assessee are completely explained.*

11. As per the analysis of the data for the month of October, 2016 made above, it is observed that the cash sales made by the appellant as well as the cash in hand in the month of October, 2016 is comparable with the data of current year as well as the preceding year. Therefore, no adverse inference can be drawn on the cash sales booked in the month of October, 2016 as well as the J position of cash in hand as on 31.10.2016.

11.1 It is observed from the data of month of Nov, 2016 that the appellant had made avg. per day cash sales of Rs. 23,50,663/- for first seven days, which is highest seven days avg. sale during the year. Further, the cash in hand position of the appellant in these seven days has also been highest as compared to the cash in hand position during the other months in the year, including the month of October, 2016. The cash sale of Rs. 47.5 lakhs made on 08.11.2016, is also more than double the avg. per day cash sales in earlier months. The avg. daily cash sales in the month of September, 2016 is at Rs. 11.79 lakhs per day (Rs. 353.69 lakhs/30), however, the sales will not be same in all days as per the daily avg. taken for the month. There will be some days when the sales will be more than this avg. sales on the basis of the whole month. Further, the month of October, 2016 was a festival month, wherein the sales generally goes up. It is further observed that the festival season has continued even in the first few days of November, 2016. The immediate proceeding month will be a good indicator of the sales in the coming month. Even if we hold the avg. cash sale in the month of Oct, 2016 at Rs. 19.26 lakhs/day as benchmark, then due to the continuation of festival season in the month of November, 2016, even then the appellant had shown Rs. 4.25 lakhs (appx.) per day cash sales more than this avg. cash sale for 7 days. Further, the cash sales of 08.11.2016, is about 2.4 times the avg. cash sales of Oct, 2016. However higher cash sales on 08.11.2016 can be accepted within the limited range, due to the extraordinary facts stated above. In these facts & circumstances, it is estimated that the appellant had inflated its cash sales as well as the cash in hand at least by Rs. 38.25 lakhs (Rs. 4.25 lakhs per day \* 7 + 2 \* Rs 4.25 Lakhs for 8th considering the double day = 38.25 lakhs) in between 1<sup>st</sup> to 8<sup>th</sup> Nov, 2016 to introduce its unaccounted SBNs in the books under the garb of cash sales. The source of this Rs. 38.25 lakhs of SBNs held as cash in hand and subsequently deposited in the bank account is held to be unexplained.

11.2 ***It appears the appellant had deposited the cash of SBNs***

*received from the undisclosed sources and to cover it, it had shown equivalent sales on/before 08.11.2016 to create excessive cash in hand. There can be possibility that the appellant might have booked these sales in books by 08.11.2016 to deposit the SBNs, but actually made sales thereafter, to keep the stock as per books.*

*11.3 In view of the discussion made on analysis of data and facts in the above para, it is held that the appellant had not explained the source of Rs. 38.25 lakhs of SBNs held as cash in hand as on 08.11.2016- and subsequently deposited in its bank account. Accordingly, the addition of Rs. 212 lakhs made by the AO u/s 68 r.w.s. 115BBE is restricted to Rs. 38.25 lakhs and this ground of appeal is partly allowed.”*

12. Now what can be concluded from aforesaid conclusions drawn by the Ld.CIT(A) in para 11.2 as reproduced above is that deposit of SBNs is not attributed to the any activity of assessee and SBNs received from the undisclosed sources is alleged to be the source and allegedly to cover it, assessee had shown equivalent sales on/before 08.11.2016 to create excessive cash in hand. A fact which is not established with any evidence or shortcomings in the books.

13. The bench is of considered view that assessee should not be expected to establish the cash flow from cash sales with mathematical precisions and what is essential is to establish that on preponderance of probability the business of assessee was able to generate surplus cash to be deposited in the bank. Only because the period under examination is of demonetisation that does not change the basic principle with regard to discharge of burden of proof for purpose of Section 68 of the Act. The nature of business of the assessee was one which would have been directly affected by market forces, where whole sale dealers and customers would have used SBNs for cash purchases. To allege without any evidence that there can be possibility that the appellant might have booked these sales in books by 08.11.2016 to deposit the SBNs, but actually made sales thereafter, to keep the stock as per books, on mere conjectures is not sustainable. The Ld. CIT(A) has accepted the major part of the cash deposits on

basis of examination of all information about sales, purchases, stock etc. but to disbelieve part on the basis of mere assumptions is not justified. Long back in the case of Lakshmi Rice Mills (1974) 97 ITR 258 (Patna), it has been held that, when books of account of the assessee were accepted by the revenue as genuine and cash balance shown therein was sufficient to cover high denomination notes held by the assessee, then the assessee was not required to prove source of receipt of said high denomination notes which were legal tender at that time.

14. 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 cash sales subjected to reported income are added u/s. 68 of the Act. Consequently we are inclined to **accept the grounds raised by assessee.**

15. Accordingly **the appeal of Revenue is dismissed and of assessee is allowed.** The additions sustained by Ld. CIT(A) is also deleted.

**Order pronounced in the open court on 27<sup>th</sup> September, 2023.**

**Sd/-**

**(M. BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

*Date:-27.09.2023*

*\*Binita, SR.P.S\**

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**