

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 256/JP/2023
निर्धारण वर्ष/Assessment Year : 2017-18.

Income Tax Officer, Ward 6(4), Jaipur.	बनाम Vs.	Shri Gotam Agarwal, 228, City Centre, S.C. Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAMPA 1487 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri A.S.Nehra, Addl. CIT

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani, CA &
Shri Rohan Sogani, CA

सुनवाई की तारीख / Date of Hearing : 26/09/2023
उदघोषणा की तारीख / Date of Pronouncement: 28/11/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the Revenue is directed against the order dated 08.10.2022 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act for the assessment year 2017-18. The assessee has raised the following grounds :-

1. Whether on the facts and circumstances of the case and in law, the Id. CIT (A) NFAC Delhi is justified ignoring the material evidences that the books of accounts were rejected by considering them non reliable, fabricated, manipulated and made to serve the sole purpose of explaining undisclosed income since the entire cash sales to the tune of Rs. 2,58,56,715/- found credited in the books of accounts were held to unexplained cash credits and an account u/s 68 was made by AO.

2. Whether on the facts and circumstances of the case and in law, the Id. CIT (A), NFAC Delhi is justified ignoring the facts the assessee was suppressed interest income by formulating colourable device by claiming abnormal and inflated expenses thereby generated business loss which was set off from interest income and thereby deleting the addition of Rs. 25,00,578/- made by the AO.

2. The brief facts of the case are that the assessee is engaged in the business of trading in precious and semi precious Gem Stones under the trade name of M/s. Sunrise Enterprises and besides that assessee is also engaged in builder ship work. The assessee e-filed his return of income for the year under consideration on 31.10.2017 declaring total income of Rs. 24,27,960/- which was processed under section 143(1) of the IT Act, 1961. The case of the assessee was selected for Complete Scrutiny under CASS to examine the issue of abnormal increase in cash deposits during demonetization period i.e. from 09.11.2016 to 31.12.2016 as compared to average rate of cash deposits during pre-demonetization period. Accordingly statutory notice under section 143(2) of the IT Act was issued on 29.09.2018 which was duly served upon the assessee through ITBA module and even same was manually served on 30.09.2018. Notices under section 142(1) dated 12.07.2019, 19.08.2019, 15.11.2019 were issued to the assessee. Further notices under section 142(1) along with detailed questionnaires were issued to the assessee electronically from time to time. The assessee complied with the notices and filed replies on 21.11.2019, 02.12.2019, 18.12.2019 and 27.12.2019 on ITBA portal which verified, examined and placed on record.

2.1 On verification of ITR and Tax Audit report e-filed by the assessee revealed that assessee has deposited cash of Rs. 2,45,38,000/- during the of demonetization

i.e. from 09.11.2016 to 31.12.2016 in the bank account maintained with HDFC, Branch Kamal Kunj, Jaipur A/c No. 15858020000273 in the name of M/s. Sunrise Enterprises of which assessee is the proprietor. To verify the source of cash deposited of Rs. 2,45,38,000/-, the assessee vide notice under section 142(1) dated 10.12.2019 was required to furnish the details of SBN notes deposited into the bank account along with details of cash deposited during the relevant year, preceding years i.e. AY 2015-16, 14-15. Besides that, the assessee was also asked to furnish the details of monthly sales (cash & credit), monthly purchase (cash & credit), monthly cash deposit into bank account for the relevant period i.e. April to 08 November for the financial year 2014-15, 15-16 and the relevant year i.e. 2016-17. Moreover, the details of Daily stock register, cash book was also asked from the assessee in specified format. Further, the assessee was also asked to furnish cash book for 01.04.2005 to 31.03.2017 and bank book with narration for 01.04.2016 to 31.03.2017. The assessee submitted reply on various dates through ITBA portal which were examined and verified. The verification of the details furnished by the assessee revealed that the sole source of cash deposited into bank account to the tune of Rs. 2,45,38,000/- claimed to be out of cash sales made during the period beginning from 26.08.2016 and upto the eve of demonetization i.e. on 08.11.2016. The assessee admittedly did not maintain stock register, therefore, it was not possible to verify the movement of stock items vis-à-vis sales and purchase bills. The entirety of information furnished by the assessee make it evident that the books of accounts were fabricated and manipulated to boost up cash availability by resorting to cash sales and therefore no reliance could be placed upon such books of accounts. Therefore, considering the severity of issue, non maintenance of stock

register, non furnishing of cash book and bank book, meager gross profit margin and non reliability of books of accounts, show cause notice was issued to the assessee on 26.12.2019 asking the assessee as to why books of accounts should not be rejected by resorting to the provisions of section 145(3) of the IT Act, 1961, why fabricated cash sales to the tune of Rs. 2,45,38,000/- credited in the books of accounts to justify the undisclosed cash deposited into bank account should not be considered as unexplained cash credit within the meaning of section 68 of the IT Act. In compliance to the show cause notice, the assessee submitted details as required vide written reply dated 27.12.2019. The submission of the assessee was examined very carefully but could not be found acceptable and rejected the books of accounts by invoking provisions of section 145(3) of the IT Act,1961. Accordingly, the AO completed the assessment at a total income of Rs. 3,07,85,253/- by making addition under section 68 of the Act of Rs. 2,58,56,715/- and Interest Income of Rs. 25,00,578/-. Aggrieved by the order of AO, the assessee preferred appeal before the Id. CIT (A). The Id. CIT (A) considering the submissions and the details furnished by the assessee and also taking into consideration various judicial pronouncements, deleted the additions made by the AO and thereby allowed the appeal of the assessee.

Now the revenue is in appeal before us.

3. Before us, the Id. D/R supported the order of the Assessing Officer and submitted that the AO has rightly made the additions in absence of proper books of accounts and the cash deposited in the bank account of the assessee was not justifiably explained.

Ground No. 1 : Addition of Rs. 2,58,56,715/- under section 68:

4. On the contrary, the Id. A/R of the assessee placed reliance on the order of the Id. CIT (A) and submitted that the order of the Id. CIT (A) be upheld. The Id. A/R reiterated the submissions as made before the Id. CIT (A) which are reproduced in the order of Id. CIT (A) vide para 2.2 from pages 3 to 9. The Id. A/R submitted that every issue raised by AO, mainly being (i) Purchase of goods before demonetization period, (ii) New business model – no comparison from earlier years, (iii) Cash sales and (iv) Reason for retaining cash in hand were explained to the Id. CIT (A) which are evident from the submissions reproduced. The Id. A/R further submitted that before the Id. CIT (A) it was also explained that section 68 is not applicable in the instant case and reliance was placed on the following judicial pronouncements :

- (i) Smt. Harshila Chordia vs. ITO (2008) 298 ITR 349 (Raj. HC)
- (ii) ACIT & Anr. Vs. Hirapanna Jewellers & Anr (2021) 212 TTJ 117 (ITAT Vishakhapatnam)
- (iii) R.B. Jessaram Fatehchand vs. CIT (1970) 75 ITR 33 (Bombay HC)
- (iv) Lalchand Bhagat Ambika Ram vs. CIT (1959) 37 ITR 288 (SC)

The Id. A/R placed reliance on the decision of Co-ordinate Bench of the Jaipur Tribunal in the case of ACIT Central Circle-1, Jaipur vs. Shri Mahendra Kumar Agarwal in ITA No. 172/JP/2022 wherein the Coordinate Bench of the Jaipur Tribunal observed at pages 54-56 of its order as under :-

“Looking to the above facts and circumstances of the case the sales made by the assessee is genuine which is executed after giving the

goods to the customer, duly reflected in the invoice issued, assessee having sufficient stock in the books, sales is duly reflected in the books of accounts supported by payment of VAT and the revenue has not brought any positive material to prove it as bogus sales. It is not the case of the A.O. that the assessee did not have the sufficient stock for making the sales. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details. As regards not providing the name, address and PAN of the customers to whom cash sales was made, the assessee has explained that the sales were below the prescribed limit so it is not compulsory or mandatory under the Income Tax Act, 1961 to collect the information related to full name, address and PAN of the customer to whom goods were sold in cash during the course of business below to the prescribed limit. The assessee further explained that in the preceding financial years, subsequent financial years and other periods of this same financial year, the same practice was being followed by the assessee where no details of name, address and PAN of customer was available with the assessee and such practice was accepted by the AO. We find the explanation of the assessee is genuine and the sales cannot be doubted merely on surmises and conjectures on the ground of non-furnishing of address and PAN of the customer. The AO did not make any enquiry on the material submitted by the appellant. She merely proceeded on statistical analysis to make the addition on account of cash deposits. We agree with the findings of Id. CIT(A) that the AO has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus and merely having some doubt by twisting the data and giving some findings which are not alone sufficient to justify the addition the income so assessed in not tenable in the eye of law. In fact the AO neither found any concrete and conclusive evidence of back dating of the entries of sales, evidence of bogus sales, evidence of bogus

purchases, and non-existing cash balance in the books of account. The AO did not even reject the books of accounts of the appellant under the provision of section 145(3) of the Act. Therefore, the contention of the revenue on the facts and circumstances of the case is not accepted and we see no reason to interfere in the order of the Id. CIT(A). Thus, we sustain the order of the Id. CIT (A) with the observations above. The appeal of the revenue stands dismissed.”

The Id. A/R further relied on the decision of Coordinate Bench of ITAT Jaipur in the case of Mahesh Kumar Gupta vs. ACIT (2023) 104 ITR (T) 519 (Jaipur-Trib.) wherein the Coordinate Bench gainfully referred the decision of Shri Mahendra Kumar Agarwal, supra.

The Id. A/R further submitted that before the Id. CIT (A) rejection of books was contested by way of additional ground at page 15 of Id. CIT (S)'s order which ground stood allowed by the Id. CIT (A). This aspect is not challenged by the Department in its present appeal.

The Id. A/R, therefore, prayed that the order of the Id. CIT (A) be upheld.

5. We have heard the rival contentions, perused the material on record and gone through the orders of the revenue authorities. The assessee deals in precious and semi precious gem stones under the name and style of M/s. Sunrise Enterprises. For the year under consideration the assessee deposited cash, during demonetization period, amounting to Rs. 2,45,38,000/- in his bank account. The entire cash deposited was out of cash sales amounting to Rs. 2,58,56,715/-. The cash sales were duly recorded in the cash book and available cash balance on different dates was deposited in bank account. The AO doubted the cash sales for

the reason that the buyers were not identified and each sale was below Rs. 2,00,000/-. In respect of no details of buyers, each being below Rs. 2,00,000/- the ld. A/R contended before us that the law nowhere mandates to obtain, maintain/retain identification details of the buyers when each sale below Rs. 2,00,000/-. For this proposition, ld. A/R has relied upon the judgment of Hon'ble Jurisdictional High Court in the case of Smt. Harshila Chordia vs. AITO (2008) 298 ITR 349, Hon'ble Bombay High Court judgment in the case of R.B. Jessaram Fathehchand vs. CIT (1970) 75 ITR 33 and Mumbai ITAT decision in the case of ACIT vs. Hirapanna Jewellers (2021)212 TTJ 117.

5.1 Further, on perusal of the order of ld. CIT (A), we find that the ld. CIT (A) while dealing with the issue, has analyzed in detail various aspects of the matter relating to addition of Rs. 2,58,56,715/- and taking into consideration various judicial pronouncements, deleted the addition by observing in para 2.3 at pages 15 to 19 of his order as under :-

"2.3 I have gone through the assessment order and also the written submission along with case laws relied upon by the appellant. Ld AO has rejected assessee's claim that the assessee has done trading in gems and jewellery. His suspicion has arisen from certain observations which are - there is no proper shop of the assessee to do the business in gems and jewellery. No signboard or shop was found at 1 Kalayan Nagar Tonk Rajasthan. Assessee has obtained CC limit from bank. In FY 15-16 sales was meagre Rs 8,06,257/-. There was repetition of same sale figure. Gross profit margin of Rs 34250.50 on a turnover of Rs 2,58,56,715/- was very low. Assessee has not maintained stock

register. These points raised by the AO were replied by the assessee. However the AO was not impressed by the reply.

Assessee has produced purchase bill dated 25.08.2016 from M/s Vaibhav Global Ltd . It shows that the assessee has engaged itself in the business of trading in precious and semi-precious stones. The purchases is supported by payment through bank the copy of which has been furnished. This purchase and its related payment have happened more than two months prior to the date of demonetization. Therefore the Ld AO has erred in suspecting the trade. The suspicion cannot replace the findings which are necessary to make addition.

From the bank statement the details of payments through banking channel are as under:

Date of Payment	Amount in Rs.
26.08.2016	1,00,00,000
08.09.2016	90,00,000
07.10.2016	8,52,000
15.10.2016	3,00,000
Total	2,01,52,000

Assessing Officer has verified the purchases by making enquiries from the said supplier under section 133(6). The said supplier has responded to the queries issued by the Learned Assessing Officer. The purchases having been made before the announcement of demonetization, the payments having been made through banking channel, therefore, the purchases stand duly substantiated. Assessing Officer has doubted the sales. The sole reason for doubting the sales is that the entire transaction is in cash with no KYC details of the buyers. The assessee has stated that the retail business of gemstone is mainly done through cash. There is no restriction under the law for selling the

goods in cash nor there is any legal requirement for obtaining KYC for the transactions entered into in cash by the assessee. In the case of R.B. Jessaram Fatehchand v. CIT (1970) 75 ITR 33 [PB 266-273], wherein the Hon'ble High Court at Para 2 of the order held as under:

"In these circumstances, the reason given by the Income-tax Officer for rejecting the book results shown by the assessee's accounts or for not accepting the cash transactions as genuine cannot be accepted as good and sufficient unless there was an obligation on the part of the assessee to keep a record of the addresses of the cash customers. It could not, therefore, be said that the failure on his part to maintain the addresses was a suspicious circumstance giving rise to a doubt the genuineness of the transactions entered into by the assessee."

I find that the purchases are cannot be doubted when these have been confirmed by the other party. I find no reason to doubt the sales. I have also gone through the following judicial pronouncements relied upon by the appellant.

I appreciate that the all judicial pronouncements duly support the case of the appellant.

Assessing Officer has also objection to the deposits in cash being in installments and keeping the cash in hand in spite of the fact that CC limit was bearing interest. The assessee has explained the reason for keeping the amount as cash in hand because he wanted to use the said cash for purchase of some property and if the said amount would have been deposited in the CC account the same would not have been available to the assessee for purchase of any immovable property as the banker do not allow use of CC limit for anything other than the trading transactions. The contention of the appellant deserves to be accepted. Similarly depositing the cash in bank account in piecemeal over the period cannot lead to any adverse inference. It is known fact

that post demonetization, long queues were witnessed and there were security issues during those days. Under these circumstances not taking entire cash, in one go, for deposit in bank was a prudent decision. Once availability of cash by way of sale of goods is established in the cash book depositing the same in bank over a period, under the circumstances, cannot be doubted.

In view of the foregoing, I am inclined to agree with the contentions made by the assessee appellant. The addition is without any basis and is solely based on surmises and conjectures and therefore the same is deleted. Relief amounting to Rs.2,58,56,715 is granted to the assessee."

Recently, the coordinate bench of the Tribunal, Jaipur adjudicated the identical issue in the case of ACIT vs. Shri Mahendra Kumar Agarwal in ITA No. 172/JP/2022 dated 22.11.2022 in favour of the assessee by observing at pages 54-56 of its order as under :-

"Looking to the above facts and circumstances of the case the sales made by the assessee is genuine which is executed after giving the goods to the customer, duly reflected in the invoice issued, assessee having sufficient stock in the books, sales is duly reflected in the books of accounts supported by payment of VAT and the revenue has not brought any positive material to prove it as bogus sales. It is not the case of the A.O. that the assessee did not have the sufficient stock for making the sales. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details. As regards not providing the name, address and PAN of the customers to whom cash sales was made, the assessee has explained that the sales were below the prescribed limit so it is not compulsory or mandatory under the Income Tax Act, 1961 to collect the information related to full name, address and PAN of the customer to whom goods were sold in cash

during the course of business below to the prescribed limit. The assessee further explained that in the preceding financial years, subsequent financial years and other periods of this same financial year, the same practice was being followed by the assessee where no details of name, address and PAN of customer was available with the assessee and such practice was accepted by the AO. We find the explanation of the assessee is genuine and the sales cannot be doubted merely on surmises and conjectures on the ground of non-furnishing of address and PAN of the customer. The AO did not make any enquiry on the material submitted by the appellant. She merely proceeded on statistical analysis to make the addition on account of cash deposits. We agree with the findings of Id. CIT(A) that the AO has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus and merely having some doubt by twisting the data and giving some findings which are not alone sufficient to justify the addition the income so assessed in not tenable in the eye of law. In fact the AO neither found any concrete and conclusive evidence of back dating of the entries of sales, evidence of bogus sales, evidence of bogus purchases, and non-existing cash balance in the books of account. The AO did not even reject the books of accounts of the appellant under the provision of section 145(3) of the Act. Therefore, the contention of the revenue on the facts and circumstances of the case is not accepted and we see no reason to interfere in the order of the Id. CIT(A). Thus, we sustain the order of the Id. CIT (A) with the observations above. The appeal of the revenue stands dismissed.”

Therefore, in view of totality of facts and circumstances of the case mentioned herein above and following the various judicial pronouncements, we find no infirmity

in the order of Id. CIT (A) which is hereby affirmed. The ground no. 1 of the revenue is dismissed.

Ground No. 2 : Addition of Rs. 25,00,578/-.

5.2 In respect of this ground, the Id. A/R reiterated the elaborate submissions as made before the Id. CIT (A) which are reproduced as under :

“ The assessee during the year earned total interest income of Rs. 69,80,400/- from the following parties. The said income was credited to profit and loss account.

Name of the Party	Amount in Rs.
Aadhinath Gems and Jewels	36,000
Arun Agarwal	2,42,000
Bharti Panchal	1,81,400
BhupendraKumar Jain	4,80,000
Gaurav Bardiya	7,28,000
Kanak Prabha Soni	3,71,000
Manoj Moondhra	7,42,000
Pankaj Somani	3,60,000
Pinkcity Infracon Pvt. Ltd	1,20,000
Piyush Kothari	7,36,000
PrateekKothari	7,42,000
Pushp Enterprises	10,000
RajendraKumar Bardiya	6,000
Suresh Kumar Sawalka	14,84,000
Vankatesh Impex	7,42,000
Total	69,80,400

The assessee borrowed money from the following two sources :

- (1) Cash credit limit
- (2) Personal borrowings

The assessee during the year paid interest amounting to Rs. 20,68,145/- on cc limit and further, paid interest to private parties amounting to Rs. 2,45,124/-. Another important fact which the Id. AO has totally missed is that the interest activity in itself was a business activity for the assessee. The assessee broadly utilized the cc limit for advancing various loans to earn

interest. The assessee also borrowed money for the purpose of advancing the same on interest other parties. All these facts, taken together, will conclusively suggest that the activity of interest earning and payment was done in a systematic manner round the year. It was not that idle funds were invested and interest was earned on the same. In this background, it is submitted that the interest income is rightly credited by the assessee in its profit and loss account and it has rightly been offered for tax under the head business income. Ld. AO has observed at page 20 of his order that assessee has incurred abnormal and inflated expenses. Ld. AO nowhere has bothered to mention which are the expenses which have been inflated nor have any expenses of abnormal nature been pointed out by the Id. AO. On this account without substantiating the allegation, Id. AO has adopted a peculiar stand of adding a sum of Rs. 48,13,847/- as separate interest income and a further deduction of Rs. 20,68,145/- towards interest paid on cash credit limit and Rs. 2,45,124/- on interest paid to private parties is allowed and the resultant figure of Rs. 25,00,578/- is added as income from interest. The fact remains that the Id. AO has not given any reasoning for treating the interest income as income from other sources where the said income was offered by the assessee as business income. When the head of income is changed it was the duty of the Id. AO to fully substantiate under what circumstances the assessing officer is of the view that the interest income is not business income but it is only income from other sources. Without prejudice to above, alternatively, without agreeing, it is submitted that Id. AO has failed to understand that the expenses incurred which resulted into loss of Rs. 25,00,578/- have not been allowed as deduction. In terms of the provisions of section 71, any loss incurred under the head business is to be set off against the income under any other head including other sources. In Id. AO's own working the loss under the head business works out to be Rs. 25,00,578/-. Calculations being as under :-

Particulars	Amount in Rs.
Net Profit as per profit and loss account	21,66,554
Less : Interest credited to Profit and Loss account	(69,80,400)
Add : Interest on cc limit	20,68,145
Add : Interest on loan	2,45,124
Net loss from business and profession	25,00,578

Ld. AO has carved out the above line items of profit and loss and taxed the same under the head income from other sources but has failed to allow the infra head set off of losses as per the provisions of section 71 of Income Tax Act, 1961. Why set off of such loss is not allowed has not been discussed by Id. AO. The action of Id. AO is not justified.”

6. We have heard the rival contentions, perused the material on record and gone through the orders of the revenue authorities. At the outset, we find that the Id. CIT (A) has decided the issue by observing in para 3.3 of his order as under :-

“ 3.3 Assessee appellant has earned total interest income of Rs. 69,80,400/- from different parties. The assessee has also paid interest amounting to Rs. 20,68,145/- on CC limit and interest amounting to Rs. 2,45,124/- to different private parties. Since the amount of CC limit as well as private borrowings are used for advancing the money on which interest income is earned, the assessee incorporated the transactions in his profit and loss account maintained for his business. Borrowing money on interest and advancing the same for earning interest, in a systematic manner over number of transactions makes the activity as business. Assessee has taken CC limit for business purpose. It has also advanced loans and has received interest on such loan. When the loan has been taken and advanced for business purpose the action of the assessee in reporting the said transactions under the head business is

fully justified. Therefore, the action of learned AO treating the said income from other sources and therefrom allowing interest expenditure only is not legally correct. Accordingly, the change of head and restricting the expenditure by learned AO is uncalled for. Relief is allowed to the assessee by deleting the addition of Rs. 25,00,078/-."

On going through the above finding of the Id. CIT (A), we are of the view that the Id. CIT (A) has rightly dealt with the matter and we find no reason to interfere with the order of Id. CIT (A) which is hereby upheld. The Id. CIT (A) has rightly deleted the addition. Accordingly, ground no. 2 of the revenue is dismissed.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 28/11/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/11/2023.

Das/

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

1. अपीलार्थी / The Appellant- The ITO Ward 6(4), Jaipur.
2. प्रत्यर्थी / The Respondent- Shri Gotam Agarwal, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 256/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

