

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri Manjunatha, G., Accountant Member

आयकर अपील सं./I.T.A. No.781/Chny/2023  
निर्धारण वर्ष/Assessment Year: 2017-18

The Deputy Commissioner of  
Income Tax,  
Non Corporate Circle 4, Aayakar  
Bhavan, 63, Race Course Road,  
Coimbatore.

Vs. Dharma Jewellers,  
75, Savithiri Nagar,  
Coimbatore 641 001.

**[PAN:AAFFD3210Q]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Hema Bhupal, JCIT  
प्रत्यर्थी की ओर से/Respondent by : ShriV. Karthickkrishnan, CA  
सुनवाई की तारीख/ Date of hearing : 04.01.2024  
घोषणा की तारीख /Date of Pronouncement : 18.01.2024

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi, dated 29.03.2023 relevant to the assessment year 2017-18.

2. The appeal filed by the Revenue is delayed by 33 days in filing the appeal, for which, the Revenue has filed an affidavit for condonation of the delay, to which; the Id. Counsel for the assessee has not raised any

serious objection. Consequently, since the Revenue was prevented by sufficient cause, the delay in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee filed its return of income for the assessment year 2073-18 on 30.11.2017 declaring total income of ₹.12,96,820/-. The return was taken up for scrutiny under CASS and notice under section 143(2) of the Income Tax Act, 1961 [“Act” in short] was issued on 26.09.2018 and was served on the assessee. After considering the details furnished by the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 18.12.2019.

3.1 In the assessment order, the Assessing Officer has noted that the assessee has deposited demonetized currencies to the extent of ₹.2,31,20,500/-. The assessee had claimed that the cash balance available as per books on 08.11.2016 of ₹.2,43,45,612/- was the source for the said SBN deposits. The assessee claimed that the cash balance as on 08.11.2016 was the result of the cash sales for the months of October, 2016 and November 2016 (till 08.11.2016). However, on verification of the records, the Assessing Officer has noted that the opening cash balance as on 01.04.2016 was given as ₹.89,46,779/-.

From the summary of cash flow furnished by the assessee, the Assessing Officer has noted that the cash balance as on 31.05.2016 was ₹.10,412/-. Thus, the opening cash balance was found unavailable for the SBN deposits during the AY 2017-18.

3.2 With regard to the cash sales, etc., the Assessing Officer has observed as under:

*c. On perusal of the comparative cash sales for the FYs 2015-16, 2016-17 and 2017 it is seen that there was a substantial increase in the cash sales during the months of October 2016 and November 2016 (prior to demonetization)*

Month	Cash sales in FY 2015-16	Cash sales in FY 2016-17	Cash sales in FY 2017-18
September	1,04,28,073	60,17,890	-
October	50,92,160	3,42,77,255	7,58,267
November till 08.11	-	1,35,54,365	-
November	1,00,32,715	-	-
December	99,43,055	10,45,780	-

*No proper justification or reasoning for the substantial increase in cash sales during October 2016 and November 2016 was submitted by the assessee.*

*d. TN VAT returns for the month of October 2016 was found filed post demonetization on 20.11.2016 and for the month of November 2016, it was filed on 20.12.2016. Though filed within the due dates of the respective VAT act, the possibility of reporting bogus cash sales figures to arrive at the cash balance prior to demonetization period through the VAT returns could not be ruled out.*

*e. On perusal of the Stock register furnished online by the assessee for the GOLD JEWELS – 22Kt, it is seen that there are negative closing stock figures from 13.10.2016 to 29.10.2016. The peak of the same being (-) 5811.567 gms on 29.10.2016. The stock register furnished by the assessee is enclosed to this order as Annexure A. There cannot be a negative stock and in this case it only means that the sales are booked in excess of the stock or in other words the sales are bogus.*

*Assessee had furnished the Purchase Gold bullion ledger (attached to this order as Annexure B), wherein it is seen that the Gold Bullions purchased from Axis bank limited are taken into stock of Gold Jewels 22 kt on the same day of purchase. Normally the Gold bullion will take a minimum conversion period but in the case of assessee it was found that the entire bullion of about 5,432 gms and 3,259.200 gms were taken to Stock of Gold Jewels on the same day of purchase. (i.e. 12.05.2016 and 24.06.2016 respectively). For the rest of the periods the stock journals for accounting the conversion of Gold bullion into Gold Jewels were found passed as and when the same were received. Though purchase of Bullions on 14.10.2016, 19.10.2016 and 20.10.2016 were noticed, the assessee firm itself had transferred the bullion stock into Gold jewels only on 30.10.2016 vide stock journal no.5. In this circumstance the negative stock figures are not explained.*

*Further to the above the Stock negative figures are noticed on the period from 05.11.2016 to 28.11.2016 including the demonetized periods. And he negative stock of (-)2,614.009 gms was noticed on 08.11.2016. Though a Purchase of bullion from Axis bank for the value of Rs.60,58,049 (Quantity details not furnished) was noticed on 02.11.2016, during the periods prior to demonetization, the conversion of the same into Gold jewels was not furnished. Even assuming that the same was converted prior to 05.11.2016 and brought into Stock of Gold jewels, the negative stock is not fully wiped out. That is the closing stock as at 08.11.2016 is still a negative stock figure.*

*f. No proper justification for substantial cash sales in October 2016 and November 2016 was provided by the assessee and No proof of delivery either through the signature of the customer or otherwise are produced. And no identity of the buyers (email or phone number or address) for the sales effected during the period 01.10.2016 to 08.11.2016 was furnished. And to avoid this, it is seen that the bills were mostly split into sale value less than Rs.2,00,000 (or less than Rs.70,000 as stated by the assessee).*

*g. In summarizing the above findings, it is concluded that the cash balance as at 08.11.2016 of Rs.2,43,45,612 was arrived through booking bogus cash sales during the months of October 2016 and November 2016 as discussed above, solely intended to accommodate the SBN deposits aggregating to Rs.2,31,20,500 made in to their bank accounts during the demonetization window. Thus the cash credit to the extent of Rs.2,31,20,500 is assessed as Income u/s.68 of the Income Tax Act and added to the total income of the assessee and brought to tax u/s.115BBE.*

4. Accordingly, after verifying the details and the explanations submitted by the assessee and the reasons for which the case is selected for scrutiny, the Assessing Officer has completed the

assessment assessing total income of the assessee at ₹.2,44,17,320/- by making addition of ₹.2,31,20,500/-.

5. On appeal, the Id. CIT(A) has observed and held as under:

*3.1 I have considered the assessment order, the responses filed by the appellant and the material on record. Since all the grounds of appeal relate to the addition of Rs.2,31,20,500 under Section 68 of the Income Tax Act (the Act), they are all being dealt with together.*

*3.2 The Assessing Officer (AO) has focused on the cash deposits in demonetised currency, and has compared the cash sales in the previous, current and succeeding years, especially in the period covering September to December to show that there has been an inordinate rise in the sales during the period October 2016 to 8th of November 2016.*

*3.3 The primary stress of the assessment order is on the issue of the negative stock, which has been brought out in para 4(e) of the assessment order, wherein it is stated that during the period 13.10.2016 to 29.10. 2016 there were negative closing stock figures in the stock register under the heading of "Gold Jewels - 22Kt". The assessment order also refers to the negative stock figure appearing on 8.11.2016 and discusses the dates on which the stock has been entered in the register and the time taken for bullion to be converted. The relevant part of the order is produced as under:*

*“e. On perusal of the Stock register furnished online by the assessee for the GOLD JEWELS- 22Kt, it is seen that there are negative closing stock figures from 13.10.2016 to 29.10.2016. The peak of the same being (-) 5811.567 gms on 29.10.2016. The stock register furnished by the assessee is enclosed to this order as Annexure A. There cannot be a negative stock and in this case it only means that the sales are booked in excess of the stock or in other words the sales are bogus.*

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*3.4 In view of the foregoing, it has been held that bogus cash sales have taken place in the month of October and November 2016, leading up to the demonetisation period, and therefore specified bank note (SBN) deposits of Rs.2,31,20,500 have been facilitated through these transactions and an addition has been made us 68 of the Act.*

*3.5 The submissions filed by the appellant on various dates have been perused. As seen from the submissions received on 16/12/2022 and 28/03/2023, there has been a steady flow of purchases of bullion throughout the period under question- in fact starting in about mid- October all the way till the end of November, while peaking in the middle of November. The purchase bills of the period in question and payments made through banking channels have been tallied and found to match. If taken as per the periods of purchase, there doesn't seem to be any shortage of gold available in the stocks to be able to manufacture jewellery, let alone having negative stock. The issue of bunching of bills at the end of the month does indeed seem to be an error. As pointed out by the appellant.*

*3.7 The assessment order also points to the series of suspicious transactions is the cash sales which have taken place during October and the beginning of November 2016, and a comparison has been made as noted above. Undoubtedly, there has been a spike in the cash sales figures, especially for the month of October, however, the comparison runs the risk being negated very easily when compared with sales in the preceding and succeeding years, as no clear pattern emerges.*

*3.8 After considering all the submissions made by the appellant and the points raised in the Assessment Order, it is seen that there was always adequate stock available with the appellant and sales, as shown, could have been made. It is seen further that while the frequency of cash deposits and purchases have increased during the impugned period the pattern of purchase of bullion and deposits of cash remains the same as in regular periods of business activity of the appellant. Therefore these cash sales and the credit to the books of accounts of the appellant and cannot be said to be unexplained. Further, the AO admits the VAT returns for October and November 2016 were filed in time but also states that the possibility of reporting bogus cash sales figures could not be ruled out- that observation itself is uncertain. I believe the*

*preponderance of probability favours the appellant and additions can be made on mere surmises. The addition of Rs. 2,31,20,500 u/s 68 of the Act is hereby deleted. The appeal is, therefore, allowed.*

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The Id. DR has pointed that based on the submissions of the assessee, the Id. CIT(A) came to a conclusion that there is adequate stock available with the assessee. However, the assessee has not filed the details of stock before the Assessing Officer and it was only submission made before the Id. CIT(A). It was further submission that when the assessee was not able to establish that sufficient stocks available with them, how the assessee could have been made sales as shown by it. Under these facts, the Id. CIT(A) has applied the preponderance of probability in favour of the assessee and deleted the addition, which appears to be not correct. Before us, the assessee filed certain details, such as, stock item register of Gold Jewels – 22 kt, ledger account of purchase gold coins, etc. However, with those details, we are unable to find out sufficient stock is available with the assessee or not. We find that it is the duty of the assessee to establish that there is sufficient stock available with the assessee and subsequently, sale was made. Thus, the preponderance of probability in favour of the assessee cannot be applied in this case. Under these facts and circumstances, we set aside the order of the Id.

CIT(A) and remit the matter back to the file of the Assessing Officer to examine the details filed by the assessee and decide the issue in accordance with law by affording an opportunity of being heard to the assessee. The assessee is also directed to furnish complete details before the Assessing Officer.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 18<sup>th</sup> January, 2024 at Chennai.

Sd/-  
(MANJUNATHA, G.)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 18.01.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,  
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.