

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM AND
MS. PADMAVATHY S, AM**

ITA No.273/Mum/2023
(Assessment Year: 2017-18)

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| ITO-23(3)(6) Room No. 608, Earnest House, Nariman Point, Mumbai-400 021 | Vs. | Suresh Jugraj Jain Ground Floor, Gurukrua Building, 267/269, Mumbadevi Road, Zaveri Bazar, Mumbai- 400002 |
| PAN/GIR No. AABPJ 8147 Q | | |
| (Assessee) | : | (Respondent) |
| Assessee by | : | Shri Amit Jhaveri |
| Respondent by | : | Dr. Kishor Dhule |
| Date of Hearing | : | 30.11.2023 |
| Date of Pronouncement | : | 23.01.2024 |

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The Revenue has challenged the appeal on the ground that the Id. CIT(A) has erred in deleting the addition made by the Assessing Officer ('A.O.' for short) u/s. 68 of the Act towards unexplained cash deposits made during demonetization period.
3. The appeal has been filed with a delay of 180 days for which the Revenue has sought for condonation of the delay on the ground that the order of Id. CIT(A) could not

be traced on the ITBA portal due to technical glitches along with other reasons. After hearing both the sides, we deem it fit to condone the delay of 180 days in filing the present appeal. Delay condoned.

4. The brief facts are that the assessee is an individual and proprietor of M/s. S. J. Jain Jewellers and is engaged in the business of trading in bullion, gold, silver ornaments and silver utensils. The assessee had filed his return of income dated 31.10.2017, declaring total income at Rs.15,88,370/- out of income from business or profession, income from capital gains and income from other source. The same was processed u/s. 143(1) of the Act and the assessee's case was selected for complete scrutiny under CASS for the reason that there was abnormal increase in the cash deposits during the demonetization period. Notice u/s. 143(2) of the Act was duly issued and served on the assessee.

5. The Id. A.O. observed that Rs.13,31,00,000/- in cash was deposited in the assessee's account and made a comparison of cash deposit prior and post demonetization and held the same to be undisclosed income from undisclosed sources and added the impugned amount to the total income of the assessee, thereby determining the total income at Rs.13,46,88,370/- in the assessment order dated 30.12.2019 passed u/s. 143(3) of the Act.

6. The assessee was in appeal before the Id. CIT(A) who deleted the impugned addition on the ground that the assessee has already declared the sales as 'revenue receipt' and even in the earlier years there has been cash deposits in the assessee's

account showing that the assessee was in regular practice of receiving cash sales and offered the same to tax.

7. Aggrieved, the Revenue is in appeal before us.

8. The learned Departmental Representative ('ld.DR' for short) stated that the total cash sales for the month of October 2016 aggregated to Rs.12,54,28,411/- and Rs.78,76,719/- for the month of November, 2016 which was during the demonetization period. The ld. DR contended that the assessee has failed to justify the source of the cash deposits by way of documentary evidence to prove the identity and creditworthiness of the parties and the genuineness of the transaction. The ld. DR further stated that the assessee has shown 1203 transactions from various parties showing the purchase bills and cash purchases have been shown less than Rs.20,000/- which is highly improbable and that the assessee has not furnished the name and address of the person to whom such sales were made. The ld. DR stated that the assessee has manipulated the cash sales and cash purchases during the demonetization period and prayed that the addition made by the ld. A.O. be upheld.

9. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the assessee had accounted the impugned income by way of cash deposits in the bank account for which section 68 of the Act would not be applicable. The ld. AR further contended that the ld. A.O. has accepted the earlier years of cash deposits in the assessee's account and that the assessee has furnished the cash book of the entire year. The ld. AR also stated that the books of accounts have been accepted by the ld. A.O. and also the tax audit report. The assessee has furnished the complete details of stock register

along with the other documentary evidences to substantiate the assessee's claim. The Id. AR submitted that the assessee has furnished the details of sales, purchase, cash book, bank account and the stock register where the books of accounts were audited. The Id. AR further contended that the Id. A.O. has added the cash deposits u/s. 68 which has already been offered to tax by the assessee as sales on the credit side of the trading account and that the same is also duly reflected in the profit and loss account. The Id. AR relied on a catena of decisions in support of the assessee's contention.

10. We have heard the rival submissions and perused the materials available on record. It is observed that the Id. A.O. had made an addition of Rs.13,31,00,000/- as unexplained cash credit u/s. 68 for the reason that the assessee has not substantiated the cash deposits made in the assessee's bank account during demonetization period. It is also observed that the Id. A.O. has made a comparison of cash deposits made by the assessee during the previous year and the subsequent year of demonetization along with a comparison of the total sales and cash sales for the said years. The Id. A.O. has also held that the impugned cash deposits constitute 99.85% of the total cash sales during the year which is an abnormal increase. The Id. A.O. further stated that the opening cash in hand as on 01.04.2016 is at Rs.34,55,571/- and the closing stock in hand at mid night of 08.11.2016 was Rs.13,39,54,607/- and compared the same with the previous financial year which was shown at Rs.1,42,00,000/- and the subsequent financial year to be Rs.7,32,046/-. The Id. A.O. also stated that the assessee has shown abnormal cash purchases in his books of accounts and as per the purchase ledger and the sample copies of the purchase bills, the assessee has declared 1203 transactions without specifying the name and address of the person from whom purchases were made and that the majority of

the purchases were made during the months of July, 2016 and August 2016 where the cash purchases aggregated to Rs.51,79,35,845/-. It is also been stated by the Id. A.O. that all the cash bills were of lesser amount, only for the reason of avoiding the KYC procedure where the KYC details were of lesser amount, only for bills beyond the specified amount. The Id. A.O. by relying on the decision of the Hon'ble Apex Court in the case of *Sumati Dayal vs. CIT* [1995] 214 ITR 801 (SC) and in the case of *Durga Prasad More* [1971] 82 ITR 540 (SC) held that the assessee has failed to prove the genuineness of the transactions and has merely manipulated the sales and purchases for the purpose of bringing into account the unaccounted money.

11. The assessee was in appeal before the first appellate authority challenging the order of the Id. A.O.

12. The Id. CIT(A), on the other hand, deleted the impugned addition on the ground that the assessee has declared the cash sales as revenue receipt and the same has been assessed to VAT where Rs.11,35,84,478/- was paid as VAT for the said sales made by the assessee and the same has been furnished to the Id. A.O. along with the sales register, VAT register and stock registers. The Id. CIT(A) further held that the Id. A.O. should have invoked the provisions of section 145(3) of the Act to prove that the cash credits made in the assessee's account would attract provisions of section 68 of the Act. The Id. CIT(A) held that the provisions of section 68 would not be applicable in the present case as the assessee has offered explanation about the source of the said deposits made in the assessee's account which are nothing but the cash sales made by the assessee shown as the revenue receipts.

13. In the above factual background, it is evident that the assessee has been in the regular practice of cash sales prior to demonetization where the ld. A.O. himself has brought the fact on record by making a comparison of the cash sales prior and post demonetization. The ld. A.O. has merely invoked the said provisions for the reason that the quantum of cash sales and subsequent cash deposits in the assessee's account had an abnormal increase during the demonetization period. The ld. CIT(A) has placed reliance on the decision of the co-ordinate bench in the case of *ACIT v. Hirapanna Jewellers* [2022] 96 ITR 24 (Vishakha)(Trib.) where it has been held that in order to disbelieve the sale the ld. A.O. should have proved that there was no sufficient stock in possession of the assessee and that the stock register has to be defective and further without any defect in the stock proved in the purchase, sales and stock register, the ld. A.O. cannot disbelieve the sales made by the assessee. It is also observed that the ld. A.O. in the present case has not categorically specified what was the defect in the purchase and sales made by the assessee except for the fact that the assessee has meticulously manipulated the purchases and sales for the purpose of not providing the details of the said purchase and sales along with the parties identity. It is also evident that the ld. A.O. has merely rejected the assessee's contention on the premise that the total sale transaction of 1204 is highly improbable where each purchase and sales is less than the minimum norm for furnishing of the details of the said transaction. Beyond this, the ld. A.O. has not brought any fact on record to show that the said transactions of the assessee are mere sham transactions. In the absence of an tangible material brought on record, we deem it fit to hold that there is no infirmity in the order of the ld. CIT(A) in deleting the impugned addition.

14. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 23.01.2024.

Sd/-

(Padmavathy S)
Accountant Member

Mumbai; Dated : 23.01.024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai