

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Waseem Ahmed, Accountant Member**

**ITA No. 76 /Ahd/2021
Assessment Year 2017-18**

G.S. Bullion, 310, Supermall, Nr. Lal Bunglow, C.G. Road, Navrangpura, Ahmedabad PAN: AALFG4426B (Appellant)	Vs	The ACIT, Central Circle-2(3), Ahmedabad (Respondent)
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**ITA No. 107/Ahd/2021
Assessment Year 2017-18**

The ACIT, Central Circle-2(3), Ahmedabad (Appellant)	Vs	G.S. Bullion, 310, Supermall, Nr. Lal Bunglow, C.G. Road, Navrangpura, Ahmedabad PAN: AALFG4426B (Respondent)
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**Assessee by: Shri Deepak R. Shah, A.R.
Revenue by: Shri Prateek Sharma, Sr. D.R.**

Date of hearing : 04-03-2024
Date of pronouncement : 08-03-2024

आदेश/ORDER

PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-

These two appeals filed by assessee and revenue against the order dated 16-03-2021 passed by ld. CIT(A)-12, Ahmedabad for assessment year 2017-18.

2. The grounds of appeals are as under:-

ITA No. 76/Ahd/2021 filed by assessee

"1. The learned CIT (A) erred in law and on the facts of the case in making an addition of Rs. 10,00,000/- as suppressed income on cash sales.

2. The learned CIT (A) erred in law and on the facts of the case in making an addition of Rs. 10,00,000/- even though the said amount is not considered as suppressed income by the AO, thus finding a new source of income which is not permissible under the powers available to the CIT (A) u/s. 250 of the Act.

3. The learned CIT (A) erred in law and on the facts of the case in making an addition of Rs. 10,00,000/- as suppressed income from sales on cash basis without any basis or comparable cases and without any material on record to prove that such income is earned by the appellant.

4. The learned CIT (A) erred in law and on the facts of the case in making an addition of Rs. 10,00,000/- as suppressed income from sales on cash basis of Rs. 58,51,566/- only because the identity of purchasers is not proved when the appellant is not under any obligation to maintain record of purchasers in cash against delivery.

5. *Without prejudice to above grounds, the addition in respect of cash sales of Rs. 10,00,000/- is excessive and requires to be reduced substantially.*

6. *The learned CIT (A) erred in law and on the facts of the case in confirming addition of Rs.5000000 being made on protective basis.*

7. *The learned CIT (A) erred in law and on the facts of the case in making addition of Rs. 50,00,000/- even when it is found that the amount is neither paid by the appellant nor received by the appellant and merely because the substantive addition is neither confirmed nor deleted in appeal even though the appellant has no connection with the person in whose hands the substantive addition is made.*

8. *Your appellant craves for leave to add, amend or alter all or any of the grounds before or during hearing of this appeal.”*

ITA No. 107/Ahd/2021 filed by revenue

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition of Rs. 1,14,00,000/- made by the Assessing Officer u/s. 68 r.w.s. 115BBE of the Act as unexplained cash deposit to Rs. 10,00,000/-.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

3. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent.”

3. Firstly, we are taking up the appeal filed by the Revenue. The survey action u/s. 133A of the Income Tax Act, 1961 was conducted on 21-12-2016 at Axis Bank Memnagar Branch which revealed that Afjalbhai Savjani Sadikali and Tejas C. Desai managed and operated dummy bank accounts with a sole intention to facilitate and unaccounted OHD notes holder to

convert either into gold or new currencies. After the survey action of Axis Bank, statement of Afzal Savjani was recorded on 27-12-2016 and on 06-01-2027 u/s. 131(1A) of the Act. During the course of statement recorded on 27-12-2016, he mentioned some instances from where he had collected cash in old high denomination notes directly from the parties which included the office of GS Bullion, C.G. Road. Therefore, a survey action was carried out at the business premises of M/s. G.S. Bullion on 24-01-2017 at the above office premises. The return of income was filed by the assessee on 15-07-2017 declaring income of Rs. 33,48,550/- . The case of the assessee was selected for complete scrutiny. Consequently, a notice u/s. 143(2) of the Act was issued on 14-08-2018 requiring the assessee to furnish necessary details. A notice u/s. 142(1) of the Act along with questionnaire was issued on 24-10-2019 and 30-10-2019 which was duly served upon the assessee. In response to the said notices, assessee filed submissions dated 15-11-2019. The Assessing Officer further noted that the backup data of accounting software of maintained in the office of assessee was taken and same was sent for advance forensic to ascertain any back dating or manipulating in accounting data. The Assessing Officer further observed that the source of cash deposits of Rs. 1.14 crore demonetization was asked to Rahul Kantibhai Patel and in his statement recorded u/s. 131, it was stated that such deposits were out of cash sales after demonetization. The Assessing Officer also observed that customers had refused to give their names as relates to purchasers found in retail invoices and therefore there was no identity of customers for sales below 2 lakhs could be ascertained. The Id. Assessing Officer further observed that the CCTV footage was also not working for last 4 months at the time of survey. Taking into account the reply of the

assessee, the Assessing Officer made addition of Rs. 1,14,00,000/- as unexplained cash deposit which is brought into the assessee's books in guise of sales before demonetization period u/s. 68 r.w.s. 115BBE of the Act. The Assessing Officer also made addition on protective basis to that of Rs. 50,00,000/- in respect of the cash given to cash handlers during demonetization period which was deposited in the bank account of Raj Enterprises which was subsequently transferred to the Shy Bullion by way of RTGS u/s. 68 r.w.s. 115BBE.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The Id. CIT(A) partly allowed the appeal of the assessee.

5. The Id. D.R. submitted that the CIT(A) was not right in deleting the addition of Rs. 1,14,00,000/- made by the Assessing Officer u/s. 68 r.w.s. 115BBE. The Id. Departmental Representative submitted that the assessee is a non-filer and cash was deposited after the demonetization period and in fact from the details the purchasers were family and relative. The Id. Departmental Representative further submitted that the forensic report that the details were prepared after demonetization and considerable time has lapsed tantamount to scrutiny the documentary evidence as an afterthought. Thus, the Id. D.R. relied upon the assessment order.

6. The Id. A.R. submitted that the cash deposits in respect of sale of bullions were accepted in the preceding years by the Revenue. In fact, during demonetization period, the assessee has not sold gold but it was buyer

to the demonetization period specially in the period of festivities that of Dussehra and Diwali has sold the bullions. The Id. A.R. submitted that the assessee has given all the details in respect to the said transactions and in fact the details about the persons where the sales was below 2 lakhs was not supposed to be required as per statutory form submitted by the assessee before the revenue authorities. The Id. A.R. further submitted that the rest of the details about the said persons were maintained by the assessee with complete name and address and the same was submitted during the assessment period. The CIT(A) therefore has taken the cognizance of the same and held that the purchasers though not identified the sale rates shown in such cash memos, the assessee will get the benefit of the cash deposits where the details of sales were regularly maintained. The Id. A.O. further submitted that the protective addition of Rs. 50,00,000/- was not justifiable as the assessee has not at all received any amount from Shy Bullion and there was no transaction either with Shy Bullion as well as with M/s. Raj Enterprises by the assessee.

7. We have heard the rival contentions and perusal the relevant materials available on record. As regards the Revenue's appeal, the CIT(A) has given a categorical finding that when the cash sales of Rs. 55,48,434/- is made to the identified person is proved, there is no reason to hold such sales as not proved. The assessee produced complete purchases/sales register and day-wise stock position for cash sales made on the said dates. The sales is put on paid stock and the complete details in this regard was submitted during the assessment proceedings by the assessee. The cash sales therefore was rightly accepted by the CIT(A). As regards the contention of the Id. D.R.

that the observation of the forensic report that the details were maintained after the transactions which is after the lapse of considerable time appears non-justifiable. The assessee is regularly maintaining stock register which gives the details of purchase as well as sale of the bullion on the daily basis. The CIT(A) has given a categorical finding and therefore the acceptance of cash deposits was rightly justified accepting the observation which was contested by the assessee that the amounts which were less than 2 lakhs which was not verified should be confirmed to the extent of Rs. 10,00,000/-. The reasoning given by the CIT(A) in that respect appears to be contrary to the details filed by the assessee in respect of the parties who have purchased bullion/gold for less than 2 lakhs. As the assessee has given required PAN details of the customers from the stock register entry, these details were as per the guideless of the Revenue in cases of the transactions related to the bullion where the mandatory form has been filed stating therein that the assessee is not required to prove the identity and creditworthiness of purchasers who have purchased the goods below 2 lakhs. Thus, the ground of the Revenue is dismissed but through this observation the ground contested by the assessee in assessee's appeal that of ground nos. 1 to 5 is allowed. As regards assessee's ground related to confirmation of addition of Rs. 50,00,000/- on protective basis from the perusal of the records, it appears that the Assessing Officer has taken cognizance of the submission recorded by Tejus Desai is not co-related the same with the assessee's transaction as from the records it can be seen that the assessee has not dealt with these parties i.e. M/s. Tejus Enterprises and that of M/s. Shy Bullion. Thus, the addition does not sustain. Thus, ground nos. 6 & 7 of assessee's appeal are allowed.

8. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed.

Order pronounced in the open court on 08-03-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 08/03/2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद