

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथा. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **372/Chny/2023**
निर्धारण वर्ष / Assessment Year: 2017-18

Income-tax Officer,
Non-Corporate Ward 1(4),
Aayakar Bhavan,
63, Race Course Road,
Coimbatore – 641 018.

M/s. Surabii Gold,
v. 138, Karuppa Gounder Street,
K G Street,
Coimbatore – 641 012.
[PAN: ABUFS-6503-P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT
: Shri. S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 26.03.2024

घोषणा की तारीख/Date of Pronouncement

: 05.04.2024

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 30.01.2023 and pertains to assessment year 2017-18.

2. The revenue has raised the following grounds of appeal:

1. Whether, on the facts and circumstances of the case; the Ld. CIT(A) was correct in allowing the

appeal of the assessee treating the cash deposits made by the assessee during the demonetisation period as explained based on the assessee's explanation that the source is from sales and admitted as revenue receipts?

2. The Ld. CIT(A) had failed to appreciate the fact that, apart from some exempted category of people, no other person was allowed to accept SBN (Specified Bank Notes) during the demonetization period. One of the reasons in the Notification No. 2652 dated 08.11.2016 is "2. SBNs being used for storage of unaccounted wealth". The Ld. CIT(A) should have appreciated the assessment order in the background of the idea of SBNs being used for storage of unaccounted wealth.

3. The Ld. CIT(A) had failed to appreciate the intention of the legislature which was to examine and verify the nature of cash deposit/ cash possession in the hands of any individuals. Even if the contention of the assessee is accepted, the assessee by accepting cash from the purchasers after 09.11.2016 in SBNs has conveniently assisted in hiding the identity of the individuals in possession of SBNs thereby defeating the intention of the legislature and demonetization exercise.

4. The Ld CIT(A) had failed to appreciate the fact that, the assessee failed to produce the details of persons who paid in cash for sales during the demonetisation period with documentary evidences.

5. The Ld. CIT(A) had failed to appreciate the fact that, the cash sales made were recorded as transactions below Rs. 2,00,000/- in order to bypass the provisions of Rule 114C(2) r.w. sl. No. 18 of Rule 114B of the Income Tax Rules, 1962. This relieved the assessee of the obligation of ensuring PAN of the purchaser while raising bills.

6. The Ld. CIT(A) failed to appreciate the fact that, in the absence of submission with supporting evidence such as sales bill and details of the persons who paid in cash for sales during the demonetisation period, the AO had no other option but to treat the credits as appearing in the books of the accounts of the

assessee, which remain unexplained, as the unexplained income of the assessee.

7. The Ld. CIT(A) has extensively quoted the decision of the Hon'ble ITAT in the case of ACIT v. M/s Hirasanna Jewellers (LT.A. No. 253/Viz/2020 dated 12.05.2021). The Ld. CIT(A) has failed to appreciate the fact that the ratio of the decision in the case of M/s Hirasanna Jewellers (cited supra) is not applicable in the case of the assessee as the assessee had made the cash deposits during the entire demonetization period whereas in the case of M/s Hirasanna Jewellers the entire cash deposit of Rs. 5,72,00,000/- was made on 08.11.2016.

8. Any other grounds that may be adduced during the appeal proceedings before the Hon'ble ITAT."

3. The brief facts of the case are that, the assessee M/s. Surabii Gold, is engaged in the business of trading of bullion, gold coins and gold jewellery. The assessee has filed its return of income for the assessment year 2017-18 on 20.11.2017, admitting total income of Rs. 5,01,260/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that an enquiry made by the ITO (Intelligence & Criminal Investigation) on 23.02.2017, regarding unusually high deposits made by the assessee during demonetization period. During the course of investigation, a statement was also recorded under oath from Shri. K. Pugalenti, partner of the assessee's firm. The Assessing Officer, further noted that the appellant firm had

made cash deposits of Rs. 9,83,19,000/- during demonetization period into bank account maintained with The South India Bank Ltd, Indian Overseas Bank, Nagercoil, Indian Overseas Bank, Coimbatore, State Bank of India, Coimbatore Nagar Branch and State Bank of India, SME Branch, Nagercoil. The Assessing Officer, called upon the assessee to furnish necessary evidences including source for cash deposits, comparative details of total sales, cash sales, cash deposits for the financial years 2015-16 and 2016-17. In response, the assessee has furnished details of total sales, cash sales and cash deposits into bank account for two financial years. The Assessing Officer, on the basis of details filed by the assessee observed that, the assessee has made cash deposits in specified bank notes into various bank accounts during demonetization period in Rs. 500 and Rs. 1000 demonetized currency notes from 08.11.2016 to 30.12.2016 amounting to Rs. 9,39,19,000/-. The Assessing Officer, further noted that the assessee has cash balance as on 08.11.2016 at Rs. 1,62,53,948/-. The balance amount of Rs. 7,75,65,500/- has been deposited out of cash receipts in specified bank notes from 08.11.2016 to 30.12.2016, in violation of notifications issued by Government of India and Reserve Bank of India.

The Assessing Officer, has allowed cash in hand as on 08.11.2016, towards source for cash deposits into bank account and balance cash deposit of Rs. 7,75,65,500/- has been treated as unexplained cash credit u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), on the ground that from 08.11.2016 onwards, except certain category of persons, all other persons are prohibited from accepting demonetized currency of Rs. 500 and Rs. 1000. Since, the appellant has received cash in specified bank notes of Rs. 500 and Rs. 1000, in violation of RBI Circulars and Government of India notifications, the Assessing Officer has held that the appellant is not able to explain source for remaining cash deposits of Rs. 7,75,65,500/- into bank account during demonetization period from 08.11.2016 to 30.12.2016 and thus, made additions of Rs. 7,75,65,500/- u/s. 68 of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee has filed detailed written submissions on the issue, which has been extracted in Para 5.2 at Pages 6 to 25 of Id. CIT(A) order. The sum and substance of arguments of the assessee before the Id. CIT(A) are that, there is no

prohibition under law for accepting Rs. 500 and Rs. 1000 currency notes up to 31.12.2016. The assessee further submitted that, although there are certain notifications and circulars from RBI to deal with specified bank notes from 08.11.2016 onwards, but as per the specified bank notes (Cessation of Liability) Act, 2017, from appointed date no person can transact, accept specified bank notes of Rs. 500 and Rs. 1000 currency. The Act has been specified appointed date and as per said Act, appointed date is 31.12.2016. Therefore, merely for the reason that the appellant has accepted cash in specified bank notes after 08.11.2016, the source for cash deposits cannot be rejected, when said cash sales is supported by necessary evidences including sales bills, corresponding purchase and necessary stock in trade.

5. The Id. CIT(A), after considering relevant submissions and also by following certain judicial precedents, including the decision of ITAT, Visakhapatnam in the case of ITO vs Tatipatri Satyanarayana, in ITA No. 76/Viz/2021 held that, the Assessing Officer has made additions towards cash deposits into bank account during demonetization period, by rejecting explanation furnished by the assessee with regard to source

for cash deposits, which is backed by necessary evidences. The Id. CIT(A), further observed that the appellant had declared sales which is supported by sales bills. The appellant is having corresponding purchases, which is backed by purchase bills. The Assessing officer, has not pointed out any discrepancies in books of accounts maintained by the assessee including stock details. In absence of any observations with regard to incorrectness in books of accounts maintained by the assessee, merely for the reason that there is a deviation in cash sales declared by the assessee for the impugned assessment year, genuine cash sales which is supported by necessary details cannot be rejected as source for cash deposits into bank account during demonetization period. Therefore, the Id. CIT(A) held that the Assessing Officer is erred in making additions towards cash deposits as unexplained credit u/s. 68 of the Act and thus, directed the Assessing Officer to delete additions made towards cash deposits u/s. 68 of the Act. The relevant findings of the Id. CIT(A) are as under:

"5.4 *I have carefully considered the arguments of AO and the submissions of the appellant extracted above. Only issue in these grounds is the addition made by the AO u/s.68 of the Act of Rs.7,75,65,500/- being the cash deposited by the appellant in its bank accounts during the demonetization announced by the Government on 8th November 2016. AO observed that I*

am not satisfied with the explanation offered by M/s. Gold and there was no legal or factual truth in the claim made by the assessee. The amounts Rs.7,75,65,500/-, being the deposits over and above the cash balance as per the books furnished by the assessee represent the incomes earned by the assessee earlier but not declared to the department. The AO opined that the amount of Rs.7,75,65,500/- cumulatively deposited in to the bank accounts of M/s. Surabii Gold in SBN during the financial year 2016-17 was cash credits not satisfactorily explained, within the meaning of section 68 of the Act. Accordingly, the AO concluded that the assessee could not offer any explanation which is backed by proof, therefore, the amount was the unexplained cash credits in the books of the assessee is brought to tax u/s 68 read with s.115BBE of the Act.

5.5 *Countering the arguments of the AO, the appellant made a detailed written submission and placed reliance on number of decisions of appeal authorities which are extracted above. The appellant found fault with the observation of the AO that 'the cash of Rs.7,75,65,500/- deposited represents the incomes earned by the assessee earlier but not declared to the department' and finding of the AO that cash credits not satisfactorily explained' in-spite of the fact that the appellant explained every sale through the bills and the cash deposit there from in the books of accounts and the income out of the same is already offered. Appellant in its submissions referred to various instructions given by the Board for comparative analysis of cash deposits, cash sales, month wise cash sales and cash deposits in the cases related Operation Clean Money. Appellant noted that the instructions provide for rejection of books where substantial evidences of wide variation are found in the analysis. AO has not pointed out any indicators for suspicion of back dating of cash sales or fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year as suggested in the Instructions of the Board. It is argued that there is no finding of booking of sales which is non-existent to show pumping of unaccounted money in old currency notes. It is also argued that the AO has not pointed out non-availability of stock or attempts to inflate stock by introducing fictitious purchases by the appellant.*

5.6 *Appellant argued that it had furnished explanation with regard to the nature and source of the cash deposited in banks*

in demonetized currency which was not found to be false by the Department. The explanation offered by the assessee was in line with the trend of cash sales and cash deposits in the past years which were accepted by the Department in the assessments made u/s 143(3) of the Act in the past. In support of the same the appellant gave a Table of cash sales for last few years to prove the point that cash sales constitute about 95% of the sales every year, and the FY 2016-16 is no exception. AO has not brought on record any material to draw an inference that the explanation offered by the assessee was incorrect or unreasonable or that the impugned sum represented income of the assessee from undisclosed sources as against the entries recorded in the audited books of the Assessee. The cash deposited in the banks from the explained source appearing in the books of accounts could not be treated as unexplained credit u/s. 68 of the Act without bringing on record any credible evidence/material in support of such allegation. It is argued that entire sales of the assessee are supported by the bills, duly verifiable from books of accounts & records and the AO did not specify any defects and the sales during the demonetization period are in line of its own previous history. The assessee submitted the best possible details/information/ documents/explanation to present its case and the DCIT has not pointed out any specific defects in the explanation. Huge cash sales is normal on occasions like Navratri, Diwali and Akshay Tiritiya and there is no abnormal rise in the cash sales. Further, the sales are supported by the proper invoices and shown in the VAT return, which are accepted by the VAT authorities, therefore, the same cannot be considered as fabricated or manipulated transactions. It argued that the AO could not bring single evidence on record in support of his allegation and the entire assessment order is based on presumption and assumptions.

5. 7 *It is observed that the appellant maintained the proper books of account in regular course of business which was duly audited by an independent Chartered Accountant. All the sales, purchases and stocks are recorded in the books of account which has not been doubted by the AO. The sales shown by the appellant had been accepted by Sales Tax/VAT Department. The AO has neither disputed the books of accounts nor pointed out any discrepancy in the sales register, stock at any time of the year, including the on the opening day of 8th November 2016 or in the cash books where from the cash was deposited in the bank account. To hold that the sales were not made on*

08.11.2016, one has to prove that the assessee did not have sufficient stocks on that day or point out any defects in the stock registers/stocks maintained based on other information, if any. It is seen that the AO has not pointed out any indicators for suspicion of back dating of cash sales or fictitious sales where there is an abnormal jump during the period November to December 2016 as compared to earlier year as suggested by the Board in the Instructions. AO has not pointed out non-availability of stock or attempts to inflate stock by introducing fictitious purchases. Further, the AO has not rejected the books of accounts. I am of the opinion that if there are no defects in the purchases and sales and the same are matching with inflow and the outflow of Stock, there is no reason to disbelieve the sales. The cash sales made by the assessee had been credited in the books of account and reduction in the stock has not been doubted by the AO. If the reduction of stock position is matching with the sales, it proves that the cash received/deposited represents the sales. The AO has not rejected the books of accounts.

5.8 *It is an accepted fact that no businessmen can refuse to make sales to any customer when stock is available and if it is within the four corners of law, especially when price of the gold was high and there is demand for gold at that time of the day. There is also no rule that sales cannot be made late in the evening or in the night. If minimum details of the customers are taken on sale bills as required under a VAT Act that sales cannot be doubted, particularly in the rush of the hour. If the AO alleges that the appellant has brought the unaccounted money generated in to the books on that day, then the onus is on the AO to bring on record evidence to demonstrate that such purchases and sales were made by the appellant out of books or that the appellant had other source of income which is not disclosed. In the absence of any evidence, allegation cannot be accepted under the law.*

5.9 *After careful examination of the facts of the case, arguments of the AO particularly the allegation that the appellant brought its unaccounted income into the books as cash sales and the counter submissions of the appellant replying to each and every point raised by the AO, I find that the arguments of the appellant are more convincing and supported by evidence in the form of books of accounts including the purchases, stock register, sale bills, cash book and reconciled bank entries, which are neither disputed. The*

AO has not pointed out single defect in the books of account and also not rejected the books of accounts.

5.10 Human probability test cannot be applied on this case, because it is a known fact that there was huge rush in jewellery shops and hence, huge cash sales of the appellant made on 08.11.2016 cannot be doubted comparing with the normal day sales. Further, the appellant has also brought on record increased sales on some days like Navratri, Diwali and Akshaya Tritiya which proved that there can be increased sales on demonetization, as it was unique situation and there was a sufficient stocks on that day or point out any defects in the stock registers/stocks maintained based on other information, if any. It is seen that the AO has not pointed any indicators for suspicion of back dating of cash sales or fictitious sales where there is an abnormal jump during the period November to December 2016 as compared to earlier year as suggested by the Board in the Instructions. AO has not pointed out non-availability of stock or attempts to inflate stock by introducing fictitious purchases. Further, the AO has not rejected the books of accounts. I am of the opinion that if there are no defects in the purchases and sales and the same are matching with inflow and the outflow of Stock, there is no reason to disbelieve the sales. The cash sales made by the assessee had been credited in the books of account and reduction in the stock has not been doubted by the AO. If the reduction of stock position is matching with the sales, it proves that the cash received/deposited represents the sales. The AO has not rejected the books of accounts.

5.11 Appellant relied on number of case laws. I have gone through and find those decisions support the arguments of the appellant. Bangalore Bench in the case of Anantpur Kalpana in ITA No. 541/Bang/2021 dt.13.12.2021 has held that section 26(2) of the RBI Act, 1934 which provides that government can specify certain notes as not legal tender. It was argued that if there is any violation of the statutory provisions, the consequences will be only under the relevant provisions of RBI Act, 1934 and those violations cannot lead to any addition under section 68 of the Act; Visakhapatnam's, in the case of **Sri Tatiparti Satyanarayana in ITA No.76Niz/2021**, after considering relevant provision of Specified Bank Notes (Cessation of Liabilities) Act, 2017, held that there is no prohibition under the Act to deal with Specified Bank Notes up to 31.12.2016.

5.12 *I find a the decision of Hon'ble ITAT, Visakhapatnam Bench in the case of ACIT Central Circle - Visakhapatnam vs. Heera Panna Jewellers is most appropriate to quote.*

".....that assessee had explained source of said amount in question as sales, produced sale bills and admitted same as revenue receipt as well as offered it to-There was no defect in purchases and sales and same were matching with inflow and out flow of stock-Audit report under section 44AB and financial statements clearly showed reduction of stock position matching with sales which clearly showed that cash generated represented sales-Assessee officer accepted sales and stocks - He had not disturbed closing stock which had direct nexus with sales - Both Assessing Officer and DDIT(Inv.) did not find any defects in books of account, trading account, P&L account and financial statements of assessee - Whether, on facts, impugned addition made under section 68 was to be deleted--Held,yes".

The AO concluded that the assessee deposited cash in the bank accounts during the period of Demonetization, but the sources were neither explained nor such money offered for taxation. This finding of the AO is incorrect in view of the fact that the appellant has explained the source of cash deposited in the bank account is out of the receipts from the cash sales. In support of the same the appellant produced sale bills and books of accounts containing stock register, sales register and cashbook. Further, the sales have been part of sale for the year and stand offered to tax as against the observation of th eAO. Reliance is placed on the decision of Hon'ble Supreme Court in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 72 /TR 194 (SC) where in it is held that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again.

5.13 *In view of the above discussion, I am of the considered opinion that the arguments of the AO are not supported by any reliable evidence but suspicion. Unique circumstance of announcement of demonetization of higher denominated notes on 8^o November, 2016, consequent huge cash sales made by*

*the appellant on 8th November 2016 and deposit of that cash in bank is satisfactorily explained by the appellant and there is no abnormality in the same. As per section 68, the sum found credited in the books of accounts for which the assessee offers no explanation, the said sum is deemed to be income of the assessee. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. Therefore, the addition made by the AO is hereby deleted. The appellant gets the relief. The grounds of appeal **2 to 7 are allowed.**"*

6. The Id. DR, Shri. D. Hema Bhupal, JCIT, submitted that the Id. CIT(A) erred in deleting additions made towards cash deposits u/s. 68 of the Act, without appreciating fact that apart from the exempt category of persons, no other person was allowed to accept specified bank notes during demonetization period, as per notifications issued by the Government of India and RBI. The Id. DR, further submitted that from 08.11.2016 onwards legal tender of Rs. 500 and Rs. 1000 currency notes were withdrawn by the Government of India. The RBI has issued guidelines from time to time to deal with demonetized currency notes and as per notifications issued by RBI, there is a prohibition for accepting demonetized currency notes. Further, the specified bank notes (Cessation of Liability) Act, 2017 deals with guarantee given by the Government of India for Rs. 500 and Rs. 1000 currency notes and as per said Act, from the appointed date i.e., on 31.12.2016, there is a

prohibition for accepting, transacting and receiving specified bank notes. But, it does not mean that from 08.11.2016 onwards all persons can accept specified bank notes. Although, the Assessing Officer has brought out clear facts to the effect that the appellant has accepted demonetized currency notes from 08.11.2016 and deposited into bank account, but, the Id. CIT(A) deleted additions made by the Assessing Officer on different footing, which is not the case of the Assessing Officer. Therefore, he submitted that the additions made by the Assessing Officer towards cash deposits u/s. 68 of the Act, should be sustained. In this regard, he relied upon the decision of ITAT, Chennai Benches in the case of Vidhiyasekaran Pradeep Malliraj vs ITO in ITA No. 698/Chny/2022, dated 07.02.2023.

7. The Id. Counsel for the assessee, Shri. S. Sridhar, Advocate, submitted that there is no dispute with regard to the fact that the assessee has maintained books of accounts and as per cash book, cash receipts against sales are supported by necessary bills. The Id. Counsel for the assessee, further submitted that the Assessing Officer has committed fundamental mistake in assessing cash sales as unexplained

cash credit taxable u/s. 68 of the Act, without appreciating fact that provisions of section 68 of the Act, is not applicable for cash sales because said sales is recorded in the books of accounts, reported to GST authorities and supported with necessary bills with corresponding purchase and stock in trade. The Id. Counsel for the assessee, further submitted that the Assessing Officer never disputed the fact that, the appellant has disclosed sales and received cash from customers, which is the source for cash deposits into bank account during demonetization period. But, the only observation of the Assessing Officer with regard to the notifications and Circulars issued by the Government of India and RBI regarding prohibition for accepting specified bank notes after 08.11.2016. However, the specified bank notes (Cessation of Liability) Act, 2017 clearly stated that, from the appointed date i.e., on 31.12.2016 no person can receive, transact and accept specified bank notes. From the above Act, it is undisputedly clear that there is no restriction for accepting specified bank notes up to appointed date i.e., on 31.12.2016. Further, cash sales declared by the assessee are supported with necessary details. The Assessing Officer, has not pointed out any discrepancy in books of accounts maintained by the

assessee nor observed any inconsistency or negative movement of stock. In absence of any incorrectness in books of accounts maintained by the assessee, the Assessing Officer cannot make additions towards cash deposits u/s. 68 of the Act, more particularly, when law is very clear in respect of KYC details of customers as per 114B of I.T. Rules, 1962, where the assessee is not required to take KYC details of customers in case sale value is less than Rs. 2 lakhs. The Id. CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and their order should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the appellant has deposited sum of Rs. 9,38,19,000/- cash into bank account during demonetization period in specified bank notes. The appellant has explained source to the extent of Rs. 1,62,53,948/- out of opening cash in hand as on 08.11.2016. In fact, the Assessing Officer accepted source to the extent of opening cash in hand available as on 08.11.2016. The balance cash deposits of Rs. 7,75,65,000/- has been treated as unexplained cash credit and brought to tax u/s. 68 of the Act,

on the ground that the appellant has received specified bank notes of Rs. 500 and Rs. 1000 denomination after 08.11.2016, in violation of notifications/circulars issued by RBI and Government of India. Except this, the Assessing Officer has not made any observation with regard to cash sales declared by the assessee from 01.11.2016 to 31.12.2016 and cash receipts in specified bank notes up to that date. In fact, the Assessing Officer never disputed the fact that, sales declared by the assessee has been recorded in the books of accounts maintained for the relevant period and sales has been reported to GST authorities, which is further supported by corresponding purchases and stock in trade. Therefore, it is necessary to analyze additions made by the Assessing Officer towards cash deposits u/s. 68 of the Act, in light of above factual background.

9. The provisions of section 68 deals with unexplained cash credits. As per said section, in case the assessee is not able to explain cash credits to the satisfaction of the Assessing Officer with necessary details, then cash credits may be treated as income of the appellant for that assessment year. Further, as per section 68 of the Act, the assessee should prove three

ingredients i.e., (i) identity of the creditors (ii) genuineness of the transactions (iii) creditworthiness of the parties. In the present case, there is no dispute with regard to identity of the customers, because the assessee has issued sale bill to all customers and recorded sales in the books of accounts maintained for that assessment year. Although, the Assessing Officer has doubted identity of the customers on the basis of their name, address given by the assessee, but fact remains that as per Rule 114B of I.T. Rules, 1962, the assessee is not required to collect KYC details of customers if sale does not exceed Rs. 2 lakhs. In the present case, there is no observation from the Assessing Officer with regard to sales declared by the assessee, that in any case, sales to a single customer has been made more than Rs. 2 lakhs. In absence of any observation with regard to sales made by the assessee about Rs. 2 lakhs, it should be considered that all sales made by the assessee is less than Rs. 2 lakhs to a single customer and further, the assessee is not required to collect KYC details of customers. In fact, the assessee has filed necessary details to prove that sales to a single customer does not exceed Rs. 2 lakhs. Therefore, in our considered view, the assessee has established identity of the customers.

10. In so far as, the genuineness of transactions is considered, the sales declared by the assessee has been recorded in the books of accounts maintained for the relevant assessment year and is supported by necessary sales bills. The sales declared by the assessee is supported by corresponding purchases and stock in trade. There is no observation from the Assessing Officer with regard to books of accounts maintained by the assessee and their incorrectness. In fact, the Assessing Officer has accepted the fact that there is no discrepancy in books of accounts maintained by the assessee and other evidences like sales bills, purchase bills and stock details submitted during the course of assessment proceedings. The assessee has declared sales to GST authorities and paid relevant GST applicable for the goods. Therefore, from the above it is undisputedly clear that genuineness of sales declared by the assessee before the date of demonetization and after the demonetization is not in dispute. Further, the assessee has furnished comparative details of total sales, cash sales, cash deposits for two financial years and as per details filed by the assessee, there is no abnormal deviation or increase in cash sales reported by the assessee for the impugned assessment year, more particularly

during demonetization period. Therefore, we are of the considered view, that the Assessing Officer is erred in treating cash deposits into bank account as unexplained cash credit taxable u/s. 68 of the Act, even though the assessee has furnished all details to prove that sales declared for the above period is supported by necessary evidences and source for cash deposit is out of cash sales made during demonetization period.

11. Having said so, let us come back whether is there any prohibition in accepting demonetized currency notes of Rs. 500 and Rs. 1000 after 08.11.2016 and up to 31.12.2016. The Assessing Officer is mainly on the issue of notification issued by the RBI to deal with the specified bank notes and argued that the assessee is not one of the eligible person to accept or to deal with specified bank notes and thus, even if assessee furnish necessary evidence, the assessee cannot accept specified bank notes after demonetization and the explanation offered by the assessee cannot be accepted. No doubt specified bank notes of Rs. 500 & Rs. 1000 has been withdrawn from circulation from 09th November, 2016 onwards. The Government of India and RBI has issued various

notifications and SOP to deal with specified bank notes. Further, the RBI allowed certain category of persons to accept and to deal with specified bank notes up to 31st December, 2016. Further, the specified bank notes (cessation of liability) Act, 2017, also stated that from the appointed date no person can receive or accept and transact specified bank notes, and appointed date has been stated as 31st December, 2016. Therefore, there is no clarity on how to deal with demonetized currency from the date of demonetization and up to 31st December, 2016. Therefore, under those circumstances, some persons continued to accept and transact the specified bank notes and deposited into bank accounts. Therefore, merely for the reason that there is a violation of certain notifications/GO issued by the Government in transacting with specified bank notes, the genuine explanation offered by the assessee towards source for cash deposit cannot be rejected, unless the Assessing Officer makes out a case that the assessee has deposited unaccounted cash into bank account in specified bank notes.

12. Coming back to case laws relied upon by the assessee. The Ld. Counsel for the assessee has relied upon the decision

of ITAT, Chennai Benches in ITO vs Sahana Jewellery Exports Pvt Ltd in ITA No. 999/Chny/2022. The ITAT Chennai Benches, under identical set of facts and also in respect of cash deposits during demonetization period held that, when source for cash deposits has been explained out of cash sales made during the period, then cash sales made by the assessee cannot be treated as unexplained credit taxable u/s. 68 of the Act. The relevant findings of the Tribunal are as under:

"11. *We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We have also carefully considered relevant reasons given by the AO to make additions towards cash receipts amounting to Rs.51,39,39,100/- u/s.68 of the Act. The AO has made additions towards cash receipts pertains to sale of jewellery for the period from 01.04.2016 to 08.11.2016 u/s 68 of the Act, on the ground that the assessee could not prove the identity of the creditors, genuineness of transactions, and creditworthiness of the parties. The genesis of the dispute started from the point of verification of source for cash deposits into bank account during demonetization period amounting to Rs.48,73,80,000/-. In fact, the assessee has made cash deposits of Rs.48,73,80,000/- to Oriental Bank of Commerce, Coimbatore, State Bank of India, SME Branch, Coimbatore, and State Bank of India, Main Branch, Coimbatore, in aggregating Rs.48,73,80,000/-. The assessee has explained source for cash deposits out of trade advances received from various persons and same has been subsequently converted into sale of jewellery. The assessee has accounted sales made before 08.11.2016 in its books of accounts and cash balance available as on 08.11.2016 as per cash book maintained by the assessee was at Rs.48,82,75,750/-.*

12. *During the course of assessment proceedings, the AO called upon the assessee to file details of name and address of the persons from whom it has received trade advances for sale*

of jewellery. The assessee has filed a list of persons from whom it has received trade advances for sale of jewellery. Out of list submitted by the assessee, the AO has issued summons u/s.131(1) of the Act, to 50 persons to verify the genuineness of the assessee claim of receipt of cash from them. Out the above 50, summons issued to 40 persons returned by the Postal Authorities citing 'addressee cannot be located' or 'no such person' or 'no such address' or 'insufficient address' or 'no such address at the above place'. In response to summons, three persons were responded and out of three, two persons namely, Shri N.Armugam and Smt.B.Deepa denied having any kind of transactions with the assessee. Further, one person namely Shri A.M.Vargies confirmed having paid advance to the assessee company and also purchased jewellery from them. The Assessing Officer, on the basis of enquiry conducted u/s.131(1) of the Act, came to the conclusion that the assessee could not substantiate cash receipts received from various persons towards sale of jewellery before the date of demonetization. Therefore, vide letter dated 24.12.2019 called upon the assessee to file confirmation from all the parties and also called upon the assessee to show cause 'as to why' the credits should not be considered as unexplained cash credit u/s.68 of the Act. In response, the assessee submitted that as per law, it is not required to collect complete address and PAN from the persons to whom it has sold jewellery. Further, as per Rules 114B of the Income Tax Rules 1962, if sale value of jewellery is in excess of Rs.2 lakhs to a single person, then, it is required to collect PAN. Since, there is no requirement of collecting PAN, the assessee does not having details of PAN and correct postal address of the persons from whom it has received trade advances for sale of jewellery. Therefore, assessee submitted that the question of filing confirmation letter from the parties, from whom, it has collected advance for sale of jewellery does not arise, and consequently, cash receipts cannot be assessed u/s.68 of the Act. The assessee had also explained the AO that it has sufficient cash balance as on 08.11.2016 as per books of accounts maintained for that assessment year and argued that the total cash deposits into bank account is explained out of cash in hand. The assessee has also made an alternative submission that it has sufficient cash withdrawal from very same bank account on various dates, which has been recorded in books of accounts of the assessee and source for cash deposits is also out of cash withdrawal from very same bank account. The assessee had also filed necessary books of accounts, including cashbook,

sales register, sale bills, purchase details along with bills and stock details to prove that there is no discrepancy in books of accounts and also the assessee has reported sales made before the date of demonetization to GST authorities.

13. *In light of above factual matrix, if one examines the issue, the AO has rejected the contention of the assessee on two grounds. The first and foremost reasons given by the AO to reject the explanation of the assessee is that persons from whom assessee claims to have been received advance are not responded to summons issued u/s.131(1) of the Act, and in few cases, they have denied any kind of transactions with the assessee. According to the AO, the assessee could not discharge its onus cast upon as per the provisions of Sec.68 of the Act, in respect of cash receipts, and thus, opined that cash receipts claimed to have been received by the assessee from various persons is unexplained cash credits taxable u/s.68 of the Act. The second reason given by the AO was that there is a contradiction in the claim of the assessee in so far as source for cash deposits are concerned in as much as initially, the assessee claims to have explained cash deposits out of cash receipts from various persons towards sale of jewellery and subsequently changed its stand and argued that source for cash deposits is out of cash withdrawals from very same bank account. In so far as the first and foremost reason given by the AO to assess cash receipts u/s.68 of the Act, we find that there is a distinction between cash credits and cash receipts towards sales. If assessee claims certain cash credits in his books of accounts and not able to explain credits to the satisfaction of the AO, then, such cash credits need to be examined in light of provisions of Sec.68 of the Act. In case, the assessee claims that it has received trade advances in cash and the same has been subsequently converted into sales by issuing sale bills, then, said trade advance cannot be examined in light of provisions of Sec.68 of the Act, because, trade advances have been subsequently converted into sales and sales has been accounted in the books of accounts of the assessee. Therefore, in our considered view, the AO has committed a fundamental mistake in examining the cash receipts claimed to have been received by the assessee towards sale of jewellery in light of provisions of Sec.68 of the Act.*

14. *Be that as it may. The fact remains that, the assessee has furnished name and address of the customers from whom*

it has received cash for sale of jewellery. The assessee need not obtain confirmation and submit to the AO, because, the law does not mandate collecting PAN details of the persons, if sale value of jewellery does not exceed Rs.2 lakhs as per Rule 114B of Income Tax Rules, 1962. In so far as compliance of KYC norms, it is mandatory under Prevention of Money Laundering Act, 2002, w.e.f.04.05.2023 onwards and not applicable for the impugned assessment year. Therefore, in our considered view, when the assessee has furnished name and address of the persons from whom it has received trade advances for sale of jewellery, the assessee has satisfactorily discharged onus cast upon to furnish name and address of the persons. Therefore, the observation of the AO in light of provisions of Sec.68 of the Act, that the assessee has not satisfactorily explained cash receipts is unwarranted and devoid of merits.

15. *Having said so, let us come back whether the assessee could able to explain source for cash deposits made during demonetization period or not. It is an admitted fact that the assessee was having sufficient cash balance as per cash book maintained for the relevant period. In fact, cash in hand as on the date of demonetization i.e. 08.11.2016 was at Rs.48,84,03,169/- and said cash balance is backed by cash receipts recorded in the books of accounts before the date of demonetization. Further, cash receipts from various persons have been further substantiated with sales made to them before the date of demonetization. In fact, the assessee has filed various evidences, including sales bills to support its arguments. The AO never disputed sales declared by the assessee nor pointed out any discrepancy in purchase or stock in trade held in the business of the assessee before the date of demonetization. In fact, the assessee has filed comparative sales for the month of April, 2016 to November, 2016 and corresponding April-15 to November, 2015 and we find that there is no abnormal deviation in sales declared for the month of November, 2016 when compared to earlier periods. It is not a case of the AO that the assessee has declared sales without purchases. In fact, a sale declared by the assessee is backed by corresponding purchases, and is supported by necessary purchase bills. The AO could not point out any discrepancy in stock register maintained by the assessee nor made out a case that the assessee has declared sales without there being any stock in hand. Therefore, in absence of any contrary findings to the effect that the sales declared by the assessee is not backed by any corresponding purchase or supported by stock in hand,*

in our considered view, simply sales cannot be rejected on the ground that sale for the particular month or period is higher when compared to corresponding previous period. In our considered view, there cannot be any reason for uniform sales in all days or month or year. There may be various reasons for increase or decrease in sales which depends upon various factors, including festival sales, clearing sales, yearend sales, etc. Therefore, in our considered view, the explanation of the assessee that it has received cash from various customers towards sale of jewellery and subsequently the advances have been converted into sales, appears to be bona fide and reasonable.

16. *Coming back to second observation of the AO in rejecting explanation of the assessee with regard to source for cash deposits. Initially, assessee claims that source for cash deposits is out of trade advances received in cash from various persons. However, during the course of assessment proceedings itself, the assessee claimed that it was an error in making a submission that it has received trade advances from various persons before the date of demonetization, but fact remains that authorized representative who appeared and made submissions before the AO made an inadvertent error of copying submission made in another group case which is also pending for assessment. Further, immediately after noticing the above inadvertent error, the assessee has submitted details of cash book along with bank statements and explained that it has sufficient cash withdrawal aggregating to Rs.150 Crs. from very same bank account on various dates before the date of demonetization and after utilization of the cash for the purpose, for which, it has been drawn the net withdrawal was at Rs.136.85 Crs. The assessee was carrying cash balance in books and once demonetization was announced, the available cash balance in Specified Bank Notes, has been deposited into bank account. We have perused relevant cash book and bank statements which are available in paper book and after considering relevant materials, we find force in the arguments of the assessee for simple reason that as per the details furnished by the assessee like bank statements, cash book, it is undoubtedly clear that assessee was having sufficient withdrawals from very same bank accounts before the date of demonetization which was recorded in the books of accounts of the assessee. Further, the cash balance maintained by the assessee as per books of accounts as on 08.11.2016 was much higher than the amount of cash deposited to bank account*

during demonetization period. Therefore, in our considered view, when the assessee is able to file necessary evidences to prove that there was sufficient cash withdrawal from very same bank account which is further backed by bank statements, where it has been clearly evident that there are sufficient cash withdrawals, in our considered view, there is no reason for the AO to reject explanation of the assessee that cash deposits are out of cash withdrawals from very same bank account.

17. At this stage, it is necessary to consider certain judicial precedents on this issue. The assessee has relied upon the decision of the Hon'ble Delhi High Court in the case of PCIT v. Agson Global (P) Ltd., reported in [2022] 441 ITR 550 (Delhi) (19-01-2022). The Hon'ble Delhi High Court under identical set of facts, has deleted the additions made by the AO towards cash deposits during demonetization u/s.68 of the Act. The relevant findings of the Hon'ble Delhi High Court are as under:

- A careful perusal of the extract of the statement made by managing director of the assessee (as recorded in " the assessment orders in-issue) would show that all that he had stated was that it was the assessee's own money, given in the form of loan and/or bogus sales or purchases, that had been routed back to the assessee in the form of share capital/share premium, albeit, through banking channels. [Para 10.3]
- The Tribunal, in this context, records a finding of fact that "no unaccounted income of the assessee" had been introduced in its books of account in the form of share capital. Based on this, the Tribunal concluded that there was 'no confession' made by the managing director that unaccounted income had been introduced by the assessee in the form of share capital. Therefore, according to the Tribunal, the statement made under section 132(4) did not constitute incriminating material. [Para 10.4]
- The Tribunal, has correctly analyzed the statement of the managing director. The statement does not allude to the fact that the assessee had introduced 'unaccounted money' in the form of share capital/share premium through investor entities. The retraction letter, as noted by the Tribunal, also did not advert to the introduction of

investment of money in the assessee in the form of share capital/share premium. [Para 11.1]

- *The trail of the money received from various entities in the form of share capital/share application money, concluded that the assessee had been able to place before the Assessing Officer sufficient documentary evidence which established that the money which the assessee had paid to the investor entities was routed back to it in the form of share capital/share premium. [Para 11.4]*

- *That being the position, the Tribunal concluded that the assessee had been able to prove the identity of the investors, their creditworthiness and genuineness, which are the ingredients of section 68. [Para 11.5]*

- *In instant case, insofar as the assessee is concerned, it placed the evidence on record, which established the trail of the money, the mode through which the money had travelled from the assessee to the investor entities and back to the assessee, and the fact that each of the investor entities was in existence. Therefore, once the assessee claimed (and it was found as a fact) that it was its own money which was routed back to it in the form of share capital/share premium, the traditional test which is sought to be applied by the revenue, for triggering the provisions of section 68, which is, that the assessee had to establish the creditworthiness, genuineness and identity of the transactions would have to adapt to the circumstances obtaining in the instant case. [Para 12.1]*

- *Therefore the addition made under section 68 needed to be sustained as untenable, in view of the finding recorded by the Tribunal. [Para 14.4]*

- *The entire purchase and sales had been duly recorded in the regular books of account of all parties; the transactions were routed through regular banking channels; the purchase and sales were duly supported by quantitative details; copies of bank statements showing sales and purchases were placed before the Assessing Officer, and no incriminating documents concerning sales and purchases were found in the course of search and seizure actions. [Para 15.1]*

- *Tribunal also found that in respect of assessment years 2012-13, 2013-14 and 2014-15, sale and purchase transactions were verified and assessment orders were framed under section 143(3). The books of account were duly audited, both, under the Companies Act, 2013 and the Income-tax Act; no defects concerning books were found either by the Assessing Officer or the Commissioner (Appeals). Thus, according to it, no incriminating evidence was found. [Para 15.1]*
- *Insofar as the abated assessment years were concerned i.e., assessment years 2015-16, 2016-17 and 2017-18, it was, apparent that the assessee had purchased goods, which were in value less than the sum for which they were sold. Therefore, as held by the Assessing Officer, in the deviation report, if the purported bogus purchases were to be disallowed then necessarily the sales shown in the assessee's regular books of account would also have to be excluded which would result in the assessee's income falling below the returned/declared income. [Para 15.1]*
- *Furthermore, the Assessing Officer had not placed on record any material to justify the disallowance of 25 per cent of the purchases on the ground that they were bogus without carrying out any inquiry or investigation. In particular, the Tribunal also flagged the issue that the purported shortage of stock was based on a reference made qua that aspect in the appraisal report of Investigation Wing which, as noted above, did not find mention in the remand report, as during the search it was found that the stock worth the aforementioned value was lying at the assessee's warehouse, something which was completely ignored. This position, was fortified by the fact that no addition in respect of any excess or shortage of stock had been made in the assessment orders of any of the years. In effect, according to the Tribunal, the stock found in the books reconciled with the stock which was found physically. [Para 15.3]*
- *It appears, that the Commissioner (Appeals) did not call for the books of account i.e., to examine the same. Furthermore, the Tribunal records that the Assessing Officer, in the remand report, did not advert to the fact*

that the books of account were either incorrect or incomplete. According to the Tribunal, the books of account could not have been rejected till such time the revenue found "patent, latent and glaring defects in the books of account". The revenue, according to the Tribunal, made no such attempt and simply relied upon the statement of the managing director, which was retracted and in any event, did not relate to the booking of bogus expenditure'. Therefore, insofar as the Tribunal was concerned, the rejection of books of account by the Commissioner (Appeals) did not meet the legal standards. [Para 15.6]

- *Thus, in effect, the Tribunal held that the books of account were rejected without crystalizing the defect in the books of account, which could have been done only after examining the same. Furthermore, according to the Tribunal, even if it is assumed that the books of account could be rejected, the profit had to be estimated based on proper material. As noted above, the Tribunal recorded the inconsistent approach adopted by the Commissioner (Appeals) in applying the gross profit ratio concerning non-related parties to purported bogus transactions i.e., those involving related parties, resulting in unsustainable conclusions. [Para 15.7]*

- *Accordingly, the observations made by the Tribunal are pure findings of fact, which cannot be interdicted by the Court in appeal. The inconsistency in the approach adopted by the Assessing Officer, while preparing the deviation report and framing the assessment order with regard to purported bogus purchases is an aspect, which cannot be ignored and has been correctly highlighted by the Tribunal. [Para 15.8]*

- *If the revenue chooses to disallow bogus purchases, it would necessarily have to ignore the corresponding sales recorded against the very same parties. As pointed out by the Tribunal, the Commissioner (Appeals) could have rejected the books of account only, after it had examined and come to the conclusion that he was not satisfied as regards their correctness or completeness. The finding of fact returned by the Tribunal is that books of account were not examined by the Commissioner (Appeals). If that be so. then, section 145(3) could not*

have been triggered by the Commissioner (Appeals), based on the mere statement of the managing director of the assessee. Besides this, as noted by the Tribunal, the Commissioner (Appeals) had attempted to quantify the profit by resorting to a methodology, which was incomprehensible. [Para 15.9]

- The average cash deposited by the assessee with its bankers before demonetization was, approximately, Rs.42.35 crores, whereas the actual sum deposited during the demonetization period was Rs.180.53 crores. The assessee's explanation was, broadly, that deposits were made out of cash sales and, during Diwali, cash sales increase; especially in the business in which the assessee is i.e.. dry fruits. [Para 16.2]*

- The assessee. in support of its plea that cash deposits were made by the assessee in respect of sales which were duly accounted for, reliance was placed on the following material:- audited books of account; bank-wise summary of cash deposits; copies of bank statements; and details of monthly cash sales and cash deposits made in earlier financial years. [Para 16.2]*

- In this context, the Tribunal analyzed the data pertaining to cash sales and cash deposits made in the financial year in issue. The analysis made by the Tribunal showed that, in the three financial years, the total cash deposits more or less corresponded with the cash sales. [Para 16.6]*

- Based on the data, the Tribunal concluded that, in the year in which demonetization kicked in i.e., financial year 2016-17, the increase in sales in percentage terms was less than the earlier year. The Tribunal, thus, held that it could not be said that the assessee had booked non-existing sales in its books post-demonetization. [Para 16.6]*

- In sum, it was the Tribunal's assessment of the material placed on record that cash deposits made by the assessee with its bankers, more or less compared with the cash sale transactions entered into by it with its - customers. The Tribunal's view was that given the fact that there was no allegation made by the revenue that the assessee had backdated its entries to enhance its*

cash sale figures, one could only conclude that there was a growth in the assessee's business. [Para 16.9]

- *Having regard to the extensive material which has been examined by the Tribunal, in particular, the trend of cash sales and corresponding cash deposited by the assessee with earlier years, it is opined that there was nothing placed on record—which could have persuaded the Tribunal to conclude that the assessee had, in fact, earned unaccounted income i.e., made cash deposits which were not represented by cash sales. Therefore, in the Tribunal correctly found in favour of the assessee and deleted the addition made under section 68. [Para 17.6]*

18. *The assessee had also relied upon the decision of the ITAT Visakhapatnam Bench in the case of M/s.Hirapanna Jewellers, Visakhapatnam, in ITA No.253A/Viz/2020 and CO No.02/Viz/2021, AY2017-18, wherein, the ITAT Visakhapatnam Bench, under identical set of facts has held as under:*

" We have heard both the parties and perused the material placed on record. In the instant case, the assessee has admitted the receipts as sales and offered for taxation. The assessing officer made the addition u/s 68 as unexplained cash credit of the same amount which was accounted in the books as sales. In this regard, it is worthwhile to look into section 68 which reads as under:

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year;

From the perusal of section 68, the sum found credited in the books of accounts for which the assessee offers no explanation, the said sum is deemed to be income of the assessee. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. The assessee is engaged in the jewellery business and maintaining the regular stock registers. Both the DDIT (Inv.) and the AO have conducted the surveys on different dates, independently

and no difference was found in the stock register or the stocks of the assessee.

Purchases, sales and the Stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/ stocks. Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. The assessing officer accepted the sales and the stocks. He has not disturbed the closing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales. Audit report u/s.44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. The assessee has furnished the trading account, P& L account in page No.7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared he exorbitant profits. Though certain suspicious features were noticed by the AO as well as the DDIT (Inv.), both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence.

Provisions or section 68 are applicable in case or unexplained cash credit. Looking at the discussion at the foregoing paragraphs and the Judicial Precedents presented, I find that with sufficient stock in record for which excise duty was paid and vat taxes were paid, the sales could not be treated as unexplained cash credit u/s.68 of the Income Tax Act. It must be appreciated that an unexplained credit would imply credit which has unexplained source which is not so. The addition made on account of bogus sale thus failed that test of being unexplained as envisaged u/s 68 of the Income Tax Act. In view these of the addition of Rs.51,39,39,100/- stands deleted.

19. *In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the AO is erred in making additions towards cash receipts received for sale of jewellery, which has been subsequently converted into sales, for the impugned assessment year as unexplained cash credits taxable u/s.68 of the Act. The Ld.CIT(A) after considering relevant facts has rightly deleted the additions made by the AO, and thus, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the Revenue."*

13. The appellant has also relied upon the decision of ITAT, Chennai Benches in the case of M/s. Purani Hospitals Suppliers Pvt Ltd vs DCIT, in ITA NO. 489/Chny/2022, dated 31.05.2023. The Tribunal under identical set of facts and in light of cash deposits during demonetization period has held as under:

"8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts borne out from records indicates that the assessee is in the business of distribution of pharmaceutical goods, surgical and diagnostics goods, which is considered to be essential goods. The assessee has deposited a sum of Rs. 1,82,37,000/- during demonetization period in specified bank notes to various bank accounts. The assessee claims that source for cash deposit is out of realization of cash sales made before demonetization period. The assessee has filed necessary details including copies of sales bills made in cash before demonetization period and also list of parties from whom cash collected after demonetization period and deposited into bank account. The assessee had also filed necessary details of information furnished to department immediately after demonetization period towards cash collected from third party in response data. The Assessing Officer is not disputing all these claims of the assessee including evidence filed in support of justification for source for cash deposit. But, the Assessing Officer has made additions

towards cash deposit in specified bank notes after demonetization period only for the reason that the assessee is not eligible to transact or receive any specified bank notes after demonetization as per notification/GO issued by RBI and Government of India. The Assessing Officer, had discussed the issue with reference to GO issued by RBI and Government of India and concluded that since the assessee has accepted demonetized currency in violation of circular/notification issued by the Government of India, the source explained by the assessee cannot be accepted. In other words, the Assessing Officer never disputed fact that the assessee has made sales in cash before demonetization period and also realized cash from debtors against cash sales made before demonetization period. Therefore, to decide the issue whether the assessee can accept specified bank notes even after it was banned for legal tender after 09th November, 2016 and further, the same can be added u/s. 69 of the Act as unexplained investment and also can be taxed u/s. 115BBE of the Act, it is necessary to examine the case in light of business model of the assessee, and evidence filed during the course of assessment proceedings.

9. *The provisions of section 69 of the Act, deals with unexplained investment, where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of accounts, if any, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by the assessee is not in the opinion of the Assessing Officer, satisfactory, then the value of the investments may be deemed to be the income of the assessee of such financial year. In order to invoke provisions of section 69 of the Act, two conditions must be satisfied. First and foremost condition is there should be an investment and second condition is the assessee could not explain source for said investment. In this case, if you go through evidence filed by the assessee including comparative details of amount collected out of sales for financial year 2015-16 & 2016-17 and details of cash deposit into bank for above financial years, we find that there is no abnormal deviations from its normal course of business. Further, on verification of analysis of cash sales and cash deposits to bank account there is no deviation of cash sales and cash deposits when compared to earlier financial year and demonetization period. Further, the assessee is dealing in essential commodities like medicines, surgical and diagnostics equipment through medical shops, hospital, doctors etc. The*

agents of the assessee come and collect cash from parties and directly deposit to bank account of the assessee. It is also not in dispute, in this line of business the majority of sales is in cash, because doctors, hospitals and medical shops mainly deals with cash. Therefore, from the business model of the assessee and trade practice there is no doubt of what so ever with regard to the explanation offered by the assessee that it has collected cash from debtors towards sales made in cash before demonetization period. Further, the appellant has also regularly availing GST/VAT returns and there is also being no change or deviation in the VAT returns field for the earlier months i.e., before the announcement of demonetization. The assessee had also declared sales made in cash in their books of accounts and filed necessary return of income and paid taxes on said income. The appellant has also made cash deposits regularly before and during that period including the notes which are not banned and therefore, it is not a case of amount of deposit in specified bank notes has come out of undisclosed source or under any circumstances only to change the colour of the money. From the details filed by the assessee, it is evident that during the month of November and December, the assessee has made almost more than 5 crores cash deposit which includes various demonetized currency and regular notes. Further, the Assessing Officer has accepted fact that out of total cash deposits, only a sum of Rs. 1,82,37,000/- is in specified bank notes. From the above, it is very clear that there is no significant change in the pattern of cash sales, cash collection and cash deposit during demonetization period, when compared to earlier period in the same financial year and also during immediate preceding financial year. Therefore, we are of the considered view that the assessee has satisfactorily explained source for cash deposit made during demonetization period in specified bank notes and thus, the Assessing Officer is completely erred in making additions u/s. 69 of the Act.

10. *Coming back to the observations of the Assessing Officer with regard to GO/notification issued by the RBI and Government of India, to deal with specified bank notes. The Assessing Officer is mainly on the issue of notification issued by the RBI to deal with the specified bank notes and argued that the assessee is not one of the eligible person to accept or to deal with specified bank notes and thus, even if assessee furnish necessary evidence, the assessee cannot accept specified bank notes after demonetization and the explanation offered by the assessee cannot be accepted. No doubt*

specified bank notes of Rs. 500 & Rs. 1000 has been withdrawn from circulation from 09th November, 2016 onwards. The Government of India and RBI has issued various notifications and SOP to deal with specified bank notes. Further, the RBI allowed certain category of persons to accept and to deal with specified bank notes up to 31st December, 2016. Further, the specified bank notes (cessation of liability) Act, 2017, also stated that from the appointed date no person can receive or accept and transact specified bank notes, and appointed date has been stated as 31st December, 2016. Therefore, there is no clarity on how to deal with demonetized currency from the date of demonetization and up to 31st December, 2016. Therefore, under those circumstances, some persons continued to accept and transact the specified bank notes and deposited into bank accounts. Therefore, merely for the reason that there is a violation of certain notifications/GO issued by the Government in transacting with specified bank notes, the genuine explanation offered by the assessee towards source for cash deposit cannot be rejected, unless the Assessing Officer makes out a case that the assessee has deposited unaccounted cash into bank account in specified bank notes.

11. *We further, noted that the Central Board of Direct Taxes had issued a circular for the guidance of the Assessing Officer to verify cash deposits during demonetization period in various categories of explanation offered by the assessee and as per the circular of the CBDT, examination of business cases, very important points needs to be considered is analysis of bank accounts, analysis of cash receipts and analysis of stock registers. From the circular issued by the CBDT, it is very clear that, in a case where cash deposit found in business cases, the Assessing Officer needs to verify the explanation offered by the assessee with regard to realization of debtors where said debtors were outstanding in the previous year or credited during the year etc. Therefore, from the circular issued by the CBDT, it is very clear that, while making additions towards cash deposits in demonetized currency, the Assessing Officer needs to analyze the business model of the assessee, its books of account and analysis of sales etc. In this case, if you go through analysis furnished by the assessee in respect of total sales, cash sales realisation from debtors and cash deposits during financial year 2015-16 & 2016-17, there is no significant change in cash deposits during demonetization period. Therefore, we are of the considered view that when*

there is no significant change in cash deposits during demonetization period, then merely for the reason that the assessee has accepted specified bank notes in violation of circulation/notification issued by Government of India and RBI, the source explained for cash deposits cannot be rejected. In our considered view, to bring any amount u/s. 69 of the Act, the nature and source of investment, needs to be examined. In case the assessee explains the nature and source of investment, then the question of making addition towards unexplained investment u/s. 69 of the Act does not arise. In this case, the source of deposits has not been disputed and has been created out of ordinary business sales which has been credited into books of accounts and profits has also been duly included in the return of income filed in relevant assessment year. Therefore, we are of the considered view that, additions cannot be made u/s. 69 of the Act and taxed u/s. 115BBE of the Act towards cash deposits made to bank account.

12. *At this stage, it is relevant to consider certain judicial precedents relied upon by the Id. Counsel for the assessee. The Ld. Counsel for the assessee relied upon the decision of Delhi High Court in the case of Agson Global Pvt Ltd vs ACIT [2022] 325 CTR 001. The Hon'ble Delhi High Court held that additions made on the sole ground of deviation in the ratio of cash sales and cash deposits during the demonetization period with that of earlier period, is improper and unlawful.*

13. *The assessee had also relied upon the decision of ITAT Indore Bench in the case of Dewas Soya Ltd, Ujjain vs ITO in ITA No. 336/Ind/2012, where it has been held as under:*

The Hon'ble Indore ITAT Bench in the case of DEWAS SOYA LTD, UJJAIN vs. Income Tax (Appeal No. 336/Ind /2012 has held that," 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 amounts received from above parties has also been added u/s 68 of the Act. This view has been held by the Hon'ble Supreme Court in the case of CIT vs. Devi Prasad Vishwnath Prasad (1969) 72 ITR 194(SC) that "It is for the assessee to prove that even if the cash credit represents income, it is income from as source, which has already been taxed." The assessee has already

offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again."

14. *The Id. DR, has relied upon the decision of ITAT, Hyderabad Benches, in the case of Vaishnavi Bullion Pvt Ltd vs ACIT Taxsutra 914/ITAT/2022 (Hyd). We, find that in the said case, the Tribunal noted that CFSL report, books and statement are contrary to assessee's claim which are of post demonetization period. Under these facts, the Tribunal came to the conclusion that additions made towards cash deposits during demonetization period, assessee could not explain proper source. In this case, on perusal of details and records, we find that the assessee has filed all details to explain source for cash deposits and on the basis of details filed by the assessee, the Assessing Officer never disputed fact that source for cash deposit is not out of ordinary business receipts, which has been accounted in the books of accounts of the assessee and further, there is no deviation in cash deposits during demonetization period when compared to earlier period in same financial year and in earlier financial year. Therefore, we reject the case laws relied upon by the Id. DR.*

15. *In this view of the matter and by considering facts and circumstances of this case, we are of the considered view that the Assessing Officer erred in making additions towards cash deposits during demonetization period u/s. 69 of the Act. The Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer. Thus, we set aside the order passed by the CIT(A) and direct the Assessing Officer to delete additions made towards cash deposits u/s. 69 r.w.s. 115BBE of the Act."*

14. Coming back to decision relied upon by the Id. DR, in the case of M/s. Vidhiyasekaran Pradeep Malliraj vs ITO (Supra). We have gone through case law relied upon by the Id. DR, and we find that, in the said case, the Tribunal after considering the decision of Hon'ble Apex Court in the case of Apex Laboratories (P) Ltd vs DCIT (135 Taxmann.com 236), held

that, one arm of the law cannot be utilized to defeat the other arm of law and doing so would be opposed to public policy and bring the law into ridicule. In our considered view, the case law relied upon by the Id. DR is not applicable to the facts of the present case for the simple reason that, the Tribunal has not considered the facts of cash deposits in light of explanation offered by the assessee with regard to source for cash deposits. However, it went on the legal issue of validity of legal tender of specified bank notes after 08.11.2016. The said issue has been considered by the coordinate bench in the case of M/s. Purani Hospitals Suppliers Pvt Ltd vs DCIT (Supra) and held that, there is no prohibition in accepting specified bank notes from 08.11.2016 up to 31.12.2016, in light of specified bank notes (Cessation of Liability) Act, 2017. Therefore, we prefer to follow the decision of Coordinate bench, which is more appropriate in light of facts of the present case and thus, we reject case law relied upon by the Id. DR present for the revenue.

15. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that, the assessee has explained source for cash deposits to the

tune of Rs. 7,75,65,100/- into bank account during demonetization period, out of cash sales recorded in the books of accounts maintained by the assessee. The Id. CIT(A), after considering relevant facts has rightly held that the Assessing Officer is erred in making additions towards cash deposits u/s. 68 of the Act, when the appellant has explained source for cash deposits. Thus, we are inclined to uphold the findings of the Id. CIT(A) and dismiss appeal filed by the revenue.

15. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the court on 05th April, 2024 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/**Judicial Member**

Sd/-

(मंजुनाथा. जी)

(MANJUNATHA. G)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 05th April, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF