

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' 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 अपीलसं./ITA No.: **801/Chny/2023**  
& CO No.: **48/Chny/2023**

निर्धारणवर्ष / Assessment Year: 2017-18

Deputy Commissioner of  
Income Tax,  
Non-Corporate Circle -4,  
Aayakar Bhavan,  
63, Race Course Road,  
Coimbatore – 641 018.  
(अपीलार्थी/Appellant)

M/s. Navaratna Maaligai,  
v. No. 362, Raja Street,  
Coimbatore – 641 001.  
**[PAN: AAIFN-6257-E]**

(Respondent/Cross Objector)

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

: Shri. P. Sajit Kumar, JCIT  
: Shri. T. Banusekar, Advocate

सुनवाई की तारीख/Date of Hearing

: 19.03.2024

घोषणा की तारीख/Date of Pronouncement

: 05.04.2024

**आदेश /ORDER**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

This appeal filed by the revenue and cross objection filed by the assessee are directed against order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 12.05.2023 and pertains to assessment year 2017-18. Since, facts are identical and issues are common, for the sake of convenience,

the appeal filed by the revenue and cross objection filed by the assessee are being heard together and disposed off, by this consolidated order.

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.*

*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. The sales bill has few names which are repeated with same/different address in same or next day. Further, most of the address of the customers were outside Coimbatore which is unusual in the case of the assessee.*

*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 there was a substantial increase in cash sales and cash deposits in the FY 2016-17 as compared to the preceding and subsequent year. Further, just one week before demonetization, the cash sales drastically increased more than 10 times compared to previous weeks.*

*7. 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.*

*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, M/s. Navaratna Maaligai is engaged in the business of trading of bullion and jewellery, filed its return of income for the assessment year 2017-18 on 28.10.2017, declaring total income of Rs. 26,90,240/-. The case was selected for scrutiny to verify cash deposits during demonetization period. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has made cash deposits of Rs. 2,91,80,000/-, in specified bank notes during demonetization period into Axis Bank account. The Assessing Officer, called upon the assessee

to furnish necessary details including source for cash deposits, books of accounts etc. In response, the assessee submitted stock registers, bank statements and cash book for the financial year 2016-17 and claimed that source for cash deposits is out of opening cash in hand as on 01.11.2016 at Rs. 1,69,66,540/- and balance cash deposits is out of cash sales made during the period 01.01.2016 to 08.11.2016. The assessee has filed copies of sales bills, corresponding purchase bills, stock registers and claimed that sales is supported by necessary bills and stock in trade. The Assessing Officer, however was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee has booked exceptionally high cash sales during demonetization period, more particularly from 01.11.2016 to 08.11.2016. The Assessing Officer, further observed that the assessee could not furnish necessary PAN and address of the customers, even though the sales bill was issued with name of the customer. Therefore, rejected arguments of the assessee and made additions of Rs. 2,91,80,000/- towards cash deposits during demonetization period as unexplained money u/s. 69A of the Income-tax Act,

1961 (hereinafter referred to as "the Act") and brought to tax u/s. 115BBE 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 reiterated its submissions made before the AO and also took support from certain judicial precedents, including the decision of ITAT Visakhapatnam Benches in the case of ACIT vs Hirapanna Jewellers 189 ITD 608. The sum and substances of the arguments of the assessee before the Id. CIT(A) are that, the assessee has explained source for cash deposits with known source of income. The Assessing Officer, cannot make additions towards cash deposits into bank account only on the ground that, said cash deposits was made during demonetization period in specified bank notes and further, there is increase or decrease in cash sales when compared to previous financial years. The Id. CIT(A), after considering relevant submissions and also taken note of relevant facts opined that, the assessee was able to explain source to the extent of Rs. 1,69,66,540/- out of opening cash in hand as on 01.01.2016 and balance cash deposits of Rs. 1,58,69,538/- is out of cash sales made during

01.01.2016 to 08.11.2016 and said cash sales is supported by necessary evidences including corresponding purchase bills, stock in trade etc. Therefore, the Id. CIT(A) directed the Assessing Officer to delete additions made towards cash deposits u/s. 69A r.w.s. 115BBE of the Act. Aggrieved by the Id. CIT(A) order, the revenue is in appeal before us.

5. The Id. DR, P. Sajit Kumar, JCIT, submitted that the Id. CIT(A) erred in not appreciating the fact that except certain category of persons, no other person was allowed to accept specified bank notes during demonetization period as per notification no. 2652, dated 08.11.2016 issued by the RBI. The Id. DR, further submitted that the Id. CIT(A) failed to appreciate the fact that, when cash sales exceeds Rs. 2 lakhs, the appellant need to obtain KYC details of customers in terms of rule 114B of I.T. Rules, 1962. But, the assessee neither furnished PAN nor correct address of customers from whom cash was received towards sales. The Assessing Officer, after considering relevant facts has rightly assessed cash deposits u/s. 69A of the Act. But, the Id. CIT(A) without appreciating relevant facts simply deleted additions made by the Assessing Officer.

6. The Id. Counsel for the assessee, T. Banusekar, Advocate, on the other hand supporting the order of the Id. CIT(A) submitted that, the Department has accepted sales declared by the assessee. The Assessing Officer, not pointed out any discrepancy in books of accounts maintained by the assessee including cash book etc. The assessee has furnished complete details of sales bill with name and address of the persons to whom sales was made. The assessee had also furnished stock register to prove that, there was no negative stock in the books of accounts. The assessee had also explained the reasons for not accepting KYC details of customers in terms of Rule 114B of I.T. Rules, 1962. The Id. CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and their order should be upheld. The Id. Counsel for the assessee further submitted that, out of total cash deposits of Rs. 2,91,80,000/-, the appellant was having opening cash in hand as on 01.01.2016 at Rs. 1.69 crores. If you exclude opening cash in hand, the remaining cash deposits into bank account is roughly about Rs. 1.10 crores and the same has been explained by the assessee out of cash sales made during 01.01.2016 to 08.11.2016. The Assessing Officer, without considering relevant facts simply

made additions towards cash deposits u/s. 69A of the Act. The Id. CIT(A), after considering relevant facts rightly deleted additions made by the AO and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has made cash deposits of Rs. 2,91,80,000/- into Axis bank account in specified bank notes during demonetization period. The assessee has explained source for cash deposits into bank account out of opening cash in hand as per cash book as on 01.01.2016, which was at Rs. 1,69,66,540/-. In fact, the Assessing Officer never disputed fact that as per cash book maintained by the assessee cash balance as on 01.01.2016 was at Rs. 1,69,66,540/-. If you exclude opening cash balance from the total cash deposits, the remaining cash deposits into bank account is roughly about Rs. 1.10 crores. The assessee has explained said cash deposits out of cash sales made during 01.01.2016 to 08.11.2016. In fact, the Assessing Officer never disputed the fact that sales declared by the assessee for the above period is recorded in the books of accounts and further supported by sales bills, corresponding purchase bills and stock in trade. But, rejected

the explanation of the assessee with regard to source for cash deposits only for the simple reason that cash sales declared by the assessee for the month of November, 2016 was comparatively higher than the cash sales reported for corresponding month for the previous financial year. The assessee has filed a comparative details of cash sales, and cash deposits for the financial years 2015-16, 2016-17, 2017-18 and 2018-19. As per details filed by the assessee, amount of cash deposits into bank account for the assessment year 2015-16 (09.11.2014 to 30.12.2014) was at Rs. 7.50 crores, whereas cash deposits for assessment year 2017-18 (09.11.2016 to 31.12.2016) was at Rs. 2,91,80,000/-. If you see pattern of cash sales and cash deposits for last three financial years, there is no abnormal increase in cash deposits during demonetization period as alleged by the Id. Assessing Officer. Further, assuming for a moment, there is a slight increase in cash deposits during demonetization period, but that alone is not the ground to reject cash sales declared by the assessee with corresponding evidence. Increase/decrease in sales may be for various reasons. It cannot be equal for all the days or months or years. In some months cash sales may be more because of various reasons like festivals sales,

clearance sales etc. It is a well-known fact that, during demonetization period on the eve of 08.11.2016, there was a huge crowd in jewellery shops, where people rushed to buy jewellery by tendering old demonetized notes. Therefore, merely for the reason that there is a huge increase in sales for the above period, it cannot be held that sales declared by the assessee is bogus in nature. Further, the Assessing Officer never disputed sales declared by the assessee which are supported by sales bills, corresponding purchase bills and stock details etc. In our considered view, when Assessing Officer has not pointed out any discrepancy in books of accounts, then merely for the reason of increase in sales, explanation offered by the assessee for source for cash deposits cannot be rejected.

8. As regards the observation of the Id. Assessing Officer with regard to KYC details of customers in term of Rule 114B of I.T. Rules, 1962, we find that as per said rules, if sales made to single customer is in excess of Rs. 2 lakhs, then the seller needs to obtain KYC details of customers. In the present case, there is no observation from the Assessing Officer with regard to sales declared by the assessee and violation of Rule

114B of I.T. Rules, 1962. Although, the Id. DR referred to certain cash receipts in cash book maintained by the assessee which was in excess of Rs. 2 lakhs, but the Id. DR failed to bring on record further evidences to prove that, said cash receipts was on account of cash sales in excess of Rs. 2 lakhs to a customer and that, the appellant was required to obtain KYC details of customers. In absence of any contrary findings from the Assessing Officer, in our considered view, the assessee is not required to obtain KYC details of customers if cash sales does not exceed Rs. 2 lakhs to a single customer. Therefore, we are of the considered view that, the reasons given by the Assessing Officer to reject explanation furnished by the assessee for source for cash deposits into bank account is devoid of merits and thus, rejected. The Id. CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer towards cash deposits.

9. The appellant has relied upon the decision of ITAT, Chennai Benches in the case of ITO vs Sahana Jewellery Export Pvt Ltd in ITA No. 999/Chny/2022. The coordinate bench of ITAT, Chennai has considered an identical issue of cash deposits during demonetization period and after

considering relevant fact and also by following certain judicial precedents held 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.”*

10. In this view of matter and by considering facts and circumstances of the case, we are of the considered view that there is no error in the reasons given by the Id. CIT(A) to delete additions made by the AO towards cash deposits during demonetization period and thus, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the revenue.

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

**CO No: 48/Chny/2023:**

12. At the outset, we find that there is a delay of 18 days in cross objection filed by the assessee, for which petition for condonation of delay along with reasons for delay has been filed. After considering the petition filed by the assessee and also hearing both the parties, we find that there is a reasonable cause for the assessee in not filing cross objection

on or before the due date prescribed under the law and thus, in the interests of justice, we condone delay in filing of appeal and admit cross objection filed by the assessee for adjudication.

13. The appellant has filed cross objection in support of order of the Id. CIT(A) and also challenged provisions of section 115BBE of the Act, to tax cash deposits at maximum marginal rate of tax. Since, we have dismissed appeal filed by the revenue and upheld deletions of additions made by the Assessing Officer towards cash deposits u/d. 69A r.w.s. 115BBE of the Act, in our considered view, cross objection filed by the assessee becomes infructuous and thus, CO filed by the assessee is dismissed as infructuous.

14. In the result, appeal filed by the revenue and cross objection filed by the assessee are dismissed.

Order pronounced in the court on 05<sup>th</sup> April, 2024 at Chennai.

**Sd/-**  
(वी दुर्गा राव)  
**(V. DURGA RAO)**  
न्यायिकसदस्य/**Judicial Member**

**Sd/-**  
(मंजुनाथा. जी)  
**(MANJUNATHA. G)**  
लेखासदस्य/**Accountant Member**

दिनांक/Dated: 05<sup>th</sup> April, 2024

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Assessee
2. Department
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF