

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.: **276/Chny/2023**  
निर्धारण वर्ष / Assessment Year: 2017-18

Joint Commissioner of  
Income-tax,  
Non-Corporate Circle -2,  
Aayakar Bhavan,  
63, Race Course Road,  
Coimbatore – 641 018.

(अपीलार्थी/Appellant)

M/s. Tara Jewellery,  
v. 61, West Bashyakaralu Road,  
R S Puram,  
Coimbatore – 641 002.

**[PAN: AAGFT-2345-B]**

(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

: 25.03.2024

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 30.11.2022 and pertains to assessment year 2017-18.

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

"1. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was right in accepting the assessee's

*comparative working on the average cash deposits for the months from April to December of the current and the subsequent year, while comparing the cash deposits, to prove that the difference is minimum?*

*2. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was right in accepting the assessee's comparison on the average sales for the entire year of current and previous years?*

*3. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was right in accepting the contention of the assessee by stating that the firm had submitted all the details of cash receipts party wise while the fact is that the assessee, in the response sheet on cash deposit submitted with the Department, it was stated that the entire amount is received from "Un-identifiable persons (Without PAN)". No details of the names and address or identity of the buyers were furnished by the assessee during the course of assessment proceedings, in support of its claim for the huge cash sales.*

*4. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was right in considering the fact that the assessee had made huge cash deposits during the period from 10.11.2016 to 12.11.2016 with its six bank accounts, out of which five accounts are almost dormant with minimum deposits for the rest of the period?*

*5. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was right in accepting the contention of the assessee that the AO did not point out a single mistake in the stock position, whereas the assessee has not furnished its stock books before the AO for verification, even though it was called for during the course of assessment proceedings?*

*6. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was right in holding that the AO failed to make any enquiry whatsoever in relation to the cash sales, whereas the assessee has failed to submit any verifiable details, other than names, in respect of the buyers?*

*7. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was right in not considering the fact that the assessee failed to furnish the previous year Cash Book for comparative verification?*

8. *Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was right in not considering the fact that the Hon'ble Supreme Court order in the case of CIT Vs. Devi Prasad Viswanath Prasad (1969) relied on by the assessee is an order wherein the nature of cash credit is discussed which was decided in favour of revenue and hence not relevant to the case of the assessee?*

9. *Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was right in not considering the fact that in the case of Motisons Jewellers Ltd dated 29.09.2022 of ITAT Jaipur Bench relied upon by the assessee, a survey was conducted in the premises of the assessee and verification of Books and documents were made while completing the assessment. In the instant case, the assessee has not produced all the details called for, like Stock Book, Purchase book etc., even though called for and hence the case law is not relevant.*

10. *Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was right in not considering the fact that other case laws relied upon by the assessee and considered by the CIT(A) relates to additions made u/s 68 of the Income Tax Act whereas in the instant case, addition is made u/s 69A of the Act and hence is not relevant to the assessee's case.*

11. *Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was right in not considering that with regard to issues relating to ill health of family members raised by the assessee before the CIT(A), it is to state that the same did not affect the cash deposits in the earlier months.*

12. *For these and other grounds that may be urged at the time of hearing, the appellant prays that this Hon'ble ITAT may be pleased to set aside the order of the Tribunal and allow the appeal."*

3. At the time of hearing, we find that there is a delay of 33 days in appeal filed by the revenue for which a petition for condonation of delay, along with affidavit explaining reasons

for delay has been filed. The Id. DR, Shri. D. Hema Bhupal, JCIT, referring to affidavit filed by the Assessing Officer submitted that, the delay in filing of appeal is due to the fact that the data involved in this case is voluminous and verification of the data with respect to the claim of the assessee before the Id. CIT(A) for preparation of grounds of appeal was time consuming. The delay in filing of appeal before the Tribunal is neither willful nor wanton of any undue benefit. Therefore, the delay of 33 days in filing of appeal may be condoned.

4. The Ld. Counsel for the assessee, on the other hand fairly agreed that the delay may be condoned.

5. We have heard both the parties and considered relevant contents of petition filed by the assessee for condonation of delay and after going through reasons given by the assessee for not filing the appeal within time allowed under the Act, we find that the reasons given by the Assessing Officer comes under reasonable cause and thus, the delay in filing of appeal by the revenue is condoned and appeal filed by the revenue is admitted for adjudication.

6. The brief facts of the case are that, the assessee M/s. Tara Jewellers, is engaged in manufacturing and retail sales of diamonds and gold jewellery. The appellant has filed its return of income for the assessment year 2017-18 on 31.10.2017, declaring total income of Rs. 85,99,000/-. 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 had deposited a sum of Rs. 4,99,50,000/- in specified bank notes during demonetization period to various bank accounts maintained with Syndicate Bank, Axis Bank, Bank of Baroda and The South Indian Bank Ltd. The assessee was called upon to explain source for cash deposits. In response, the assessee submitted that the source for cash deposits is out of opening cash balance as on 08.11.2016, which was at Rs. 4,98,17,761/- and said opening balance was generated out of sales for the earlier period. The Assessing Officer, called upon the assessee to file necessary books of accounts including cash book to verify the claim of the assessee with regard to the opening cash in hand of every month for the financial years 2015-16 & 2016-17. The assessee has furnished comparative details of opening cash in hand for two financial years and also

cash sales, cash deposits to bank account. The Assessing Officer, on the basis of details submitted by the assessee observed that, although there is cash in hand on 08.11.2016 at Rs. 4,98,17,761/-, but said cash balance has been arrived at by booking bogus cash sales for the period of October, 2016 and from 01.11.2016 to 08.11.2016 and it was intended to accommodate the specified bank notes deposited aggregating to Rs. 4,99,50,000/- into their bank accounts during demonetization period. Therefore, rejected arguments of the assessee and made additions of Rs. 4,99,50,000/- 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.

7. 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 at Para 4 of Pages 2 to 4 of Id. CIT(A) order. The sum and substance of arguments of the assessee before the Id. CIT(A) are that, the Assessing Officer never disputed availability of opening cash in hand as per books of accounts maintained for the relevant assessment

year as on 08.11.2016, which is over and above the cash deposits during demonetization period. Although, the Assessing Officer has made a comment on sale declared by the assessee, but the observations of the Assessing Officer is on the basis of surmises and suspicion, without there being any evidence with the Assessing Officer to allege that sales declared by the assessee prior to date of demonetization period is bogus in nature. The assessee has produced all evidences including books of accounts, corresponding sale bills and purchase bills and stock register to prove genuineness of sales declared for the relevant period.

8. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of certain judicial precedents, including the decision of ITAT Visakhapatnam Benches in the case of ACIT vs Heera Panna Jewellers in ITA No. 253/Viz/2020, and also the decision of Hon'ble Delhi High Court in the case of PCIT vs Agson Global Pvt Ltd, reported (2022) 441 ITR 550, held that the Assessing Officer did not point out a single mistake in the stock position sales, cash position as per books of accounts maintained by the assessee. There was no findings in the entire impugned assessment

order pointing out any discrepancy either in sales declared by the assessee or corresponding purchases. The Assessing Officer, had made a casual observation with regard to sales declared by the assessee without there being any evidence to suggest that cash sales declared prior to the date of demonetization is bogus sales. Therefore, the Id. CIT(A) held that when the appellant is able to provide necessary evidence to prove sales declared for the relevant assessment year with corresponding bills and vouchers and also stock details, then merely for the reason that there is an increase in sale for the above period, when compared to previous financial year, the sales declared by the assessee cannot be disputed. Therefore, the Id. CIT(A) held that the assessee has explained source for cash deposits during demonetization period out of opening cash in hand available as on 08.11.2016 and said cash balance is explained out of sales declared prior to the date of demonetization. Thus, deleted additions made by the Assessing Officer towards cash deposits of Rs. 4,99,50,000/- u/s. 69A of the Act r.w.s. 115BBE of the Act. Aggrieved by the Id. CIT(A) order, the revenue is in appeal before us.

9. The Id. DR, Shri. D. Hema Bhupal, JCIT, submitted that the Id. CIT(A) erred in not appreciating the fact that the Assessing Officer has brought out clear deviations in cash sales and cash deposits declared by the appellant for the impugned financial year, when compared to previous financial year and further, there is a sudden increase in cash sales and cash deposits during demonetization period. The Id. DR, further submitted that the appellant has reported abnormal cash sales in the month of October and November, 2016 when compared to cash sales declared for the period October and November, 2015. The closing cash balance as per cash book maintained by the assessee for both assessment years is compared and as per said cash balance, the cash balance for the financial year 2016-17 is abnormally high when compare to closing cash balance for the financial year 2015-16. The Assessing Officer, on the basis of analysis of comparative cash sales, cash deposits and closing cash in hand of every month for two financial years, has come to the conclusion that the assessee has booked bogus sales prior to the date of demonetization to cover up cash deposits in specified bank notes to bank accounts. But, the Id. CIT(A) simply accepted explanation

furnished by the assessee and deleted additions made towards cash deposits u/s. 69A r.w.s. 115BBE of the Act.

10. The Ld. Counsel for the assessee, on the other hand submitted that there is no dispute with regard to the fact that the assessee has maintained books of accounts and also submitted necessary sales bills in support of cash in hand available as on 08.11.2016. The Assessing Officer, has not made any observation with regard to the incorrectness in books of accounts maintained by the assessee. In fact, the assessee has furnished all books of accounts which were audited by Accountant u/s. 44AB of the Act. The assessee has also furnished details of total sales, cash sales, cash deposits for two financial years and explained that there is no abnormal increase in cash sales for the impugned assessment year. The Ld. Counsel for the assessee, further submitted that the assessee is not required to collect KYC details of all customers, in case of sales does not exceed Rs. 2 lakhs to a single customer. In the present case, sales made to customers does not exceed Rs. 2 lakhs in any case. Therefore, the provision of Rule 114B of I.T. Rules, 1962 does not apply. The Id. CIT(A), after considering relevant facts has rightly deleted additions

made by the Assessing Officer. In this regard, he relied upon the decision of ITAT Chennai Benches, in the case of ITO vs Sahana Jewellery Exports Pvt Ltd in ITA No. 999/Chny/2022, dated 20.12.2023.

11. 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 cash deposits of Rs. 4,99,50,000/- in specified bank notes during demonetization period is out of opening cash in hand as on 08.11.2016 of Rs. 4,98,17,761/- as per cash book maintained by the assessee. It is also not in dispute that cash balance as per cash book maintained by the assessee is supported by necessary cash receipts against cash sales achieved for the period September, 2016, October, 2016 and up to 08.11.2016. In fact, the Assessing Officer never disputed fact that cash balance as per cash book maintained by the assessee as on 08.11.2016 was higher than the cash deposits to bank account during demonetization period. But, the Assessing Officer disregarded cash balance available with the appellant as on 08.11.2016 to explain source for cash deposits into bank account during demonetization period only for the simple

reason that sales declared by the assessee for the period from September, 2016 to 08.11.2016, when compared to September, 2015 to November, 2015 is abnormal. In other words, except making an observation that there is slight increase in cash sales and cash deposits during the month of October and November, 2016 when compared to October and November, 2015, there is no other reasons given by the Assessing Officer to disbelieve cash balance available with the assessee. Further, the Assessing Officer has made a simple observation with regard to sales declared by the assessee as bogus sales, without there being any supporting evidences with the Assessing Officer to prove its allegation that the sales declared by the appellant for the month of September to November, 2016 is bogus in nature. On the other hand, the appellant has filed all details including sales bills, corresponding purchase bills and stock register to prove that sale declared for the above period is supported by necessary invoices and also there is no discrepancy in quantitative details of stock in trade maintained by the assessee. Further, it is not a case of the Assessing Officer that, the assessee has booked cash sales without corresponding purchases or stock in trade. But, the Assessing Officer has failed to make out any

observation with regard to books of accounts maintained by the assessee, sales bills, purchase bills and stock details submitted in support of their arguments. Therefore, we are of the considered view that the Assessing Officer is erred in making additions towards cash deposits into bank account of Rs. 4,99,50,000/- during demonetization period u/s. 69A r.w.s. 115BBE of the Act. The Id. CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer.

12. 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 of 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. In this view of the matter and by following the decision of ITAT, Chennai Benches in the case of ITO vs Sahana Jewellery Export Pvt Ltd (Supra), we are of the considered view, that the assessee has explained source for cash deposits during demonetization period, out of opening cash in hand available as on 08.11.2016 and further, said cash in hand is supported

by cash sales declared prior to the date of demonetization. The Id. CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer towards cash deposits u/s. 69A r.w.s. 115BBE of the Act. Thus, we are inclined to uphold the findings of the Id. CIT(A) and dismiss appeal filed by the revenue.

14. In the result, appeal filed by the revenue is 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**

चेन्नई/Chennai,

दिनांक/Dated: 05<sup>th</sup> 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