

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 2567/MUM/2023 (A.Y: 2017-18)

DCIT, Circle- 41(2)(1) Room No. 623, Kautilya Bhavan BKC, Mumbai- 400051	v.	National India Bullion Refinery ACA NIBR Compound, CTS #1285 A/H 29, Kanjur Village Road Kanjur Marg (E), Mumbai PAN: ABBFA4631K
(Appellant)		(Respondent)

Assessee Represented by	:	Shri. Neelkanth Khandelwal
Department Represented by	:	Shri Ashok Kumar Ambastha
Date of conclusion of Hearing	:	07.03.2024
Date of Pronouncement	:	05.04.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the revenue against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 09.01.2023 for the A.Y. 2017-18.

2. Brief facts of the case are, assessee filed its return of income on 06.01.2018 declaring income of ₹.68,02,270/- for the assessment year under consideration and the return was processed under section 143(1) of Income-tax Act, 1961 (in short "Act"). Subsequently, the return was selected for scrutiny under CASS and notices under section 143(2) and 142(1) of the Act along with questionnaire were issued and served on the assessee. In response, assessee filed electronic submission in "E-Proceeding" as per the requirements.

3. The assessee firm is engaged in the business of Bullion Refinery trading. During the year under consideration, the assessee has declared income under the head "Income from Business & profession". During the course of the assessment proceedings, Assessing Officer observed that assessee has deposited an amount of ₹.6,50,96,500 in three different bank accounts on account of Specified Bank Notes [SBNs] during the demonetization period. Further, all these deposits are on account of cash sales conducted on a single day i.e. 08.11.2016 of ₹.6,24,72,313/- and ₹.26,24,187/- on account of opening cash in hand as on 08.11.2016. Further, Assessing Officer observed that prior to 08.11.2016, the assessee's monthly cash sales did not even exceed ₹.1,00,00,000 in any of the months starting from April 2016 to October

2016. Accordingly, Assessing Officer suspected how cash sales worth ₹.6,24,72,313 could occur, that too, on a single day. Assessing Officer asked the assessee to justify the same by issue of notice u/s 142(1) of the Act. In response, assessee filed its details on 25.12.2019 through ITBA portal.

4. After considering the submissions of the assessee Assessing Officer rejected the same due to following reasons: -

"1. The assessee has surprisingly conducted sales in cash in SBNs on a single day i.e. Rs. 6,24,72,313. Further, this cash along with opening cash in hand is deposited on 6 different occasions on 10.11.2016, 11.11.2016, 12.11.2016, 13.11.2016, 19.11.2016, 05.12.2016 in three bank accounts. It does not fit within reasonable logic as to how such huge cash sales could happen on a single day;

2. The Invoices submitted for cash sales are perused and the same look made up and non- genuine. The signatures and names of parties are unverified and non-credible. Further, the assessee has received on an average Rs. 1,50,000- Rs. 2,00,000 per sale transaction in cash which is highly improbable and unrealistic and therefore, beyond any human probability, Hence, It can be easily inferred that bogus cash sale below Rs. 2,00,000/- are booked only to avoid KYC provisions and also to make verification of bogus cash sale booked impossible. This process is only used as a colourable device only to bring into the books the unaccounted and unexplained money generated through out of books activities.

3. Further, it is also most pertinent to mention here that Assessee has deposited the cash in hand in installments and it is also beyond human probability that a person would hold cash in hand and then deposit the same in bank at different dates at those times when there was a great rush in banks and any reasonable person would have deposited the same in the first opportunity.

4. *Further, the assessee has not produced any other credible evidence to even remotely suggest that the transaction of sale is a genuine transaction."*

5. On the basis of above observations, assessing officer concluded that concocted cash sale has been booked by the assessee to adjust his undisclosed income during the demonetization period. Assessing Officer proceeded to determine the income of the assessee at ₹.7,18,98,770/- by adding an amount of ₹.6,50,96,500/- under section 68 of the Act and observed as under: -

"6.1 Assessee has manipulated books of account to adjust his undisclosed money.

6.2 Assessee has pretended that he has sold stock and cash received from the sale is deposited in the bank. This connotation of the assessee is not accepted because actually assessee has undertaken purchases and sales out of the book, therefore to adjust his undisclosed money, during demonetization period he has booked concocted cash sale from April 2016 to November, 2016 (upto 08/11/2016).

6.3 Concocted cash sale cannot be booked without manipulation in books of account and in this case assessee INCOME must have manipulated books of account.

6.4. Human Probability Test: The explanations offered by the assessee are not accepted for the following reasons:-

(a) In the ordinary course, it is human tendency that a person who possesses a large amount of cash in hand, will deposit the same into the bank account immediately, once he comes to know that the currencies which he holds/possesses are banned by the prescribed authorities from circulation and that too, he will deposit all the currencies in on a single day as one time deposit and not in piece-meal at different dates. If it is not done within a reasonable time, it is for the assessee to prove the reasons for not doing so. "Human Probability Test" is one of the

important tests laid down the highest Court of India in order to check the genuineness of the transactions entered into the books of account of the assessee's. The "Human Probability Tests" were laid down for the first time in the case of CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC) and followed in the case of Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC). The Human Probability test was also applied in the following cases:

1. *A. Rajendran & Ors. vs. ACIT (2006) 204 CTR (Mad) 9*
2. *Hacienda Farms (P) LTD. vs. CIT (2011) 239 CTR (Del) 212*
3. *Major Metals Ltd. vs. UOI AND ORS (2012) 251 CTR (Bom) 385*
4. *Pradip Kumar Loyalka vs. ITO (1997) 59 TTJ (Pat)(TM) 655*
5. *ACIT vs. Sampat Raj Ranka (2001) 73 TTJ (Jd) 642*

(b) Thus, the Court has laid down a test to analyze the genuineness of the entry through the logical analysis. The "Human Probability Test" could be applied when the Assessee makes the Officer to believe his/her story as a valid event. The false claims of the Assessee cannot sustain before the test of Human Probabilities.

As enumerated in the decision of the Hon'ble Supreme Court in the case of Roshan Di Hatti Vs Cit (1977) 107 ITR 938 (SC), Kale Khan Mohammed Hanif Vs CIT (1963) 50 ITR 1 (SC), it has been held in various judicial pronouncement that where the nature and source of any receipt/investment, whether it be a money or other property, cannot be satisfactorily explained by the assessee, it is open for the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source. In the case of the assessee, the assessee could not explain the sources for making deposit of cash in SBN notes to the extent of Rs. 6,50,96,500

7. In view of above facts and circumstances addition of 100% of the cash deposit in the bank in demonetization period as being manipulated will meet the end of justice. Keeping the view of natural justice, amounting to Rs. 6,50,96,500/- is added back to the income of the assessee u/s 68 of the I. T. Act, 1961. Penalty proceedings u/s 271AAC of the I. T. Act, 1961 is hereby initiated separately. It is specifically mentioned that the addition is being made u/s 115BBE of the I. T. Act, 1961.

(Addition of Rs. 6,50,96,500/- u/s 68 of the I. T. Act, 1961.)"

6. Being aggrieved, assessee preferred an appeal before the Ld.CIT(A) and challenged additions made by the Assessing Officer of ₹.6,50,96,500/- under section 68 of the Act. Assessee has filed detailed submissions before the Ld.CIT(A), after considering detailed submissions, Ld.CIT(A) deleted the addition made by the Assessing Officer by observing as under: -

"6.3 I have carefully considered the arguments of AO, the submissions made by the appellant as extracted above and Paper Book filed. Only issue in this case is the cash deposit of Rs.6,50,96,500/- made by the appellant in its bank accounts during the first few days of demonetization announced by the Government on 8th November 2016. Assessee submitted the details on 25.12.2019 through ITBA portal and the AO completed the assessment on 28.12.2019. AO had not accepted the arguments of the appellant and in the assessment order she observed that as per the explanation these deposits were made out of cash sales conducted on a single day ie 08.11.2016 of Rs.6,24,72,313/- and cash in hand as on 08.11.2016 being Rs.26,24,187/- and this cash was deposited on 6 different days in three bank accounts. She observed that such huge cash sales could not happen on a single day as prior to 08.11.2016, the assessee's monthly cash sales were about Rs.1,00,00,000/-, She observed that the invoices submitted look made up and non genuine, the signatures and names of parties are unverified and non-credible Receiving an average Rs. 1,50,000/- to Rs.2,00,000/- per sale transaction in cash is beyond any human probability and this was done to avoid KYC provisions. This process, she argued, was used as colourable device to bring the unaccounted and unexplained money generated through out of books activities into the books.

6.4 AO reached to a conclusion that concocted cash sales were booked by the assessee to adjust his undisclosed income during the demonetization period and books of account are manipulated to adjust his undisclosed money. AD supported her theory by stating that the assessee has generally undertaken purchases and sales out of the book from April, 2010 to November, 2010 (upto 00.11.2010). merefore, to adjust his undisclosed money, during demonetization period he has booked concocted cash sales.

6.5 The AO observed that it is human tendency that a person who has large amount of cash in hand will deposit the same into the bank account immediately once he comes to know that the currencies are banned by the government from circulation but not in piece-meal at different dates. In this case the amount from cash sales received on 8th November 2016 was deposited over period of five days instead of in a single day in the bank account, which is not a normal behavior and the explanation offered by the assessee fails test of Human Probability. She placed reliance on case of CIT Vs Durga Prasad More (1971) 82 ITR 540(SC) and followed in the case of Sumati Dayal Vs CIT (1995) 214 ITR 801 (SC). Finally, AO held that as the assessee could not explain the sources for making deposit of SBN notes to the extent of Rs.6,50,96,500/-, placing reliance on the decision of the Hon'ble S.C in the case of Roshan Di Hatti Vs CIT (1977) 107 ITR 938 (SC), Kale Khan Mohammed Hanif Vs CIT (1963) 50 ITR 1 (SC) she added the amount u/s 68 of the Act.

6.6 Countering the arguments of the AO, the appellant made a detailed written submission which is extracted above. Appellant submitted that the assessee is a partnership firm, started its operation during the financial year 2015-16, engaged in the business of dealing in bullion, being refining and trading of Gold / Silver. Partners have 35 years of experience in the same business under the original firm NIBR, but now after the partition, business is done under the name NIBR-ACA. Trading in Gold and silver Includes purchase of Gold and Silver in big quantity and converting and selling gold coins and silver coins, purchase of gold and gold jewellery from the customers, melt the same and recover gold which is converted into slabs of different denomination. It stated in the submissions that to support the melting gold and silver in big volume, the appellant has gold refinery situated at CTS # 1285, A/H 29 Kanjur Village Road, Kanjurmarg Mumbai admeasuring 11,661 sq ft, which is used for its own business as well as for job work and with 30 staff employed, the refinery has manufacturing capacity of 800 kg per day of silver and 50 kg gold per day. It is further submitted that the appellant uses SAB ERP, ABS and ilogic software to maintain its books of accounts and stock register. The appellant has submitted a Paper Book (referred to as PB here after) in ITBA containing sales register and stock registers of shop and refinery.

6.7 To summaries, the appellant made following arguments in its submissions reproduced above against the arguments made by the AO in the assessment order

1. Stock registers of Shop and Factory show that the firm was having sufficient quantity of stock of Gold and Silver as closing stock on 07/11/2016, which was sold on 08/11/2016.

1. Stock of Gold and Silver are certified by Tax Auditor in Tax Audit Report of the appellant and no adverse comments are given by Tax Auditor for the same.

1. Cash book of shop and factory given on page number 102-134 of the paper book clearly show the entries of cash sales made on 08/11/2016 and appellant was having sufficient cash balance as on 08/11/2016 which is deposited subsequently, which make the source of cash deposited very clear

1. The cash sales made by the appellant are supported by the copies of invoices prepared as per the requirement of Maharashtra VAT Act and also supported by VAT returns given in the paper book.

1. Due to declaration of demonetization announced on 8th November 2016 at 8:00PM, customers turned out in large number to jewelry shops for purchasing jewelry and other related items. This is supported by news headlines submitted on page no. 206-207 of the PB. The shop and factory of the appellant company were no exception to this public demand.

1. The appellant has submitted that cash was deposited in 3 banks in tranches because of tremendous rush and big line at the banks for deposit and withdrawal of cash and it was prudent for a business man not to carry the full amount of cash on one day to one bank. The fact of huge rush in bank is supported by News head line given on page no. 205 of the paper book.

6.8 Along with submissions filed by the appellant, I have gone through the PB in which Sales Register, Stock Register, cash book, Audit Report are filed along with other documents. The appellant has submitted stock register for the period 01/04/2016 to 31/03/2017 during the assessment proceedings. Copy of stock register for shop is on page no.82 to 97 and the copy of stock register for refinery is on page. no. 98 to 100. It is noticed that the stock register is having date of purchase, opening quantity at shop, opening quantity at refinery, purchases, quantity received for job work of appellant and issued received, purchases, sales, quantity issued for job work of appellant and received back, stock of samples, closing stock at shop and closing stock of shop at refinery, Similarly, stock register of refinery gives details of date. Opening quantity, receipt, issue and closing quantity. On page no.

208 of the paper book, there is a comparison chart of stock. Examination of comparison chart shows that there is always more or less same quantity of stock on other days also and there does not appear any manipulation in stock on the date of demonetization, as alleged by the AO.

6.9 Sales register of shop and factory is on pages no. 209-227, and summary of movement of stock of Gold and Silver as on 08/11/2016 is on page no. 101 of the PB. From the summary it is seen that the appellant was having total 14,876.74 gms of gold, out of which 9286.50 gms was of its shop and 5590.243 gms was of refinery. The appellant has made purchases of 2589.88 gms for shop and made cash sales of 15,303.57 gms and sales on credit Of 1805.90 gms. Similarly, the appellant was having opening stock of total 322.80 kgs of silver, out of which cash sales was made for 227.465 kgs and made credit sales of 80.61 Kgs

6.10 In the stock register, purchase made increases the stock and sales made decreases the stock. 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. Alternatively, one has to point out defects in the stock registers/stocks maintained based on other information if any. I am of the opinion that if there is 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. In the assessment order, the assessing officer has not pointed out any faults/mistakes in the purchases and stocks. The books of accounts of the appellant firm are audited u/s 44AB of the Act and the Audit report is in the PB filed. Perusal of the financial statements available on pages 27 to 36 of PB show the reduction of Stock position is matching with the sales, which goes to say that the cash received/deposited represents the sales.

6.11 It is seen that the appellant filed cash book for shop on page no.102 to 128 and cash book for refinery on page no. 129 to 134. It is noticed from page no.121 of the cash book of shop, there was a cash balance at shop of Rs. 4,34,89,563 and page. 134 shows that the appellant was having cash balance at refinery of Rs.2,23,50,233, Total available cash balance is Rs.6,58,39,696 at the end of eth November 2016. Out of which the appellant has deposited cash of Rs.6.50.96,600 into bank accounts. 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. Source of SBN of 500 and 1000 deposited in banks is available on page no.60 of the PB.

6.12 It is observed that the appellant maintained the proper books of account in regular course of business which were duly

audited by the independent Chartered Accountant under section 44AB of the Act, all the sales, purchases and stocks were recorded in the books of account which had not been doubted by the AO. The sales shown by the appellant had been accepted by Sales Tax/VAT Department. Copies of VAT returns are on page no. 135 to 194 of PB.

6.13 AO in the assessment order raised doubt that all the cash sale transaction amounts are between Rs.1,50,000/- and Rs.2,00,000/-, is beyond any human probability and this was done to avoid KYC provisions. She argued that this method was used as colourable device to bring the unaccounted money generated through out of books activities made before the announcement of demonetization into the books. It is true that No KYC is required for the sales up to Rs.2,00,000 as per section 139(A)(5)(c) of the Act read with Rule 1148 of the I.T. Rules, therefore if customer chooses to keep his purchases or splits a purchase between the family members, it cannot be blamed on the seller. It is also true that no businessmen can refuse to make sale 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 Maharashtra VAT Act, that cannot be doubted, particularly in the rush of the hour. The identity of the purchasers to whom cash sales were made was disclosed in the sale bills where the name of the party and address of party are mentioned. Some copies of sale bills are available on page no.195 to 204 of the PB If the AO alleges that the appellant used cash sales as colourable device to bring the unaccounted money generated through out of books activities made before the announcement of demonetization, 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. In the absence of any evidence, blind allegation cannot be accepted under the law.

6.14 After careful examination of the facts of the case, arguments of the AO particularly the doubt raised over single days sales, deposit of cash over five days instead of one single day in the bank and application theory of human probability and the 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. Appellant company had submitted cash book (for shop and factory) as a supporting evidence for cash receipts. In the cash book it can be clearly seen that source of cash deposits are cash sales made on 08/11/2016. When the Rule 1148 of I.T. Rules, 1962 r.w.s 139(A)(5)(c) of the Act provides that no

KYC is required, it is human nature that people will restrict each transaction to below 2 lakhs only and the appellant has made cash sales within four corners of law. The Summary Chart of stock movement given on page no. 101 clearly reflects that appellant was having sufficient quantities of gold and silver stock which was sold on 08/11/2016. The summary of cash book showing the cash flow shows that there was no unusual cash deposit vis-a vis the collection out of cash sales during the year. AO has not pointed out single defect in the books of account but rejected the books of accounts which is surprising. The allegation of manipulation of books by the appellant is not supported by any evidence. The appellant has deposited more than 99.20% of the cash in 4 days i.e. 10th to 13th November, considering the amount and the rush in the banks during those days, depositing in tranches cannot be considered unusual.

6.15 Test of human probability cannot be applied under unusual situations like the demonetisation. Human probability test cannot be applied on the appellant's case, because it was the known fact that there was huge rush in jeweler shop and hence, huge cash sales of the appellant made on 08/11/2016 cannot be doubted comparing the normal day sales. Also, there was huge rush in banks and hence, depositing cash in tranches is normal and no adverse inference can be drawn by applying human probability test Ignoring the evidences produced by the appellant supporting the availability of stock and cash. The appellant company was maintaining the stock almost constantly the same as could be seen from comparison of stock on various dates given on page no. 208 and therefore there is no manipulation of stock as on 08/11/2016.

6.16 There was no whisper in the entire impugned Assessment Order pointing out any such discrepancy in stock and cash book. The appellant has established the sales with the bills and outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. Therefore I do not find any reason to suspect the sales merely because huge cash sales in single day, cash was not deposited in single tranche and non-availability of KYC documents for sale not deposit below 2 lakhs. The contention of the appellant that due to demonetization, the public became panic and made the investment in jewelry thereby thronged the jewelry shops appear to be reasonable and supported by the newspaper clippings. It is seen from the newspaper clippings that there was unusual rush in various jewelry shops immediately after announcement of demonetization that there was huge rush in banks after demonetization and hence, huge cash sales of gold and jewelry and depositing cash in tranches in banks by the appellant can be treated as logical and acceptable.

6.17 Appellant relied on number of case laws in support its submissions. In the case of ACIT Central Circle- Visakhapatnam vs. Heera Panna Jewellers decided by Hon'ble ITAT, Visakhapatnam Bench it is held.

".....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 outflow 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".

6.18 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 and in the unique circumstances of announcement of demonetization of higher denominated notes on 8th November 2016, huge cash sales made by the appellant on 8th of November 2016 and deposit of that cash in tranches in bank is satisfactorily explained by the appellant and there is no abnormality in the same. Therefore, the AO is directed to delete the addition of Rs.6,50,96,500/- made. The appellant gets the relief. The grounds of appeal 2 to 8 are allowed.

7. In the ground number 9, appellant made an alternative argument that as the appellant has already offered the income embedded in the cash sales which is credited to the profit and loss account, therefore deserves a relief. As the grounds of appeal 2 to 8 have been decided in favour of the appellant, there is no need to adjudicate this ground, hence dismissed as infructuous.

8. Ground No.10 and 11 relate to levying interest u/s.234A and 2348 of the Act. The levy of interest is mandatory as held by the Hon'ble Supreme Court in the case of CIT V Anjum M H Ghaswala (2001) 252 ITR 1 (SC). Hence, the contention of the appellant cannot be considered to be legally tenable, however in view of the decision in respect of the other grounds, this ground is dismissed.

9. The next ground of appeal is that the appellant craves leave to add, alter or amend the grounds of appeal which are without prejudice to the one other. No such option has been exercised by

the appellant during the appeal proceedings and hence, does not require any adjudication.

10. In the result the appeal is allowed."

7. Aggrieved by the above order of Ld.CIT(A), revenue is in appeal before us raising following grounds in its appeal: -

"1. Whether on the facts and circumstances of the case the Ld. CIT(A) erred ignoring, the fact the assessee sold bullion in cash in SBNs of Rs. 6,24,72,313/- in less than Four hours i.e. from 8PM when the demonetization was declared to 12 PM on 08.11.2016 and details of the name and address of the parties to whom sales has been made and impugned cash has been received has not submitted before the AO.

2. Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in not appreciating the fact that sales in cash in SBNs, within Four hours i.e. from 8PM when the demonetization was declared to 12 PM on 08.11.2016, of Rs. 6,24,72,313/- and cash deposits in installments in bank accounts is not as per Human Probability Test as laid down by the Hon'ble Supreme Court of India in the case of Sumati Dayal vs CIT (995) 214 ITR 801(SC)."

3. Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in holding that there was no reason to suspect the sales, ignoring the fact of that huge cash sales were made in a single day, cash was not deposited in a single tranche and the details of the sales was not.de available which all contradict the human probability test.

4. The appellant craves leave to add, amend, alter substitute or modify any of the above grounds or add a fresh ground as and when found necessary either before or at the time of hearing."

8. At the time of hearing, Ld. DR brought to our notice relevant facts of the case from the assessment order and submitted that Ld CIT(A) has accepted the documents submitted before him without proper verification, furthermore, he has allowed the appeal. He brought to our

notice that assessee has maintained stock in two places and the sales declared by the assessee in the shop is different that the sales declared in stock register submitted before the authorities. He submitted that the stock register is modified to suit the assessee's books of account. He relied on the order of the Assessing Officer. Ld. DR prayed to set aside the order of the Ld.CIT(A) and that of the order of the Assessing Officer be restored.

9. On the other hand, Ld. AR reiterated the submissions made before the Ld. CIT(A) and brought to our notice bank statements and the books maintained by the assessee. With regard to the query raised by the Ld.DR on the mismatch of sales figures declared by the assessee, he brought to our notice two separate stock register were maintained in shop as well as refinery, where the golds are melted and refined, which is a separate place of operation. He explained the figures of both the places from the relevant documents place on record in the form of paper book, which was matching with the figures submitted before Ld CIT(A). Ld.AR of the assessee relied on the order of the Ld. CIT(A) and prayed to dismiss the appeal filed by the revenue.

10. Considered the rival submissions and material placed on record, we observe from the record, Assessing Officer has observed that assessee has deposited huge cash during demonetization period. We observe from the record that the assessee has deposited cash on a single day i.e., on 08.11.2016 to the tune of ₹.6,24,72,313/-. These cash deposits are proceeds of sales recorded during the 08.11.2016. In support of the above, the assessee has submitted details of parties to whom the purchase/sales were effected for more than the value of ₹.2 lakhs., the details include their name, PAN and address, which is placed on record in the form of paper book. The assessee also reconciled the gold stock maintained in two places viz., shop and refinery with the above sales and purchases recorded during this period and submitted before Ld. CIT(A). These cash collection and bank deposits were also reconciled and submitted before Assessing Officer for the periods under consideration. The Assessing Officer has not found any discrepancies in the above statement and the stocks are matching (maintained in two places) with the audited financial statement submitted before tax authorities. Further we observe that the assessee has followed the procedure of declaring the details of persons from whom the transaction value is above the limit prescribed under rule 114B of the I.T. Rules and their PAN details has to be submitted. With

regard to transaction values less than 2 lakhs, there is no requirement to declare the details of the parties. In this case, the assessee has followed the procedure accordingly.

11. Before us, Ld. DR submitted that the stock registers maintained by assessee are not reliable by bringing the stock declared during the assessment proceedings. Further, he submitted that the sales were effected within four hours of declaration of demonetization to the various parties which is not believable. In our view, the fact remains that assessee is in the business of manufacturing and selling of gold jewellerys. The possible method of conversion of currencies by buying the gold and gold jewels cannot be denied. The assessee has demonstrated that it has sold the gold/jewellery during this period. The revenue has not brought any contrary findings that the assessee has deposited the cash other than sale of jewellerys. The Assessing Officer finds fault on the recordings of sales. The revenue has not found any other material to show that assessee has deposited the cash from other possible income.

12. We observe that the assessee has already demonstrated that the sales and purchases effected by it are properly reflected in its books of

account and there is no discrepancies found by the tax authorities. The additions has to be supported by the evidences. In the given case, the assessee has submitted the relevant information during the assessment proceedings the sources for the cash deposits are only sale of gold/gold jewelleryes. When all the information is already submitted and the cash deposits are matching with the financial statements submitted before the authorities, the Assessing Officer cannot still consider it to be undisclosed deposits. Therefore, we rely on the decision of ITAT Visakhapatnam in the case of Hirapanna Jewellers (supra), which held that:-

"In the instant case, the facts clearly support that the assessee has made the sales and there were sufficient stocks to meet the sales. Thus, the facts of the assessee's case are clearly distinguishable. The Ld.DR further relied on the decisions of Kale Khan Mohammad Hanif, 50 ITRI (SC), wherein, the Hon'ble Supreme Court held that the AO is permitted to make addition of unexplained cash credits even though the income is estimated on sales. In the instant case, the AO had accepted the sales and no unexplained cash credits were found, thus, the case law relied upon by the Ld.DR is also distinguishable on the facts of the case. The Ld.DR relied on the decision of CIT VS P.Mohanakala, 161 Taxmann 169, CIT vs Devi Prasad Vishwanath Prasad 72 ITR 194(SC) both the cases refer to the sums found credited in the books of account but not offered as income, whereas in the instant case the assessee admitted the same as sales and offered for taxation, hence, the case laws has no application in the assessee's case. The Ld.DR also relied on the decision in Naresh Kumar Tulshanus. 5th ITO, ITAT Bombay (supra), the decision was related to the addition u/s 69A representing huge deposit of cash in bank for which the initial source was declared as past profits and subsequently explained as withdrawal from partnership firm without relevant matching entries in the banks, therefore, the coordinate bench of ITAT held that withdrawal of such huge amount in high denomination was not

practicable. The Ld.DR also relied on the decision of J.M.J. Essential Oil Company Vs. ITO, 100 taxmann.com 181 in the cited case, the assessee effected large sales in one month of each year continuously for two years and the assessee is eligible for deduction u/s 80IC and the AO observed that the assessee was inflating the sales and claiming the huge deductions. No such cash inflow is involved due to demonetization. Whereas in the assessee's case there were no such deduction or the exempt income and the profits were also not abnormal. The assessee explained the reason for huge sales with evidence and thus the case law relied up on by the DR is distinguishable. The Ld DR relied on various case laws and all the case laws more or less are related to the additions made u/s 68 as unexplained cash credit and in none of the cases the assessees have admitted the same as income. Therefore, we find that the case laws relied up on by the Ld.DR has no application in the instant case and the same are distinguishable.

In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House (Supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra), Hence, we do not see any reason to interfere with the order of the Ld. CIT(A) and the same is upheld.

The assessee filed cross objections supporting the order of the Id. CIT(A). Since, the appeal of the revenue is dismissed, the cross objection filed by the assessee becomes infructuous, hence, dismissed."

13. Therefore, respectfully following the above decision and we observe that Ld. CIT(A) has deleted the addition by considering the various aspects and observed that "if there is 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" and by

following the decision of Hirapanna Jewellers (supra) deleted the addition made by the Assessing Officer. Accordingly, we do not see any reason to interfere with the findings of Ld CIT(A) in this regard and accordingly, we dismiss the grounds raised by the revenue.

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

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

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Mumbai / Dated 05/04/2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum