

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.1189/Del/2022
(ASSESSMENT YEAR 2017-18)**

| | | |
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| Income Tax Officer Ward-51(5) Delhi | Vs. | Ramesh Chander Rajput 3086/36 Beadon Pura, Karol Bagh New Delhi-110005 PAN-AAEPR8636B |
| (Appellant) | | (Respondent) |

| | |
|---------------|--------------------|
| Assessee by | Mr. R.S. Ahuja, CA |
| Respondent by | Ms. Mayuri, Sr. DR |

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|-----------------------|------------|
| Date of Hearing | 23/04/2024 |
| Date of Pronouncement | 03/05/2024 |

ORDER

PER S.RIFAUR RAHMAN, AM:

This appeal has been filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [“Ld. CIT(A)”, for short], dated 28/01/2022 for Assessment Year 2017-18.

2. The grounds raised by the Revenue are as under:

“1. Whether the Ld. CIT(A) is correct in law in deleting the addition made under the provision of section 68 of the Income Tax Act, 1961, and treating cash deposit as sales, when assessee during the course of

assessment failed to provide any justification for maintaining high level of cash.

2. Whether Ld. CIT(A) is correct in concluding that AO did not bring any material on record against assessee in respect of cash sales which was deposited by assessee in the bank, when assessee itself is non cooperative during the course of assessment and filed its first, partial reply at the fag end of the time barring after a period of 15 months from the issuance of first notice.

3. Whether Ld. CIT(A) is correct in concluding that took of accounts was accepted by the AO, when assessing officer specifically mentioned in the assessment order that months wise cash in hand figures have been manipulated by the assessee to justify the unaccounted cash.

4. Whether Ld. CIT(A) is correct in referring to the Judgment of ITAT, Vishkapatnam in ACIT, Central Circle-1 V/S M/s Hirapanna Jewellers in the present case, when facts of the cases are different in the present case to the relied on.

5. The appellant craves leave to add, alter, remove and modify any ground of appeal.”

3. Brief facts of the case are, the return was filed by the assessee on 29/10/2017 declaring total income of Rs.13,34,370/-. The case was selected for scrutiny under CASS to examine the issue ‘Cash deposit during demonetization period’. Accordingly, notice u/s 143(2) and 142(1) were issued through ITBA Portal of the Department on 27/08/2018 and 25/09/2018. Since, no compliance from the assessee side, further notices were issued to the assessee. In response, the assessee furnished the

details/documents on 18/12/2019. After perusing the details submitted by the assessee, the Assessing Officer observed certain mismatch in cash deposits and cash withdrawal of the assessee and he observed that on several occasions, assessee had withdrawn money even though it has sufficient funds in hand. The Assessing Officer observed from the monthly cash sales and cash deposits during the Financial Year 2015-16 and 2016-17, observed that there is substantial increase in cash sales and cash deposits during demonetization period when compared to previous assessment year. The Assessing Officer determined the unexplained cash deposits made in bank account to the extent of Rs.2,93,00,000/- by observing as under:

“5. (i) In response o the above notice, the assessee furnished details/documents on 18/12/2019, which have been examined. On the perusal of the details filed by the assessee it has been observed that in the regular manner cash in hand was maintaining from the range of Rs. 16.00 lacs to 50.00 lacs. Further, it is observed from the details furnished by the assessee that the assessee has withdrawn cash of Rs. 31,00,000/- from the bank in spite of the fact that cash in hand of Rs. 49.21,712/- was otherwise available with him. No justification for the cash withdrawal of Rs.31,00,000/- has been made by the assessee. In view of the fact, it can be concluded that the cash withdrawn by the assessee has been utilized for its personal purposes and month wise cash in hand shown in the chart is not the actual cash in hand available with him.

(ii) Further, on the perusal of the details filed by the assessee for the FY 2015- 16, it appears that the cash sales made during the month has been deposited into bank accounts immediately in the same month or if there

was some balance available with him that was also deposited in the following month. The opening and closing cash in hand in the FY 2015-16 was declared at Rs. 9,97,772/- and 9,27,309/- respectively only. Further, the comparable figures of FY 2017-18 are not provided by the assessee being these were specifically called for in notice issued u/s 142(1) on 17.11.2019.

(iii) Considering the above facts, it can be concluded that the month wise cash in hand figures have been manipulated by the assessee to justify the unaccounted cash available with him to deposit the same in bank accounts to make it appears to be genuine. The assessee has declared total cash sales of Rs. 2,82,99,977/- in the month of October and upto 8th Nov. 2016 (Rs.1,19,77,883/- Rs 1,63,22,094/-). Further, it is also observed that month wise cash sales has been declared by the assessee is in the range from Rs. 5.00 lakhs to Rs. 46.00 lakhs (except the sale declared in the month of Oct, and Nov, 2016). Being the quarterly VAT return for the quarter ending on 30.09.2016 either already filed or due for filing before the demonetization period, therefore, the assessee was unable to manage the cash sales before Oct., 2016.

(iv) Under the provisions of section 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.

(v) Considering the submissions made by the assessee and facts of the case as narrated above, it is justified to estimate that the cash in hand as on 30.09.2016 was available with the assessee amounting to Rs. 40,00,000/-, Considering the pattern of the cash sales for the quarter ending on 30.09.2016, the cash sales in the month of Oct, 2016 to 8th Nov, 2016 (i.e. 1.25 month) is estimated at Rs. 47,00,000/- (being the cash sale of July, Aug & Sept, 2016 amounting to Rs. 4295084 + 2321865+4620588-11237537/3=3745845X1.25=46,82,230/-). Since the demonetized currency was not a legal tender in the market w.e.f. 09-11-2016, therefore, a prudent businessman in the normal course of business shall deposit this currency in bank in one-go, which has not been done, rather has been deposited in six piece-meals. From the perusal of facts narrated here-in-above, the only inference can be drawn that the assessee has not furnished the true and correct particulars of the actual source of the cash deposits made during the demonetization period and in actual no cash was available in the books of account and the unaccounted demonetized currency available with assessee has been introduced in the books of account in the form of cash receipts from bogus sale. The

assessee has deposited total cash of Rs. 3,80,00,000/- during the demonetization period in the bank accounts maintained in Bank of Baroda, Indusind Bank and Yes Bank. Hence, the cash deposits aggregating to Rs. 2,93,00,000/- [Rs. 3,80,00,000 Rs. 87,00,000 (Rs. 40,00,000/- + Rs. 47,00,000/- as discussed above)] during the demonetization period in the A.Y. 2017-18 remained unexplained under the provisions of Section 68 of the Income Tax Act, 1961 and the same is hereby treated as assessee's unexplained cash credits / income for the year under consideration and added to the income of the Assessee. Tax on the income shall be computed as per the provisions of section 115BBE of the IT Act.”

4. It is relevant to note at this point of time that assessment order for the current year was passed by the Assessing Officer dated 20/12/2019 along with computation sheet determining the total demand of Rs.3,01,63,100/-. The above said order passed by the Assessing Officer is incomplete consists of only three pages. Subsequently, the above mistake was noticed by the Assessing Officer and passed corrigendum order on 24/12/2019, and in the above said corrigendum order, the Assessing Officer has reproduced the earlier order dated 20/12/2019 and pointed out that the above order was erroneously printed with the wrong data and passed a detailed assessment order in the form of corrigendum. At page 9 of the assessment order, he pointed out that the demand notice, computation of tax etc. are remain unchanged as passed alongwith the original Assessment Order dated 20/12/2019 as under:

“Further, it is hereby informed that all other contents (i.e. demand notice, computation of tax and penalty notice etc.) of the said order are remained same.”

5. Aggrieved with the above order, assessee preferred an appeal before the Ld. CIT(A), NFAC, Delhi. The assessee filed grounds of appeal and detailed note which is reproduced in the appellate order at page 5 to 18.

6. After considering the detailed submissions of the assessee, the Ld. CIT(A) allowed the appeal of the assessee with the following observations:

“6.2 In my opinion, the AO did not bring any material on record against assessee in respect of cash sales which was deposited by assessee in his bank accounts. The assessing officer accepted the records and books of account as per assessment order and he has admitted that the assessee has declared income from business. The AO did not examine the complete materials and records available before him in respect of sales, purchase, cash transactions and bank transactions relating to the appellant/ assessee's business. 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 purchases and the stocks. He has not disturbed the closing stock which has direct nexus with the sales. Once the purchases and stock is considered as genuine, the allegation that the genuineness of the cash sales remained unexplained is prima facie contrary and factually incorrect. The appellant explained that the cash was received on account of his business of trading in jewellery, electronics and handloom. On the other hand, the AO, in the assessment order, has not given any findings with regard to the sales or purchases of assessee.

6.3 The appellant relied on the judgement of Hon'ble ITAT, Visakhapatnam in the case of ACIT v Hirapanna Jewellers [2021] 128 taxmann.com 291. The Hon'ble ITAT, deleted the addition made for cash deposited by assessee- in its bank account post demonetization, since assessee had explained source of said cash deposits as sales, produced sale bills and admitted same as revenue receipt as well as offered it to tax and assessee also represented outgo of stocks, which was matching with sales. The Hon'ble ITAT dismissed the appeal of Revenue and observed as follows:

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 the 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 assessee. Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence.

Keeping in view of the facts and circumstances of the case as explained above, it is clear that the cash receipts represent the sales which the assessee has rightly offered for taxation. 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. Hence, the addition

made by the AO is liable to be deleted. Grounds No. 1 to 6 are accordingly allowed.”

7. Aggrieved with the above order, the Revenue is in appeal before us raising the following grounds of appeal:

“1. Whether the Ld. CIT(A) is correct in law in deleting the addition made under the provision of section 68 of the Income Tax Act, 1961, and treating cash deposit as sales, when assessee during the course of assessment failed to provide any justification for maintaining high level of cash.

2. Whether Ld. CIT(A) is correct in concluding that AO did not bring any material on record against assessee in respect of cash sales which was deposited by assessee in the bank, when assessee itself is non cooperative during the course of assessment and filed its first, partial reply at the fag end of the time barring after a period of 15 months from the issuance of first notice.

3. Whether Ld. CIT(A) is correct in concluding that took of accounts was accepted by the AO, when assessing officer specifically mentioned in the assessment order that months wise cash in hand figures have been manipulated by the assessee to justify the unaccounted cash.

4. Whether Ld. CIT(A) is correct in referring to the Judgment of ITAT, Vishkapatnam in ACIT, Central Circle-1 V/S M/s Hirapanna Jewellers in the present case, when facts of the cases are different in the present case to the relied on.

5. The appellant craves leave to add, alter, remove and modify any ground of appeal.”

The assessee also filed application under ‘Rule-27 of the ITAT Rules, 1963’ in which, assessee has raised following grounds of appeal:

“....

I. *Whether there can be two assessment orders for an Assessee for same assessment year?*

- II. *Whether the Assessment Order dated 24.12.2019 is illegal as the original assessment order was passed and uploaded on the portal on 20.12.2019? The Corrigendum to Order dated 24.12.2019 has not been uploaded as an Assessment Order but as a communication that too in a new tab on e-proceedings portal.*
 - III. *If the Assessment Order dated 24.12.2019, signed by the Ld. AO on 24.12.2019, is sustainable in the eyes of law, then, whether the demand notice under section 156 dated 20.12.2019, signed on 20.12.2019, is illegal as demand notice cannot be issued prior to the signing of the Assessment Order as held in Kallyan Kumar Ray V. CIT (1991) 191 ITR 634.?*
 - IV. *Whether the CIT (A) erred in declaring the Assessment Order dated 20.12.2019 as null and void without appreciating that there cannot be two Assessment Orders for same assessment proceedings and since the Order dated 20.12.2019 was a non- speaking order therefore was liable to be quashed at the threshold itself ?*
 - V. *Whether the AO erred in issuing the Corrigendum to the Assessment Order without issuing any notice to the Assessee ? ”*
8. At the time of hearing, the Ld. AR submitted as under:

“At the outset it is imperative to bring on record that the Ld. A.O. has passed Assessment order u/s 143(3) on 20.12.2019 and issued Computation and Notice of Demand u/s 156 of the IT Act, 1961. The order dated 20.12.2019, it is seen that the Assessment order has not been passed in accordance with the procedure laid down in law. Thereafter, the Ld. A.O passed corrigendum order on 24.12.2019 which reads as under:

"This is in continuation to Order passed w/s 143(3) of the Income Tax Act, 1961 for the Axst. Year 2017-18 on 20.12.2019 vide order No. ITBA/AST/S/143(3)/2019. 20/1022786534(1). It is to be brought in your knowledge that while passing the assessment order, due to some technical error following were printed:-Assessment Order dated 20.12.2019.

The same was erroneously printed. Now it is hereby informed that the same may be read as following:- Assessment Order dated 24.12.2019."

The Ld. CIT(A) has observed at Page 2 of its order that As noted above, the Assessing Officer has passed the corrigendum to assessment order stating that the order dated 20.12.2019 was erroneously printed, assessment order dated 20.12.2019 is null and void. Thus, corrigendum

order dated 24.12.2019 is treated as final assessment order u/s 143(3) of the Act.

That the Assessee vide an Application under Rule 27 of the Income Tax Appellate Tribunal Rules has challenged the validity of the Assessment Order on the following grounds:

I. Whether there can be two assessment orders for an Assessee for same assessment year. ?

II. Whether the Assessment Order dated 24.12.2019 is illegal as the original assessment order was passed and uploaded on the portal on 20.12.2019? The Corrigendum to Order dated 24.12.2019 has not been uploaded as an Assessment Order but as a communication that too in a new tab on e-proceedings portal.

III. If the Assessment Order dated 24.12.2019, signed by the Ld. AO on 24.12.2019, is sustainable in the eyes of law, then, whether the demand notice under section 156 dated 20.12.2019, signed on 20.12.2019, is illegal as demand notice cannot be issued prior to the signing of the Assessment Order as held in Kallyan Kumar Ray V. CIT (1991) 191 ITR 634.?

IV. Whether the CIT (A) erred in declaring the Assessment Order dated 20.12.2019 as null and void without appreciating that there cannot be two Assessment Orders for same assessment proceedings and since the Order dated 20.12.2019 was a non-speaking order therefore was liable to be quashed at the threshold itself.?

V. Whether the AO erred in issuing the Corrigendum to the Assessment Order without issuing any notice to the Assessee. ?

No notice was ever served upon the Assessee before passing the "Corrigendum to the Assessment Order dated 20.12.2019" this makes the corrigendum order invalid. Issuing a corrigendum order without giving notice to the Assessee is against the principles of natural justice.

As per law, notice of demand can only be issued once the Assessment order is drafted and signed by the Assessing Officer and not prior to that otherwise, the validity of the Notice of Demand will be vitiated. Reliance is placed on Kallyan Kumar Ray V. CIT (1991) 191 ITR 634. No additions were made in the first Assessment order, but the computation and notice of demand were issued. Addition u/s 68 was only made in the Corrigendum to the Assessment Order.”

9. On the other hand, the Ld. DR objected to the above submissions and submitted that the Assessing Officer has passed the order within the time and she agreed that Assessing Officer has passed the initial order dated 20/12/2019 by mistake in the ITBA Portal and she explained at that point of time such mistakes cannot be rectified by the Assessing Officer and it is a fact on record that the order was incomplete which was posted in ITBA Portal, she submitted that after noticing the mistake, the Assessing Officer passed the corrigendum order indicating the mistakes in the initial order and passed the proper order within the limitation period in the form of corrigendum order. The Assessing Officer has clearly indicated that the demand notice and computation of tax etc. are the same as passed along with initial order dated 20/12/2019. She prayed that the corrigendum order passed by the Assessing Officer is a proper order.

10. Considered the rival submissions and material placed on record, we observed that the Assessing Officer had passed the original assessment order dated 20/12/2019 with the incomplete information along with demand notice, computation of tax and

penalty notices. Subsequently, he noticed that he has uploaded wrong assessment order in ITBA Portal and the above said mistake could not be rectified through the system, he has passed the corrigendum order within the limitation period and passed the same on 24/12/2019 and all other demand and notices, computation sheet etc. are not modified or changed. Considering the fact that only the assessment order was uploaded by mistake and all other information relating to tax demand etc. are correct. Therefore, only the assessment order was modified not the demand, therefore, in our considered view that case law relied on by the assessee are not relevant for the facts on records, therefore, we are inclined to adjudicate the issue in favour of the Revenue and we hold that the corrigendum assessment order passed by the Assessing Officer is proper.

11. Coming to the merits of the case, the Ld. DR submitted that the assessee has made huge cash deposits during the period of demonetization, the case was also selected to verify the same. The Ld. DR submitted that the assessee has not submitted and not cooperated by not representing the case for almost one and half

year. Only at the fag end of the assessment proceedings, assessee has submitted the information. She submitted that the assessee has recorded huge sales particularly after demonetization and she submitted that the Assessing Officer has compared the cash sales and cash deposits during the year and previous assessment year and found that the monthly cash sales and cash deposits made by the assessee has increased many fold. She supported the findings of the Assessing Officer by filing hand written stock movements for the period of September and November. She submitted that assessee has recorded sales of 1,67,26,558/- and purchase recorded at Rs.66,48,686/- with the stock movements of Rs.1,00,97,129/-. She has calculated the G.P. Ratio of 39.63% for the month of November and similarly she has submitted the G.P. for the month of September and it is at 13.8%. With reference to above statistics, she submitted that assessee has manipulated the sales during the period. She prayed that the findings of the Assessing Officer may be sustained.

12. On the other hand, the Ld. AR submitted that the Assessee is a proprietor of three business concerns Rajput Jewellers, Rajput

Electronics and Rajput Handloom. The primary source of cash deposited is through the sale proceeds of Rajput Jewellers. Rajput Jewellers is a trading concern which deals in purchase and sale of Gold, Silver and Diamond Ornaments. Rajput Jewellers also purchases old gold from the customers and convert it into new ornaments. The present appeal is relating to AY 2017-18 wherein the case of the Assessee was selected for scrutiny which was concluded by making an addition of Rs. 2,93,00,000/- u/s 68 of the Income Tax Act, 1961.

13. The Ld. AR submitted that without prejudice to the legal grounds raised by the Assessee, it is submitted that the Assessee maintains proper books of accounts and its books are duly audited as per Income Tax Act, 1961.(Refer Tax Audit Report in Form 3CB-3CD at page 52-61 of the Paperbook) Pertinently, apart from a bald allegation by the Ld. A.O. in its order at para 5(iii) at page 8 of the Assessment Order that the Assessee has manipulated its books no other fallacy has been pointed out by the Ld. A.O. in the books. Ld. A.O. should be specific in alleging manipulation, he has admittedly not disputed opening and closing stock, purchases etc. therefore as

per law he cannot proceed on mere suspicion and doubt the sales of the Assessee.

14. The Ld. AR further submitted that the Ld. A.O. in its Show-Cause Notice dated 12.12.2019 in Para 3 (Refer Page No. 46 of the Paperbook) proposed to reject the books of Accounts of the Assessee and charge a Gross-Profit @18% however, post this SCN (, the Assessee's submissions dated 12.12.2019 were filed and in his Final Assessment Order dated 24.12.2019 (Corrigendum to Assessment Order) Ld. A.O has not rejected the books which clearly evidences that the Ld. A.O. has considered the voluminous documents filed by the Assessee and accepted the books. That during the course of the proceedings, the Assessee submitted the following documents:

| S. No. | Particulars | Page No. of the Paperbook |
|--------|---|---------------------------|
| 1. | Tax Audit Report u/s 44AB | 52 to 61 |
| 2. | ITR and Computation * | 62 to 63 |
| 3. | Audited Financial Statements | 64 to 85 |
| 4. | VAT Returns | 86 to 154 |
| 5. | Trial Balance | 155 |
| 6. | Cash Transaction report with Assessee's reply | 187 to 191 |

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| 7. | Cashbook 01.04.2016 to 31.03.2017 | 194 to 241 |
| 8. | VAT returns FY 2015-16 | 242 to 256 |
| 9. | Month-wise Cash Sales and Deposit FY 2016-17 | 270 |
| 10. | Month-wise Cash Sales and Deposit FY 2015-16 | 271 |
| 11. | Advance received from customers | 281 |
| 12. | Month-wise Stock Statement | 297 |
| 13. | Month-wise Sale and Purchase during AY 2017-18 | 347 |

15. The Ld. AR submitted that the Assessee is a person who keeps huge cash in hand which is also a finding of the Ld. A.O., though he had his reservations but it is a fact that the Assessee keeps huge cash in hand. A comparative statement of month-wise closing cash in hand for the Assessee is as follows:

Monthly closing cash in hand:

| Month | AY 2016-17 | AY 2017-18 |
|-----------|----------------|------------------|
| April | 54,44,398/- | 79,45,210.61/- |
| May | 58,29,818/- | 34,12,633.21/- |
| June | 27,42,407/- | 44,43,979.21/- |
| July | 29,36,624/- | 66,10,616.21/- |
| August | 30,95,777/- | 81,59,103.21/- |
| September | 54,78,043/- | 1,20,20,990.21/- |
| October | 64,44,836/- | 2,35,74,608.21/- |
| November | 82,87,105/- | 16,15,568.02/- |
| December | 44,17,201/- | 24,05,820.61/- |
| January | 48,56,017/- | 34,86,376.61/- |
| February | 31,99,792.61/- | 46,10,121.61/- |
| March | 9,32,309.61/- | 61,56,608.61/- |

16. The Ld. AR also submitted that, as far as the finding of the Ld. A.O. that the Assessee withdrew Rs. 31 lakhs from bank despite having Rs. 49,21,712/-cash in hand is concerned, in this regard it is submitted that the Assessee has a practice of having high cash in hand, he don't keep much balance in its bank accounts. This fact can be corroborated by the fact that when there is any payment is to be made through banking channel then only the Assessee deposit the amount so that the payment could be honored. Although, this withdrawal of Rs. 31 Lakhs pertains to April 2016 which is not relevant to the case at hand as the disputed amount/manipulation as alleged by the Ld. A.O in its para 5(iii) is post October 2016. It is submitted that the opening balance of cash in hand as on 01 October 2016 at Rs. 40 Lakhs is Adhoc as against the cash book figures of Rs. 1,20,35,988.61/- is totally uncalled.

17. The Ld. AR submitted that as far as the stocks are concerned, it is an undisputed fact that the Assessee had sufficient stocks in his books to support the sales made in October and November 2016 which is also accepted by the Ld. A.O. The only reservation raised by the Departmental Representative during the

course of the hearing was regarding the high GP ratio on the sales made on 08.11.2016 which in fact supports the case of the Assessee that the sale made on 08.11.2016 was made at relatively higher margin since the demand was at its peak.

18. The Ld. AR submitted that the further estimation of sales of the Assessee for 1.25 month i.e., 1.10.2016 to 08.11.2016 on average basis is also incorrect because sales have been accepted by VAT, by Income tax. If the Ld. A.O. wanted to reduce the sale he should take this figure out of the turnover as per P&L account.

19. The Ld. AR further submitted that the VAT returns are duly accepted by the VAT authorities and pertinently, no VAT return was revised for the year under consideration. It is submitted that the VAT return for quarter ending 30.09.2016 was filed on 28.10.2016 therefore the same cannot be doubted. It is important to note that the VAT assessment was also done in the case of the Assessee for the year under consideration wherein no demand was raised. All the invoices, ledgers, returns were duly accepted by the VAT department. Order dated 26.02.2021 having reference number

150083672394 passed by Gurudutt Ranga, AVATO (Ward 45), Delhi was placed on record during the hearing on 23.04.2024.

20. The Ld. AR submitted that the sales of the Assessee are duly reported to the VAT authorities, the Assessee placed the copies of its VAT returns (Refer Page 86 to 154 of the Paper book). The comparative statement of turnover of the Assessee clearly shows that there was no abnormal increase in the turnover of the Assessee for the year under consideration. The comparative statement for different Assessment Year is as follows:

Turnover as per VAT returns:

| Assessment Year | Turnover |
|-----------------|------------------|
| AY 2016-17 | Rs.7,53,73,559/- |
| AY 2017-18 | Rs.7,70,86,240/- |

21. The Ld. AR submitted that on the eve of 08th November 2016, the announcement of demonetization was made by the Hon'ble Prime Minister, after the announcement, there was an unprecedented rush at all the jewellery shops pan India including that of the Assessee. The shop is in the main market area making it easily approachable and the timing, i.e., 08:00 pm which is the peak time of the day when the footfall in the market is at its

maximum as compared to any point of time in a day. **The announcement triggered the public to rush towards jewellery shops as buying gold, diamonds and other precious stones was the most favorable investment one could make at such a short point of time. It is pertinent to mention that as per the news reports, all the Jewellers of the country reported unusual high volume of sale that day.** Due to panic and high rush, the customers were not bothered with the design of the jewellery but only focused on its weight and purity, thereby the time and attention taken by a customer was substantially very less which enabled the Assessee and its staff to cater many customers. **In fact, it is imperative to bring on record that the October 2016 was the month of festivals such as Karva Chauth (19.10.2016), Dhanteras (28.10.2016) Diwali (30.10.2016), Dussehra (11.10.2016), and Bhai Dooj (01.11.2016), also due to upcoming wedding season the sales for October were at peak.** It is pertinent to mention that all the sales were duly recorded in the books, invoices were generated and reported to the VAT authorities. Also, the sales are duly reflected in the P&L account of the

Assessee. The books of account of the Assessee are duly audited and reported to the Income Tax Authorities. It is important to note that no single adverse comment has been given by the auditors during their audit of the said books.

22. The Ld. AR submitted that the said order has been passed completely on surmises and conjectures and not on legal principles. The Ld. AO has wrongly stated that the Assessee has failed to provide documents and information to substantiate the claims which is contradictory to the records.

23. The Ld. AR submitted that the Assessee strongly relies on the recent order dated 12/05/2021 of the **Hon'ble ITAT Vishakhapatnam in the matter of Asst Commissioner of Income Tax 1 V. M/s. Hirapanna Jewellers ITA/253/Viz/2020, (Refer Page 38 of the Legal Paperbook)** wherein the Hon'ble ITAT held that the announcement of demonetization led to unprecedented rush towards the jewellery shops which soared the sales of gold and diamond jewellery and the cash receipts represent the sales which the Appellant has rightly offered for taxation. The

facts of this case were similar to that of the Assessee as the sales in October and November were high on account of festival season and due to unprecedented demonetisation therefore the Assessee strongly relies on this case as it is squarely applicable to the facts and circumstances of the present case. Trading account of the Appellant shows sufficient stock to effect the sales.

Relevant extract has been reproduced herein below:

“.....

The Ld. DR placed reliance on various decisions. In the case of Sumati Dayal Vs. CIT (supra), CIT vs Durga Prasad More 82 ITR 540) both the cases are related to the circumstantial evidences in the absence of direct evidence. 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.

9. 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.

24. It is humbly submitted that unparalleled situations breeds unparalleled outcomes, demonetization was one of such situation which bred extemporaneous rush in the jewellery shops pan India;

Therefore, it cannot be said that the Assessee has manipulated the books to cover-up his unaccounted money which is contrary to the facts and circumstances which are completely supporting the case of the Appellant.

25. The Ld. AR submitted that the Assessee strongly relies on the order dated 09.04.2010 passed by Hon'ble High Court of Delhi in the matter of *Commissioner of Income Tax V. Kailash Jewellery House ITA/613/2010*. Wherein the finding of the Hon'ble Tribunal as well the Ld. CIT (Appeals) that in the cases of cash deposited as proceeds from sales whereby the sales are duly recorded in the books of Assessee and had found place in the profit and loss account was not interfered with.

Relevant extract has been reproduced herein below:

"4. The Tribunal also noted that the departmental representative could not challenge the factual finding recorded by the Commissioner of Income-tax (Appeals). Nor could he advance any substantive argument in support of his appeal. The Tribunal also observed that it is not in dispute that the sum of Rs 24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the Assessee in its return. It is in these circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same."

26. The Ld. AR submitted that the Assessee also relies upon the order of Hon'ble ITAT Delhi in the matter of Kishore Jeram Bhai Khaniya v. ITO [ITA. No. 980, 1220/Del./2011 dated 13.05.2014 ITAT- Delhi) wherein it is specifically held that once the amount of cash sales has been shown as income by duly including it in his total sales, the same cannot be considered u/s 68 of the IT Act.

Relevant extract has been reproduced herein below:

"There is another dimension to this issue. The Assessing Officer made addition of Rs. 22.06 lacs u/s 68 of the Act, which contemplates the making of addition where any sum found credited in the books of the Assessee is not proved to the satisfaction of the A.O. It is only when such a sum is not proved that the Assessing Officer proceeds to make addition u/s 68 of the Act. We are dealing with a situation in which the Assessee has himself offered the amount of cash sales as his income by duly including it in his total sales. Once a particular amount is already offered for taxation, the same cannot be again considered u/s 68 of the Act. In fact, such addition has resulted into double addition."

27. The **Hon'ble Supreme Court in the case of CIT v. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194** that "It is for the Assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed. The Assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again."

28. Having provided the explanation for the said cash deposit by the Assessee, pertinently voluminous records were provided to the AO, but AO wrongly proceeded on conjectures and surmises without appreciating the material placed on record. It is a settled position that AO cannot just reject the material placed and or explanation provided by the Assessee without proving the same to be false with substantiating evidence.

29. The Ld. AR submitted that the Rule 114B of the Income Tax Rules, 1962, governs the requirement of reporting the PAN card details of the persons dealing beyond a threshold prescribed in the table provided in the said rule. Sale and purchase of jewellery are

covered under serial number 18 of the said table which clearly provides that the PAN details of the customer are required for the sale or purchase exceeding Rs. 2 lakhs. Therefore, the Assessee was not required as per law to mention the PAN details of the customers for the sales below Rs. 2 lakhs consequently the Ld. AO has wrongly made this as one of the reason to invoke section 68 of the Act against the Appellant.

Relevant extract has been reproduced herein below:

[Transactions in relation to which permanent account number is to be quoted in all documents for the purpose of clause (c) of sub-section (5) of section 1394.

114B. Every person shall quote his permanent account number in all documents pertaining to the transactions specified in the Table below, namely:-

| | | |
|----|--|---|
| 18 | <i>Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. Nos. 1 to 17 of this Table, if any.</i> | <i>Amount exceeding two lakh rupees per transaction</i> |
|----|--|---|

30. The Appellant relies upon R.B. Jessaram Fatehchand (Sugar Deptt.) V. CIT (1970) 75 ITR 33, wherein Hon'ble High Court of Bombay held that in the case of a cash transactions where the buyer takes the delivery of goods by paying in cash, in that scenario the seller is hardly bothers about the name and address of the purchaser. Relevant extract has been reproduced herein below:

“ ...

In the case of a cash transaction where delivery of goods is taken against cash payment, it is hardly necessary for the seller to bother about the name and address of the purchaser.

31. The Ld. AR also submitted that, from the submissions made above and settled legal position that Section 68 Is not applicable in the case of sales, because the amount which is taxed once cannot be taxed again. Therefore, the Ld. AO has wrongly invoked Section 68 and 115BBE of the IT Act without appreciating the facts and documents placed on record.

32. Considered the rival submissions and materials placed on record, we observed that assessee is a proprietor of three business concerns Rajput Jewellers, Rajput Electronics and Rajput Handloom. The business of the assessee is mostly on cash basis and as per the information submitted before us shows that assessee has declared turnover of Rs.7,70,86,240/- in the Asst. Year 2017-18 and the turnover of assessment Year 2016-17 is Rs.7,53,73,559/- respectively. Since, the assessee has deposited huge cash during the demonetization period. The case of the assessee was selected for scrutiny.

33. On careful review of the cash in hand submitted by the assessee before the Tax Authorities show that during the Assessment Year 2016-17, the assessee has carried closing cash balance from the range of 27 lacs to 82 lacs at each of the closing month. During the current assessment year, the assessee has followed the similar pattern till August, 2017, however, in September to October, assessee has huge closing cash balance to the extent of Rs.1,20,00,000/- and 2,35,00,000/- respectfully. The same was deposited during November and December. Subsequent to cash deposit in bank the assessee has maintained similar pattern of cash holding during the rest of the period. It clearly shows that assessee sold jewellery particularly during the demonetization period, we also observed that assessee had huge stock in September to the extent of Rs.5,27,73,912/- and in November closing stock of Rs.40,11,1,925/-, it clearly shows that assessee has sufficient stock to cover the cash sales during the period of demonization. When the assessee demonstrated that assessee has sufficient cash sales and carries sufficient cash balance in his books of accounts which supports the cash deposits in the bank and also financial results

are not indicating any abnormal variations, supports the submissions made by the assessee. Further, we observed that the Co-ordinate Bench of ITAT, Visakhapatnam held that in the case of ACIT vs. M/s Hirapanna Jewellers (supra) held as under:

“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 the 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 assessee. Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence.”

34. From the above, it is clear that as long as assessee explains the source of sales, submits the details of receipts particularly cash sales and demonstrates the availability of cash and sufficient stock in the business to support the cash deposit in the bank and at the same time, AO has not brought anything on record to substantiate his finding, merely interprets the data rather than indulging in making proper enquiry.

35. In our considered view merely comparing the sales in cash deposits with the earlier assessment years without bringing on record anything against the assessee for making cash sales and cash deposits, in our considered view, the assessee has explained the source of cash deposits and rightly offered to tax in its books of accounts, therefore, it does not call for separate disallowance. Further, considering the detailed findings of the Ld. CIT(A), we do not see any reason to disturb the same. Accordingly, ground raised by the Revenue is dismissed.

36. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in open Court on 3rd May, 2024.

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 03/05/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI