

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

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

ITA No. 3471/Del/2023

Asstt. Year: 2017-18

SV Diamonds Private Limited Shop No. 308 A, Third Floor, Gali No. 4, 2606-2607, Karol Bagh New Delhi 110 005. PAN AAPCS5185G	Vs.	ITO, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Nirbhay Mehta, CA
Department by:	Shri Dharm Veer Singh, CIT(DR)
Date of Hearing:	07.05.2024
Date of pronouncement:	17.05.2024

ORDER

PER VIMAL KUMAR, JM

The appeal is against order dated 11.10.2023 of the Learned Commissioner of Income Tax, (Appeals) upholding assessment order dated 15.12.2019 assessing income as Rs. 34,98,58,460/- by adding Rs. 34,87,65,950/- as cash sales as unexplained cash credit under section 68 of the Act.

2. Brief facts of case are that assessee filed income tax return declaring income of Rs. 10,92,508/-on 4.11.2017. The assessee

is engaged in business of manufacturing and trading, import and export of all kind of gold, silver and diamond jewellery and ornament articles. The case was selected for scrutiny under CASS for the reason “abnormal increase in cash deposit during the demonetization period as compared to pre demonetization period and large value cash deposit during demonetization period.” Notice under section 143(2) was issued on 24.09.2018. Notice under section 142(1) along with questionnaire was issued on 20.05.2019. Assessee filed reply on 27.05.2019. Notices under section 142(1) were issued on 17.8.2019, 30.08.2019 and 09.09.2019. Assessee neither filed any details nor sought any adjournment. Notices under section 142(1) were issued on 13.09.2019 and 18.10.2019. Assessee did not file any reply. In every notice issued under section 142(1) the assessee company was asked to submit the cash in hand as on 01.04.2014 to 31.03.2016 and from 01.04.2016 to 08.11.2018. No information was provided. Every time assessee was requested to submit monthly trading account from 01.04.2016 to 31.03.2017 which was never submitted. During demonetization period, assessee has deposited sum of Rs. 34,90,00,000/-, Rs. 80,000/- , Rs. 1,50,000/- and Rs. 1,00,000/-. The genuineness of transactions was verified from other companies. Learned Assessing Officer vide order dated 15.12.2019 assessed income of Rs. 34,98,58,460/- .

3. Assessee preferred appeal before the Learned CIT(A).
4. Despite notices when the appellant / assessee failed to appear before Learned CIT(A) so the appeal was dismissed.

5. Being aggrieved appellant / assessee preferred present appeal.

6. Learned Representative for assessee submitted that Learned CIT(A) erred in confirming assessment order without providing adequate opportunity to the assessee. Learned CIT(A) issued three notices for hearing in a period of one month time and concluded the hearing . Learned CIT(A) erred in confirming the action of Learned Assessing Officer that cash deposits were out of undisclosed source of income on the basis of comparison of cash sales data of demonetization period of relevant assessment year. Learned CIT(A) erred in confirming action of Learned Assessing Officer in bringing to tax the cash sales under section 115BBE of the Income Tax Act, 1961 is not in accordance with law as income cannot be treated at par with unexplained cash credit. So appeal may be accepted.

7. Learned Representative for Department submitted that impugned orders are legal.

8. From examination of record in light of aforesaid rival contention it is amply clear that Learned CIT(A) confirmed addition of Rs. 34,87,65,950/- by treating cash sales as unexplained cash credit under section 68 of the Income Tax Act, 1961 by Learned Assessing Officer. Learned CIT(A) issued notices for 27.1.2021, 01.09.2023, 11.09.2023 and 20.09.2023. Notices were issued to the appellant were duly delivered to the mail ID provided on ITBA as per income tax Portal. However, the appellant / assessee never bothered to respond to any of the notices issued. It is material fact that out of four, three notices

were issued within one month period prior to deciding appeal by Learned CIT(A).

9. Hence, the appeal is allowed with the observation that the appeal is restored to the file of the Learned CIT(A) with the direction to decide afresh in accordance with law after hearing parties.

10. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17th May, 2024.

sd/-

**(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 17/05/2024

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	