

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.3571/Del/2023**

**निर्धारणवर्ष/Assessment Year: 2017-18**

<b>Rakesh Malhotra</b> G-1/5, F.No.23, 2 <sup>nd</sup> Floor, Model Town-II, New Delhi. PAN No.AAIHR5845L	<b>बनाम</b> <b>Vs.</b>	<b>ITO,</b> Ward-36(4), Civic Centre, New Delhi.
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

<b>निर्धारितकीओरसे /Assessee by</b>	<b>Shri K Sampath, Adv. &amp; Shri V. Rajkumar, Adv.</b>
<b>राजस्वकीओरसे /Revenue by</b>	<b>Shri Om Parkash, Sr. DR</b>

<b>सुनवाईकीतारीख/ Date of hearing:</b>	<b>11.03.2024</b>
<b>उद्घोषणाकीतारीख /Pronouncement on</b>	<b>17.05.2024</b>

**आदेश /O R D E R**

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals) - NFAC, Delhi dated 29.11.2023 for the AY 2017-18.

Assessee raised the following grounds: -

*“On the facts and in the circumstances of the case and in law the Ld. CIT(A) of NFAC, Delhi erred in -*

- 1. confirming the following actions of the Assessing Officer-*

*a. passing order u/s 143(3) of the Income-tax Act, 1961 determining taxable income at Rs.41,34,250/- against returned income in a sum of Rs.3,84,250/- without considering the submissions made and evidence submitted:*

*b. making addition of Rs.37,50,000/- being the amount of cash deposit in bank treating the same as unexplained invoking section 68 r.w.s. 115BBE of the Act.*

*The above action being arbitrary, fallacious, unwarranted and illegal must be quashed with directions for appropriate relief.”*

2. Brief facts are that the assessee is a HUF carrying business of trading in cloth on retail basis. Assessee e-filed its return of income on 05.08.2017 declaring income of Rs.3,84,250/-. The assessment was completed u/s 143(3) of the Act on 30.12.2019 determining the taxable income at Rs.41,34,250/-. While completing the assessment the Assessing Officer made an addition of Rs.37,50,000/- u/s 69A r.w.s. 115BBE of the Act representing the amount of cash deposited in its bank account during the demonetization period treating the same as unexplained.

3. On appeal the Ld.CIT(A) sustained the addition as having been made u/s 68 rejecting the contention of the assessee that the said cash deposits were made out of cash sales.

4. Before me the Ld. Counsel for the assessee, at the outset, submits that the Assessing Officer made addition in respect of cash deposits observing that the assessee has not given any explanation or evidences to substantiate the cash deposits. Ld. Counsel submits that in the course of assessment the assessee duly submitted all the details as called for by the AO which included cash book, bank statement, profit and loss account, balance sheet, sales account with both cash and credit sales. Ld. Counsel submits that it was explained that the payment for purchase was made through banking channels and similarly the credit sales were realized through bank only. The cash deposited in bank was out of cash accumulated through cash sales. Ld. Counsel submits that the AO, however, alleges non-compliance by the assessee.

5. The Ld. Counsel for the assessee submits that the cash transactions have been duly recorded in the books maintained by the assessee such as cash book, bank book, ledger account, etc. The cash was deposited out of sale proceeds of the fabrics in the normal course of business. Purchases are duly entered in the books of account and creditors have been paid through cheques. The sales are both in cash and on credit. Credit sales have been realized through regular banking channels. It is submitted that in

the course of assessment proceedings the assessee has filed copies of cash book, sales and purchase account, bank book and bank statement. It is submitted that while trading results have been accepted by the Assessing Officer and profit there from was taxed only cash sales have not been believed. It is submitted that the assessee has earned gross profit of Rs.4,97,651/- on sale of Rs.57,29,701/- (cash sales 40,29,728/-, credit sales 18,99,973/-).

6. Ld. Counsel further submits that perusal of the balance sheet would reveal that assessee had outstanding trade debtors of Rs.10,61,289/- and trade creditors of Rs.36,50,418/- as on 31.03.2017. Ld. Counsel submits that the AO did not accept the availability of cash which were deposited in the bank on the ground that there are no cash transactions in the preceding and subsequent year.

7. The ld. Counsel submits that the Assessing Officer did not disturb the book results of the assessee, did not reject the books of account not doubted sales, purchases and stock. The Assessing Officer having accepted the trade results and the books of account, there is no justification in not accepting the cash sales only for the reason that the assessee did not record any cash sales in the earlier

and subsequent years. Reliance was placed on the following decisions: -

1. *CIT Vs. Vishal Exports Overseas Ltd. (Tax Appeal No.2471 to 2476 of 2009 dated 03.07.2012) (Gujarat High Court);*
2. *M/s Fine Bujranwala Jewellers Vs. ITO (ITA No.1540/Del/2022) dated 27.03.2023;*
3. *Anantpur Kalpana Vs. ITO (194 ITD 702);*
4. *Mansukh K Waghasia Vs. ITO (195 ITD 99);*

8. On the other hand, the Ld. DR strongly supported the orders of the authorities below. Ld. DR further submits that the Assessee has not produced the required information called for by the AO. In reply the Ld. Counsel for the assessee submits that all the information were produced before the AO and also before the Ld.CIT(Appeals). Ld. Counsel further invited our attention to the written submissions filed before the Ld.CIT(A) at pages A3, A4, page 2 and 20 of the Paper Book and submitted that the assessee furnished all the details before the AO and the acknowledgment of e-proceedings in uploading of the information which clearly suggest that the assessee has furnished the information.

9. Heard rival submissions, perused the orders of the authorities below. In so far as furnishing of information is concerned, it is observed that the assessee furnished cash book, bank book, balance sheet, profit and loss account, cash details, sales account alongwith the submissions in response to the notices issued by the AO. Assessee also furnished copy of ITR, computation of income, cash transaction statement, bank account statement and explained that the cash deposits were made out of cash sales. However, the AO as well as the Ld.CIT(A) did not accept the explanation of the assessee that these cash deposits were made out of cash sales observing that the assessee did not file any explanation or evidences.

10. On perusal of the assessment order, it is observed that though the assessee has furnished cash book, bank book, balance sheet, profit and loss account, details of cash deposited, sales account, etc. the AO did not reject the information filed by the assessee. The AO did not reject the books of account of the assessee. It is observed that the trading results of the assessee were accepted and the purchases, sales were not doubted at all. The AO accepted the credit purchases and credit sales and the explanation of the assessee that the cash deposits were made out of cash sales was

rejected on the ground that assessee did not have any cash sales in earlier and subsequent years.

11. In my opinion, on the sole reason that there are no cash sales in the immediately preceding year and also subsequent year cannot be the basis for rejecting the explanation of the assessee that the cash deposits were made out of cash sales especially when the assessee produced cash book, sales, purchases, etc. to demonstrate that the cash deposited were made out of cash sales not rejected the books of account, not doubted the purchases, sales and further accepted the book results without rejecting the books of account.

12. In the case of M/s Fine Gujranwala Jewellers Vs. ITO (supra) the coordinate bench of Delhi Tribunal in ITA No.1540/2022 dated 27.03.2023 observed as under:

*“17. It is the specific case of the assessee is that the sale proceeds of jewellery were the source of cash deposited in the bank and of the entries are supported by books of accounts, purchase vouchers, sales invoice, stock register, VAT records, bank statement etc. at no point of time books of accounts of the assessee was rejected and the same has been accepted in VAT. It is not the case of the Revenue authorities that the invoice are more than 2,00,000/- but it is the specific case of the Department that all the invoices are Rs. 2,00,000/- or below Rs. 2,00,000/- but total cash sale invoices for diamond items during 01/10/2016 to 08/11/2016 was Rs. 20.87 lakh compare to Rs. 53,514/- only in the Financial Year 2017-18, which ultimately resulted in making the addition.*”

18. We should keep in mind that the fact for Assessment Year 2016-17 cannot be comparable with the fact of Financial Year 2017-18 or any other year because the extraordinary incident of demonization was unique to Financial Year 2016-17, the abnormal increase in the cash sale and their deposit in the bank account consequent to demonization could not be basis for the rejection of account and addition u/s 68 of the Act. The Tribunal Bench at Vishakhapatnam in the case of ACIT Vs. Hirapanna Jewellers (2021) 189 ITD 608 (Visaks) held as under:-

"7. 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 Fine Gujranwala Jewellers, 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 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.*

*7.1. In the case of CIT Vs. Assolciated Transport (P.) Ltd. 1996] 84 Taxman 146/[1995] 212 ITR 417 (Cal). The Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, therefore, held that there was no reason to treat this amount as income from undisclosed sources and it was not a fit case for treating the said amount as concealed income of the assessee. The revenue moved to Calcutta High Court against the order of the tribunal and the Hon'ble High Court has confirmed the*

*order of the Tribunal while deleting the penalty, Hon'ble Calcutta high court held as under:*

*"8. The Tribunal was of the view that the assessee had sufficient cash in hand. In the books of account of the assessee, cash balance was usually more than Rs. 81,000. There is no reason to treat this amount as income from undisclosed sources. It is not a fit case for treating the amount of Rs. 81,000 as concealed income of the assessee and consequently imposition of penalty was also not justified in this case."*

*In the case of Lal chand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 ISC), the Hon'ble Apex Court decided the matter in favour of assessee of the ground that it was clear on the record that the assessee maintained the books of accounts according to the mercantile system and there was sufficient cash balance in its cash books and the books of account of the assessee were not challenged by the Assessing officer. If the entries in the books of accounts are genuine and the balance in cash is matching with the books, it can be said that the assessee has explained the nature and source of such deposit.*

*19. In the present case, the department has not rejected the books of accounts of the Assessee accepted in VAT. The regular books of accounts were maintained in the normal course of business in which no flaw, fallacy or deficiency was pointed out by the AO. It is well settled law that once the assessing officer accepts the books of accounts and the entries in the books of accounts are matched, there is no case for making the addition as unexplained. In the assessee case of R S Diamond India Pvt. ltd. Vs. ACIT, Fine Gujranwala Jewellers, I.T.A. No. 2017/Mum/2021 (A.Y. 2017-18) the Income Tax Tribunal Bench at Mumbai has held as under:-*

*"4. I have heard the parties and perused the record. The facts that the deposit made into the bank account is from out of the books of accounts and the said deposits have been duly recorded in the books of*

*account are not disputed. It is the submission of the assessee that it had received advance money from walk in customers for sale of jewellery over the counter and the amount so received was duly recorded in the books of account. The said amount alongwith other cash balance available with the assessee was deposited into the bank account after announcement of demonetization by the Government of India. He also submitted that the assessee has raised sale bills against the said advances in the name of respective customers. Since the transaction was less than Rs.2.00 lakhs, it was stated that the assessee did not collect complete details of the customers. Thus, it is seen that the advance amount collected from customers, the sales bill raised against them etc., have been duly recorded in the books of account. The impugned deposits have been made from cash balance available with books of account. I also notice that the Assessing Officer has not rejected the books of account. When cash deposits have been made from the cash balance available in the books of account, in my view, there is no question of treating the said deposits as unexplained cash deposit as opined by the Assessing Officer.*

*5. The Ld A.R relied on certain case laws which are relevant to the issue under consideration. In the case of Lakshmi Rice Mills (1974) 97 ITR 258 (Patna), it has been held that, when books of account of the assessee were 3 R. S. Diamonds India Private Limited accepted by the revenue as genuine and cash balance shown therein was sufficient to cover high denomination notes held by the assessee, then the assessee was not required to prove source of receipt of said high denomination notes which were legal tender at that time. In the case of M/s. Hirapanna Jewellers (ITA No. 253/Viz/2020 dated 12.5.2021), it was held that when the cash receipts represented the sales which has been duly offered for taxation, there is no scope for making any addition under section 68 of the Act in respect of deposits made into the bank account.*

*6. I notice that the decision rendered in both the above said cases support the case of the assessee.*

*Accordingly, in the facts and circumstances of the case, I am of the view that the addition of Rs. 45 lakhs made in the hands of the assessee is not justified, since the said deposits have been made from the cash balance available in the books of account. Accordingly, I set aside the Fine Gujranwala Jewellers, order passed by learned CIT(A) on this issue and direct the Assessing Officer to delete the addition of Rs. 45 lakhs."*

20. Further, in the case of *Lakshmi Rice Mills v. CIT [1974] 97 ITR 258 (Pat.)* Hon'ble Patna High court held as under:

*"It is, in my view, a fundamental principle governing the taxation of any undisclosed income or secreted profits that the income or the profits as such must find sufficient explanation at the hands of the assessee. If the balance at hand on the relevant date is sufficient to cover the value of the high denomination notes subsequently demonetized and even more, in the absence of any finding that the books of account of the assessee were not genuine, the source of income is well disclosed and it cannot amount to any secreted profits within the meaning of the law."*

*Thus, considering the above ratio, when the Assessee's books of account were not rejected, the Lower authorities ought not to have made additions."*

13. In the case of *Anantpur Kalpana Vs. ITO (supra)* the Bangalore Bench of the Tribunal held that where AO made addition u/s 68 of the Act on account of cash deposited by assessee in its bank account post demonetization, since such cash deposit was towards assessee sale proceeds which was already offered to tax by the assessee and admitted by Revenue as revenue receipt, impugned

addition made u/s 68 would result in double taxation and, therefore, is liable to be deleted.

14. In the case of Mukesh K. Waghasia Vs. ITO (supra) the Surat Bench of the Tribunal held that where assessee having explained that cash deposited in bank account was out of cash turnover as declared under 44AD and the assessee also having submitted memorandum of trading and profit and loss account and balance sheet impugned additions of such cash deposit were to be deleted.

15. The above decisions applies to the facts of the assessee's case. Therefore, in view of the above discussion and placing reliance on the decisions referred to above, the AO is directed to delete the addition made u/s 69A/68 of the Act. The grounds of appeal of the assessee are allowed.

16. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 17/05/2024

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 17.05.2024

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**