

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 270/Ahd/2022 &
ITA No. 287/Ahd/2022
Assessment Year 2017-18**

Rekhaben Indravadan Chokshi 204, Anmol Apartment, Mahalakshmi Society, Paldi, Ahmedabad- 380007 PAN: AAQPC9768D	Vs	The ITO, Ward-5(2)(4), Ahmedabad
The ACIT, Circle-2(1)(1), Ahmedabad (Appellant)		Rekhaben Indravadan Chokshi 204, Anmol Apartment, Mahalakshmi Society, Paldi, Ahmedabad- 380007 PAN: AAQPC9768D (Respondent)

**Assessee Represented: Shri S.N. Divatia, A.R. &
Shri Smair Vora, A.R.**

Revenue Represented: Shri Sanjay Punglia, CIT-DR

Date of hearing : 30-04-2024
Date of pronouncement : 18-07-2024

आदेश/ORDER

PER : SIDDHARHTA NAUTIYAL, JUDICIAL MEMBER:-

These are cross appeals filed by the assessee and the Department against the order of Ld. CIT(A). Since common facts and issues for consideration are involved for both the years under consideration, both the appeals are being taken up together.

2. We shall first take up the assessee's appeal in ITA No. 270/Ahd/2022.

3. The brief facts of the case are that the assessee had filed return of income for A.Y. 2017-18 on 31.10.2017 declaring total income at Rs.23,25,290/-. The case was selected for scrutiny with the reason 'Abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period". During the course of assessment proceedings, the assessing officer observed that during the demonetization period from 8th November 2016 to 30th December 2016, the assessee had deposited cash amounting to Rs.28,67,50,000/- (in Specified Bank Note) in bank accounts held by the assessee. The assessing officer observed that major purchases of Rs.23.12 Crores and Rs. 6.13 Crores were made by the assessee during the month of July, 2016 and October, 2016 i.e. just before the demonetization period. The assessing officer observed that the assessee had shown to have purchased bullion/jewellery in the months of July & October, 2016 mainly from three parties:

(a) Jewellery/Bullion purchased from M/s. Arihant Designer Jeweller Pvt. Ltd. for Rs. 20 crores, a company which had two Directors and one of the Director was the assessee's husband Shri Indravadan J Chokshi.

(b) URD Jewellery/Bullion purchased from Shri Indravadan J Choksi (2.3 crores) – This jewellery was claimed to have been received by Shri Indravadan J Chokshi from M/s. Arihant Designer Jeweller Pvt. Ltd. and thereafter sold by Shri Indravadan J Choksi to his wife Ms. Rekha Chokshi that is the assessee and

(c) URD purchases (purchases from unregistered dealers) Rs. 3.60 cores.

3.1. The A.O. observed that the assessee had made total purchase amounting to Rs.25.90 crores just prior to the demonetization period. The assessing officer issued notice u/s. 133(6) to M/s. Arihant Designer Jeweller Pvt. Ltd. on 02.11.2019 and the notice was received back with the remark "refused". Further, on perusal of the sale bills issued by M/s. Arihant Jewellers, the A.O. observed that these sale bills were without counter signature, signatures were different on each bills and without narration of which types of ornaments were sold to the assessee. Further, the assessing officer observed that the assessee had not made any payment against purchase of gold and jewellery of Rs. 20,94,50,989/- and the same was outstanding. This credit practice of such huge amount of money was found to be unacceptable by the assessing officer since normally in this line of business, the goods i.e. gold, jewellery, bullion etc. is delivered only when payment is made by the parties. Further, during the course of investigation, the assessing officer called for certain details from Shri Indravadan J Choksi being one of the Directors of M/s. Arihant Designer Jeweller Pvt. Ltd. like

return of income for A.Y. 2016-17, books of accounts for A.Y. 2016-17 and sale/purchase register relevant to the period for A.Y. 2016-17. However, Shri Indravadan J Choksi refused to furnish the same for the reason that owing to dispute between the Directors, the business activities of M/s. Arihant Designer Jeweller Pvt. Ltd. had closed since financial year 2015-16 and no books of accounts had been maintained by M/s. Arihant Jewellers since 31.03.2015.

4. Further, Shri Indravadan J Chokshi in his statement dated 25.07.2016 stated that I J Jewellers, proprietary concern of his wife Smt. Rekhaben Chokshi had purchased jewellery/bullion worth of Rs.20 Crores from Arihant Designers Jewellers Pvt. Ltd., during the period 01.04.2016 to 01.11.2016 . He also furnished copies of sale bills claimed to be issued by Arihant Designers Jewellers Pvt. Ltd. However, the assessing officer observed that Shri Indravadan J Chokshi failed to furnish any supporting evidences related to sale of gold and jewellery worth Rs. 22.30 Crores (Approx.) stated to have been sold by Arihant Designers Jewellers Pvt. Ltd. to I J Jewellers and to Shri Indravadan J Chokshi except self-signed sale bills claimed to be issued by M/s. Arihant Designers Jewellers Pvt. Ltd. Since the assessing officer doubted the genuineness of the sale bills, he issued summons to Shri Vijay R Vora, the other director of Arihant Designers Jewellers Pvt. Ltd. In his statement Shri Vijay Vora submitted that there was no stock which was available with M/s. Arihant Designers Jewellers Pvt. Ltd as on 01.04.2016 claimed to have been purchased by I J Jewellers and Shri Indravadan J Chokshi. Accordingly, Ld. AO was of the view that the purchase/transfer of stock of jewellery/bullion from

Arihant Designers Jewellers Pvt. Ltd. was not supported by any evidences. The purchase of jewellery recorded in the books of account of M/s. I J Jewellers was fabricated and bogus and these entries of purchases have been created only to create stock in books of the assessee in order to accommodate cash sales and in order to generate cash that was deposited in the assessee's various bank accounts during demonetization period.

4.1. Further, with regard to URD purchases (unregistered dealers purchases of Rs.3,60,09,722/-) from various individuals, the assessing officer observed that the 'URD Sellers' have confirmed in their statement that the transactions claimed by the assessee as purchase of jewellery were mere entries obtained by the assessee from such URD individuals. Therefore, looking into facts, it was evident that the assessee inflated purchases booked as URD purchases only to inflate/create stock in the books in order to accommodate cash sales, in order to generate cash that was deposited in various bank accounts during demonization period. The assessing officer further observed that Arihant Designers Jewellers Pvt. Ltd., from whom the assessee had purchased bullion/jewellery worth Rs.20 Crores had not filed return of income for Assessment Year 2016-17. Further as per statement of Shri Vijay R. Vora the other director of Arihant Designers Jewellers Pvt. Ltd. he had stated that the bills submitted by Shri Indravadan J Chokshi as proof of purchase of jewellery and bullion are not genuine bills and are contradictory to normal business practice of the company. It was mandatory to mention VAT TIN & CST TIN number on the sale bills/invoice issued. However, no such details

are mentioned on the sale bills issued in favour of Shri Indravadan Chokshi. Further, there was also substantial discrepancy in the chronology in the order of the sale bills issued, which are contradictory to normal business practice. From the above facts, it was evident that the purchase of jewellery/bullion from Arihant Designers Jewellers Pvt. Ltd. in the books of the assessee was fabricated and bogus. These entries of purchases have been inflated to create stock in books in order to accommodate cash sales, in order to generate cash that was deposited in assessee's various bank accounts.

5. Further, with respect to jewellery/bullion worth Rs.2,30,00,000/- stated to have been purchased by the assessee from her husband, Shri Indravadan Chokshi, the same was also fabricated and bogus. No stock was available with Arihant Designers Jewellers Pvt. Ltd. during the impugned period under consideration and there is no concrete proof that any such stock was purchased by Shri Indravadan Chokshi from Arihant Designers Jewellers Pvt. Ltd., which was later sold to Ms. Rekhaben Chokshi. Further, with respect to URD purchases of Rs.3,60,09,722/-, the assessing officer perused copy of ledger account of URD purchases and on further investigation carried out, the assessing officer observed that several individuals, who have been shown as 'URD Sellers' have confirmed in their statement that the transactions claimed by the assessee, towards purchase of jewellery were mere entries obtained from the said individuals. They have also paid the required tax on such transactions, by treating them as "income from other sources", in their individual

capacity. The assessing officer further observed that on perusal of the VAT returns for the months of October, November and December, 2016, they were filed after due date. The assessee was required to file monthly VAT return within the 20 days of completion of month, however, the assessee filed the return for the month of October, 2016 on 30.01.2017, for the month of November 2016 on 21.02.2017 and VAT return for the month of December 2016 on 20.03.2017. Further, the assessing officer also observed that the cash sales during the month of October, 2016 to December 2016 was Rs.54,94,41,477/-, up from Rs.18,69,45,359/- in the previous year and which was almost a 249% increase. Further, the assessing officer observed that the assessee had nominal cash sales of Rs.7,46,179/- from 01.04.2016 to 30.09.2016 and the cash sales which was made during the period 22.10.2016 to 08.11.2016 reached an unimaginable amount of Rs.31,28,37,385/- (against cash sales of Rs.3,11,82,382/- for the same period in the immediately preceding year). Therefore, clearly looking the entire scheme of things, the entire purchases and sales alleged to have been made during the impugned period under consideration was bogus and fabricated. The assessing officer also observed that cash sales were intentionally bifurcated into small amounts in order to keep the sale value below Rs. 2 lacs to avoid mentioning PAN of the cash purchaser. Therefore, in nutshell, the total purchases of Rs. 25,90,09,722/- recorded in the books of accounts during the demonetization period was an eye wash to create stock in the books of accounts and generate unaccounted cash in the books by recording cash sale against such purchases. Accordingly, the assessing officer held that the cash of Rs.28,67,50,000/- deposited

in various bank accounts by the assessee was liable to be treated as unexplained cash credit u/s. 68 of the Act and was thereby added to the total income of the assessee.

6. Further, in addition to the above, during the course of assessment proceedings, the assessing officer also observed that the assessee had repaid loan of Rs.2,46,86,637/- outstanding with Capri Global Capital Ltd. In response to notice issued by the assessing officer, the assessee produced copy of ledger accounts in its books of accounts, Loan accounts statement issued by Capri Global Capital Ltd. and corresponding bank statement evidencing the payment. However, the assessee was unable to produce confirmation from Capri Global Capital Ltd. and also was unable to produce its return of income. The assessing officer was of the view that in absence of cogent evidences of source of repayment of loan of Rs.2,41,64,929/-, to Capri Global Capital Ltd., the source thereof remains unexplained. Accordingly, the assessing officer made addition of Rs.2,41,64,929/- with the following observations:

From perusal of assessee's reply and above schedule following facts are noticed:

1. Out of total repayments, a sum of Rs.4,82,930/- was paid in cash on 30.07.2016, Rs.2,00,000/-, was paid in cash on 27.10.2016 and Rs.40,00,000/- was paid in cash on 08.11.2016 which is not allowable as per the provision laid down by section 269T.

2. It was also found that out of remaining amount Rs. 45,00,000/- and Rs. 27,00,000/- were paid by Shri Dennis Indravadan Chokshi and Smt Taraben Jagjivandas Chokshi respectively who are son and mother of the Indravadan J Chokshi.

3. Further, Shri Dennis I Chokshi had filed his first return of income for A.Y-2016-17 on 23/05/2017 declaring income of Rs.2,42,040/- and Smt Taraben J Chokshi had filed her last return of income for the A.Y-2013-14 declaring total income at Rs.2.87,500/-. The return of income of the above two persons does not support the creditworthiness.

4. The assessee had not furnished anything in respect of loan papers/documents, sanction letter, amount of loan taken, details of loan interest, amount of interest charged by the lender and details of TDS deducted by the assessee on interest payment.

5. The assessee had not furnished the confirmation letter from the lender and ITR of Capri Global Capital Ltd.

6. Copy of interest certificate is not furnished by the assessee.

7. The assessee had not explained the nature of repayment of loan made by Indravadan Chokshi, Taraben Chokshi and Denish I Chokshi, as if the assessee had taken any loan/gift or consideration from these persons or anything else, not explained by the assessee. Apart from this the assessee had not shown anything in respect of above payment by the family member in her books of accounts.

In the light of above facts and circumstances as discussed above and in the absence of cogent evidences of the source of repayment of loan of Rs.2,41,64,929/- with Capri Global Capital Ltd. is remained unexplained. Therefore, the sum of Rs. 2,41,64,929/-is treated as unexplained cash credit utilized for repayment of loan and added back to the total income of the assessee u/s 68 of the Act. Penalty proceedings under section 271AAC(1) are initiated separately.

7. The assessee filed appeal before Ld. CIT(A), with respect to the addition of Rs.28 crores (Approx.) during the demonetization period. Ld. CIT(A) upheld the order of the assessing officer by observing that assessee has tried to create a facade of cash sales being made prior to demonetization. However, the assessing officer has demonstrated that the cash sales were clearly bogus in nature and in order to cover up claim of bogus sales, bogus stock/

purchases was attempted to be created which was again undone by the assessing officer. While dismissing the appeal of the assessee, the Ld. CIT(A) made the following observations:

5.3 I have carefully considered the matter. The AO had pointed out various issues and circumstances which go to show that the explanations regarding cash deposit given by assessee are not satisfactory. For F.Y. 2016-17, sales from the month of April to September totaled less than 1.2 crore. Out of that, cash sales was only Rs.7,46,179/-. However, claim of sale in the month of October leap-frogged to more than Rs.24 Crore. The sale in few days of November, 2016 before demonetization was claimed to be over Rs.30 crore. Claim of cash sale in this month of October. November was more than 30 crore. Assessee had not given any plausible explanation regarding the spurt in sales just before the announcement of demonetization. The claim that the months of October and November were festive season in India due to which sales had jumped can be true to a certain degree, but it cannot explain the unnatural growth in sales. Besides, the AO had pointed out various flaws in the alleged sale bills produced by assessee. The normal sale bills issued by Arihant Designer Jewellers Pvt. Ltd. (Arihant Jewellers, in short) during МОРСКИЕ H

normal course of business is different from the bill issued by the assessee in course of demonetization. Even proper serial numbers were not followed in sales bills issued. On the day when demonetization was announced, assessee showed cash sales entries numbering 236(Check) amounting to Rs 3 crore. The AO also pointed out that figure of cash sales shown were not commensurate with the weight of bullion claimed to be sold in cash. Moreover the sales values were kept below Rs.2 lakh in order to sidestep the need for mentioning of PAN of alleged buyer. The sale bills also did not contain any details of particular of buyer though the form for sale has columns meant for details regarding buyers. At page 19 of the assessment order, the AO pasted copy of sale bills issued by assessee. The bill has a heading Arihant Designers Jewelers Pvt. Ltd. It is not understood how an individual executed sales in the name of a company which has a legal existence of its own. Assessee claimed to have purchased material from Arihant Jewellers in the month of July, 2016 for her proprietorship business viz. I J jewelers. The various defects pointed out by the AO give

subtle indications to show that claim of sales was just a smokescreen for unexplained cash deposited by assessee during demonetization.

5.3.1 The assessee claimed to have made substantial cash sales during the period of demonetization in order to cover up the deposit of demonetized cash. More baffling is regarding the source of bullion claimed to have been sold. Bulk of the Jewellery and bullion was claimed to have been purchased from Arihant Jewelers. The said claim of purchase exceeded Rs.20 crore. This claim of purchase has many loopholes as pointed out by the AO. The company Arhiant Jewellers stopped functioning from F.Y.2015-16. There are no records to show that the company still had more than Rs.20 crore of jewellery/bullion in stock for sale to assessee, Moreover, assessee did not pay a single sum of money for purchase of such jewellery. The only proofs submitted regarding sale of jewellery to assessee were bills signed by assessee's husband. Without proof of having stock by Arihant Jewelers and further evidence of sales of the same to assessee, there is no reason to believe that assessee had purchased materials with over Rs.20 crore from Arihant jewelers.

5.3.2 Part of the jewellery claimed to have been sold was stated to be purchased from Indravadan Chokshi. This also has no factual basis. The assessee's husband claimed to have purchased from the company, Arihant Jewellers. But as mentioned earlier, there was no proof of Arihant Jewellers having stocks for sale and also having actually sold any jewellery/bullion to assessee's husband.

5.3.3 Assessee also claimed to have purchased Rs.3.6 crore worth of materials form unregistered dealers (URD). In this regard the AO, at para 5.6 of his order had demonstrated that the claimed transaction was totally bogus. Facts narrated by the AO, need not be repeated here. It is clear that the assessee had attempted to create bogus stock to cover bogus sale in order to explain away SBN deposited in course of demonetization. Detailed findings of the AO have not been rebutted with facts in course of appeal proceedings.

In a nutshell, what is clear is that assessee deposited more than Rs.28 crore in SBN during demonetization period. Assessee tried to create a facade of cash sales being made prior to demonetization. The claim of such sales actually being made had been convincingly demonstrated to be bogus by the AO. Further, in order to cover the

*claim of sales, bogus stock/purchases was attempted to be created.
That attempt also had been undone by the AO.
In view of the above, ground No. 2 is dismissed.*

8. With respect to the addition of Rs. 2,41,64,929/-, the Ld. CIT(A) partly allowed the appeal of the assessee and restricted the addition to Rs. 1,36,82,930/-. While passing the order, the Ld. CIT(A) made the following observations:

6.3 I have considered the matter. The AO had disallowed the total amount of loan loan repaid by assessee, I find no basis in the action of the AO. According to assessment order page 30, following payments were made from the bank account of assessee.

<i>Date</i>	<i>Amount</i>
15.04.2016	69/805/-
15.04.2016	3,42,372/-
23.06.2016	69,822/-
15.11.2016	3,42372/-
15.11.2016	69,805/-
28.11.2016	52,00,000/-
06.12.2016	43,87,823/-

The above payments were made from assessee's own bank account. Only nominal sum was paid before demonetization. Majority of payment through banking channel was made after demonetization i.e after assessee deposited huge amount of cash in her bank account. The AO had treated the cash deposited as undisclosed income. The assessee already has cash balance in her bank account. Therefore, I find no reason to treat the above sums paid through her bank account as unexplained.

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6.3.1 Assessee paid the following sums in cash.

30.07.2016	Rs.4.82,930/-
27.10.2016	Rs.2,00,000/-
08.11.2016	Rs.40,00,000/-

The assessee's cash deposit during the period of demonetization has been treated as being earned from undisclosed source. The assessee had not

given any adequate explanation regarding the source of repayment of loans made on the above three occasions. In absence of satisfactory explanation, there is no way of treating the loan repayment given in cash as explained.

6.3.2 The assessee also claimed that loan repayment of Rs. 18,00,000/- 27,00,000/- and Rs.45,00,000/- were sourced from Indravan J. Chokshi (spouse), Taraben J. Choskhi(mother) and Denish Indravadan Chokshi(son). In the assessment order, the AO stated the creditworthiness of Smt. Taraben Chokshi and Shri. Denish Indravadan Chokshi were not proven. Assessee's mother filed her last income tax return for A.Y. 2013-14 and disclosed income of Rs.2.87,500/- only. Assessee's son filed his return of income for A.Y. 2016-17 showing income of Rs.2,42,040/-. The mere fact of payment being made through banking channel does not prove the creditworthiness of the parties. Even in case of Indravadan J. chokshi, no proof of creditworthiness of the party has been furnished. Therefore, there is no reason to take the view that the source of Rs. 18,00,000/- stood explained.

In view of the above, Ground No.3 is treated as party allowed.

9. Further, with regarding the grant of opportunity of cross-examining the person whose statement was taken by the Department, the Ld. CIT(A) held that this objection raised by the assessee is frivolous and devoid of merits. While passing the order, the Ld. CIT(A) made the following observations:

8.1 From a reading of assessment order as well as submission furnished by assessee, it is seen that assessee's husband Sri Indravadan Choksi and Sri Vijay R Vora were directors in M/s Arihant Jewellers. The latter, it appeared, resigned from directorship of the company. Sri Vijay Vora was summoned by the Department and his statement was recorded u/s 131 of the Act on 09.05.2017. Statement given by him was reproduced at pages 13 to 17 of the assessment order. The objection of assessee is that she was not given opportunity to cross examine Sri Vijay Vora.

8.2 The matter is considered. From a reading of statement taken, it is seen that questions asked and answers given pertained to the company viz. M/s. Arihant Jewellers. The assessee did not have any connection with the company and the only question that may have bearing on assessee is

question number 10 and the answer given by Sri Vijay Vora to that question. During the examination u/s 131, Sri Vijay Vora was shown copy of alleged sale bill furnished to the Department by Sri Indravadan Choksi. Sri Vijay Vora had pointed out some obvious defects in the sale bill like the bill not being pre-printed, signature of buyer being absent, sale bills not being in chronological order etc. From the statement given, the AO inferred that bills issued to I.J.Jewellers je assessee were against the normal practice of the company. At this stage, it may be recalled that assessee is not a director of the company. It is not the case of assessee that she was involved in the day to day affairs of the company. Under the circumstances, even if chance of cross- examination is given to her, there is hardly any scope of her proving the statement of Sri Vijay Vora was wrong. Rather, it is seen that in course of assessment and appeal proceedings, no facts were brought on record to show that the company had stock to the extent of Rs.20 Crore and that the same was sold to assessee without receiving any payment. I would at least consider it befitting to remand the matter to the AO had the assessee furnish factual details showing that the statement given by Shri. Vijay Vora was wrong. But no facts in that regard were furnished. In view of the above, the objection raised is frivolous and devoid of merit.

Ground taken is dismissed.

10. We shall first take up the assessee's appeal in ITA No. 270/Ahd/2022.

11. The assessee has raised the following Grounds of appeal:

1.1 The order passed u/s 250 on 23/05/2022 for A.Y. 2017-18 by NFAC, Delhi, upholding the addition of Rs.28,67,50,000/- from various parties as non-genuine, repayment of loan to the extent of Rs.18 lakhs to Capri Global Capital Ltd. as undisclosed income of the appellant is wholly illegal, unlawful and against the principles of natural justice.

1.2 The NFAC has grievously erred in law and or on facts in not considering fully and properly the explanations furnished and the evidence produced by the appellant. The NFAC has passed a non-speaking order and confirmed the impugned addition simply on the findings given by AO.

1.3 The NFAC has grievously erred in law and or on facts in upholding impugned additions without furnishing the material relied upon, copy of

statement of concerned parties etc. as well as the opportunity to cross examine the concerned parties so that the assessment was liable to be quashed.

2.1 The NFAC has grievously erred in law and or on facts in confirming the additions as under and thereby upholding the cash deposits out of sales etc. as unexplained :-

<i>i) Purchases from Arihant Designers Jewellers Pvt. Ltd.</i>	<i>Rs. 20,00,00,000</i>
<i>ii) PURchases from Shri I J Chokshi</i>	<i>Rs.2,30,00,000</i>
<i>iii) URD Purchases</i>	<i>Rs.3,60,09,722</i>
<i>iv) Repayment of loan to Capri Global Capital Ltd.</i>	<i>Rs.1,36,82,930/-</i>

2.2 The NFAC has grievously erred in law and or on facts in upholding the above said additions towards purchases etc. as well as upholding the cash deposits as unexplained.

It is therefore prayed that the additions upheld to the extent of Rs.30,04,32,930/- by the NFAC should be deleted.

11.1. Before us, the counsel for the assessee has challenged the finding made by the assessing officer and Ld. CIT(A) on various counts. Firstly, the counsel for the assessee submitted that while holding that purchases and sales were non-genuine, the Department has not rejected the books of accounts and other records maintained by the assessee and it is not in dispute that the assessee had produced cash book, bank statement, sales register, purchase register and quantity records, etc in support of the purchases and sales made by the assessee. Secondly, the statement of Shri Vijay R. Vora cannot be relied upon since the relations between the assessee and Shri Vijay Vora were strained and various answers given by Shri Vijay Vora without any supporting evidence. Further, the counsel for the assessee

submitted that M/s. Arihant Designers Jewellers Pvt. Ltd., had also filed a commercial suit in the Commercial Court at Ahmedabad on 12.05.2017 through its director, Smt. Purvi Hemant Jhaveri for recovery of amount of Rs. 20,94,50,989/- due by the assessee to Arihant Designers Jewellers Pvt. Ltd. towards sale of stock. This filing of the commercial suit in the court of law itself proves that the genuine sales were made by Arihant Designers Jewellers Pvt. Ltd. to the assessee in respect to which, commercial suit for recovery had been filed by Arihant Designers Jewellers Pvt. Ltd. against the assessee. Thirdly, it was submitted that so far as URD purchases is concerned, only two out of nine persons appeared in response to summons issued u/s. 131 of the Act and their failure to respond or furnish documents as asked by assessing officer would not amount to treating the said purchases as non-genuine. Further vide his written submissions, the assessee also submitted various points as to why the statement of Shri Vijay R. Vora could not be relied upon. Further, the counsel for the assessee submitted that the assessee may be allowed in opportunity to cross-examination Shri Vijay Vora, Shri Indravadan Chokshi and other concerned persons in respect of the statements given by them. The Ld. Counsel for the assessee also placed reliance on judicial precedents in support of it's contentions.

12. In response, the Ld. D.R. placed reliance on the observations made by the assessing officer and Ld. CIT(A) in their respective orders.

13. We have heard rival contentions and perused the materials on record. On going through the facts of the instant case, we are of the considered view that the Ld. CIT(A) has not erred in law and on facts in confirming the additions made in the hands of the assessee while treating the cash deposit as unexplained income of the assessee. In this case, so far as purchases from Arihant Designers Jewellers Pvt. Ltd., is concerned, the assessing officer has clearly pointed out that no concrete evidences have been furnished by the assessee regarding purchase of jewellery/bullion from Arihant Designers Jewellers Pvt. Ltd. As per facts coming from record, due to dispute between the director of Arihant Designers Jewellers Pvt. Ltd. Shri Vijay Vora and Shri Indravadan Chokshi being the husband of the assessee, apparently, no business was being carried out by Arihant Designers Jewellers Pvt. Ltd. Therefore, there is nothing on record to prove that there was any stock amounting to Rs.20 crores (approx.) which was transferred by Arihant Designers Jewellers Pvt. Ltd. to the assessee in the months of July and October 2016 as stated by the assessee. Apparently and evidently, Arihant Designers Jewellers Pvt. Ltd., was not having such huge stock of bullion/jewellery and there is no concrete proof to establish that this amount was sold/transferred to the assessee during the year under consideration. The second notable fact regarding the sale of jewellery/bullion amounting to Rs. 20 crores (approx.) was that the purchases were not made as per regular invoicing/accounting practices of Arihant Designers Jewellers Pvt. Ltd. The bills were not in a chronological order, they were not having VAT TIN and CST TIN as was the regular practice in their line of business and the bills issued by Arihant Designers

Jewellers Pvt. Ltd. to the assessee were apparently bogus and fabricated in nature. Therefore, apparently looking into the instant facts, the purchases were only essentially book entries in order to accommodate the bogus/cash sales to account for the unexplained money of the assessee deposited by the assessee in various bank accounts during the demonetization period. Thirdly, the ld. Assessing Officer has correctly observed that no payment whatsoever was made by the assessee against this huge amount of purchase made by the assessee from M/s. Arihant Designers Jewellers Pvt. Ltd. This was clearly contradictory to normal trade practices in the line of business, wherein purchases are made on immediate payment basis. In order to demonstrate the genuineness of the transactions, the Ld. Counsel for the assessee submitted before us that a money/commercial suit had been filed by M/s. Arihant Designers Jewellers Pvt. Ltd. against the assessee for recovery of this amount of Rs.20 crores (approx.) in a commercial court of law. Therefore, the filing of the money suit itself lends credence to the fact that the assessee had made genuine purchases in response to which the seller had filed a suit for recovery against the assessee. However, we are of the view that the above argument of the Ld. Counsel for the assessee is flawed for various reasons. The fact that commercial suit/money suit has been filed between the parties is not at all a conclusive proof as to whether there was actual delivery of jewellery/bullion to the assessee or not. Even the Hon'ble commercial court would not give any specific finding with regard to the fact that whether there was any transfer or jewellery/bullion from Arihant Designers Jewellers Pvt. Ltd. to the assessee, when both the parties are not disputing the delivery of

gold/jewellery. Therefore, in our view, this commercial suit has only been filed to create a facade of eyewash that bullion/jewellery had been transferred to the assessee wherein from the facts, the assessee has not able to demonstrate the same. Another interesting aspect which comes before us from the perusal or document placed before us is that the Board Resolution dated 15th day of December, 2016 authorizing Ms. Purvi Hemant Zaveri to file a commercial suit against the assessee was recommended/signed by Shri Indravadan Chokshi, husband of the assessee in the capacity of director of M/s. Arihant Designers Jewellers Pvt. Ltd. Therefore, from the facts, it is evident that the husband of the assessee only initiated recovery proceedings in the capacity of Director of M/s. Arihant Designers Jewellers Pvt. Ltd. for initiation of money/commercial suit against his wife for an amount alleged to have been payable by his wife to M/s. Arihant Designers Jewellers Pvt. Ltd. Therefore, from the entire scheme of things, it seems apparent to us that Ld. CIT(A) has correctly observed that only a facade has been created to demonstrate that certain sale of jewellery/bullion was made by Arihant Designers Jewellers Pvt. Ltd. to the assessee, for which even from facts placed on record, there was no real/actual transfer of jewellery/bullion to the assessee. Fourthly, we observe that the assessee has recorded enormous increase in cash sales during the demonetization period, for which, the assessee has not been able to give any justifiable reason. From the facts placed on record, in our view Ld. CIT(A) has correctly observed that the assessing officer has correctly made out a case that all these alleged cash sales and purchases were only on books in order to accommodate the substantial unaccounted cash

deposited by the assessee in its various bank accounts during the demonetization period. Further, we observe that the assessing officer has correctly noted that the assessee did not file timely VAT returns and the same were only filed much later only with a view to accommodate the bogus/fabricated sales alleged to have been made by the assessee during the demonetization period. Another notable facts with respect to the transactions is that the assessee had only made a small cash sales of less than Rs. 2 lacs deliberately with a view to avoid giving PAN details of the so called purchases. Therefore, on appreciation of the entire scheme of things and the findings made by the assessing officer, we are of the considered view that the assessee has clearly engaged in bogus sales/purchase transactions only with a view to inflate the stock in its books in order to accommodate the cash sales in order to generate cash that was deposited in the assessee's various bank accounts.

14. In the case of **Sumati Dayal vs. Ld. CIT(A) 214 ITR 801 (SC)**, the Hon'ble Supreme Court has stressed upon the surrounding circumstances and application of test of human probabilities in the given set of facts in the following words:-

“The transaction about purchase of winning ticket took place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase had to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record, an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. The majority opinion after considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine. It could not be said that the explanation offered by the appellant in respect of the

said amounts had been rejected unreasonably and that the finding that the said amounts were income of the appellant from other sources was not based on evidence.”

15. On the issue of circumstantial evidence and in the matters related to the discharge of 'onus of proof' and the relevance of surrounding circumstances of the case, the Hon'ble Supreme Court in the case of **CIT v. Durga Prasad More [1972] 82 ITR 540**, have observed as under:

“...that though an appellant's statement must be considered real until it was shown that there were reasons to believe that the appellant was not the real, in a case where the party relied on self-sewing recitals in the documents, it was for the party to establish the transfer of those recitals, the taxing authorities were entitled to look into the surrounding circumstances to find out the reality of such recitals. Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and the Tribunals have to judge the evidence before them by applying the test of human probability. Human minds may differ as to the reliability of piece of evidence, but, in the sphere, the decision of the final fact finding authority is made conclusive by law.”

16. In the case of **Satish Kishore v ITO 110 taxmann.com 307 (Delhi - Trib.)**, the ITAT held that where long-term capital gain on sale of shares by assessee was an arranged affair to convert its own unaccounted money through accommodation entries and assessee failed to prove genuineness of transaction, exemption claimed under section 10(38) on sale of shares had rightly been disallowed. The ITAT made the following relevant observations, while dismissing the appeal of the assessee on this issue:

Thus, the contention of the assessee that the transaction leading to long-term capital gains are supported by documents of sale and purchase, bank statement etc., cannot be accepted keeping in view of the facts and circumstances of the case brought on record by the Assessing Officer after proper examination of the material facts and taking into account the corroborating evidences. The onus was on the assessee to prove the

transaction leading to claim of long-term capital gain was a genuine transaction. The assessee failed to justify manifold increase in the prices of the shares despite weak financials of the companies. Initial investment in the company of unknown credential and subsequent jump in the share prices of such a company, cannot be an accident or windfall but could be possible, because of manipulation in the share prices in a preplanned manner, as brought on record by the Assessing Officer. In view of the failure on the part of the assessee to discharge his burden of proof and explain nature and source of the transaction and huge profit in all shares traded by the assessee against the human probability, it is opined that the Commissioner (Appeals) has rightly confirmed the addition in dispute, which does not require any interference. This action of the Commissioner (Appeals) on the issue in dispute is upheld and the grounds raised by the assessee in the appeal are dismissed. Accordingly, both the appeals of assessee are dismissed.

17. Similarly, with respect to purchases made by the assessee from Shri Indravadan Chokshi i.e. husband of the assessee, we are in agreement with the observations by Ld. CIT(A) that there is no factual basis for such purchase of jewellery by the assessee from her husband. As mentioned in the preceding paragraphs there was no proof of M/s. Arihant Designer Jewellery Pvt. Ltd. was having any stock for sale and also there is no proof of having actually sold in jewellery / bullion to assessee's husband. Accordingly, we concur with the views of Ld. CIT(A) that these purchases are non-genuine and the assessee's appeal with respect to the same is dismissed.

18. With regards to assessee's claim towards purchase of Rs. 3.6 crores worth of jewellery / bullion, from Unregistered Dealers from a Registered Dealers (URD) again, we are of the considered view that Ld. CIT(A) has correctly observed that the AO at Para 6.6 of his order has suitably demonstrated that the claim the transaction was totally bogus. From the facts placed before us it is clear that the assessee has admitted to creating bogus stock to cover bogus sale

with regard to SBN deposited during the course of demonetization. Accordingly, assessee's appeal with respect to the aforesaid purchases is hereby dismissed. To sum up, we are of the considered view that the AO has convincingly demonstrated that the claim of such sales actually been made is totally and absolutely bogus. Further, with regard to cover up the claim of sales bogus stocks/ purchases was admitted to be created by the assessee an admitted which has been appropriately undone by the AO. Accordingly, the assessee's appeal with respect to the aforesaid disallowances, is hereby dismissed. With regard to opportunity of cross examination, we concur with the view of Ld. CIT(A) that such opportunity, in the instant facts would not solve any needful purpose whatsoever. The entire scheme of things is only a façade / eyewash created by the assessee to justify the basis of bogus sales made by the assessment during demonetization period.

Now we shall come to the Department's appeal in ITA No. 287/Ahd/2022

19. The Department has raised the following grounds of appeal:

“1. The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,04,81,999/- made u/s 68 of the Act, without properly appreciating the facts of the case and the material brought on record?”

2. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary?”

3. It is, therefore, prayed that the order of ld. CIT(A) may be set aside and that of the Assessing Officer be restored.”

20. The brief facts in relation to this ground of appeal are that during the course of assessment proceedings, the AO observed that

assessee had repaid loan of Rs. 2,46,86,637/- outstanding with Capri Global Capital Ltd. The assessee was requested to furnish ledger confirmation, copy of ITR, copy of bank statement duly reflecting the transaction of Capri Global Ltd. In response, the assessee submitted copy of ledger account in it's books of accounts of Capri Global Capital Ltd., loan accounts statement issued by Capri Global Ltd. and corresponding bank statement evidencing the proof of payment. However, the assessee was unable to produce the confirmation and copy of ITR of Capri Global Ltd. On perusal of reply of the assessee, the AO held that in absence of cogent evidences of the source of repayment of loan of Rs. 2,41,64,929/-, this amount was liable to be treated as unexplained cash credit and added back to the total income of the assessee under Section 68 of the Act. While passing the order, the AO made the following observations:

"From perusal of assessee's reply and above schedule following facts are noticed:

1. Out of total repayments, a sum of Rs.4,82,930/- was paid in cash on 30.07.2016, Rs.2,00,000/-, was paid in cash on 27.10.2016 and Rs.40,00,000/- was paid in cash on 08.11.2016 which is not allowable as per the provision laid down by section 269T.

2. It was also found that out of remaining amount Rs.45,00,000/- and Rs. 27,00,000/- were paid by Shri Dennis Indravadan Chokshi and Smt Jaraben Jagjivandas Chokshi respectively who are son and mother of the Indravadan J Chokshi.

3. Further, Shri Dennis I Chokshi had filed his first return of income for AY-2016-17 on 23/05/2017 declaring income of Rs.2,42,040/- and Smt Taraben J Chokshi had filed her last return of income for the A.Y-2013-14 declaring total income at Rs.2,87,500/-. The return of income of the above two persons does not support the creditworthiness.

4. The assessee had not furnished anything in respect of loan papers/documents, sanction letter, amount of loan taken, details of loan

interest, amount of interest charged by the lender and details of TDS deducted by the assessee on interest payment.

5. The assessee had not furnished the confirmation letter from the lender and ITR of Capri Global Capital Ltd.

1. Copy of interest certificate is not furnished by the assessee.

2. The assessee had not explained the nature of repayment of loan made by Indravadan Chokshi, Taraben Chokshi and Denish I Chokshi, as if the assessee had taken any loan/gift or consideration from these persons or anything else, not explained by the assessee. Apart from this the assessee had not shown anything in respect of above payment by the family member in her books of accounts.

*In the light of above facts and circumstances as discussed above and in the absence of cogent evidences of the source of repayment of loan of Rs.2,41,64,929/- with Capri Global Capital Ltd. is remained unexplained. Therefore, the sum of Rs.2,41,64,929/- is treated as unexplained cash credit utilized for repayment of loan and added back to the total income of the assessee u/s.68 of the Act. Penalty proceedings under section 271AAC(1) are initiated separately. **UNQUOTE***

21. In appeal, the Ld. CIT(A) partly allowed the appeal of the assessee and give relief to the assessee to the tune of Rs. 1,04,81,999/- on the ground that the aforesaid payments were made from assessee's own bank account and therefore, there was no reason to treat the above sum paid through the assessee's bank account as unexplained. However, with respect to the balance amount, the Ld. CIT(A), on appreciation of the evidences placed on record, confirmed the addition on the ground that the assessee has not been able to proof the sources thereof. While passing the order the Ld. CIT(A) observed as under:

"6.3 I have considered the matter. The AO had disallowed the total amount of loan loan repaid by assessee. I find no basis in the action of the AO. According to assessment order page 30, following payments were made from the bank account of assessee:

<i>Date</i>	<i>Amount</i>
15.04.2016	69,805/-

15.04.2016	3,42,372/-
23.06.2016	69,822/-
15.11.2016	3,42,372/-
15.11.2016	69,805/-
28.11.2016	52,00,000/-
06.12.2016	43,87,823/-

The above payments were made from assessee's own bank account. Only nominal sum was paid before demonetization. Majority of payment through banking channel was made after demonetization i.e. after assessee deposited huge amount of cash in her bank account. The AO had treated the cash deposited as undisclosed income. The assessee already has cash balance in her bank account. Therefore, I find no reason to treat the above sums paid through her bank account as unexplained.

6.3.1 Assessee paid the following sums in cash.

30.07.2016	Rs.4,82,930/-
27.10.2016	Rs.2,00,000/-
08.11.2016	Rs.40,00,000/-

The assessee's cash deposit during the period of demonetization has been treated as being earned from undisclosed source. The assessee had not given any adequate explanation regarding the source of repayment of loans made on the above three occasions. In absence of satisfactory explanation, there is no way of treating the loan repayment given in cash as explained.

6.3.2 *The assessee also claimed that loan repayment of Rs.18,00,000/- 27,00,000/- and Rs.45,00,000/- were sourced from Indravan J. Chokshi (spouse), Taraben J. Chokshi(mother) and Denish Indravadan Chokshi(son). In the assessment order, the AO stated the creditworthiness of Smt. Taraben Chokshi and Shri. Denish Indravadan Chokshi were not proven. Assessee's mother filed her last income tax return for A.Y. 2013-14 and disclosed income of Rs.2,87,500/- only. Assessee's son filed his return of income for A.Y. 2016-17 showing income of Rs.2,42,040/-. The mere fact of payment being made through banking channel does not prove the creditworthiness of the parties. Even in case of Indravadan J. Chokshi, no proof of creditworthiness of the party has been furnished. Therefore, there is no reason to take the view that the source of Rs.18,00,000/- stood explained.*

In view of the above, Ground No.3 is treated as party allowed."

22. On going through the facts on the instant case, we are of the considered view that the Ld. CIT(A) has taken a correct decision while partly allowing the appeal of the assessee and thereby has

correctly deleted the addition of Rs. 1,04,81,999/- under Section 68 of the Act. Accordingly, we find no factual or legal infirmity in the order of Ld. CIT(A) with respect to this ground of appeal, so as to call for any interference.

23. In the result, the Department's appeal is dismissed.

24. In the combined result, both the appeal of the assessee and Department are hereby dismissed.

Order pronounced in the open court on	18-07-2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 18/07/2024

Sd/-
(SIDDHARHTA NAUTIYAL)
JUDICIAL MEMBER

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद