

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 582/JP/2024  
निर्धारण वर्ष/Assessment Years : 2017-18

|  |             |                             |
|--|-------------|-----------------------------|
| Abhishek Khandelwal<br>Prop. M/s Laxmi Jewellers<br>Opposite GPO, P. R. Marg<br>Ajmer, Ajmer | बनाम<br>Vs. | ITO,<br>Ward-2(2),<br>Ajmer |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CQKPK 4689 P   |             |                             |
| अपीलार्थी/ Appellant   |             | प्रत्यर्थी/ Respondent      |

निर्धारिती की ओर से/ Assessee by : Sh. Sunil Porwal, CA (Th. V.C.)  
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary

सुनवाई की तारीख/ Date of Hearing : 22/08/2024  
उदघोषणा की तारीख/Date of Pronouncement: 02/09/2024

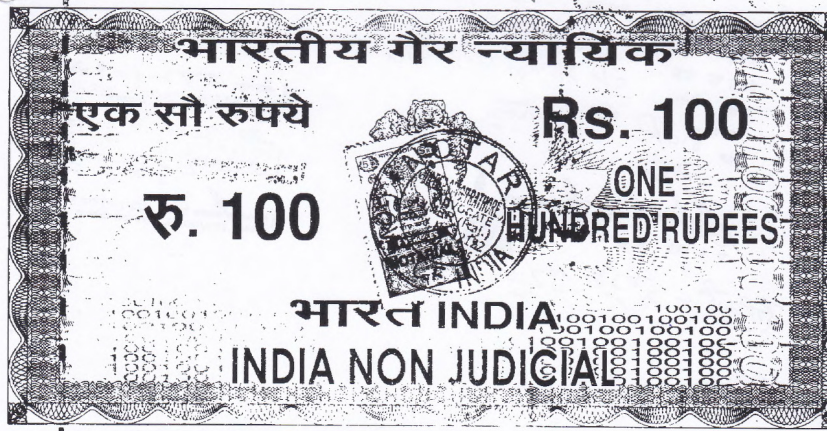
आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is preferred by the above named assessee, feeling dissatisfied with the order of the Commissioner of Income Tax (Appeals)-12, Mumbai dated 26/10/2023 [for short Id. CIT(A)] for assessment year 2017-18. The said order of the Id. CIT(A) arise because the assessee challenged the order of the assessment passed on

30.11.2019 passed under section 143(3) of the Income Tax Act, [ for shrot Act ] by ITO, Ward-2(2), Ajmer.

2. At the outset of hearing, the Bench observed that there is delay of 124 days in filing the appeal by the assessee for which the Id. AR of the assessee filed an affidavit stating the reasons for delay and prayed for condonation of delay, the content of the affidavit filed reads as under :-



राजस्थान RAJASTHAN

BT 383458

**Affidavit**

I Abhishek Khandelwal S/o Gopal Khandelwal Prop. M/s Laxmi Jewellers, Ajmer do solemnly affirm as under:-

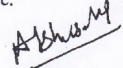
1) That I am doing the business of Gold / Silver jewellery since September'2014 & holds VAT / GST number also.

2) That for assessment year – 2017-18; complete books of accounts, sales, purchase bills etc. were e-filed to A.O. & verified by him.

3) That the appeal was filed to CIT(A) & time to time submissions as called filed. The decision of CIT(A) dated 26.10.2023 was received (Seen & viewed) on portal only on 05.04.2024. thus it caused delay in filing the appeal & assessee request for condonation of same since the delay cause was beyond control of assessee.

Place: Ajmer

Date: 30/4/24

  
(Deponent)
**Verification**

I Abhishek Khandelwal S/o Gopal Khandelwal Prop. M/s Laxmi Jewellers, Ajmer do verify the above statement true to the best of my knowledge and belief.

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ABHISHEK KHANDELWAL

ASST. YEAR 2017-18

APPEAL NO. ITA/582/JP/2024

Notary Public, Ajmer

3. On this issue during the course of hearing, the Id. DR objected to assessee's application for condonation of delay stating that the serving of the notice at the different email is not possible and it is sufficient that the assessee was given the notice and that suffice the

principles of natural justice and thereby objected to the condonation petition filed by the assessee.

4. We have heard the rival contention of the parties and perused the materials available on record. The prayer by the assessee for condonation of delay of 124 days has sufficient cause as the email id mentioned was different as contended in the affidavit placed on record and thereby it has resulted delay in bringing the present appeal with a delay of 124 days.

Based on the contentions supported by the affidavit we concur with the submission of the assessee and condone the delay in bringing the present appeal with a delay of 124 days. As held by the apex court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) wherein the apex court held that "Any appeal or any application, other than an application under any of the provisions of [Order XXI of the Code of Civil Procedure](#), 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period." The court further noted that ordinarily a litigant does not stand to

benefit by lodging an appeal late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.

As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. As the assessee as contended in the affidavit that he was prevented with sufficient cause based on the reasons mentioned in the affidavit and we concur and thereby condone the delay.

5. In this appeal, the assessee has raised following grounds: -

- “1. *That the Ld. CIT(A) confirming the application of provision of sec. 145(3) without rejecting method of accounting and stock valuation.*
2. *That the Ld. CIT(A) confirming the application of provision of sec. 69A for cash deposit in bank, whereas same are out of regular books as maintained.*
3. *Any other matter with prior permission of the chair.*

6. Succinctly, the fact as culled out from the records is that the assessee E-filed his return of Income on 23.09.2017 declaring total Income of Rs. 6,02,080/-. The case was selected under complete scrutiny for the reason (i) Cash deposit during demonetization period.

Notice u/s 143(2) of the Income tax Act, 1961 was issued on 13.08.2018, fixing the case for hearing on 28.08.2018, which was duly

served upon the assessee by registered mail ID. Notice u/s 142(1) was issued to the assessee on 25.04.2019, 06.06.2019, 23.08.2019, 04.09.2019. In compliance with statutory notices, the assessee has e-furnished necessary details called for. The details so furnished have been thoroughly examined and considered which are placed on file. Replies filed to the points raised during assessment proceedings along with details/clarifications sought are placed on file by the Id. AO.

6.1 During the year under consideration the assessee has shown income from jewellery business in the name & style of M/s Laxmi Jewelers & income from other sources. The Id. AO after verification and examination of the details filed, noticed that assessee had deposited substantial cash amounting Rs. 36,50,000/- in his bank account with Bank of Maharashtra, account No. 60197106811 on 21.11.2016. The date comes under the period of demonetization dated 9.11.2016 to 30.12.2016.

On perusal of assessee's Income Tax Return of assessment year under consideration and preceding assessment year, bank statements and submissions Id. AO observed that assessee had received income/profit from jewellery, and he has deposited cash of only Rs. 1,60,000/- up to 26.10.2016 and no cash deposited after demonetization period.

Similarly, in F.Y. 2015-16 assessee has made cash deposit in bank Rs. 9,10,000/- only. Therefore, assessee was asked to explain the sources of cash deposits during demonetization period. In response, assessee has submitted that Cash deposited in his saving bank accounts during the demonetization period from dated 09.11.2016 to 30.12.2016 were out of the sale proceedings of jewellery.

Ld. AO on 22.11.2019 issued a show cause notice to the assessee mentioning the reasons as to why the books of account maintained by the assessee is not acceptable and proposed to be rejected by invoking the provisions of section 145(3) of the Act. The assessee furnished the reply on 22.11.2019. The Id. AO considered the reply of the assessee but found not acceptable. Since, the Id. AO already proposed to reject the books of account, he estimated the income @ 10 % of cash deposit as additional income and accordingly added a sum of Rs. 3,65,000/- as income of the assessee.

7. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

Decision and Reasons -

3. Ground No. 1 is regarding the application of provision of section 145(3) without rejecting the method of accounting and stock valuation.

3.1. The assessment order and the submissions made by the appellant were perused carefully.

3.2 In the assessment order, the AO has categorically stated in the second last para that-

In view of above, books of accounts of the assessee are rejected u/s 145(3) and cash deposited upto Rs. 3,65,000/- (10% of cash deposit) in Maharashtra bank A/c No. 6097106811 during demonetization period is treated as unexplained deposit/money under sec. 69A and taxed under sec. 11588E of the I.T. Act and penal provisions initiated apart from the interest under sec 234A, B & C.

3.3. Further, in the preceding para, the AO has made a detailed description of the discrepancies found by him in the books of accounts maintained by the appellant. The discrepancies as enumerated by the AO in the assessment order were as under-

1. You have shown total sales of Rs. 1,04,81,531 during F.Y. 2016-17 declaring Net profit of Rs. 60,20,78/- in compare to total turnover in F.Y. 2015-16 Rs. 7,10,600/- showing Net profit of Rs. 34,71,29/- and no debtors, creditors, stock in trade shown in return for A.Y. 2016-17 which was filed u/s 44AD.

2. As per Ledger a/c of sale you have shown total cash sales during F.Y 2016-17 Rs. 37,81,913/-. Out of which cash sale was Rs. 48,364/- upto 04.09.2016 and Rs. 36,81,913/- from 09.10.2016 to 07.11.2016.

3 in F.Y. 2015-16 cash sale shown by you was Rs. 4,20,320/- upto 08.11.2015. The festival of Diwali was on 11.11.2015 & Navratra (Dussehra) was on 22.10.2015 in F.Y. 2015-16.

4. You have e-furnished bills of cash sales on which no name and address of person, PAN, quality of gold, and detail of item sold is mentioned. All bills are made of below 2,00,000/-.

5 You have shown NIL closing stock as on 31.03.2016 in your return for A.Y. 2016-17 whereas you have shown opening stock of gold ornaments Rs. 64,73,250 (2660.960 grms.) as on 01.04.2016.

6 You have shown cash receipt of Rs. 2,42,100/- on 20.04.2016 in cash 1. book as advance and others. Whereas as per return for A.Y. 2016-17 no debtors/advances shown.

7. You have shown opening cash balance in cash book as on 01.04.2016 Rs. 1,54,326/- As per your cash book you have cash in hand Rs. 30,71,644/- on 26.10.2016 including job work income claimed Rs. 266,500/- (received upto June, 2016) but you have deposited cash in bank Rs. 1,30,000/- on 26.10.2016.

3.4 The above notings and reasons demonstrate that the AO has minutely and carefully examined the books of accounts maintained by the appellant and concluded that the same were not reliable and deserved to be rejected u/s 145(3) of the Act.

3.5. The AO also concluded that the appellant has made a concocted story by making unreliable books of accounts to generate cash through bogus sales or otherwise to deposit his undisclosed cash in the bank account during the demonetization period.

3.6 Section 145(3) empowers the AO to reject books of accounts u/s 145(3) under ANY of the following circumstances -

- (a) Where he is not satisfied about the correctness or completeness of the accounts; OR
- (b) Where method of accounting cash or mercantile has not been regularly followed by the assessee: OR
- (c) Accounting Standards as notified by the Central Government have not been regularly followed by the assessee.

3.7 Hence, broad parameters have been laid out in the section itself under which the provisions are required to be invoked for rejection of books of accounts in any particular case. Even definite groundwork sine-quantum (without which not), has been done expressly by the AO before resorting to the provisions of this section in the instant case.

3.8. Further, the Hon'ble Courts also expect the AO to bring on record the specific defects in the books of accounts of the assessee before invoking the provisions of section 145(3) which he has done.

3.9. During the assessment proceedings, the appellant was given an opportunity to justify the discrepancies in his books of accounts.

3.10. The appellant furnished his reply on 25.11.2019 stating as under --

"That the trade of gold jewellery is such that it is usually in CASH & cusome do not wish to disclose his name nor is warranted in Income-Tax Law Further each day sales & purchases have been verified by you in person & no single discrepancy found therein in cash-book & stock register."

3.11. The above reply was considered by the AO during the assessment proceedings and the various discrepancies and mismatch was again described in the body of the assessment order itself. The relevant portion is being reproduced as under-

Assessee has shown large cash in hand Rs. 41,32,290/- on 08.11.2016 from sale. Assessee has stated that large cash in hand was due to sale of Navratra & Diwali. Assessee has not given justifiable reasons of having large cash in hand as Diwali & Navratra was also in FY 2015-16 and he has deposited cash only Rs. 9,10,000/- Assessee has deposited Rs. 130,000 on 26.10.2016 while he has Rs. 30,71,644/- cash balance as per cash book furnished. Besides this assessee has shown cash sale of Rs 37,81,913/ during the year. Out of which cash sale was Rs. 48,364/- was upto 04.09.2016 and Rs. 36,81,913/- from 09.10.2016 to 07.11.2016. All the bills of cash salu were below 200000/- without name and adress of purhaser and no quality of gold and item sold mentioned. Assessee has introduced debtors of Rs 242,100/- on 20.04.2016 while he has no closing balance of debtors as on 31.03.2016.

3.12. From the above commentary of the AO, it is clear that precise and in depth analysis of the books of accounts of the appellant revealed that the books of accounts of the appellant suffered from various types of defects and discrepancies.

3.13. The Hon'ble Allahabad High Court in the case of Avdesh Pratap Singh Abdul Rehman and Brothers vs. CIT 201 ITR 406 held that –

It is difficult to catalogue the various types of defects in the account books of an assessee which may render rejection of account books on the ground that the accounts are not complete or correct from which the correct profit cannot be deduced

3.14 In the instant case, the detailed explanations given by the AO which led him to infer that the accounts had discrepancies and that it could not be relied upon to assess the income, profits or gains of the appellant. Further, the Hon'ble Court had opined in the case (supra) that-

In such a situation the authorities would be justified to reject the account books under section 145(2) and to make the assessment in the mariner contemplated in these provisions.

3.15. Further, the Hon'ble Supreme Court in the case of Kachwala Gems Vis. JCIT, Jaipur 288 ITR 10 (SC) held the rejection of books of accounts under Section 145 is justified.

16 The appellant himself is to be blamed that he did not submit proper accounts and therefore, there was no arbitrariness on AO's part to reject the books of accounts based on the discrepancies described in detail in the body of the assessment order.

3.17. In view of the above, the AO has proceeded to reject the books of accounts for the reason of not being satisfied about the correctness or completeness of the accounts, which is one of ANY of the reasons, under section 145(3) of the Act, which has been enumerated in para 3.6 of this appellate order.

3.18. Therefore, the contention of the appellant that the AO has applied section 145(3) without rejecting the method of accounting and stock valuation is misplaced, misconstrued and misinterpretation of section 145(3), which allows the AO to reject books of accounts if he is not satisfied with the correctness or completeness of the accounts maintained by the appellant.

3.19 In the instant case, the AO has invoked first point of section 145(3) which postulates that the AO is not satisfied about the correctness and completeness of the books of accounts of the appellant.

3.20 In light of the above, the Ground No. 1 is dismissed.

4. Ground No. 2-In Ground No. 2, the appellant contends that section 69A is meant for application in the case of cash deposits in banks whereas he contends that the amount are out of his regular books of accounts.

4.1. In this regard, it is stated that as the AO had categorically rejected the books of accounts in the body of the assessment order and resorted to make an assessment invoking section 69A

4.2 Section 69A envisages that->

Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion jewellery or valuable article is not recorded in the books of account, if any maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion jewellery or other valuable article, or the explanation offered by him is not the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

4.3. In view of the above, rejection of books of accounts by the AO, for the reason that the appellant's books of accounts contains discrepancies and do not meet the test of deduction of true and correct profits therefrom, the AO has rightly estimated 10% of the cash deposited by the appellantie. Rs. 3,65,000/- during demonetization period and tax it as unexplained deposit/money uis 69A of the I.T. Act.

4.4 Sufficient reasons have been enumerated in the assessment order to hold that books of accounts maintained by the appellant contain discrepancies and are unreliable. It is also evident that the AD has brought on record the material on basis of which he has arrived at the conclusion with regard to the correctness and completeness of the accounts of the appellant. Therefore, section 69A has been correctly invoked by the AO. He has made the addition of Rs. 3,65,000/- (10% of total cash deposited during demonetization period) by treating it as unexplained

deposit/money under section 69A. The ground taken by the appellant is misplaced and deserved to be dismissed.

4.5 In view of the above, Ground no. 2 is dismissed.

5. Ground No. 3 is general in nature and needs no adjudication.

6. In the result, the appeal of the appellant is dismissed.”

8. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove.

To support the grounds so raised by the assessee, Id. AR of the assessee filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

(1) “E-return of income was filed on 23.09.2017 being income from jewellery business in the name of M/s Laxmi Jewellers & other sources. (Page 1 to 13)

(2) Case was selected under complete scrutiny for the reason “CASH DEPOSIT DURING DEMONETIZATION PERIOD” total cash deposit on 21.11.2016 (of demonetization period 09.11.2016 to 30.12.2016) is Rs. 36,50,000/- (Containing OLD SBN) out of cash balance as on 09.11.2016 of Rs. 41,32,290.00.

(3) The details of sales, job receipts for the last 3 year are as under:-

| Period   | Sales            | Jobs           | G.P.           | N.P.           | G.P.%  | N.P.%  |
|--|------------------|----------------|----------------|----------------|--------|--------|
| <u>Business started in September 14 (as on 31.03.2015)</u> | Rs. 3,97,800/-   | Rs. 2,67,100/- | Rs. 56100/-    | Rs. 321485/-   | 14.10% | 80.81% |
| As on 31.03.2016   | Rs. 3,98,600/-   | Rs. 312000/-   | Rs. 64800/-    | Rs. 347129/-   | 16.26% | 87.29% |
| As on 31.03.2017   | Rs. 1,04,81531/- | Rs. 2,66,500/- | Rs. 4,52,363/- | Rs. 6,02,078/- | 4.32%  | 5.74%  |

(4) That the assessee is further subject to “VAT TAX” (Composition tax under & copy of VAT Tax return for the year is as enclosed & forwarded to A.O. also Tin – 08550014509 (under vat tax).

- (5) The A.O. has observed (Page 2 of Ao's order 2<sup>nd</sup> Para) that assessee had received income / profit from jewellery and he has cash deposited only Rs. 160000/- upto 26.10.2016 and no cash deposited after demonetization period. Similarly in F.Y. 2015-16 assessee has made cash deposit in bank Rs. 9,10,000/- only. Therefore, assessee was asked to explain the sources of cash deposits during demonetization period, in response, assessee has submitted that cash deposited in his saving bank accounts during the demonetization period from 09.11.2016 to 30.12.2016 were from sale of jewellery.
- (6) The A.O. has further observed that though sales are complete vouched & sales bills also produced but same do not contain the name & address of buyers & since in return filed on 31.03.2016; (U/sec. 44AD in sahaj form 4) hence no closing stock being opening stock as on 01.04.2016 is verifiable. And thus looking to such discrepancies; the books of accounts believed to be rejected u/sec. 145(3) of Act; & thus show caused & has made addition of 10% of total Cash – Deposit in bank during demonetization period (10% of Rs. 36,50,000/-) Rs. 3,65,000/- as unexplained cash – credit u/sec. 69A of Act & same has taxed u/sec. 115BBE.
- No care for following facts granted:-
- (1) That is was intimated to A.O. & facts got verified that the trade of gold jewellery is such that it is usually in CASH & customer do not wish to disclose his name nor is warranted in income tax law. Further each day sales & purchase have been verified by A.O. in person & no single discrepancy found therein in cash – book & stock register.
- (2) That the details of opening stock as on 01.04.2016 & opening Debtors of Rs. 2,42,100/- are mainly as per books of accounts, however return filed u/sec. 44AD hence there was no necessity to disclose in return form, but VAT return, records in form of sales, purchases justified the same were physically verified by A.O. during personal hearing. Copy of Assessee's Trading, Profit and loss and Balance – Sheet as on 31.03.2015, 31.03.2016 as such mitted to A.O. are enclosed to justify the facts. (Page 13A, 13B)
- (3) Provision of section 145(3) of Act can be applied for following reasons:-  
*Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) [has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2)], the Assessing Officer may make an assessment in the manner provided in section 144."*
- (4) Thus till the A.O. has not disputed the quantity sold / purchase; valuation of closing / opening stock; no provision u/sec. 145(3) can be invoked till A.O. do not prove any deviation in accounting policies & valuation merely cash – sales, realization of debtors no name of customer in sales bills cannot justify the action of A.O. for initiating the provisions of section 145(3) of Act.  
(Page 15 to 18)
- (5) That the G.P.% & N.P.% are also subject to rate variation (Increase) in closing stock to sales as evident from valuation's purchases.)
- (6) That as per standard operating procedures (SOP) mentioned in the CBDT instruction on "OPERATION CLEAN MONEY" (OCM); as per which it is

important to check whether the case of the assessee falls into statistical analysis; which suggests that there is a looking of non – existent sales whereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money.

- (7) Further the A.O. is to look into that whether there is any difference between cash sales to cash deposit ratio or there is substantial downfall or increase in the gross profit and net profit compared to earlier years.
- (8) The assessee has maintained day to day stock register of items traded gold & silver & has also maintained day to day cash book specifying the sales & cash flow “NO DEFECTS” therein found; nor has been pointed out by the A.O. during assessment proceedings. (Page 15 to 18)

That uptill assessee was maintaining books in individual name & from year 2015 in name of Laxmi Jewellers also complete Trading, Profit and loss account & Balance – sheet for year ended 31.03.2015, 31.03.2016 & for the year were also submitted to A.O. & as enclosed. (Page 13A, 13B)

- (9) That the business of jewellery of assessee has only started in the year 2015 (September'14) & figures of sales of this year v/s last year are not comparable. Also last year sales was just Rs. 3,98,600/- whereas this year it is Rs. 1,04,81,531/-.

Further the sales effected higher prior to demonetization in due to navratri & deewali sales.

Thus the ratio of 10% on cash deposit applied on total sales during demonetization does not hold good.

As held in case of ITAT Delhi ITA No. 37414/Delhi/2019 Agon Global (P) Ltd. V/s The ACIT dated 31.10.2019

That when there is no difference in cash sales V/s cash deposit ratio no addition on account of cash deposits during demonetization period can be made.

- (10) Even if provisions of section 145(3) of Act are applied; same cannot be considered as unexplained deposit money u/sec. 69A of Act.

(A.O. has considered 10% of cash – deposit Rs. 36,50,000/- in bank during demonetization period as unexplained cash credit).

*Where books of account are rejected in their entirety, the assessing officer cannot rely upon any entry in those books of account for making an addition to assessee's taxable income under section 68*

(1) *CIT V. Dulla Ram, Labour Contractor (2014) 42 taxmann.com 349/223 taxman 24 (Mag.) (Punj. & Har.)*

(2) *CIT v/s Bahubali Neminath Muttin (2016) 72 taxman.com (139) Kar.*

Since it is books sales, rates of sales & quantity of sales not disputed; A.O. has no dispute on valuation of stock or cash flow in books. Debtors realized are having identity & out of sales made already considered by A.O. (Debtors realized on 20.04.2016 are debtors for 01.04.16 to 19.04.16 for sales & not opening as on 01.04.2016 complete cash book copy for the year filed to A.O.; thus it is either estimation of sales amount or gross profit margin can be estimated by applying provisions of section 145(3) of Act,

but at stage "SALES AS PER BOOKS" cannot be considered as "UNEXPLAINED MONEY CREDIT U/SEC. 69A & THUS PROVISION OF SECTION 115BBE CANNOT BE INVOKED".

No further disallowance can be made when books rejected. *ITAT (JPR) ITA No. 298/JPR/2013 A.Y. 2005-06 Cosmopolitan Tr. Corporation V/s ITO 2(1) JPR.*

Further even if any addition made it is "BUSINESS INCOME" & not "UNEXPLAINED MONEY" Refer – *Shri Shyamlal Goyal Sendliwa V/s ACIT Circle – 2 Indore (29.06.2022)*

That even cash surrender to tax is income u/sec. 28 to 44 of Act. Thus the provision of section 69A of Act do not apply. It is business income liable to tax u/sec. 28 to 44 & thus no provision of section 69A could apply.

Similar view have been held by various courts in favour of assessee deciding that since Cash – deposit (Demonetization period), when investment / source disclosed in books of accounts than no provision of section 69A can be invoked.

*Refer – (1) (2024) 160 taxman.com 1249 (Vishakapathnam ITAT) Shoha Devi Dilip Kumar V/s ITO dated 31.01.2024*

*(2) ITO V/s Tatiparti Satya Narayana (It Appeal No. 76 (VIZ) of 2021 dated 16.03.2022 (Para 6).*

*(3) (2024) 161 taxman.com 293 (Amritsar ITAT) Mohd Ashraf War V/s ITO dated 02.04.2024.*

*(4) Fine Gujrnwala Jewellers V/s ITO (2023) 151 Taxman.com 340 (Delhi ITAT) Para 10."*

9. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee is proprietary of the M/s Laxmi Jewellers doing business of sale of silver and gold articles. The assessee deposited cash of Rs. 36,50,000/- in the bank account which are of specified bank note (SBN). The assessee has given all the proof related to the recording of the sale on account of the Diwali festival and the assessee could not deposit the cash into bank account due to festival

seasons and in the meantime, demonetization was announced. Thus, the action of the Assessing Officer making addition of Rs. 3,65,000/- u/s 68 of the Act being 10% of the money so deposited u/s. 69A of the Act is incorrect and required to be deleted.

10. Per contra, Id. DR relied upon the detailed reasoning given by the Id. AO at page No. 3 of her order wherein Id. AO contended that the turnover of the assessee has declared u/s 44AB of the Act in the preceding year. The assessee declared the sales of Rs. 36,81,913/- from 09.10.2016 to 07.11.2016. The assessee has not furnished details of purchaser of the goods along with name, address and PAN. The assessee has not shown closing stock and has shown opening stock for an amount of Rs. 64,73,250/-. Based on that the additions making @ 10% of the sales is correct and the Id. CIT(A) confirmed the finding of Id. AO based on those arguments, she supported the order of lower authorities.

11. We have heard the rival contentions and perused the material placed on record. The bench noted that the apple of discord in this case is that Id. Assessing Officer made a lump sum addition @ 10% on the amount deposited into the bank account of the assessee on account of the deposit

of SBN made by the assessee for an amount of Rs. 36,50,000/- for which Id. AO made ad-hoc addition @ 10% u/s 69A of the Act. The provisions of section 69A of the Act provides to make the addition if the assessee is found to be the owner of any money, bullion jewellery and other valuable articles and such money bullion jewellery or valuable is not recorded in the books of the account of the assessee. Therefore, when the sale has been duly recorded and supported by the books of account produced by the assessee the addition cannot be made u/s. 69A of the Act. But since the books of account of the assessee has already been rejected and the profit is estimated @ 10 % on the money so deposited into the bank account where we note that since this addition being trading addition made by the Id. AO he has not given the credit of the profit already reflected in the books of account and therefore, while doing so the Id. AO has not reduced that profit which we considered is required to be given credit to the assessee while making the addition therefore, we direct the Id. AO to reduce the profit already declared by the assessee @ 5.74 % and balance amount 4.26 % can be considered as trading addition in the hands of the assessee. Based on these observations the ground no. 2 raised by the assessee is partly allowed.

12. So far as the ground no. 1 raised by the assessee is concerned as is evident from the assessment order that the books of account of the assessee was rejected by the Id. AO by mentioning the various defects on page 3 of assessment order. Even the Id. CIT(A) has dismissed that ground based on the merits discussed by the assessing officer in his order.

Before us ground no. 1 raised by the assessee reads as “*That the Ld. CIT(A) confirming the application of provision of sec. 145(3) without rejecting method of accounting and stock valuation.*”

Here we note that the assessee is not challenging the rejection of the books based on the detailed observation made by the Id. AO but contend that the method of accounting as well as the stock valuation was not rejected. We note that once the books of account is rejected based on detailed 6 reasons by the Id. AO, it may not be a particular part of the record but once the same is rejected on various reasons we do not find any infirmity in the finding recorded by the Id. CIT(A) and that of the Id. AO. Therefore, ground no 1 raised by the assessee stands dismissed.

In the result, the appeal of the assessee stands partly allowed.

Order pronounced in the open court on 02/09/2024.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 02/09/2024

\*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Abhishek Khandelwal, Ajmer
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(2), Ajmer
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 582/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar