

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 428/DEL/2024**  
**[Assessment Year: 2017-18]**

M/s Khoobsoorat Fabrics Pvt. Ltd., Plot no. 122, Ist Floor, Patparganj Industrial Area, Delhi-110092. PAN- AAACK 3072 B	<u>Vs</u>	Income-tax Officer, Ward-14(3), Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>Shri Gautam Jain, Adv.; &amp; Shri Lalit Mohan, CA</b>	
<b>Respondent by</b>	<b>Shri Sanjay Kumar, Sr. DR</b>	
<b>Date of hearing</b>	<b>14.08.2024</b>	
<b>Date of pronouncement</b>	<b>11.08.2024</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 22.01.2024, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

*“1. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has erred both in law and on facts in upholding an addition made of Rs. 31,85,570/- out of Rs. 32,34,000/- representing alleged unexplained cash deposits in the bank account of the appellant company during the period of demonetization and brought to tax under section 68 of the Act read with section 115BBE of the Act*

1.1 That, the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that the learned Assessing Officer having accepted the cash sales and taxed income thereon could not by any stretch of imagination either legally or logically hold that cash deposited is unexplained and taxable as income of the assessee u/s 68 of the Act.

1.2 That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate that once the sales are duly recorded in the books of accounts and have been made out of stock available in the books of accounts then both logically and legally, such sales could not be separately assessed to tax as bogus sales and unexplained cash credit u/s 68 of the Act.

1.3 That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the addition by failing to appreciate that once books of accounts are correct and complete and therefore, the sales as recorded in the books of accounts out of stock available with the appellant could to be regarded as cash sales merely on statements without disregarding the factual matrix/evidence tendered by the appellant

1.4 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the purchases declared in the books of accounts were duly accepted then no subjective assumption and presumption could be made a basis to subjective assumption and presumption could be made a basis to assume, allege and conclude that sales made out of such purchases were unexplained credit under section 68 of the Act.

1.5 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in recording various adverse inferences which are contrary to the facts on record, material placed on record and, are otherwise unsustainable in law and therefore, addition so sustained is absolutely unwarranted.

2. That without prejudice to the above and in the alternative, even otherwise, the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in holding that amount deposited in the bank by the appellant is taxable as income under section 68 of the Act and thereafter computed the demand in accordance with the rates specified in section 115BBE of the Act as amended by Taxation Laws (Second Amendment) Act, 2016.”

2. Facts giving rise to the present appeal are that assessee company filed its return for relevant assessment year 2017-188 on 11.10.2017 declaring income of Rs. 3,24,840/-. The case was taken up for scrutiny through CASS on limited parameter. The reason for selection of scrutiny is stated to be abnormal increase in cash deposits during demonetization period as compared to pre demonetization period. During assessment proceedings the Assessing Officer noticed that there was abnormal increase in cash deposits during the demonetization period. The Assessing Officer issued statutory notices to the assessee to explain the source of such cash deposits. However, there was no compliance, hence he made addition of the cash deposited in the bank account and assessed income at Rs. 35,58,840/- against declared income of Rs. 3,24,840/-. Aggrieved by this the assessee carried the matter before learned CIT(Appeals) who partly allowed the appeal. Thereby out of the total addition of Rs. 32,24,000/- he reduced it to Rs. 31,85,570/-. Aggrieved against this the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee reiterated the submissions as made in the written synopsis. For the sake of convenience the written synopsis is reproduced as under:

*“MAY IT PLEASE YOUR HONOURS:*

*1 This appeal arises from an order dated 22.1.2024 of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.*

*2 That appellant is a private limited company incorporated on 27.7.1993 under the Companies Act 1956 and, is engaged in the business of trading of fabrics.*

*3 Grounds 1 to 1.5 and 2 relate to addition made of Rs. 31,85,570/- out of Rs. 32,34,000/- representing alleged unexplained cash deposits in the bank account of the appellant company during the period of demonetization and brought to tax u/s 68 of the Act read with section 115BBE of the Act.*

3.1 In this regard, it is submitted that appellant has deposited cash amounting to Rs. 32,34,000/- during demonetization period i.e. 08.11.2016 to 31.12.2016 which is tabulated hereunder:

Sr. No.	Bank Name	Account Number (Pages of paper book)	Date	Total Amount of deposit (pages of Paper Book)
i)	Oriental bank of commerce	50965015001957 (39-60)	11.11.2016	1,24,000 (53)
			12.11.2016	1,26,000 (53)
			15.11.2016	2,45,000 (53)
			22.11.2016	2,40,000 (53)
			02.12.2016	1,10,000 (56)
			02.12.2016	1,00,000 (56)
			08.12.2016	1,30,000(56)
ii)	Union Bank of India	532701010034398 (61-76)	10.11.2016	1,25,000 (68)
			11.11.2016	1,26,000 (68)
			12.11.2016	1,23,000 (68)
			13.11.2016	2,20,000 (68)
			16.11.2016	60,000 (68)
			16.11.2016	1,80,000 (68)
			18.11.2016	2,40,000 (68)
			19.11.2016	80,000 (68)
			19.11.2016	30,000
			21.11.2016	1,00,000(68)
			23.11.2016	1,00,000(68)
			25.11.2016	80,000 (69)
			28.11.2016	20,000 (69)
			29.11.2016	1,00,000(69)
			30.11.2016	2,25,000 (68)
			01.12.2016	80,000 (70)
			02.12.2016	80,000(70)
			03.12.2016	20,000 (70)
			07.12.2016	50,000 (70)
			08.12.2016	1,20,000 (70)
				32,34,000
<i>Total</i>				

Note: Copy of detail of cash deposited by appellant company during the FY 2016-17 is placed at Page 113 of paper book.

3.2. It is submitted that appellant has deposited the aforesaid cash out of cash in hand available out of withdrawals made from bank account and cash sales, the breakup of which is as under

<i>Sr. No</i>	<i>Particulars</i>	<i>Amount (Rs)</i>
i)	<i>Opening Cash</i>	34,466
	<i>01.04.2016 to 07.11.2016</i>	
ii)	<i>Cash withdrawal</i>	3,30,000
iii)	<i>Cash Sales</i>	32,28,701
iv)	<i>Other cash receipt</i>	28,186
v)	<i>Less: Cash deposits in bank</i>	2,800
vi)	<i>Less: Cash Expense</i>	2,09,443
vii)	<i>Closing Balance as on 07.11.2016</i>	34,09,110
	<i>08.11.2016 to 31.12.2016</i>	
viii)	<i>Cash Sales</i>	0
ix)	<i>Cash withdrawal</i>	1,70,000
x)	<i>Less: Cash Expenses</i>	40,172
xi)	<i>Cash available for deposit</i>	35,38,938
xii)	<i>Cash deposit during 08.11.2016 to 31.12.2016</i>	32,34,000
xiii)	<i>Closing Balance as on 31.12.2016</i>	3,04,938

*It is submitted that appellant has withdrawn cash amounting to Rs. 3,30,000/- during 01.04.2016 to 07.11.2016 and Rs. 1,70,000/- during 08.11.2016 to 31.12.2016 which is tabulated hereunder:*

<i>Sr. No.</i>	<i>Bank Name</i>	<i>Account Number (Pages of paper book)</i>	<i>Date</i>	<i>Amount (Rs) (pages of Paper Book)</i>
<i>01.04.2016 to 07.11.2016</i>				
			12.09.2016	45,000 (50)
i)	<i>Oriental bank of commerce</i>	50965015001957 (39-60)	12.09.2016	40,000 (50)
			14.09.2016	50,000 (50)
			26.09.2016	10,000 (49)
			30.09.2016	35,000 (49)
			03.10.2016	25,000 (52)
			03.10.2016	45,000 (52)
			10.10.2016	40,000 (52)
			13.10.2016	40,000 (52)
		<i>Total</i>		<b>3,30,000</b>
<i>08.11.2016 to 31.12.2016</i>				
ii)	<i>Oriental bank of commerce</i>	50965015001957 (39-60)	06.12.2016	10,000
			16.12.2016	10,000
			21.12.2016	10,000
			22.12.2016	10,000
iii)	<i>Union</i>	532701010034398	14.11.2016	20,000

	<i>bank of India</i>	(61-76)	19.11.2016	30,000
			24.11.2016	20,000
			01.12.2016	10,000
			02.12.2016	10,000
			06.12.2016	10,000
			16.12.2016	10,000
			19.12.2016	10,000
			21.12.2016	10,000
<i>Total</i>				1,70,000

3.4 It is further submitted that appellant has made cash sale amounting to Rs. 32,28,701/- during 01.04.2016 to 07.11.2016 is tabulated hereunder:

<i>Sr. No.</i>	<i>Date</i>	<i>Amount (Rs)</i>	<i>Pages of Paper Book</i>
<i>i)</i>	02.05.2016	1,89,588	131
<i>ii)</i>	09.05.2016	1,94,712	132
	18.05.2016	1,98,751	133
<i>iv)</i>	24.05.2016	1,97,159	135
<i>v)</i>	02.06.2016	1,98,319	136
<i>vi)</i>	07.06.2016	1,90,613	137
<i>Vii)</i>	23.06.2016	1,99,620	138
<i>viii)</i>	30.07.2016	1,55,570	139
<i>ix)</i>	09.08.2016	1,82,323	140
<i>x)</i>	01.09.2016	1,79,415	141
<i>xi)</i>	06.09.2016	1,95,432	142
<i>xii)</i>	31.10.2016	1,90,456	143
<i>xiii)</i>	31.10.2016	1,98,436	134
<i>xiv)</i>	01.11.2016	1,72,710	144
<i>xv)</i>	01.11.2016	1,99,775	145
<i>xvi)</i>	02.11.2016	1,94,218	156
<i>xvii)</i>	02.11.2016	1,91,604	147
<b><i>Total</i></b>		<b>32,28,701</b>	

3.5 It is submitted that appellant has submitted the following evidences in support of genuineness of claim made by the appellant:

**(I) ACKNOWLEDGMENT OF RETURN OF INCOME, COMPUTATION OF INCOME, TAX AUDIT REPORT AND AUDITED FINANCIAL STATEMENT**

- a) Copy of acknowledgment of return of income along with computation of income, tax audit report and audited financial statement of AY 2017-18 (Page 1-23 of paper book)

**(II) EVIDENCES OF CASH WITHDRAWALS**

i) Copy of bank statement of following banks:

a) Oriental bank of commerce A/c No. 50965015001957 for the period from 01.04.2016 to 31.03.2017 (Page 39-60 of paper book)

b) Union Bank of India A/e No 532701010034398 for the period from 01.04.2016 to 31.03.2017 (Page 61-76 of paper book)

ii) Copy of bank book of following banks:

a) Oriental bank of commerce A/c No. 50965015001957 for the period from 01.04.2016 to 31.03.2017 (Page 77-84 of paper book)

b) Union Bank of India A/c No 532701010034398 for the period from 01.04.2016 to 31.03.2017 (Page 85-88 of paper book)

iii) Copy of cash book for the period from 01.04.2016 to 31.03.2017 (Page 89-98 of paper book)

**(III) EVIDENCES OF CASH SALE**

i) Copy of cash sale invoices (Page 131-147 of paper book)

ii) Copy of sales A/c (Page 148-152 of paper book)

**(IV) OTHER EVIDENCES**

a) Copy of response sheet filed regarding cash deposit during demonetization period alongwith source of cash deposit (Online filed, available on ITBA) (Page 128-130 of paper book)

4 The appellant in support of above submits as under:

Sr. No.	Particulars	para of this submission
i)	That once audited books of accounts are accepted as such no addition is permissible	
ii)	That once cash sales have already been offered as income, cash deposited in the bank out of such cash sales cannot be taxed under section 68 of the Act as that tantamount to double taxation.	6-6.1
iii)	That once cash deposits are duly explained from the	7

	<i>withdrawals made from the bank accounts, no adverse inference can be validly drawn; and addition made is illegal, invalid and unsustainable</i>	
iv)	<i>That rebuttal to the adverse observations made in the order of CIT(A) to uphold the impugned addition</i>	8
v)	<i>That section 68 of the Act does not apply to a sum already disclosed as income</i>	9-9.1
vi)	<i>That section 68 of the Act does not apply to revenue transaction.</i>	10-10.4

*5 THAT ONCE AUDITED BOOKS OF ACCOUNTS ARE ACCEPTED AS SUCH NO ADDITION IS PERMISSIBLE: It is submitted that once audited books of accounts are accepted and, it is not disputed that sales are duly recorded in books of accounts and consequently income thereof has been offered as taxable income by reflecting the same in the trading and profit and loss account appellant. It is submitted that in these circumstances no addition is permissible on account of cash deposit arising out of sale proceeds and cash withdrawals and, appellant in this regard seeks to place reliance upon following judicial pronouncements:*

*i) 315 ITR 185 (P&H) CIT vs. OM Overseas*

*ii) 320 ITR 116 (All) CIT vs. Mascot India Tools & Forgings (P) Ltd.*

*64 DTR 409 (Jai) Asstt. CIT vs. Shankar Exports*

*iv) 325 ITR 13 (Del) CIT vs. Paradise Holidays (extract at page 175 of Paper Book and pages 10-13 of JPB)*

*v) ITA No. 999/2010 dated 03.08.2010 CIT vs. M/s Rice India Exports Pvt. Ltd. (extract at page 175 of Paper Book)*

*vi) ITA No. 336/Ind/2012 dated 31.10.2012 ACIT vs. Dewas Soya Ltd. (extract at page 176 of Paper Book)*

*vii) ITA No. 165/2010 dated 04.05.2017 CIT vs. M/s PashupatiNath Agro Food Products (P) Ltd*

*viii) ITA No. 352/D/2021 dated 9.6.2023 DCIT vs. Bawa Jewellers (P) Ltd. (pages 78-102 of Paper Book in para 10 at pages 95-96)*

ix) ITA No. 2224/D/2023 (Del) dated 2.1.2024 *Brijwasi Diamonds v. ITO* (pages 129-134 of Paper Book in para 14 at page 133)

xii) ITA No. 2006/Del/2023 dated 14.12.2023 *JCII v. M/s Pari Agencies (P) Ltd.* (pages 145-152 of Paper Book in para 11 at page 150)

xiii) ITA No. 1011/Del/2022 dated 8.8.2023 *DCIT v. Manuvel Malabar Jewellers (P) Ltd.* (pages 153-164 of Paper Book in para 11 at page 161)

xiv) ITA No. 2727/D/2022 dated 10.3.2023 *Vivek Garg v. ITO* (pages 165-169 of JPB in para 8 at page 168)

xv) ITA No. 3934/D/2023 dated 23.2.2024 *Bharat Agro Industries v. DCIT* (pages 175-182 of JPB in paras 8 to 9 at pages 179-181)

6 THAT ONCE CASH SALES HAVE ALREADY BEEN OFFERED AS INCOME, CASH DEPOSITED IN THE BANK OUT OF SUCH CASH SALES CANNOT BE TAXED UNDER SECTION 68 OF THE ACT AS THAT TANTAMOUNT TO DOUBLE TAXATION: It is submitted that aforesaid evidences manifestly demonstrate the source of cash deposit in bank account which are evidently out of cash sales made by the appellant prior to the period of deposit of cash pursuant to demonetization on 08.11.2016. In fact the cash sale has been accepted as income in the order of assessment and also supported by books of accounts maintained by appellant company. It is submitted that books of accounts are duly audited under Companies Act' 2013 as well as u/s 44AB of the Act. In fact once books of accounts are accepted and, cash sales taxed as income, then source of cash sale is explained from the cash book which too stands accepted. In such circumstances, finding of learned Assessing Officer that no specific explanation regarding source of cash deposited was submitted is not only factually incorrect, also fundamentally misconceived, wholly unjustified and thus unsustainable

6.1 It is submitted that addition made on the basis that cash deposit is not explained by cash sales tantamount to double taxation. It is submitted that once the cash deposit is taxed through cash sales then taxing the cash deposits separately amount to double taxation of income. Thus, once cash sales have already been offered as income then money available as a result of such cash sales which have been deposited in the bank cannot be taxed under section 68 of the Act as that tantamount to double taxation. It is submitted that double taxation is not permissible in law. Reliance is placed on the following judgments:

i) 72 ITR 291 (SC) *CIT v. Laxmi Pat Singhania vs. CIT*

ii) 118 ITR 50 (SC) *State of Uttar Pradesh vs. Raja Buland Sugar Co. Ltd.*

iii) 344 ITR 294 (MP) *CIT v. Jaora Flour and Foods (P) Ltd.* (pages 6-87 of JPB)

- iv) ITA No. 995/Ahd./2014 dated 6.1.2020 *Shree Sanad Textiles Industries Ltd. Vs. DCIT* (extract pages 170-171 of Paper Book)
- v) ITA 8761/D/2019 dated 10.7.2020 *A.K. Lumbers Ltd. vs. ACIT* (extract page 171-172 of Paper Book and pages 19-37 of JPB)
- vi) ITA 1329/Kol/2018 dated 26.2.2020 *New PoojaJewellers vs. ITO* (extract page 172 of Paper Book)
- vii) ITA 2614/Kol/2019 dated 29.5.2020 *Bhagwant Merchants (P) Ltd. Vs. ITO* (extract page 172 of Paper Book)
- viii) ITA No. 1019/Hyd/2017 dated 18.5.2018 *ITO vs. Shaik Zameer* (extract pages 172-173 of Paper Book)
- ix) ITA No. 48/bang/2019 dated 27.2.2019 *Shri Ashok Desingnaik vs. ITO* (extract page 173 of Paper Book)
- x) I.T.A. No. 88/Gau/2020 dated 17.02.2021 *NilkanthaSahaVs ITO* (extract pages 173-175 of Paper Book)
- x) ITA No. 995/Ahd/2014 dated 6.1.2020 *Shree Sanad Textiles v. DCIT* (pages 103-128 of JPB in para 9.3 at page 119-121)

**THAT ONCE CASH DEPOSITS ARE DULY EXPLAINED FROM THE WITHDRAWALS MADE FROM THE BANK ACCOUNTS, NO ADVERSE INFERENCE CAN BE VALIDLY DRAWN; AND ADDITION MADE IS ILLEGAL, INVALID AND UNSUSTAINABLE:** It is submitted that it is well settled law that once cash deposits are duly explained from the withdrawals made from the bank account, no adverse inference can be validly drawn: and addition made is illegal, invalid and unsustainable. The assessee seeks to place reliance on the following judgments:

- i) 291 ITR 36 (Del.) *CIT vs. Kulwant Rai* (extract at pages 164-165 of Paper Book)
- ii) 302 CTR 241 (Del) *Jaya Agarwal v ITO* (extract at pages 165-166 of Paper Book)
- iii) 121 TTJ 366 (Del.) *ACIT vs. Baldev Raj Charla & Ors* (extract at pages 166 of Paper Book) It may be stated here that the aforesaid conclusion was accepted by the revenue and not challenged before the High Court as would be evident from the judgment in the case of *CIT vs. Baldev Raj Charla* reported in 334 ITR 129 (Del)
- iv) 127 ITR 807 (Kar) *S.R. Venkata Ratnam vs. CIT* (extract at pages 166- 167 of Paper Book)

v) 300 ITR 98 (MP) Mansuklal Ratanlal Jain (Chopra) vs. Union of India (extract at page 167 of Paper Book)

vi) 117 DTR 78 (Raj) Sind Medical Stores vs. CIT (extract at pages 167- 169of Paper Book)

vii) ITA No. 2942/D/2011 dated 26.08.2011 ACIT vs. Sh. Joginder Singh Assessment Year 2005-06

viii) ITA No. 3471/3/2010 dated 19.08.2011 ITO vs. Smt. Neha Jain Assessment Year 2007-08

ix) ITA No.4429/Del/2010 dated 08.08.2013 ITO vs. Smt. Narwada Assessment Year 2009-10

x) ITA No. 1867/10/2011. A.Y. 2007-08 18.10.2013 Shri Yoginder Singh Dalal vs. ITO

xi) ITA No. 1439/Del/2017 AY 2011-12 dated 11.12.2017 Rajinder Singh v. ACIT (extract at pages 169-170 of Paper Book)

**8 THAT REBUTTAL TO THE ADVERSE OBSERVATIONS MADE IN THE ORDER OF CIT(A) TO UPHOLD THE IMPUGNED ADDITION**

Sr. No.	Adverse observation of the learned Commissioner of Income Tax (Appeals)	Submission of assessee
i)	Rs. 3,30,000/- was withdrawn from OBC during i 12.9.2016 to 13.10.2016, i.e.. about 27 to 60 days before first date of cash deposit on 10.11.2016. Those too were withdrawn in small amounts of Rs. 10,000/- to Rs. 50,000/- in 9 (nine) instalments. Obvious question arises, did the assessee really withdraw small amounts at regular intervals during Sehgal these two months of September and October only ii) to hold at hand and deposit entire amount later in bank instead of spending? Generally, such iii) withdrawals are made for day to day expenses of the establishment. Assessee has claimed that it iv) withdrew total amount of Rs. 5,00,000/- and v) deposited entire amount back to bank.	It is submitted that merely because there was a time gap between withdrawal of cash and cash deposits explanation of the appellant could not be rejected. Reliance is placed on the following judgments: i) ITA No. 5660/Del/2012 ITO V. Deepali Sehgal ii) 88 Taxman.com 382 (Ahd- Trib.) Sudhirbhai Pravinkant Thaker V. ITO iii) 99 ITD 227 (Ahd) Anand Autoride Ltd. Vs JCIT iv) 126 ITR 263 Shiv Charan Dass Vs CIT v) ITA No. 734/Chd/2014 ACIT VS

	<p><i>If it was true, if entire amount deposited back, how did the assessee meet day-to-day expenses of the business establishment? (Para 7.1 page 10)</i></p>	<p><i>Shri Joginder Paul</i></p> <p><i>vi) ITA No. 180/Chd/2013 ITO VS. Sh. Ashok Kumar Jain</i></p> <p><i>vii) IT.A. No.476(Asr)/2012 Sh. Karnail Singh VS DCIT</i></p> <p><i>viii) ITA No.61(Asr)/2016 VS. Chandan Nijjer viii) 63 CCH 0048 Jodh-Trib Krishna Agarwal vs. ITO</i></p> <p><i>ii) It is further submitted that the cash transactions are very common in the business activity. Assessee as per needs of his business did the transactions. Further the assessee established the withdrawal and deposit made by him in the Written Submission filed (Pg.4 &amp; 5 of WS) before the Hon'ble CIT(A), wherein the assessee duly explained the source and provided the bank's statement.</i></p> <p><i>It is very clear that the closing balance of the assessee as on 07.11.2016 was Rs. 34,09,110/-, Ld CIT(A) without acknowledging the same and without any adverse finding that cash was not available with the assessee grossly made addition. (Judgment relied upon 291 ITR 36 (Del.) CTT vs. Kulwant Rai)</i></p> <p><i>iii) Even the assessee was unaware of the fact that the Demonetization kind of thing will ever happen.</i></p>
<p><i>iii)</i></p>	<p><i>It is pertinent here that the principle of law of evaluation of direct evidence versus circumstantial evidence including human probability has been laid down by the Supreme Court in the cases of Sumati Dayal vs CIT [1995] 214 ITR 801 (SC) and CIT v. Durga Prasad More (1971) 82ITR 540, pp.</i></p>	<p><i>i) It is very Evident that when the assessee filed its ITR, Audit reports and bank account statements, which the Ld. CIT(A) can easily examine the surrounding circumstances too. But the Ld. Authorities failed to do so and Proceeded with the addition in hands of the assessee.</i></p>

<p>545, 547). The law pronounced by the Supreme Court is binding under Article 141 of Constitution of India. The Supreme Court held in <i>Sumati Dayal vs CIT</i> [1995] 214 ITR 801 (SC) that human probability is very much important in deciding whether a transaction is real. (Para 7.4 page 11)</p>	<p>ii) In <i>CIT v. Durga Prasad More</i>: In this case the issue before the Hon'ble Court to decide in which hand the income from property be taxed whether in individual assessee's hand or as trust property. Here the facts of the case are altogether and not at all relevant in present appellant's case.</p> <p>iii) In <i>Sumati Dayal v. CIT</i>: In this case assessee shown certain amounts in capital account in books claiming same to be winning from horse races. For this contention she filed sworn statement. Assessing Officer disbelieved her version and Settlement Commission upheld the assessment order holding that it was reasonable to infer, on facts that assessee did not participate in races but purchased winning tickets after events with unaccounted money. It is submitted that in the above case assessee only filed sworn statement to justify the amount shown credited in capital account however in the appellant's case the sales made during the demonetization period are evidenced with sale invoices (pe 131-14 of 15) and sales ais placed pg. 145- 152 of 715) etc.</p>
<p>iv) All invoices are between Rs. 155,570- to Rs. 1,99,775, ie, below Rs. 2 lakh which seems to be intended to avoid mentioning PAN as required under Rule 114B of Income Tax Rules, 1962, on the one hand and achieving the targeted cash sale figure necessary to explain cash deposits on the other hand. Otherwise, why not a single customer did transaction of more than Rs. Two lakh or less than Rs. One lakh out of assessee's turnover of about Rs. 3 crore? (para 8(1) page</p>	<p>It is submitted that no addition, can be made solely on the basis of the mere Suspicion. Reliance is placed on the following judgments 26 ITR 736 (SC) <i>Dhirajlai Gindharilal</i> <i>CIT, Bounthay</i> 26 ITR 775 (SC) <i>Dhakeswari Cotton Mills in CIT</i> (extract at page 195 of Paper Book) 30 ITR 181 (SC) <i>Mehta, Parikh &amp; Co. vs. CIT</i> (extract at page 195 of Paper Book) 37 ITR 1 (SC) <i>Omar Salay</i></p>

13)	<p><i>Mohammad Sait v CIT</i>  37 IIR 288 (SC) <i>Lal Chand BhagatAmbica Ram vs. CIT</i></p>
v) <i>In spite of the fact that there was space for name, is address, TIN of buyers on the invoices, these were not mentioned in invoices as a result of which these are not verifiable. Such omission seems deliberate, (para (iv) page 13)</i>	<p>37 ITR 2716SC) <i>Uma Charan Shaw &amp; Bros. Co. v. CIT</i> reported in 42 ITR 689 (All) <i>Sri Ram Tandon, vs. CIT</i> (extract at pages 195-196 of Paper Book)  91 ITR 8 (SC) <i>CIT Calcutta Discount Company Ltd.</i>  It is submitted that admittedly it cannot be said that in the case of cash sales, the appellant is bound to keep record of names and address of the buyers as held in the following judgments  ITA No.896 Ahd/2011, dated 20.7.2012 <i>M/s Nitisha. Silk Mills (P) Ltd., v. ITO</i> (pages 135-141 of JPB in para 10 at pages 139-141)   ITA No. 1011/del/2022 dated 8.8.2023 <i>DCIT v. Manuvel Malabar Jewellers (P) Luck</i> (pages 153-16-4 of JPB in para 9.2 at page 160)   In the present case the reason for disbelieving the cash invoices below Rs. 2lakh in every transaction, that lead to the conclusion of the Assessing Officer that the same has been done to avoid the application of provision of rule 114B.  The said observation made by the Assessing Officer without any material in his hand. There is no prohibition under law to make sale transaction below Rs. 2hakhs as such the assessee had at liberty to manage his own affairs. From the action of the assessee in raising the sales bill below Rs. 2lakhs the Assessing Officer cannot interpret as the sale are bogus only to give colour to non-genuine transaction as genuine</p>

		<p><i>transaction. The evidence brought on record by the Assessing Officer are not enough to hold that sales were not genuine.</i></p> <p><i>Moreover, when the books of account not rejected:-</i></p> <p><i>The books of account were accepted by the Id AO and provisions of section 145(3) has not been applied. The Id. AO herself accepted such sales as genuine and the profit embedded in such sales has been taken in trading a/e and considered for working out the taxable income. Thus, adding to such entire sales as income of the assessee is tantamount to double addition.</i></p>
vi)	<p><i>There was no cash sale at all in preceding FY 2015- 16 and there was no cash sale during succeeding FY 2017-18 except Rs. 10,763/- in April and Rs. 5,86,904/- in May which shows assessee's profile as one who did not trade with customers in cash. With that background, doing cash sale of as much as Rs. 32 lakh by such an assessee during or near the demonetization period goes inexplicably contrary to that. Question arises and remains unanswered as to why did assessee do cash sales only during and near that period? (para 8(ii) page 13)</i></p>	<p><i>It is submitted that the accounts of the appellant have been accepted by lower authorities, thus once lower authorities has accepted the sales of the appellant; naturally corollary would be that the learned Assessing Officer accepted the sales made in cash also. It is therefore respectfully submitted that source of cash deposits ought to have been treated as explained. Reliance is placed on the judgment of Hon'ble Delhi Bench of Tribunal in the case of Bharat Agro Industries v. DCIT in ITA No. 3934/D/20223 dated 23.2.2024 (pages 175-182 of JPB in para 8 at page 179)</i></p>
vii)	<p><i>Assessee's invoices bear the words "wholesale cloth merchants" and all payments were in cheques as is practice in wholesale businesses. Assessee did not explain what prompted sudden change for a brief period. Therefore, claim of cash sale is unusual and improbable (para 8(iii) page 13)</i></p>	<p><i>From the Table given @3.3 on Pg. No. 4 of written submission before the Id. CIT(A), before the Demonetization ie. 08.11.2016, assessee did cash sales of Rs. 32,38,701/-.</i></p> <p><i>Assessee made these transaction since the inception of the FY which is very evident from the Table 3.5 placed @ pg. 5 of WS.</i></p> <p><i>iii) Therefore, Ld. CIT(A) without looking into the facts of the case and</i></p>

		<p><i>submission placed on record concluded that assessee did cash sales during the time of demonetization which is clearly arbitrary in nature.</i></p> <p><i>iv) That the cash sale has been accepted as income in the order of assessment and also supported by books of accounts maintained by appellant company. It is submitted that books of accounts are duly audited under Companies Act 2013 as well as u/s 44AB of the Act. In fact, once books of accounts are accepted and, cash sales taxed as income, then source of cash sale is explained from the cash book which too stands accepted.</i></p> <p><i>v) Further, every business is unique and their cannot be one shoe fit all approach and Ld. CIT(A) should not decide how a business men should do his business. In such circumstances, finding of Ld. CIT(A) that cash sale was unusual and improbable is vague and incorrect.</i></p>
viii)	<p><i>In Para 9.3 of its submission, as mentioned in Para 5.7(v) supra, appellant cited the case law of CIT v. Kailash Jewellery House, ITA No. 613/2010 (Del) dated 9.4.2010. I find that in that case the jurisdictional hon'ble Delhi High Court held that the cash deposited out of sales cannot be treated as income u/s 68 of the Act once the sales are not disputed by the revenue. But here the sales are disputed and so the case law does not apply (para 11.2 page 15)</i></p>	<p><b>FACTUALLY INCORRECT</b></p> <p><i>i) It is submitted that the accounts of the appellant have been accepted by lower authorities, thus once lower authorities has accepted the sales of the appellant'; naturally corollary would be that the learned Assessing Officer accepted the sales made in cash also. It is therefore respectfully submitted that source of cash deposits ought to have been treated as explained. Reliance is placed on the judgment of Hon'ble Delhi Bench of Tribunal in the case of Bharat Agro Industries v. DCIT in ITA No. 3934/D/20223 dated 23.2.2024 (pages 175-182 of JPB in para 8 at page 179)</i></p> <p><i>ii) Cash Sale was already declared as the income of the income, once income of the assessee was assessed, further</i></p>

		<p>addition tantamount to the double addition. Ld. CIT(A) without acknowledging the facts that cash sale was duly declared as the income of the assessee and disclosed, which are not in the dispute.</p> <p>iii) Furthermore, there is no adverse finding that assessee had any back date entries and Ld. CIT(A) did not advert to the fact that the books of accounts were either correct or incomplete.</p>
ix)	<p>As mentioned in Para 5.7(iii) supra, appellant also argued that once audited books of accounts are accepted as such no addition is permissible or, in other words, addition u/s 68 cannot be made without rejecting books of account. Also that, sections 68 of the Act does not apply to a sum already disclosed as income. I do not agree because section 68 is outside the chapter-IVD (Sections 28 to 44BD) of the Act. This addition is unlike additions u/s 36, 37 etc which come under the head business and profession. Rejection of books of account comes under section 145(3) while 145(1) provides that it is for computation of income under the heads "Profits and gains of business and profession" or "Income from other sources". Therefore, addition under section 68 is not addition under the head business or profession and hence section 145(3), i.e., rejection of books of account is not necessary So, it is rejected (para 12 page 16)</p>	<p><b>LEGALLY MISCONCEIVED</b></p> <p>i) It is submitted that Hon'ble Delhi Bench of Tribunal in the case of DCIT v. Manuvel Malabar Jewellers (P) Ltd. in ITA No. 1011/D/2022 daed 8.8.2023 (pages 153-164 of JPB) wherein it has been held as under:</p> <p>"We find that similar issue was also considered by the Hon'ble Jurisdictional High Court in the case of CTT vs Kailash Jewellery House in ITA 613/2010 wherein it was held that the cash deposited out of sales cannot be treated as income u/s 68 of the Act once the sales are not disputed by the revenue. Similarly in the context of cash deposits made during demonetization period, the co-ordinate bench of Vizag Tribunal in the case of Hirapanna Jewellers reported in 128 taxmann.com 291 had decided these in favour of the assessee. The ld. CIT(A) had duly appreciated these factual and legal contentions of the assessee and granted relief to the assessee, on which we do not find any infirmity. The relevant operative portion of the order of the ld. CIT(A) had already been reproduced supra."</p> <p>There is no allegation of change of any accounting practice by the assessee. There was no enquiry about</p>

	<p><i>the transactions reported in financials to corroborate there was any significant irregularity which made books inaccurate.</i></p> <p><i>ii) is a settled law held that in the absence of any material pointing towards falsehood of the books of accounts and no particular defect or discrepancy being pointed in the books of accounts, resort could not be made to rejecting the books of accounts by invoking sec. 145(3), specially where same were duly audited by a statutory auditor.</i></p> <p><i>iv) Further Sec. 68 deals with cash credit and not with the method of accounting, When assessee duly recorded business income in his books, then it is very essential to deny books of account.</i></p> <p><i>v) Further reliance is placed on the Hon'ble High Court of Allahabad in the case of Dr. Prabhu Dayal Yadav v CIT (2018) 80 taxmann.com 126/253 Taxmann 191 (All), had observed, that the rejection of the books of account is unsustainable where the assessee had maintained his account and recorded his professional receipts and there is no evidence to doubt the correctness or completeness of the books of account. Our aforesaid View that existence of infirmities and discrepancies in the account maintained by the assessee is a pre-requisite for invoking the provisions of Sec. 145 of the Act and the AO has to show that the account are either incomplete or incorrect is supported by the judgment of the Hon'ble High Court of Himachal Pradesh in the case of CIT v. Swastik Food Products [2015] 61 taximann.com 83/275 CTR 109 (HP).</i></p>
--	---

9 *THAT SECTION 68 OF THE ACT DOES NOT APPLY TO A SUM ALREADY DISCLOSED AS INCOME* Apart thereof and, without prejudice to above it is submitted that section 68 of the Act does not apply to a sum already disclosed as income as held by the judgment of Hon'ble Delhi High Court in the case of *DIT vs. Keshav Social & Charitable Foundation* reported in 278 ITR 152 wherein Hon'ble Court has held that section 68 of the Act has no application in respect of income from charitable trust are concerned (extract page 176 of Paper Book). The aforesaid judgment is also affirmed by Apex Court in the case of *DIT V. Keshav Social and Charitable Foundation* reported in 394 ITR 496 (extract at page 177 of Paper Book)

9.1. It is also submitted that similar view has been expressed in the following cases:

- i) *ITA No. 827/2011 dated 7.07.2011 CIT vs Sadhana Foundation*
- ii) *ITA No(s), 1754/2010, 1755/2010 and 206-2011 (Del) dated 7.07.2011 CIT vs. O P. Suri Memorial Education Society upholding decision of ITAT in the case of DCIT vs. Sadhana Foundation in ITA No. 2704/D/2010 dated 08.10.2010*
- iii) *298 ITR 190 (Del) DIT vs. MotiBagh Mutual Aid Education*
- iv) *ITA No. 214/2009 dated 13.05.2009 DIT vs Akhil Bhartiya Mahajan Siromani Sabha which has been SLP dismissed by the Hon'ble Supreme Court in SLP (C) (CC 385/2010 in the case of DIT vs. Akhil Bhartiya Mahajan Siromani Sabha dated 11.02.2010*
- v) *364 ITR 398 (All) CIT vs Uttaranchal Welfare Society*
- vi) *ITA No. 2957/D/2010 dated 14.01.2011 Hans Raj Samarak Society vs. DIT*
- vii) *ITA No. 776/LKW/2014 (Luck) dated 17.6.2015 ITO vs. M/s Saraswati Educational Charitable Trust*

10 *THAT SECTION 68 OF THE ACT DOES NOT APPLY TO REVENUE TRANSACTION:* Moreover, it is submitted that section 68 of the Act does not apply to revenue transaction. In other words, once a sum has already been offered as income as part of sales then such sum cannot again be taxed under section 68 of the Act. It is submitted that section 68 of the Act (extract at page 178 of Paper Book)

10.1 It will be apparent from the above that said provision provides that where any sum is found credited in the books of an appellant maintained for any previous year. and the appellant 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 appellant of that previous year. In other words, what the statute provides is that the sum which is credited in the

*books of appellant firm and no explanation has been offered or explanation offered is not in the opinion of the Assessing Officer satisfactory, such sum can be regarded as income under section 68 of the Act. However, it is absolutely clear that what can be taxed is income under section 68 of the Act and should not have been an income already declared by the appellant. Thus the submission of the appellant is that what is already an income cannot again be deemed an income under section 68 of the Act. It is thus submitted that revenue count transaction which is being offered as income by the appellant cannot be made a basis to resort to section 68 of the Act. It is therefore, respectfully submitted that since cash sales have already been offered as income, section 68 of the Act has no application. Reliance is placed on the judgment of Gujarat High Court in the case of CIT vs. Vishal Export Overseas Ltd. in ITA No. 2471/2009 dated 3.7.2012 (extract at page 179 of Paper Book).*

10.2 Reliance is also placed on the following judgments:

#### *DELHI HIGH COURT*

- i) *ITA No. 613/2010 (Del) dated 9.4.2010 CIT v. Kailash Jewellery house (extract at pages 179-180 of Paper Book and page 9 of JPB)*
- ii) *177 Taxman 29 (Del) CIT v. Goverdhan India (P) Ltd. (extract at page 180 of Paper Book)*

#### *INCOME TAX APPELLATE TRIBUNAL*

##### *DELHI BENCH*

- i) *ITA No. 6520/D/2018 AY 2014-15 M/s Singhal Exim (P) Ltd. (extract at pages 180-181 of Paper Book)*
- ii) *ITA No. 1220/D/2011 AY 2006-07 Kishore JeramBhai Khaniya (extract at page 181 of Paper Book)*
- iii) *55 ITD 159 (Del) Racmann Springs (P) Ltd. v. DCIT (extract at page 181-182 of Paper Book)*

##### *AHMEDABAD BENCH*

- i) *ITA No. 1652/Ahd/2011 Shri Pavan kumar Bhagatram (extract at page 182-183 of Paper Book)*

*HYDERABAD BENCH*

*i) ITA No. 264/Hyd/2011 AY 2006-07 dated 13.11.2013 S.B.Steel Industries (extract at page 183 of Paper Book)*

*10.3 Apart from the above, at this juncture, the appellant also seeks to rely upon the decision in the case of J.M. Wire Inds vs CIT in ITA 96 of 1989 dated 15.07.2010 (extract at pages 183-185 of Paper Book and pages 142-144 of JPB))*

*10.4 Reliance is also placed on the following judgments:-*

- i) ITA No.215/LKW/2016 dated 30.11.2018 DCIT v. Smt. Veena Awasthi (extract at page 185 of Paper Book)*
- ii) ITA No. 524/D/2017 dated 25.11.2019 Neeta Breja (extract at page 186 of Paper Book)*
- iii) 126 ITR 263 (P&H) Shiv Charan Dass v. CIT (extract at page 187 of Paper Book)*
- iv) 99 TTJ 250 (Ahd) Anand Autoride Ltd. v. JCIT affirmed by Kerala High Court in the case of CIT v. K.J. Sridharan reported in 201 ITR 1010*
- v) ITA No.253/Viz/2020 Dated: 12.05.2021 ACIT Vs M/s HirapannaJewellers (extract at page 187 of Paper Book)*

*11 In light of the aforesaid, addition made of Rs. 32,34,000/-may kindly be deleted.*

*12 It is therefore, prayed that it be held addition made and upheld by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant be allowed.'*

4. On the other hand, learned Sr. DR opposed the submissions and supported the orders of authorities below. Learned DR submitted that the assessee could not prove the cash sales. Even in past therefore was no such cash deposits.

5. I have heard rival submissions and perused the material available on record. Learned counsel for the assessee vehemently drawn my attention to the paper book to buttress the contention that the Revenue has not rejected the claim regarding cash sales. Once cash sales have been accepted, therefore, the cash deposited in the bank account represented the sale consideration. It is undisputed fact that the Assessing Officer has accepted sale and purchase and has not doubted the same.

The AO has accepted the profit declared by the assessee. The lower authorities have not commented upon the stocks of the assessee. If the stock remains undisturbed and no adverse finding is recorded, merely because the assessee has disclosed sales in cash this year would not be sufficient to tax such amount u/s 68 of the Act. In my considered view the lower authorities have not made any independent inquiry regarding correctness of claim of the assessee. If there is no mismatch in the sales and corresponding purchases, in my view, making addition purely on the basis of conjecture and surmises cannot be sustained. I hold accordingly. The AO is hereby directed to delete the impugned addition. Grounds of appeal are allowed.

6. Appeal of the assessee is allowed.

Order pronounced in open court on 11<sup>th</sup> September, 2024.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI