

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI ANIKESH BANERJEE (JUDICIAL MEMBER) AND
MISS. PADMAVATHY S. (ACCOUNTANT MEMBER)

ITA No.2625/Mum/2024
(Assessment Year: 2017-18)

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|--|----|--|
| Ziva Jewellery Private Limited Gems Industries, Plot No.A/30, 2 nd Floor, Road No.3, MIDC, Andheri East, Mumabai-400 093 PAN : AAACZ2058C | vs | The Assistant Commissioner of Income-tax, Circle 3(3)(1) [Earlier 11(3)(2), Mumbai Aayakar Bhavan, M.K. Road Mumbai-400 020 |
| APPELLANT | | RESPONDENT |

| | |
|---------------------------|--|
| Assessee represented by | Shri Rashmikant Modi and Ms. Ketki Rajeshirke |
| Department represented by | Shri Swapnil Savant (JCIT) |

| | |
|-----------------------|------------|
| Date of hearing | 09/09/2024 |
| Date of pronouncement | 23/09/2024 |

ORDER

PER ANIKESH BANERJEE (JM):

The instant appeal filed by the assessee is directed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi (hereinafter, 'ld.CIT(A)') passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the assessment year 2017-18 dated 28/03/2024. The impugned order emanated from the order of the Ld. Assistant Commissioner of Income-tax, Circle

11(3)(2), Mumbai (in short, 'the Ld.AO'), order passed U/s 143(3) of the Act and date of order 24/12/2019.

2. The assessee has raised the following grounds of appeal:-

"Grounds of appeal in respect of order dated 28-03-2024 passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appellate Centre [CITA] u/s. 250 of the Income-tax Act, 1961 bearing ITBA/NFAC/S/250/2023-24/1063571698(1).

The following grounds of appeal are without prejudice to each other-

1. The Learned Commissioner of Income Tax (Appeals)-National Faceless Appellate Centre [Ld. CITA] has erred in law and in facts and circumstances of the case in upholding the Assessment Order dated 24- 12-2019 passed u/s 143(3) of the Act in determining the assessed income at 23,74,74,267/-as against the returned income of 257,77,270/-.

2. The Ld. CITA has erred in law and in facts in passing the order without observing the principles of natural justice.

3. The Ld. CITA has erred in confirming the action of the Ld. Assessing Officer [Ld. AO] in making addition of Cash Sales deposited in bank amounting to 23,16,97,000/- being alleged Unexplained Credits u/s 68 r.w.s. 115BBE.

4. The Ld. CITA has erred in confirming the action of the Ld. AO in invoking the provision of section 115BBE of the Act by levying tax at special rates of 77.25% including Surcharge and Cess.

5. The Ld. CITA has erred in law and in facts of the case in confirming the action of the Ld. AO in rejecting the books of account u/s 145(3) of the Act.

6. The Appellant craves leave to add to, amend, alter and/or delete any of the forgoing grounds of appeal."

3. The brief facts of the case are that the assessee is a dealer of diamond studded jewellery, filed its return of income on 29/10/2017 U/s 139 of the Act declaring total income at Rs.57,77,270/- whereas the total income was determined by the Id. AO at Rs.3,74,74,267/- and the deemed total income under section 115JB at Rs.56,79,449/- by making addition of Rs.3,16,97,000/- under

section 115BBE on account of deposit of specified notes during demonetization period.

3.1 It emerges that while in the assessment proceedings, the Id. AO noticed from the audited financials that assessee has reported closing cash balance of specified notes of Rs.3,16,97,000 as on 08/11/2016. The entire amount was deposited in bank account as below:-

| | |
|---|-------------|
| Axis Bank, Borivli Branch A/c No.914020023712465 | |
| Deposited on 11.11.2016 | 1,52,26,500 |
| Deposited on 13.11.2016 | 99,00,000 |
| | ----- |
| | 2,51,26,500 |
| Axis Bank Borivali Branch A/c No.914030026018172 deposited on 13.11.2016 | 65,70,000 |
| | ----- |
| Total | 3,16,97,000 |
| | ===== |

When asked for the details of the month-wise cash sales, the assessee submitted the following details:-

| Month | Cash sales | Credit sales | Total sales | Purchase | Cash deposited in bank |
|----------------|-------------|--------------|--------------|--------------|------------------------|
| April, 2016 | | 1,13,90,235 | 1,13,90,235 | 1,69,64,844 | - |
| May 2016 | | - | - | 18,19,665 | - |
| June,2016 | 7,63,000 | 18,50,34,035 | 1,92,97,035 | 1,34,29,456 | - |
| July,2016 | | 1,59,43,258 | 1,59,43,258 | 1,91,17,678 | 10,05,000 |
| August,2016 | - | 2,75,05,988 | 2,75,05,988 | 43,56,044 | 6,70,000 |
| September,2016 | - | 1,86,23,559 | 1,86,23,559 | 3,19,11,014 | - |
| October, 2016 | 66,10,900 | 2,91,64,593 | 3,57,75,493 | 1,27,38,801 | 9,87,000 |
| November, 2016 | 2,61,49,909 | 7,54,20,410 | 10,15,70,319 | 7,45,08,095 | 3,17,97,100 |
| December, 2016 | - | 3,265,79,182 | 3,265,79,182 | 1,60,07,490 | - |
| January, 2017 | 1,51,000 | 1,48,69,285 | 1,50,28,285 | 2,36,98,010 | 81,242 |
| February, 2017 | 11,06,530 | 1,57,32,851 | 1,68,39,381 | 2,64,55,108 | 12,57,530 |
| March, 2017 | 10,23,000 | 3,72,91,011 | 3,83,14,011 | 2,97,44,381 | 2,40,000 |
| | 3,58,04,339 | 29,71,54,407 | 33,29,58,746 | 27,07,50,586 | 3,60,37,872 |

The above details furnished by the assessee was not found acceptable to the Id. AO. According to him, the trend shown by the assessee was abnormal; there is no cash sales in the months of April & May, 2016 as also in the months of July, August & September, 2016. And there is a nominal cash sale in the months of January, February & March. The Id. AO also observed that the cash sales shown in the months of October 2016 and November, 2016 are Rs.66,10,900/- and Rs.2,61,49,909, respectively, which is not as per assessee's business trend. The Id. AO also noticed that the November sale is only for eight dates, i.e. upto the date of declaration of demonetization. With regard to the further query, the assessee replied that the assessee had not maintained the details of persons to whom the sales were made as the sales were below the permissible limit. The Id. AO finally noticed that the majority of the cash sales were made on dates closer to the declaration of demonetization and that this cannot be coincidence. Therefore, he held that this is nothing but introduction of specified notes in books through fictitious sales by manipulating books. Finally finding fault with comparison of sales during the first six months of the year, verification of sales bills issued for cash sales, the Id. AO rejected the books of accounts of the assessee under section 145(3) of the Act and carried out the addition of Rs.3,16,97,000/- being the cash deposit of specified notes during demonetization. The aggrieved assessee filed an appeal before the Id. CIT(A), which did not find favour with the Id. CIT(A), who dismissed the appeal. Further aggrieved, the assessee has filed appeal before the Tribunal.

4. The Id. AR filed a written submission which is kept in record. The Id. AR has demonstrated that the cash was deposited during the demonetization period in Axis Bank, Borivali Branch No.914020023712465 amount of 2,51,26,500/- and in

account No.914030026018172 Rs.65,70,000/- which works out to total amount of Rs.3,16,97,000/-. In hearing, the Id.AR submitted the stock register, details of purchases, cash book, which are annexed in APB. Further, the Ld.AR filed the copy of return in Form 231 under MVAT Act, 2002 as proof of the turnover made during this month which was declared before the State Authority. The Id.AR also filed an excise return copy which depicts the same amount of turnover and placed that the Id.AO without considering the proper documents, the books of accounts are rejected under section 145(3) which is unjustified. The assessee has sufficient stock to execute the sales during demonetization after announcement on 08/11/2016. The Id.AR further relied on the order of co-ordinate bench of ITAT, Mumbai Bench "H" in the case of **M/s Kandan Jewellers Pvt Ltd in ITA No.1035/Mum/2022, date of pronouncement 29/05/2023**. The relevant paragraphs 13 & 14 are reproduced as below:-

"13. We find the coordinate bench of Hon'ble Tribunal on the similar/identical issue in the case of M/s RS Diamond India Vs. ACIT, [2022] 145 taxmann.com 545 (Mum Trib) dated 26 July 2022 has observed and granted the relief at Para 4 of the order read as under:

4. I have heard the parties and perused the record. The facts that the deposit made into the bank account is from out of the books of accounts and the said deposits have been duly recorded in the books of account are not disputed. It is the submission of the assessee that it had received advance money from walk in customers for sale of jewellery over the counter and the amount so received was duly recorded in the books of account. The said amount alongwith other cash balance available with the assessee was deposited into the bank account after announcement of demonetization by the Government of India. He also submitted that the assessee has raised sale bills against the said advances in the name of respective customers. Since the transaction was less than Rs. 2.00 lakhs, it was stated that the assessee did not collect complete details of the customers. Thus, it is seen that the advance amount collected from customers, the sales bill raised against them etc., have been duly recorded

in the books of account. The impugned deposits have been made from cash balance available with books of account. I also notice that the Assessing Officer has not rejected the books of account. When cash deposits have been made from the cash balance available in the books of account, in my view, there is no question of treating the said deposits as unexplained cash deposit as opined by the Assessing Officer.

5. The Ld A.R relied on certain case laws which are relevant to the issue under consideration. In the case of Lakshmi Rice Mills v. CIT [1974] 97 ITR 258 (Patna), it has been held that, when books of account of the assessee were accepted by the revenue as genuine and cash balance shown therein was sufficient to cover high denomination notes held by the assessee, then the assessee was not required to prove source of receipt of said high denomination notes which were legal tender at that time. In the case of Asstt. CIT v. Hirapanna Jewellers [2021] 128 taxmann.com 291/189 ITD 608 (Visakhapatnam Trib.), it was held that when the cash receipts represented the sales which has been duly offered for taxation, there is no scope for making any addition under section 68 of the Act in respect of deposits made into the bank account.

14. The CIT(A) has considered the details of sales, the stock register and the turnover is consistently maintained. The assessee has submitted the details of cash sales/receipts and party wise details of sales above Rs.2 lakhs and when a query was raised to Ld.AR on submissions of details were the cash sales are below Rs.2 Lakhs. The Ld.AR mentioned that the assessee has submitted details of sales below Rs2 lakhs and highlighted rule 114B of the I T Rules r.w.s139(a)(5)(c) of the Act and there was no KYC required. Further the Ld.AR demonstrated the sample Tax Invoice below Rs.2 lakhs in the demonetization period and the invoice contains, name and address etc. Further there is no significant increase in the cash sales out of total sales, whereas for F.Y.2016-17 it is @ 31.27% and in comparison to F.Y. 2015-16 @ 31.44%, the Ld.AR referred to the cash flow statement, cash book and demonstrated the details of deposits made out of the cash sales and the assessee has been consistently maintaining the stock of Rs.68.07 crs for the F.Y 2015-16 and for F.Y 2016-17 it was maintained at Rs.65.38crs and the cash sales are part of the stocks maintained which is not disputed. Further the addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid

tender. Since the cash sales proceeds/receipts received from the customers are reflected in the Audited Profit & Loss account as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. The AO has not pointed out any specific adversity but made a generalize addition without considering the factual aspects and primary evidence. The A.O has failed to make further enquiries on the information filed and the assessee has discharged the initial burden placed by submitting the information and details. We find the CIT(A) has dealt on the facts, provisions of law, notes and judicial decisions. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information on the disputed issues to take different view. We considered the facts, circumstances, submissions and ratio of judicial decisions as discussed above are of the view that the CIT(A) has passed a reasoned and conclusive order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.”

5. The Id.DR vehemently argued and relied on the order of the Id.CIT(A) page 65. The relevant paragraph 6.1.2 is reproduced as below:-

“6.1.2 I have gone through the addition made by the Assessing Officer seating the entire cash deposits of Rs.3.16,57,000 as unexplained credits u/s.68 of the Act and the submissions of the appellant have been perused. it is seen from the assessment order that the appellant just in two days made huge cash deposits to the tune of Rs.3.16.97.000/-in its two bank account maintained with Axis Bank that there were no cash sales in the months of April & May 2016 and nominal cash sales in the month of June, January, February and March and no cash sales in the month of July, August & September, 2016. The Assessing Officer brought out the analysis of cash sales and cash deposits excellently in the assessment order The AO has also brought out the sales made on the date of notification of demonetization ie on 08.11.2016 time 23:51:04, 23.51.23 23:51:40, 23.51.52, which are less than Rs 2 lakhs. It is impossible to have purchases in the late night as mentioned above ll clearly shows that the appellant has accepted demonetised

currency in Specified Rank Notes (SBNs) contrary to RBI notification. As per the notification, the appellant not an authorized person to collect SBNs The AD also verified the bills submitted by the appellant that the bills do not contain authentic details of sales and description of jewellery sold. The appellant failed to explain the trends of cash sales made during November, 2016 Reliance is placed on the decision of Hon'ble ITAT Hyderabad in the case of Vashnavi Bullion (P) Ltd v. ACIT in ITA Nos 500 & 501 of 2220 and 58 & 59 (Hyd) of 2021 (2022) 145 tawmann.com 197 (Hyderabad Tribunal) held as follows-“

6. We heard the rival submission and considered the documents available on the record. We perused the assessment order and the observation of the Ld.AO is at paras 5.1 to 5.3, which are reproduced as below:-

“5.1 The assessee was asked to submit details of month wise cash sales and month wise cash deposited by it which was shown by assessee as cash sales. The details submitted by assessee are reproduced below: -

Details of total sales, purchase and cash deposited during the year.

| Month | Cash sales | Credit sales | Total sales | Purchase | Cash deposited in bank |
|----------------|-------------|--------------|--------------|--------------|------------------------|
| April, 2016 | | 1,13,90,235 | 1,13,90,235 | 1,69,64,844 | - |
| May 2016 | | - | - | 18,19,665 | - |
| June,2016 | 7,63,000 | 18,50,34,035 | 1,92,97,035 | 1,34,29,456 | - |
| July,2016 | | 1,59,43,258 | 1,59,43,258 | 1,91,17,678 | 10,05,000 |
| August,2016 | - | 2,75,05,988 | 2,75,05,988 | 43,56,044 | 6,70,000 |
| September,2016 | - | 1,86,23,559 | 1,86,23,559 | 3,19,11,014 | - |
| October, 2016 | 66,10,900 | 2,91,64,593 | 35,77,54,593 | 1,27,38,801 | 9,87,000 |
| November, 2016 | 2,61,49,909 | 7,54,20,410 | 10,15,70,319 | 7,45,08,095 | 3,17,97,100 |
| December, 2016 | - | 3,265,79,182 | 3,265,79,182 | 1,60,07,490 | - |
| January, 2017 | 1,51,000 | 1,48,69,285 | 1,50,28,285 | 2,36,98,010 | 81,242 |
| February, 2017 | 11,06,530 | 1,57,32,851 | 1,68,39,381 | 2,64,55,108 | 12,57,530 |
| March, 2017 | 10,23,000 | 3,72,91,011 | 3,83,14,011 | 2,97,44,381 | 2,40,000 |
| | 3,58,04,339 | 29,71,54,407 | 33,29,58,746 | 27,07,50,586 | 3,60,37,872 |

5.2 The trend shown by assessee is abnormal. There is no cash sales in the months of April & May 2016. Again, there are no cash sales in the month of July, August & September 2016. There are nominal cash sales of Rs. 763,000 in the month of June 2016. Cash sales in the months of January February & March is also Rs. 1,57,000, Rs. 11,06,530 & Rs. 10,23,000 respectively.

5.3 Only in the month of October 2016 and November 2016 assessee has shown cash sales of Rs. 66,10,900 and Rs. 2,61,49,909 respectively which is not as per assessee's business trend. There is an abnormal increase in cash sales during the month of October & November 2016. These months are just before the date of demonetization declared on 08.11.2016. It is pertinent to mention here that in November Sale is for only eight dates upto date of declaration of demonization.”

We find that the assessee had made the sales in the same ratio of cash & credit sales. The cash sales are below the value of Rs. 2,00,000/-. We note there is a corresponding increase in credit sales during the months of October and in November which are actually the festive season. The Id. AO assumed that on festive dates the shops would remain closed, and KYC of the buyers were not submitted. In this relation the Id. AR placed that considering Rule 114B of the Income Tax Rule, 1962 w.e.f. 01/01/2016 wherein KYC of the buyers of the jewellery in case of transaction amount to Rs. 2,00,000/- or more were required to be maintained. Observation of cash book of the assessee, in APB pages 124 to 138 there is no cash sales more than Rs. 2,00,000/-. We note there is no adverse finding on purchase and the purchase was made through banking channel. The details of purchase for impugned financial year are annexed in APB pages 104 to 107. We observed that if purchase is not in dispute, then the stock is not in question. The details of quantitative and value of items sold in cash sales for

impugned assessment year are annexed in APB pages 139 to 144 and monthly quantitative summary of stock for impugned assessment year in APB pages 158 TO 159. We further note that in the Excise & MVAT assessment order there is no adverse finding and it is placed before the bench that the assessee declared the entire sales for impugned assessment year in indirect tax returns and paid the tax accordingly.

In case of rejection of books of account under section 145(3), we find that the business income of the assessee is not disputed nor the purchase. Respectfully relied on the order of coordinate bench of **ITAT-Mumbai** in the case of **ACIT vs. Ramlal Jewellers (P) Ltd (2023) 154 taxmann.com 584** held that addition U/s 68 on account of cash deposit could not be made simply on reason that during demonetization period cash deposits vis-à-vis cash sales ratio was higher. It is established that sales representing outflow of stock was duly accounted in the books of account and there was no abnormal profit during the year, then there is no justification to treat deposits made in bank account out of cash sales to be income from undisclosed source. We note that the assessee is maintaining a consistent GP ratio. There is no finding of the Id. AO for cash purchase by the assessee.

The reliance was also placed in the order of Coordinate Bench of **ITAT Mumbai SMC Benchin Pukhraj Nathmal Jain vs. ITO 25(3)(2), Mumbai ITA No-2815/Mum/2023** date of pronouncement **26/02/2024**, held that.

“10. Considering the facts of the present case and applying the ratio of the above decision of the coordinate bench we are of the view that the assessee has discharged the onus of substantiating the source for the deposits made in SBN during demonetisation period and that the addition made by the revenue without disputing the business income of the assessee is not

tenable. In view of the above discussion, we are of the considered view that the addition of Rs 33,40,327/- made under section 68 of the Act cannot be sustained and is therefore deleted.”

The Id.AO was not satisfied with the representation of books of account of the assessee. But no specific lacuna was found for rejection of Books of accounts of the assessee. The submitted all the relevant documents before the Id. AO and the submissions are annexed in APB pages 116 to 123. We respectfully relied on the orders of ITAT-Mumbai Bench in the cases of **M/s Kandan Jewellers Pvt Ltd(supra),Ramlal Jewellers (P) Ltd(supra)** and **Pukhraj Nathmal Jain(supra)**. We setaside the impugned appeal order and the addition amount to Rs. 3,16,97,000/- is quashed.

7. In the result, the appeal of the assessee bearing **ITA No.2625/Mum/2024** is allowed.

Pronounced in the open court on 23rd September 2024.

Sd/-

sd/-

| | |
|------------------------------|---------------------------|
| (MISS. PADMAVATHY S.) | (ANIKESH BANERJEE) |
| ACCOUNTANT MEMBER | JUDICIAL MEMBER |

Mumbai, Date: 23rd September 2024

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

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(Asstt. Registrar), ITAT, Mumbai