

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

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

आयकर अपील सं./ITA. No. 863/JPR/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Shri Dinesh Kumar Soni House No. 89, Govind Nagar West, Amer Road, Jaipur.	बनाम Vs.	The DCIT, Central Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGCPS2969J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Pawan Kumar Garg (C.A.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 08/08/2024
उदघोषणा की तारीख / Date of Pronouncement : 27/09/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the Learned Commissioner of Income Tax (Appeals), Jaipur-4 dated 15.04.2024 [for short "CIT(A)"] for the assessment year 2017-18, which in turn arise from the order dated 31.12.2019 passed under section 143(3) of the Income Tax Act, [for short "Act"] by the ITO, Ward-1(1), Jaipur.

2. The assessee has marched the present appeal on the following grounds: -

- “1. That addition u/s 68 is not possible if no books of accounts are maintained.*
- 2. That Ld. AO had erred in making addition u/s 68 on account of unexplained cash credit on the basis of suspicion and surmises.*
- 3. That the appellant craves the right to add, amend or delete any of the grounds of appeal either before or at the time of hearing of appeal.*

3. The fact as culled out from the record is that the assessee is an Individual. The assessee filed e-return of income on 31.03.2018 declaring total income of Rs.8,98,600/-. The case was selected for scrutiny and thus, notice under sec. 143(2) of the I.T. Act, 1961 was issued on 21.09.2018, which was duly served upon the assessee through speed post as well as e-mail.

During e-assessment proceedings, Notices were issued under sec.142(1) of the Income-tax Act, 1961 thereby calling the relevant details from time to time. In compliance with the notices issued assessee e-filed, the necessary details / information, as required, during e-assessment proceedings, which were examined by the AO.

During the assessment proceedings, the assessee produced Books of Accounts along with supporting vouchers and Bank Statement which were examined on test check basis by the AO.

3.1 As is evident from the record that the assessee engaged in the business of manufacturing and trading of Gold & Silver

jewellery under the name & style M/s DPD Jewellers. Assessee has declared total Sales / Turnover from the said business activities at Rs. 1,17,87,858/-. The assessee has declared his profit from the said business activities under sec. 44AD of the Act. Accordingly, he has declared Profit of Rs.9,03,747/- on the above activities (i.e. @ 8% on sales of Rs.98,23,701/- & @ 6% on sales of Rs.1964157/-). The assessee has declared income from other sources of Rs.611/- and thereafter claiming deduction under Chapter VIA of the Act, the assessee has declared total income of Rs.8,98,600/-.

3.2 Ld. AO in the assessment proceeding noted that the assessee has deposited a sum of Rs. 58,00,000/- in the form of Specified Bank Notes [SBN]. In the assessment proceeding the assessee submitted the details of the sales. Ld. AO noted that the assessee has inflated the sales made on account of demonetization. He has considered the five times of sales to the average sale as genuine and thereby derived sales as acceptable for an amount of Rs. 19,32,490/- [Rs. 3,86,498/- average sales * 5 times based on the explanation] and thereby he hold balance amount of Rs. 12,90,178/- [32,22,668 less 19,32,490/-] as unexplained

credit and the sales to that extent not considered and added as income as per provision of section 68 of the Act.

4. Aggrieved, from the said order of assessment, assessee has filed an appeal before the Id. CIT(A). The Id. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“However in case the subject matter of addition is not expressly falling under the four chapters of income heads and for the year under assessment/appeal (before application of provisions of section 68/69/69A etc.) in that case applicability of section 68/69/69A etc. is to be seen. If the sources, genuineness etc. are explained satisfactorily i.e. sources are out of genuine disclosed/taxed income in that case and section 68/69/69A etc. However if the asset/credit/expenditure is treated as income because of the applicability of section 68/69/69A etc. in that case that shall not get restricted by taxation under the head business income. Section 69C even clearly mentions that such unexplained expenditure will not be deductible under any head of income. Loans given / stock in hand / loan received etc. are otherwise not taxable as these are in the nature of asset/liability/capital nature in the hands of the taxpayer and not in the nature of revenue income. However when these are unexplained in terms of sections 68/69/69A etc. these become income and become taxable.

Section 14 of the Income-tax Act, 1961 Heads of income Assessment year 1984- 85-Whether opening words of section 14, 'save as otherwise provided by this Act. clearly leave scope for 'deemed income' of nature covered under scheme of sections 69, 69A, 69B and 69C being treated separately, because such deemed income is not income from salary, house property, profits and gains of business or profession, or capital gains, nor is it income from 'other sources' Held, yes. [Fakir Mohmed Haji Hasan v. Commissioner of Income-tax [2002] 120 Taxman 11 (Gujarat)/[2001] 247 ITR 290 (Gujarat)/[2001] 165 CTR 111 (Gujarat) [10-08-2000]].

In the judgements referred by the appellant, the above referred judgements of honourable Supreme Court have not been considered.

Further the facts of the case of the appellant are different as these pertain to the deposit of cash during the demonetisation period wherein it is a known fact that those who were having earlier accumulated unaccounted cash tried different means to somehow deposit such cash in the bank account without attracting the section 115BBE of the Act. Demonetisation was introduced by the Government to curb the menace of black money.

These are the special provisions dealing with the situation and the incomes which are the subject matter of the contention in the appeal and being the specific provisions they are preferred and override the general provisions and are mutually exclusive and different from business income. Hon'ble Supreme Court of India in the case of CIT Vs British Paints India Ltd (1991) 188 ITR 44 (SC) has held that it is the duty of the assessing officer to determine the taxable income by making such computation as he considers appropriate in the given situation. Further, the issue in appeal is specifically held in favour of Revenue by the Hon'ble Supreme Court in the case of Commissioner of Income-tax v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC)(01-08-1968] and by Hon'ble Allahabad High Court in the case of Commissioner of Income-tax-I v. G.S. Tiwari & Co. [2014] 41 taxmann.com 17 (Allahabad)/[2014] 220 Taxman 111 (Allahabad) (Mag.)/[2013] 357 ITR 651 (Allahabad) [30-05-2013].

Respectfully following the judgements of honourable Supreme Court and judgements as referred above which have been rendered following judgements of the honourable Supreme Court, it is held that the assessing officer may tax the cash credit entered in the books of account of the business, and at the same time estimate the profit and there is no restriction in the law in this regard. From the ratio of the judgements it is also understood that sections 68/69/69A etc. are the deeming provisions and are different from the heads of income like the business income and income from other sources and income from house property etc. From the ratio of the judgements it is also understood that estimation of the business income after the rejection of the books of accounts or as per presumptive taxation or computing the exact business income as per the various sections of the chapter under the head business income, are different approaches to working out the business income of one taxpayer. Sections 68/69/69A etc. are applicable irrespective of the method of determination of business income. Further that the presumptive taxation scheme provides exemption from only the specific provisions as mentioned therein which pertain only to the chapter of business income.

Accordingly the additional ground raised by the appellant is hereby dismissed.”

“Ground No. 1 that Ld. AO had erred in making addition u/s 68 on account of unexplained cash credit on the basis of suspicion and surmises.

Decision:-

(v) The appellant deposited Rs. 58,00,000 in the old currency in his bank account during the period of demonetisation. The appellant has submitted that the source of the same is from the sales made by him in the pre-demonetisation period. From the sales history of the appellant himself, it is seen that the appellant has shown sudden spike in sales in the period close to the announcement of demonetisation. Further the appellant has not deposited the cash in the bank account on a matching basis as on the one hand the appellant has claimed huge cash sales however on the other hand such cash receipt from the sales have not been deposited in the bank account.

(vi) It is to be noted that each entry must be separately explained by assessee to prove the genuineness of the transaction, While explaining the various credits and investments, it is possible that the assessee may be successful in explaining some of them, but that does not by itself mean that the entire investments has to be considered as explained. The Assessing Officer has to apply his mind in each and every individual entry when an explanation is offered by the assessee as observed by the Hon'ble Rajasthan High Court in the case of CIT v. RS. Rathore [1995] 212 ITR 390 (Raj.).

(vii) The Assessing Officer is not required to show the source of the money deposited in the bank account. There can be several possibilities. Such details are only in the possession of the assessee and onus lies on him. Where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the department to locate its exact source - CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC), A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC).

(viii) The Hon'ble Supreme Court in the case of Sreelekha Banerjee v. CIT [1963] 49 ITR 112 has observed as under:

"If there is an entry in the account books of the assessee which shows the receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee himself, it is necessary for the assessee to establish, if asked, what the source of that money is and to prove that it does not bear the nature of income. The department is not at this stage required to prove anything. It can ask the assessee to produce any books of account or other documents or evidence pertinent to the explanation if one is furnished, and examine the evidence and the explanation. If the explanation shows that the receipt was not of an income nature, the department cannot act unreasonably and reject that explanation to hold that it was income. If, however, the explanation is unconvincing and one which deserves to be rejected, the department can reject and draw the inference that the amount represents income either from the sources already disclosed by the assessee or from some undisclosed source. The department does not then proceed on no evidence, because the fact that there was receipt of money is itself evidence against the assessee. There is thus, prima facie, evidence against the assessee which he fails to rebut, and being unrebutted, that evidence can be used against him by holding that it was a receipt of an income nature. The very words 'an undisclosed source' show that the disclosure must come from the assessee and not from the department."

(emphasis supplied)

It is further observed in this case by the Hon'ble Supreme Court as under-

"In the present case, the assessee claimed that the high denomination notes were a part of the cash balance at the head-office. The Income-tax Office found that at first the cash on hand was said to be Rs. 1,62,022, but on scrutiny, it was found to be wrong. Indeed, the assessee himself corrected it before the Appellate Assistant Commissioner and stated there that the balance was Rs. 1,21,875. Ordinarily, this would have prima facie proved that the assessee might have kept a portion of this balance in high denomination notes. But the assessee failed to prove this balance, as books of the assessee did not contain entries in respect of banks. Though cash used to be received from banks and sent to the various places where works were carried on and vice versa, no central account of such transfers was disclosed. There was also no account of personal expenses of the assessee and he had failed to prove why such large sums were kept on hand in one place when at each of the places where work was carried on, there

were banks with which he had accounts. The Appellate Assistant Commissioner also went into the question and found that on the same day when the high denomination notes were encashed, a sum of Rs. 45,000 was drawn by cheque. The next remittance immediately afterwards was of Rs. 16,000 to Bokaro, but Rs. 17,000 were withdrawn a few days before to meet this expense. A withdrawal of Rs. 8,000 was made a day later and Rs. 20,000 were withdrawn ten days later to finance the business. It appears that the money on hand (Rs. 45,000) was not touched at all, but on January 30, 1946, a further sum of Rs. 6,005 was withdrawn and not utilised, which made up the sum of Rs. 51,000 for which the high denomination notes were encashed.

On these facts, the Tribunal came to the conclusion that the high denomination notes represented not the cash balance but some other money which remained unexplained, and the Tribunal treated it as income from some undisclosed source. The High Court held on the above facts and circumstances that there were materials to show that Rs. 51,000 did not form part of the cash balance, and the source of money not having been satisfactorily proved, the department was justified in holding it to be the assessable income of the assessee from some undisclosed source. In this conclusion, the High Court was justified, regard being had to the principles we have explained above."

(Emphasis Supplied)

One of the important factual-legal relevant questions emerging from the above judgement is as under.-

Question of justification of keeping large sums on hand whereas the facility of withdrawing cash was available at the time and place it was required.

The above is from the observation "failed to prove why such large sums were kept on hand in one place when at each of the places where work was carried on, there were banks with which he had accounts."

In view of the above, the judgement of Hon'ble Supreme Court is squarely applicable to the facts of the case.

(ix) It is observed by the Hon'ble ITAT in the case of Renu T Tharani vs Dy Commissioner of Income Tax in ITA No. 2333/Mum/2018 as under:-

"These evidences and statements cannot always be accepted at the face value without application of mind about their reliability. A conscious call is to be taken, in a fair and objective but a realistic,

manner about reliability of such evidence. As observed by Hon'ble Supreme Court, in the case of CIT Vs Durga Prasad More [(1971) 82 ITR 540 (SC)], " Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities". As Hon'ble Supreme Court has observed, in this case, "...it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities..... appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence", "

In view of the above discussion the claim of the appellant is to be adjudicated as per the principles of human probabilities. The onus is on the assessee to prove that the funds deposited in his bank account are from the sources claimed by the assessee. All these transactions has to be linked and proved. The onus in this regard is on the assessee which has not been discharged.

(x) Judgement in the case of Vivek N. Jajodia v. Income-tax Officer, 16(2)(2), Mumbai [2011] 10 ITR(T) 581 (Mumbai)/[2010] 123 ITD 136 (Mumbai)/[2010] 134 TTJ 806 (Mumbai)(23-01-2009) TAX DEPARTME

The relevant para of the judgement are extracted here under as relied upon:-

*8. The learned D.R. in reply submitted that there is preponderance of probability against the assessee as the gifts are not customary. There are no mutual gifts given by the assessee to the foreign persons. The basic responsibility of providing evidences for proving the gift as genuine has not been established.....

12. In order to decide as to whether the impugned gifts in the present case are genuine or not, one has to look not only at the documents produced but also at the surrounding circumstances. In this connection, we may fruitfully notice and reproduce the following observations made by the Hon'ble Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540.

"It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents."

13. According to section 3 of the Evidence Act, a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that the prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. The aforesaid provisions are nothing but recognition of board principles of common law governing the issue under consideration.

14.

15. After considering the explanation of the assessee in the light of the facts and circumstances of the case, we are not inclined to interfere

with the order of the learned CIT(A) in this behalf. The so-called gifts credited in assessee's capital account is not acceptable as it is contrary to the preponderance of probabilities and common course of human conduct. In view of this, we confirm the order of the Assessing Officer and the learned CIT(A) in this regard. The ground is rejected."

Some of the factors which weighed in deciding the matter are as under.-

- A party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. [Hon'ble Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540]
- If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. [Hon'ble Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540]
- The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents. [Hon'ble Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540].
- The Hon'ble Supreme Court held that in cases where the explanation offered by the assessee about the nature and source of the sums found credited in his books is not satisfactory, there is prima facie evidence against the assessee, viz., the receipt of money and that the burden is on the assessee to rebut the same, and, if he fails to rebut it, it can be held against the assessee that it was receipt of an income nature. The Hon'ble Court further observed: 'May be the money came by way of bank cheques and was paid through the process of banking transaction but that itself is of no consequence'. [CIT v. P. Mohankala [2007] 291 ITR 278 1 (SC)]

(xi) In the case of Konathala Nooku Naidu v. Income-tax Officer, Ward-1 [2024] 160 taxmann.com 758 (Visakhapatnam Trib.) [18-03-2024] [L.T.A. No.269 Viz/2023], Hon'ble ITAT upheld the addition and found the explanation as unacceptable when the source of cash deposited in the bank on 13-11-2016 was stated to be the loan which was further

withdrawn in cash on 29-09-2016 in view of the fact that the assessee has not properly explained as to why the loan was availed by the assessee and for what purpose he has withdrawn the amount on 29-09-2016 and deposited the same after one and half months.

"6. Insofar as the loan of Rs. 2,60,000/- is concerned, the contention of the assessee is that he has availed a loan and withdrawn the amount and redeposited the same in his bank account. On perusal of this transaction of the assessee, I find that the assessee has availed a loan on 26/9/2016 and withdrawn the same on 29/9/2016. But, the assessee has deposited the said amount on 13/11/2016. The assessee has not properly explained as to why the loan was availed by the assessee and for what purpose he has withdrawn the amount on 29/11/2016 and deposited the same after one and half months. Therefore, the contention of the assessee is not tenable. Hence, I am of the view that the assessee has not properly explained the source for the cash deposit of Rs. 2,60,000/- and thus I sustain the addition to this extent."

(xii) The claim of the appellant is not supported by preponderance of probability in his favour. In such situation, onus is on the appellant to prove that what is improbable has happened. The dictionary meaning of the word "preponderance" is superiority in weight, power, importance, or strength. Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true. This preponderance is based on the more convincing evidence and its probable truth or accuracy.

(xiii) According to section 3 of the Evidence Act, a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that the prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. The aforesaid provisions are nothing but recognition of board principles of common law governing the issue under consideration.

(xiv) The appellant submitted during the assessment proceedings that as people start taking delivery 7 to 10 days before Dev Uthani Gyaras hence his sales occurred in first week of November 2016 however from

the comparative date of the preceding year there is no such sharp rise sale in any period of the year and this argument of the appellant is contradictory to the regular business practices in the past history of the appellant himself and thus unreliable and a mere self-serving statement. Further it is also seen that the credit sales have not increased at all in this period and have rather gone down. A summary of the same is tabulated below

	Cash Sale (Rs.)	Credit Sale (Rs.)
October 2016	4,84,162	6,10,407
November 2016	32,22,668	5,81,653

The Id. AR during the hearing on 27.02.2024 sought time till 06-03-2024 to file the original and revised VAT Returns. However such details have not been filed. Adverse inference is drawn against the appellant in this regard as it cannot be verified whether the VAT returns were revised to accommodate increase of retail sales in cash to accommodate the unaccounted cash in hand. Further the appellant has not given any plausible or cogent reasoning for the sudden spike in sales as noted in the assessment order. The appellant is also silent on the aspect of the sharply rising cash in hand which was just kept in hand and was not deposited in the bank account as against the regular business practices of the appellant himself.

Month	Sale in cash during FY 2016-17	Cash deposited during 2016-17	Cash deposit as % of cash sales	Sales in cash during FY 2015-16	Cash deposited during 2015-16	Cash deposit as % of cash sales
	A	B		C	D	
April	162452	77500	47.71	115500	50,000	43.29
May	56804	100000	176.04	85710	50,000	58.34
June	19870	77500	390.04	105515	0	0.00
July	657464	78000	11.86	65510	43,500	66.40
August	600924	96500	10.06	85715	50,000	58.33
September	723810	12000	1.66	135813	50,000	36.82
October	484162	10000	2.07	187306	48,000	25.63

Upto Nov.	8 th 8	322266 8	0	0.00	370981	50,000	13.48
Total		592815 4	451500	7.62	1152050	341500	29.64

From the tabulated data below it is seen that in the preceding year the appellant was usually depositing almost 50% of the cash received by him from the sales and the remaining was apparently being used in business expenses and/or withdrawn for personal expenses etc. or maybe also kept as cash in hand.

The appellant has submitted the opening cash in hand and the closing cash in hand for each month for the year under appeal and for the preceding year to the learned AO vide his letter dated 16-10-2019 (mentioned with pencil). For the preceding year it is seen that the maximum cash in hand at the end of any month was almost Rs. 6 lakhs and in some months it was even less than Rs. 1 lakh. In the year under appeal the closing cash in hand for the initial months of the financial year was in the same range as the preceding year however the same rose to much above Rs. 6 lakhs in July and August 2016 and further rose above Rs. 8 lakhs in September 2016 and for the above Rs. 9 lakhs at the end of October 2016. The closing cash in hand sharply and suddenly rose to more than 58 lakhs as at end of 08-11-2016.

The act of the appellant in not depositing the regularly increasing cash in the bank account is against his own regular business practices and is hit by the judgements in the case of Sreelekha Banerjee v. CIT [1963] 49 ITR 112 [Supreme Court] and Konathala Nooku Naidu v. Income-tax Officer, Ward-1 [2024] 160 taxmann.com 758 (Visakhapatnam - Trib.)[18-03-2024] and other judgements as referred above. Appellant has not explained that why the cash was not deposited in the bank account. This assumes even greater significance as the appellant has submitted during the assessment proceedings that the appellant had applied for a mortgage loan from PNB Housing finance to fulfill orders and enhance business but the loan was delayed and was disbursed on 24/11/2016 for Rs. 22,22,213/-. As people start taking delivery 7 to 10 days before Dev Uthani Gyaras and sales occurred in first week of November 2016 and the whole amount was utilized to purchase raw material. On the one hand the assessee appellant was taking a loan from PNB Housing Finance, on the other hand he was having huge cash in hand which is lying idle and was not been deposited in the bank account and the appellant waited for

several days(from September onwards) and a relatively smaller portion of Rs. 18 lacs was deposited in bank on 11/11/2016 and and the larger portion of Rs. 40 lacs was deposited only on 16/11/2016. The appellant has not explained issue and has maintained a complete silence. The explanations of the appellant are contradictory to the facts of his own case. It shows creation of back dated non- genuine sales bills to introduce cash in books.

Further the learned AO has done a detailed analysis of the facts and reasoning which are referred to. In view of the above discussion the books of accounts of the appellant are not reliable and do not present a correct and fair view and the correct taxable income cannot be deduced therefrom. Learned AO in the assessment order has held that, in view of human tendency and the reason furnished by the appellant, the assessee has inflated his sales during the month of November, 2016 (01.11.2016 to 30.11.2016) by Rs. 12,90,178. The sales figures have not been relied upon in the assessment order. Powers of the CIT Appeal are co-terminus with the powers of the assessing officer. Accordingly the books of accounts of the appellant are rejected u/s 145(3) of the Act. The Id. AO has held in the assessment order that the out of deposited cash of Rs. 58,00,000/- SBNs during the demonetization period, Rs. 12,90178/- so deposited in the Bank Account of the assessee is treated as unexplained cash credit in its books of account and liable be taxed under sec. 68 of the Act. However at the same time it can not be said that the excessive/bogus sales occurred only during the period 01.11.2016 to 08.11.2016. The analysis of the cash deposit in the earlier month particularly the month of September and October and first fortnight of November and also the excessive cash in hand in such months which are not as per the regular business practices of the appellant himself and also considering the fact of delay in deposit of cash and keeping it idle whereas it is the claim of the appellant that funds were required urgently to purchase the stock and even loan was taken by the appellant from AU Financiers etc. shows that even in the earlier period of September and October, the appellant had recorded non genuine sales to increase the cash in hand only in the books by backdating to accommodate the unaccounted and earlier accumulated cash from unknown sources available with him during the demonetization.

In view of the above discussion, going by the principles of human probabilities and past history of the appellant, the explanations of the appellant are found to be devoid of merit and the addition made by the learned assessing officer is hereby upheld. The cash credit claimed

from the sales but found to be unexplained and upheld as the income of the appellant u/s 68 of the Act is to be reduced from the sales of the appellant and added to the closing stock for the completeness of double entry.

The appellant has contended that section 68 is not applicable as he filed the ITR as per section 44AD of the Act. However the argument is found to be devoid of merit. Appellant has maintained the books of accounts. Section 68 is applicable as bank passbook can also be considered as the books of accounts for the purposes of section 68. There are judicial precedents as per which addition under section 68 of the Act can be made w.r.t. cash deposit in bank account. Hon'ble ITAT Delhi Bench in the case of Jagdish Prasad Sharma v. ITO [IT Appeal No. 104 (Delhi) of 2015, dated 13-1-2020), following the later decision of the Bombay High Court in Arunkumar J. Muchhala v. CIT [2017] 85 taxmann.com 306/250 Taxman 362/399 ITR 256 (Bom.), has held that bank passbook is also the books of the assessee within the meaning of section 2(12A) and, therefore, addition u/s 68 can also be made, irrespective of whether credit entries are made in the books of account of the assessee or not. Further alternatively such amount Rs. 12,90,178 having found its place in the bank account is also taxable as unexplained investment u/s 69 of the Act.

Accordingly this ground of appeal is hereby dismissed.”

5. Aggrieved from the order of the Id. CIT(A) the assessee has preferred this appeal on the grounds as reiterated in para 2 above.

In support of the grounds so raised Id. AR of the assessee has relied upon the following written submission: -

“BRIEF FACTS:

Assessee was engaged in the business of Manufacture and job work of jewellery during the year under consideration. Assessee had deposited cash of Rs. 58,00,000/- in old currency during the period of demonetization. Ld AO added the amount of Rs. 12,90,178/- as unexplained cash credit on estimate basis u/s 68 and raised demand of Rs. 14,34,724/-.

Such addition/ disallowances were challenged by the assessee before Ld. CIT(A) who confirmed the addition. Now the assessee has preferred appeal before your honor.

Ground wise submission is as under:

Additional Ground No. 1: That addition u/s 68 is not possible on lump sum/ estimation basis:

As per Sec. 68 of the income tax act, 1961,

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

It is important to note that the addition under section 68 cannot be made on an estimated/ lump sum basis. The provision uses the word 'any sum'. "Any Sum" appearing in section 68 of the Act refers only to a specific amount. It has been held by Delhi High Court in D.C. Rastogi v. CIT [2014] 45 taxmann.com 489 [PB 4-6] that in terms of provisions contained in section 68, any amount other than one found credited in account/ books of accounts could not be estimated and charged to tax.

Relevant Extract of the judgment is as follows:

The AO had rejected the assessee's books/ accounts. However, the figure of the sums credited in the books maintained by the assessee for the concerned year remained unexplained, i.e. cash of Rs. 15,17,060/-. In the opinion of the Court, the language of section 68 does not admit to the interpretation that the reference to "any sum" which is found to be "credited" in the assessee's book for any particular year can mean only one thing, i.e. the actual sum found in the books for the concerned previous year and which is unexplained. In this case that amount was Rs. 15,17,060/-. The judgement of the Madras High Court is only an authority for the proposition that if the profits reported by the assessee are not accepted on the basis of the supporting accounts, the ITO can process such profits by estimation after rejecting the books. That was not a case where interpretation of section 68 was called for. It is one thing to say that for separate heads of income such as profits, capital gains, etc, which would involve reporting of accounts maintained on an elaborate basis and also detailing expenditure etc, the Assessing officer may have the discretion to reject accounts and arrive at the

income on the basis of estimation. However, in the case of section 68, there cannot be any estimate even if for the rest of the accounts, such an exercise is validly undertaken. This is for the simple reasons that the expression “any sum” refers to any specific amount and nothing more”.

In view of above, addition of Rs. 12,90,178/- deserves to be deleted.

Ground No. 1: That addition u/s 68 is not possible if no books of accounts are maintained:

As per Sec. 68 of the income tax act, 1961,

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year:

Sec. 68 starts with the words if any sum is found credited in books of an assessee. In the present case, assessee had filed return u/s 44AD and therefore, no books of accounts were required to be maintained. In the absence of books of accounts, no addition u/s 68 is possible.

In the present case, Ld. AO passed the assessment order by rejecting books of accounts and making addition u/s 68. However, no books of accounts were maintained by the assessee and therefore, rejection of the same does not arise.

Further, it has been held by in various judgement that no addition u/s 68 is possible in absence of books of accounts/ filing of return on presumptive basis and some of the judgement are as follows:

- a. Delhi ITAT in Babbal Bhatia vs. ITO [ITA 5430 & 5432/DEL/2011] [PB 7-20]

The findings of the tribunal are as under:

Addition u/s 68 of the act can be made where any sum is credited in the books of the assessee maintained for any previous year. Thus the very sine qua non for making of an addition u/s 68 of the Act presupposes a credit of the amount in the books of the assessee. Our view is fortified by the judgement of the Hon'ble High Court of Bombay in the case of Bhaichand N Gandhi 141 ITR 67 wherein the Hon'ble High Court had held as under:

“As the tribunal has pointed out, it is fairly well settled that when moneys are deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not of trustee and beneficiary. Applying this principle, the pass book supplied by the bank to its constituent is only a copy of the constituent's

account in the books maintained by the bank. It is not as if the pass book is maintained by the bank as the agent of the constituent, nor can it be said that the pass book is maintained by the bank under the instructions of the constituent. In view of this, the Tribunal was, with respect, justified in holding that the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions. In our view, the tribunal was justified in the conclusions at which it arrived.

In the case of Anandram Ratinani, the Hon'ble Guwahati High Court has also held that a perusal of section 68 of the Act shows that in relation to expression "books" the emphasis is on the word 'Assessee' meaning thereby that such books have to be books of the assessee himself and not of any other assessee.

It is correct that since no books of accounts are maintained in the ordinary course of business of the assessee, no such addition u/s 68 of the Act is tenable.

- b. ITO Barabanki v. Kamal Kumar Mishra [2013] 33 taxmann.com 610 (Lucknow Trib.)
- c. Roopak Jain vs. ITO Ward-48(3), New Delhi, 2016 (10) TMI 692-ITAT DELHI
- d. Sh. Satbir Singh Bhullar Vs. ITO [ITA 258/ASR/2022] [ITAT AMRITSAR]

Further, it has been held in various judgements that Bank pass book cannot be considered as Books of accounts for the purpose of section 68:

- a. Rameshbhai somabhai patel v. ITO [ITA NO. 1864/AHD/2014]
- b. Smt. Manasi Mahendra Pitkar v. ITO [2016] 73 taxmann.com 68/160 ITD 605 (Mum. – Trib.)
- c. Smt. Ramilaben B. Patel v. ITO [2018] 100 taxmann.com 325 (Ahd.-Trib.)
- d. Amitabh Bansal v. ITO [2019] 102 taxmann.com 229 (Delhi-Trib.)
- e. Mehul v. vyas v. ITO [2017] 80 taxmann.com 311/164 ITD 296 (Mum.-Trib.)
- f. CIT v. Bhaichand N. Gandhi [1982] 11 Taxman 59/141 ITR 67 (Bom.)

Further, Ld. CIT(A) had cited the judgement in case of Jagdish Prasad Sharma v. ITO [ITA 104/DEL/2015] and Judgement of Bombay High Court in Arunkumar J. Muchhala v. CIT [2017] 85 taxmann.com 306/250 taxman 362/399 ITR 256 (Bom.) stating that Bank pass book is also books of accounts for the purpose of addition u/s 68. However, facts of the case laws cited by the Ld. CIT(A) are different from the present case. In above cited case laws, Assessee had earlier admitted

during assessment proceedings that books of accounts are maintained and will be produced later but could not produce till finalization of assessment proceedings and later attempted to claim the benefit of non-maintenance of books of accounts. Non production of books of accounts cannot be equated with non-maintenance of books of accounts.

In view of above, addition of Rs. 12,90,178/- deserves to be deleted.

Ground No. 2: That Ld. AO had erred in making addition u/s 68 on account of unexplained cash credit on the basis of suspicion and surmises:

Assessee had deposited cash of Rs. 58,00,000/- in old currency notes during the period of demonetization. Assessee had submitted the required documents for the verification of above cash balance.

However, Ld. AO added the amount of Rs. 12,90,178/- as unexplained cash credit u/s 68 on the following grounds:

- a. That there is abnormal increase in sales of the period from 01.11.2016 to 08.11.2016 as compared to the sales of the corresponding period of previous year.
- b. That the sales made were below Rs. 2,00,000/- and did not contain the credentials of purchasers like father's name, complete address, PAN and Mobile Number etc.
- c. That there was no reason for the sudden hike in cash sale during the year under consideration, as compared to the cash sales of immediate preceding year. Thus, the cash sales declared during the year under consideration is found to be unreasonable and exceptionally excessive.

The day of 08.11.2016 was a historical day due to the announcement of demonetization. Our shop is in the mid of the city i.e., just near to Johari Bazar and due to unexpected announcement of demonetization on the evening of 08.11.2016, the public largely purchased the jewellery as alternative for exchange of currency hence, Ld. AO's contention that no reason of sudden hike is not justified.

- During the assessment proceedings Ld. AO demanded details of day-wise opening stock, day-wise purchases, day-wise sales and day-wise closing stock along with other details like Comparative Chart of Cash Sale and Credit sale, Cash deposit in bank account in two different years and cash work done in two different years along with cash work done month-wise in two different years and the same was submitted to the Ld AO as and when demanded.
- Ld. AO never dissatisfied with the data supplied, Copy of Sales and Purchases Bills, Copy of Bank account and Narration of transactions,

Copy of Purchases, Sales and Job Work account, Monthly Cash Account. However, issued SCN no. 1023025187 (1) on 24-12-2019 regarding justification of cash deposit and the same was replied as follows: -

1. Assessee is a manufacturer and work very marginally. As marriage season start from Dev Uthani Gyaras which was on 11-11-2016, so Assessee had huge orders in hand for this season hence assessee applied for a mortgage loan from PNB Housing Finance to fulfil orders and enhance business but the loan was delayed and was disbursed on 24-11-2016 for Rs. 22,22,213/-. As people start taking delivery 7 to 10 days before Dev Uthani Gyaras hence our sales occurred in first week of November 2016 and the whole amount was utilized to purchase raw material i.e., Gold/ Silver / Stones. Stock came on lower side due to good sales and delay of loan. However, stock came to average level after receiving loan and plough back of sales.
2. Whole purchases are fully verifiable and whole amount deposited in cash has been paid to purchase Goods (Raw Material). No amount has been withdrawn in cash hence business money remained in business.
3. Survey of the Assessee's premises was held on 28-02-2018 and no adverse finding was found and survey team was satisfied with Assessee's working hence it also means that all is okay.
4. As per summary sheet of day wise stock [PB 21] submitted on 31-10-2019, sufficient stock was there in the books which can be verified by your good self.

However, Ld. AO raised the demand and mentioned in order that Assessee has shown a sale of Rs. 32,22,668 /- during the period from 01-11-2016 to 08-11-2016 which is exceptionally higher as compared to average cash sales and which is not possible for the business of the Assessee and relied on the judgement of Smt. Srilekha Banerjee and others in which the department was justified in holding that Rs. 51,000/- was assessable income of the Assessee from some undisclosed sources. However, this judgement is not applicable on us because we neither maintained books of accounts prescribed u/s 44AA nor contended that cash deposited in bank account was capital of the proprietor.

Further, assessing officer had failed to appreciate the fact that all the deposits in the bank account of the assessee, whether before demonetization period, during demonization period and after demonization period were used for the purpose of the business. No major amount was withdrawn out of the business or diverted anywhere

else which itself proves that amount deposited was out of the cash in hand. Above cash deposit of Rs. 20 Lakhs during demonetization period was used to purchase gold from reputed firms and having a turnover of crores of rupees. Further, purchase and sales details were provided to Ld AO along with details of closing stock. When, neither the purchase nor stock have been objected by the Ld AO and Assessment for the A.Y. 2018-19 have been completed u/s 143(3) [PB 22-25] where the stock was never objected leading to double verification/ satisfaction of the financials in the Balance sheet as on 31.03.2017, therefore, the addition deserves to be deleted as held in ACIT vs. M/s Hirapanna Jewellers [ITA 253/VIZ/2020]. Findings of the Tribunal in above judgement is as follows: [PB 26-43] [Page No. 10-12]

In the instant case, the assessee has admitted the receipts as sales and offered for taxation. The assessing officer made the addition u/s 68 as unexplained cash credit of the same amount which was accounted in the books as sales. In this regard, it is worthwhile to look into section 68 which reads as under:

68. Where any sum is found credited in the books of an assessee.....

From the perusal of section 68, the sum found credited in the books of accounts for which the assessee offers no explanation, the said sum is deemed to be income of the assessee. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. The assessee is engaged in the jewellery business and maintaining the regular stock registers. Both the DDIT(Inv.) and the AO have conducted the surveys on different dates, independently and no difference was found in the stock register or the stocks of the assessee. Purchases, sales and the stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock. To disbelieve the sales either the assessee should have the sufficient stocks in their possession of there must be defects in the stock registers/ stocks. Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. The assessing officer accepted the sales and the stocks. He has not disturbed the closing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales. Audit report u/s 44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with sale which goes to say that the cash generated represent the sales. The

assessee had furnished the trading account, P&L account in Page No. 7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared the exorbitant profits. Though certain suspicious features were noticed by the AO as well as the DDIT(Inv.) both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the assessee. Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence.

Further, some of the judgments on similar issue decided in favor of Appellant are as follows:

- I. Shree Vaibhav Laxmi Jewellers vs ACIT [394/JP/2024] [PB 44-60]
- II. Mahesh Kumar Gupta vs. ACIT [149/JP/2022] [PB 61-104]
- III. Motisons Jewellers Limited [161 and 178/JPR/2022]
- IV. Chandra Surana [ITA 166/JPR/2022]
- V. Mahendra Kumar Agarwal [ITA 172/JPR/2022]
- VI. Raj Kumar Nowal [ITA 165/JPR/2022]
- VII. Roop Square Pvt Ltd [ITA 198 and 249/Chand/2021]

The assessee had submitted his contentions before Ld AO that cash has been received out of cash sales, Bills do not contain KYC and Mobile numbers as assessee is a small jewellery manufacturer and do not insist for mobile numbers or addresses of customers or KYC since it was not mandatory and Department of revenue has specifically issued clarification in this regard also in the case of sales below Rs. 2 lakhs and complete details are maintained wherever the sales to a single person exceed Rs. 2 lakhs. Here we would like to state that most of the sales were below Rs. 2 lakhs.

However, Ld AO did not raise any specified defects/ reasons for rejection of contention of the assessee and made addition of Rs. 12,90,178/- on the basis of suspicion and surmises which is illegal, bad in law and deserves to be deleted.

In view of above submissions, whole of the addition deserves to be deleted.

Ground No. 3: That the appellant craves the right to add, amend or alter any grounds of appeal before or at the time of disposal of this appeal:

Not Pressed

5.1 To support the various grounds so raised by the Id. AR of the assessee and has relied upon the following evidences in support of the contentions so raised:-

S. No.	Particulars	Page No.	Authority before whom presented
1.	Copy of ITR along with Computation and Balance sheet	1-3	AO
2.	Copy of Judgement by Delhi High Court in D.C. Rastogi v. CIT [2014] 45 taxmann.com 489	4-6	Case Law
3.	Copy of Judgement by Delhi ITAT in Babbal Bhatia vs. ITO [5430 & 5432/Del/2011]	7-20	Case law
4.	Summary Sheet of day wise stock	21	AO & CIT(A)
5.	Copy of order passed by Ld AO for the AY 18-19	22-25	Judgment
6	Copy of Judgement in ACIT vs. M/s Hirapanna Jewellers [ITA 253/VIZ/2020]	26-43	Case law
7.	Copy of Judgement of Jaipur ITAT in Shree Vaibhav Laxmi Jewellers vs. ACIT [394/JP/2024]	44-60	Case law
8.	Copy of Judgement of Jaipur ITAT in Mahesh Kumar Gupta vs. ACIT [149/JP/2022]	61-014	Case law

6. In addition to the written submission so filed Id. AR of the assessee submitted that finding of the lower authority is incorrect so far as the credit of the assessee is partly accepted and partly denied. The provision of section 68 of the Act does not empower the Id. AO to accept the part credit as genuine and part of the same is not, that too based on the surmises and conjectures.

7. Per contra Id. DR representing the revenue has relied upon the finding of the lower authority and stated that both the orders

passed by the Id. AO and that of the Id. CIT(A) are in detailed explaining the reasons on the finding so recorded.

8. We have heard the rival contentions and perused the material placed on record. In this appeal the assessee has raised two grounds both are related to the addition made as per provisions of section 68 of the Act.

The brief fact related to the case of the assessee is that the assessee engaged in the business of manufacturing and trading of Gold & Silver jewellery under the name & style M/s DPD Jewellers. For the year under consideration, assessee has declared total Sales / Turnover from the said business activities at Rs. 1,17,87,858/-. The assessee has declared his profit from the said business activities under sec. 44AD of the Act. Accordingly, he has declared Profit of Rs.9,03,747/- on the above activities (i.e. @ 8% on sales of Rs.98,23,701/- & @ 6% on sales of Rs.19,64,157/-). Case of the assessee was selected for scrutiny as the assessee has deposited cash of Rs. 58,00,000/- during demonetization period. In the assessment proceeding the assessee submitted the details of the sales. Ld. AO noted that the assessee has inflated the sales made on account of demonetization. He has considered

the five times of sales to the average sale as genuine and thereby derived sales as acceptable for an amount of Rs. 19,32,490/- [Rs. 3,86,498/- average sales * 5 times based on the explanation] and thereby he hold balance amount of Rs. 12,90,178/- [32,22,668 less 19,32,490/-] as unexplained credit and the sales to that extent not considered and added as income as per provision of section 68 of the Act. While doing so Id. AO noted that the assessee has not provided satisfactory explanation about the nature and source of cash deposits. Here we note that one the one hand Id. AO accepted the sales of Rs. 19,32,490/- and on the other hand on the same set of evidence placed before him he is not considered the other part of the sales and that too based on the estimation, presumption and assumption he has not placed on record failure on the part of the assessee as when the part of the sale is considered then why the other part is not considered.

Looking to the overall facts of the case and material available on record we are of the considered view that the addition made by the Id. AO and sustained by the Id. CIT(A) merely based on the presumption and assumption. They did not deal to the fact of the case on the same set of evidence part of the sale is accepted and part of the same were not accepted. Considering that factum we do

not find any reason to sustain the addition and therefore, we direct the Id. AO to delete that addition made in the hands of the assessee.

In the result appeal filed by the assessee is allowed.

Order pronounced in the open Court on 27/09/2024.

Sd/-

Sd/-

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

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

जयपुर / Jaipur

दिनांक / Dated:- 27/09/2024

*Santosh

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

1. अपीलार्थी / The Appellant- Sh. Dinesh Kumar Soni, Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 863/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar