

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 737/MUM/2024
Assessment Year: 2017-18**

Bina Goenka The Jeweller LLP,
501 Kings Apartments, Juhu
Between JW Mariot and Tulip
Star,
Mumbai-400092.

**PAN NO. AAPFB 7501 C
Appellant**

Vs. Asst. CIT Circle-25(2),
220, 2nd floor, Kautilya Bhavan, C-41
to C-43, G Block, Bandra Kurla
Complex, Bandra (East),
Mumbai-400051.

Respondent

Assessee by : Mr. Siddharth Kothari
Revenue by : Mr. Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 24/07/2024
Date of pronouncement : 23/09/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 19.01.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, raising following grounds:



2. Briefly stated facts of the case are that the assessee is a limited liability partnership (LLP) firm, which has been incorporated on 12/10/2015. The assessee firm is engaged in retail trading activity of finished studded jewellery products for its domestic and international customers. For the year under consideration, the assessee filed return of income on 29/11/2017 declaring total income at ₹ 24,14,650/-. The return of income filed by the assessee was selected for scrutiny through computer-assisted selection process mainly for the reasons *inter-alia*, large cash deposits in bank accounts during the monetization period, abnormal increase in sales with decreasing profitability compared to preceding year. The Assessing Officer issued statutory notices under the Income-tax Act, 1961 (in short 'the Act') which were duly served on the assessee. The Assessing Officer also gathered relevant bank statement of the assessee from the bank invoking authority under section 133(6) of the Act. The Assessing Officer asked details of cash deposit and Cash sales for the year under consideration before and after 08/11/2016 (i.e. the date on which currency notes of rupees thousand and five hundred were held to be invalid and withdrawn from circulation by the Government of India). Similar details of cash deposits and cash sales for preceding assessment years were also called for. From the details furnished by the assessee, the Assessing Officer observed that in the preceding assessment year , there was no cash sales or cash deposit but in the year under consideration, in the week immediately prior to the



date of the demonetization i.e. 8/11/2016, the assessee shown cash sales of ₹ 34, 50, 000/-and after the said date, assessee shown cash deposits of ₹ 32, 95, 500/-from 08/11/2016 to 30/11/2016 and then cash deposits of ₹ 1, 54, 500/- was shown for the period from 01/12/2016 to 31/12/2016. From the details filed by the assessee, the Assessing Officer observed abnormal increase in cash sales in the year under consideration as compared to the preceding year. The Assessing Officer found it abnormal that the assessee had no cash sales throughout the financial year 2015-16 and 2016-17 except for one day i.e. 28/10/2016. In the opinion of the Assessing Officer, the trend of the cash deposit clearly indicated that the assessee had artificially booked bogus sales on one particular day to justify unaccounted cash with it on 08/11/2016 i.e. the day on which demonetization was declared. The Assessing Officer asked the assessee by way of show cause notice dated 14/12/2019 to explain the steep increase in cash sales in October 2016. In view of no compliance on the part of the assessee, the Assessing Officer in the assessment order dated 16/12/2019 passed under section 143(3) of the Act concluded the cash deposits of ₹ 34,50,000/-as unexplained cash credit in terms of section 68 of the Act.

3. On further appeal, the assessee filed detail submissions and explained source and nature of the credit of ₹ 34,50,000/-in its books of accounts, but the Ld. CIT(A) rejected the contention of the



assessee and upheld the finding of the Assessing Officer, observing as under:

“7.1.2 During the appellate proceedings, in his written submissions, the appellant has given contention to justify the cash sales. The Ld. AO has made a logical analysis in which he proved that cash sales were made only during the specific period and no cash sale was made both before and after the said period. On the other hand, the appellant tried to justify that the cash sales was due to festive season. As can be seen from the submissions of the appellant, the process of cash deposit started on the date of 10.11.2016 and ended on 19.12.2016. After that no cash was deposit. The appellant also furnished few cash memos valuing less than 2 lacs to prove that the details of buyers in case of cash sales is not required. The appellant further take contention that all the cash sales are recorded in books of accounts and the stock register is also maintained. The appellant did not enclose the cash register during the appellant proceedings. As noted by the AO and held in these proceedings the so-called cash sale during demonetization period was bogus and the cash sale ledger and books were fabricated. These books are now rejected u/s 145 of the Act. 1965. The financial result such as profit and loss arising out of such books are also rejected. The so-called cash sales is treated as unaccounted income / asset of the appellant; hence, held falling u/s 68 and 69 of the Act. The findings of the AO are confirmed. The ground of the appellant is dismissed.”

4. We have heard rival submissions of the parties and perused various documents filed by the assessee in the paper-books containing pages 1 to 165 and 1 to 76. The ground No. one of the appeal was not pressed and therefore same is dismissed as infructuous. The ground Nos. 2 to 4 of the appeal are related to the issue of cash deposits of ₹ 34,50,000/-held by the Assessing Officer as unexplained cash credit under section 68 of the Act. Out of the cash of ₹ 34,50,000/-, the assessee deposited ₹ 32, 95, 500/- into the bank account from 10/11/2016 to 30/11/2016 and deposited ₹ 1,54,500/- on 19/12/2016 . The relevant part of the cash book of the assessee available on paperbook pages 144 and 145 is reproduced as under:



1-11-2016	To	Opening Balance	34,50,500.00		
10-11-2016	By	By State Bank of India 35409029868 Contra Being cash deposited in bank	8	1,95,000.00	32,55,000.00 Dr
11-11-2016	By	By State Bank of India 35409029868 Contra Being cash deposited in bank	9	1,98,000.00	30,57,000.00 Dr
	By	Axis 916020010932245 Contra Being cash deposited in bank	10	1,95,000.00	28,62,000.00 Dr
12-11-2016	By	State Bank of India 35409029868 Contra Being cash deposited in bank	11	1,92,000.00	26,70,000.00 Dr
13-11-2016	By	State Bank of India 35409029868 Contra Being cash deposited in bank	12	1,90,000.00	24,80,000.00 Dr
15-11-2016	By	State Bank of India 35409029868 Contra Being cash deposited in bank	13	1,95,000.00	22,85,000.00 Dr
16-11-2016	By	State Bank of India 35409029868 Contra Being cash deposited in bank	14	1,95,000.00	20,90,000.00 Dr
17-11-2016	By	By State Bank of India 35409029868 Contra Being cash deposited in bank	15	1,92,000.00	18,98,000.00 Dr
18-11-2016	By	State Bank of India 35409029868 Contra Being cash deposited in bank	16	1,95,000.00	17,03,000.00 Dr
19-11-2016	By	State Bank of India 35409029868 Contra Being cash deposited in bank	17	1,92,000.00	15,11,000.00 Dr
21-11-2016	By	State Bank of India 35409029868 Contra Being cash deposited in bank	18	1,93,000.00	13,18,000.00 Dr
22-11-2016	By	State Bank of India 35409029868 Contra Being cash deposited in bank	19	1,95,000.00	11,23,000.00 Dr
23-11-2016	By	State Bank of India 35409029868 Contra Being cash deposited in bank	20	1,94,000.00	9,29,000.00 Dr
24-11-2016	By	State Bank of India 35409029868 Contra Being cash deposited in bank	21	1,94,500.00	7,34,500.00 Dr
25-11-2016	By	State Bank of India	22	1,95,000.00	5,39,500.00 Dr



		35409029868 Contra					
		Being cash deposited in					
		bank					
28-11-2016	By	State Bank of India	23		1,92,000.00		3,47,500.00 Dr
		35409029868 Contra					
		Being cash deposited in					
		bank					
		Carried Over		34,50,000.00		31,02,500.00	

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Cash Book : 1-Apr-2016 to 31-Mar-2017

Date	Particulars	Vch Type	Vch No	Debit	Credit	Balanace
	Brought Forward			34,50,000.00	31,02,500.00	
31-11-2016	By	State Bank of India	24		1,93,000.00	1,54,500.00
		35409029868 Contra				
		Being cash deposited in				
		bank				
	By	Closing Balance		34,50,000.00	32,95,500.00	
					1,54,500.00	
1-12-2016	To	Opening Balance		34,50,000.00	34,50,000.00	
19-12-2016	By	State Bank of India	25	1,54,500.00		
		35409029868 Contra			1,54,500.00	
		Being cash deposited in				
		bank				
				1,54,500.00	1,54,500.00	

5. Before us, the learned counsel for assessee explained that the source of cash deposits was cash sales made by the assessee on 28/10/2016, details of which is available in cash book. The relevant part of said cash book (paper book page 141 to 144) is reproduced as under:

28-10-2016	To	(As per details)	Sales	BG/16-17/034	1,95,000.00	1,95,000.00 Dr.
		Net Sales (Jewellery)		1,92,688.00 Cr		
		Mvat Sales 1.20%		2,312.00 Cr		
		Being Jewellery Sales				
		Pendant-8585(1)				
		Diamond 0.43 Cts,				
		Pearls 12.35 Cts,				
		Gold Wt 4.25 gms				
		against Inv No. BG				
		16-17-040				
		Dt: 28/10/2016				
	To	(as per details)	Sales	BG/16-17/035	1,98,000.00	3,93,000.00 Dr
		Net Sales (Jewellery)		1,95,652.00 Cr		
		Mvat Sales 1.20%		2,348.00 Cr		
		Being cash Jewellery				
		Sales Pendant- PD				



	Net Sales (Jewellery)		1,92,688.00 Cr		
	Mvat Sales 1.20%		2,312.00 Cr		
	Being cash Jewellery Sales Pendant-8585(4) Diamond 0.40 Cts, Pearls 11.80ts, Gold Wt 04.05 gms against Inv No. BG 16-17-040 Dt: 28/10/2016.				
To	(as per details) Sales	Sales	BG/16-17/041	1,92,000.00	15,52,000.00 Dr
	Net Sales (Jewellery)		1,89,723.00 Cr		
	Mvat Sales 1.20%		2,277.00 Cr		
	Being cash Jewellery Sales Earrings -ER -8171(2) Diamond 0.21 Cts, Rubies 03.05ts, Emaralds 3.74 cts, Gold Wt 08.40 gms against Inv No. BG/16-17/041 Dt: 28/10 /2016.				
To	(as per details) Sales	Sales	BG/16-17/042	1,95,000.00	17,47,000.00 Dr
	Net Sales (Jewellery)		1,92,688.00 Cr		
	Mvat Sales 1.20%		2,312.00 Cr		
	Being cash Jewellery Sales Cuff Link Cuff -34(1) Diamond 2.99 Cts, Black Oneyx 6.38 cts, Gold Wt 10.57 gms against Inv No. BG /16-17/042 Dt: 28/10/2016				
To	(as per details) Sales	Sales	BG/16-17/043	1,92,000.00	19,29,000.00 Dr
	Net Sales (Jewellery)		1,89,723.00 Cr		
	Mvat Sales 1.20%		2,277.00 Cr		
	Being cash Jewellery Sales ER-8171(3) Diamond 0.20 Cts, Rubies 3.04 cts, Emaralds 3.62 Cts, Gold Wt 08.30 gms against Inv No. BG/16-17/043 Dt: 28/10 /2016.				
				19,43,500.00	4,500.00

Carried Over

Bina Goenka The Jeweller LLP

Cash Book : 1-Apr-2016 to 31-Mar-2017

Date	Particulars	Vch Type	Vch No.	Debit	Credit	Balance
	Brought Forward			19,43,500.00	4,500.00	
28-10-2016	To (as per details)	Sales	BG/16-17/044	1,93,000.00		21,32,000.00 Dr
	Net Sales (Jewellery)		1,90,711.00 Cr			
	Mvat Sales 1.20%		2,289.00 Cr			
	Being cash Jewellery Sales Ring-5503(1) Diamond 0.12 Cts, Rubies 3.07 cts, Emaralds 3.69 Cts, Gold Wt 8.860 gms against Inv No. BG/16-17/044t: 28/10/2016.					
To	(as per details)	Sales	BG/16-17/045	1,95,000.00		23,27,000.00 Dr



BG/16-17/050 Dt:
28/10/2016

Carried Over 33,00,500.00 4,500.00

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Date	Particulars	Vch Type	VcH No.	Debit	Credit
Balance	Brought Forward			33,00,500.00	4,500.00
28-10-2026 To Dr	(as per details) Sales		BG/16-17/05	1,54,00.00	34,50,000.00
	Net Sales (Jewellery)			1,52,174.00 Cr	
	Mvat Sales 1.20%			1,826.00 Cr	
	Being cash Jewellery Sales Ring RG-5503(4) Diamond 0.10 Cts. Rubles 1.72 Cts, Emeralds 3.54 Cts, Gold Wt. 7.75. gms Against Inv No. BG/16-17/051 Dt: 28/10/2026				
By	Closing balance			34,54,500.00	4,500
					<u>34,50,000.00</u>
				<u>34,54,500.00</u>	<u>34,54,500.00</u>
				34,50,000.00	

6. The explanation in relation to the cash deposit of ₹ 34,50,000/-of the assessee has not been found to be satisfactory by the Assessing Officer and therefore he treated the credit in books of accounts corresponding to cash deposit of ₹ 34,50,000/-as unexplained cash credit in terms of section 68 of the Act. Therefore, the issue in dispute precipitated before us is whether the cash sales shown by the assessee in its books of accounts on 28/10/2016, amounting to ₹ 34,50,000/-to explain the source of the cash deposits are genuine or not.

7. We find that **firstly**, the Assessing Officer held the cash sales as source of cash deposits as unexplained for the reason that all the



cash sales of ₹ 34,50,000/-has been booked in the books of accounts on 28/10/2016 i.e. one date and no other cash sales are appearing in the books of accounts either prior or after this date, which according to the Assessing Officer was not believable in normal course of conduct of business. The learned counsel for assessee however has explained that the firm was constituted only in the preceding assessment year, having sales of ₹ 136.19 lakhs and no long history of sales for comparison with the sales for the year under consideration. He further explained that those cash sales of ₹ 34,50,000/-was made on 28/10/2016 in view of the 'Diwali' festival. He also explained that said cash sales of Rs. 34,50,000/-constituted 1.74% of the total turnover of ₹ 1978.87 lakhs during the year. According to the learned counsel for assessee cash sales being included in the total turnover of the assessee for the year under consideration, sales offered to value-added tax (VAT) as per the invoices issued and the assessee paid tax liability and no loss has been caused to the coffers of the revenue either VAT or Income-tax, hence, the source of the deposit of ₹ 34,50,000/-stands explained.

7.1 **Secondly**, the Assessing Officer noticed that all the cash sales were below ₹ 2 lakhs but aggregate of which being more than ₹ 2 lakhs, the assessee has not complied to Rule 114E of Income-tax rules, 1962, according to which the assessee was required to report cash transactions exceeding the specified sum of ₹ 2 lakh for sale of



the goods or services. However the assessee referred to Central Board of Direct Taxes (CBDT), circular dated 22/12/2016 and submitted that said limit was applicable for each transaction and not on aggregate cash sales, and therefore, there was no requirement for reporting such cash sales under rule 115E of Income tax rules,1962.

7.2 **Thirdly**, the learned counsel for the assessee submitted that all the comparative details of cash deposit and cash sales, copy of cash memo in respect of cash sales, ledger account of purchases corresponding to the cash sales, stock of finished goods for the entire previous year corresponding to the assessment year under consideration, copy of cash book was filed before the lower authorities, but the Ld. CIT(A) recorded incorrectly that no cash book for the period was filed and he sustained the addition for this reason.

7.3 In view of observation of the facts in the case of the assessee, we are of the opinion that the only basis for treating the cash deposit as unexplained cash credit by the Assessing Officer is cash sales recorded in the books of accounts immediately prior to the demonetization period as compared to no cash sales either before or after that period. Therefore the addition has been mainly on the suspicion that cash sales are bogus or non-genuine. In our opinion just because no other cash sales were recorded in the previous year, it cannot be presumed that such cash sales made in the year



under consideration are bogus. The Assessing Officer has ignored the fact that cash sales are out of stock genuinely held and acquired by the assessee through purchase invoices, which were duly produced before the Assessing Officer, but same were not doubted by him. The learned DR also could not controvert the copy of purchases corresponding to the sales and stock register, filed by the assessee in the paper book. Probably, the Assessing Officer suspected on the cash sales for the reason that same are below ₹ 2 lakhs and made on the same date, however in our opinion in view of the festival season of 'Diwali', such cash sales cannot be ruled out unless proved to be otherwise. It is for the Assessing Officer to bring on record evidences to support his allegations. The finding of the Assessing Officer is based on the merely suspicion and no documentary evidence have been brought on record by the Assessing Officer to establish that such cash sales were not genuine. In our opinion, suspicion, howsoever strong, cannot take place of the evidences. Similar finding has been given by the Coordinate Bench of Tribunal in the case of **Alchemist Touchnology Vs ACIT in .ITA No. 1689/Del/2022**, which is reproduced as under:

“10. We find that from perusal of the records, there is no evidence to prove that the „amounts sent“ shown in the hard disk is actually amounts sent by assessee company in hawala route which had ultimately found its way in the form of share capital and share premium under FDI route. The revenue had completely addressed this issue and made an addition purely on suspicion and surmise without any basis thereby making the addition totally unsustainable in the eyes of law. On the contrary, the



assessee had stated that LGF had sent 19500000 USD from Cyprus and after deduction of LC charges and other overseas bank charges , the assessee could ultimately receive only 18621973.93 USD equivalent to Rs 100 crores in India under FDI route as share capital and share premium. In support of this, the assessee had duly provided all the necessary documents as listed above. The assessee from the inception had always taken the stand that it had not sent any monies abroad in hawala route. The assessee cannot be asked to prove the negative. It is for the revenue to prove the same with cogent evidences, which is not done in the instant case. We find that the revenue had merely proceeded to make the addition on suspicion. It is trite law that suspicion howsoever strong would not partake the character of legal evidence and hence a greater onus is casted on the revenue to bring on record cogent evidences to justify its suspicion, which is conspicuously absent in the instant case. The only material that is relied upon by the revenue is the hard disk seized during search which only contained Page | 9 Alchemist Touchnology the details of „amounts sent“ and „amounts received“. Nowhere the said material even suggested that the amounts were sent by assessee company in illegal route which in turn had surfaced back in the form of share capital and premium under FDI route from Cyprus. Though the presumption [u/s 292C](#) of the Act would go in favour of the revenue, it cannot be brushed aside that the said presumption is a rebuttable presumption and assessee had duly discharged its onus on the same. Moreover, the present assessee herein is an assessee proceeded [u/s 153C](#) of the Act and hence it is all the more necessary for the revenue to arrive at the satisfaction that income or materials or documents does not belong or pertain to the searched person and indeed belongs to third person (i.e 153C assessee). Viewed from this angle, it could be safely concluded that presumption [u/s 292C](#) of the Act would apply only to the person proceeded [u/s 153A](#) of the Act and not for the assessee [u/s 153C](#) of the Act.”

7.4 In view of facts of instant case, respectfully, following the coordinate bench (supra), we reject the finding of the lower authorities that cash sales of the assessee are not genuine. Once the cash sales are accepted to be genuine, the cash received thereon and later deposited into bank account by crediting the cash and debiting the bank account satisfactorily explain the credit entry in the books of accounts and therefore no addition in terms of



section 68 of the Act is warranted for corresponding cash deposit of ₹ 34,50,000/-in the case of the assessee. The ground Nos. 2 to 4 of the appeal of the assessee accordingly allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 23/09/2024.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 23/09/2024
Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai