

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

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

आयकर अपील सं./ITA No. 12/JP/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Nitin Vijay 84/130 K. V.-5, Madhyam Marg Mansarovar, Jaipur	बनाम Vs.	ITO, Ward -1(4), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIZPV 3971 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rohan Sogani, CA
राजस्व की ओर से / Revenue by : Sh. Anup Singh, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 05/09/2024
उदघोषणा की तारीख / Date of Pronouncement: 10/10/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is filed by the assessee, as he was dissatisfied with the finding recorded in the order of the National Faceless Appeal Centre, (NFAC) Delhi [for short CIT(A)]. The order under challenge was passed on 06/12/2023 and relates to the assessment year 2017-18. The Id. CIT(A) passed that order because the assessee has challenged the assessment order passed by the Income Tax Officer, Ward 2(4), Jaipur [for short AO]. Ld. AO passed an order against the assessee on

23.12.2019 as per provisions of section 143(3) of the Income Tax Act [for short Act].

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

“1. In the facts and circumstances of the case and in law, National Faceless Appeal Center/Id. CIT(A) erred in confirming the action of Id. AO making addition of cash advance received from customers amounting to Rs. 1,71,28,000/- as unexplained cash credit u/s 68 of the Act. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 1,71,28,000/-.

2. In the facts and circumstances of the case in law, National Faceless Appeal Center/Id. CIT(A) erred in invoking the provisions of section 115BBE for taxing the addition made of Rs. 1,71,28,000/- u/s 68 of the Act. The action of Id. CIT(A) is illegal unjustified arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 1,71,28,000/-.

3. The assessee craves his right to add, amend, or alter any of the grounds on or before the hearing.”

3. Succinctly, the fact as culled out from the records is that the assessee has filed return of income on 30.10.2017 declaring total income of Rs. 3,50,470/- which was processed u/s 143(1) of the I.T. Act. Subsequently, the case was selected for Scrutiny through CASS. Accordingly, notice u/s 143(2) of the Income- tax Act, 1961 was issued on 13.08.2018 and served upon the assessee through ITBA module and also through registered post on 20.08.2018. Assessee is engaged in the business of retail trade of Gems & jewellery under the trade name of M/s

Planet Gems and contended to carrying business from premises located at 84/130, Madhyam Marg, Mansarovar, Jaipur. In response to the notices so issued assessee complied the same and filed the details as called for by AO. Assessee filed E-return and is subjected to provisions of section 44AB i.e Accounts of the assessee are subjected to tax audit and the turnover declared by the assessee for the FY 2016-17 stood at Rs 2,27,25,130/-. Upon verification of ITR & Tax Audit report e-filed by the assessee, Id. AO revealed that assessee has deposited cash of Rs 1,71,28,000/- in the bank account no. 200999903652 maintained with IndusInd Bank and Rs. 2,28,000/- in the bank account no. 677101500312 maintained with ICICI Bank Ltd. during the period of demonetization i.e., from 09.11.2016 to 30.12.2016. Ld. AO called for the Bank Account statement of the impugned bank along with Account opening Form & KYC by issuing notice u/s 133(6) of the Act. From the details so called for Id. AO noted that assessee opened the bank account & is sole authorized signatory to operate the impugned bank accounts. Ld. AO with a view to verify the source of cash deposited to the tune of Rs 1,73,56,000/- (Rs. 1,71,28,000 & Rs 2,28,000), the assessee was required vide notice u/s 142(1) to furnish the details of monthly sales (cash & credit), monthly Purchase (cash & credit) Monthly cash deposit into bank account for the relevant period i.e. 1 April to 08 Nov,

2016 for the financial year, 2015-16 & the relevant year i.e. 2016-17. Moreover, the details of Daily stock register, cash book & etc. was also asked from the assessee in specified format. The assessee submitted reply on various dates through ITBA portal which were examined and verified by AO. Upon verification of information & documents furnished by the assessee he revealed that sole source of cash deposited into bank accounts to the tune of Rs. 1,73,56,000/- is claimed as advance received from customers which were contended by the assessee to have been received just prior to evening of demonetization between 17.10.2016 to 08.11.2016. The detailed scrutiny of the details submitted by the assessee revealed certain material discrepancies, abnormal variations, illogical & hard to digest non real/illusory facts. Ld. AO thus examined the submission of the assessee and appraised very carefully but found not acceptable, in as much, same is far-fetched from reality & has no tangible basis / rationale and thus was rejected on account of the following observations:

1. That the assessee has commenced the business in FY 2014 but till 08.11.2016 there were no sales or sales were so negligible, which itself casts doubt about the existence of operation of any business activity prior to 08.11.2016. The tabulated sheet of turnover depicted in return is as under, which will lay credence to the above version:-

FY	Turnover as per ITR	Whether Audited or Income u/s 44AD	Remarks
2016-17	9,12,500/-	44AD	Income shown from

			Legal Profession
2015-16	6,30,990/-	44AD	Income shown from Legal Profession
2014-15	4,50,270/-	44AD	Income shown from Legal Profession

1. It will also be imperative to mention that the nature of business mentioned in all ITR's prior to & including ITR of relevant year, is Legal Profession. Therefore, even the fact that above turnover for preceding years were from Business of Jewellery alleged to be in the name of Planet Gems is still unverifiable.

2. That the verification of information /documents revealed that entire source of cash deposited of Rs.1,73,56,000/- claimed to have been emanated from receipt of Advances for Supply of Gold Jewellery. The details of various parties who provided advance to assessee for supply of Gold Ornaments were filed by the assessee. The notice u/s 133(6) were issued by the office for verifying the version of the assessee.

3. In total 58 cases notices u/s 133(6) of I.T.Act, 1961 were sent to the persons who made advances for purchasing jewellery from the assessee, out of which only 20 replies received in this office and rest did not turn up to file confirmation of the so called transactions. It is worthwhile to mention here that 18 notices returned unserved by the postal authorities therefore it can easily be deduced that 40 of them have been duly served at the address provided by the assessee but about 50% of these persons are ready to come in front to acknowledge the cooked up transaction. Moreover, out of 20 replies received, two of them i.e. Smt. Shimla Vijay filed reply on 11.12.2019 as under:-

उपरोक्त विषयान्तर्गत एवं प्रासंगिक पत्र के संदर्भ में निवेदन है कि श्री नितिन विजय द्वारा कर निर्धारण वर्ष 2017-18 में दिनांक 17-10-16 से 08-11-2016 में मुझसे गोल्ड के विरुद्ध अग्रिम प्राप्त करने का क्लेम किया है, जबकि मैंने कोई अग्रिम नहीं दिया है।

जिसमें आप द्वारा चाही गई जानकारी का विन्दुवार विवरण निम्न प्रकार से है-

1. दिनांक 17-10-16 से 08-11-2016 में श्री नितिन विजय को गोल्ड के विरुद्ध मेरे द्वारा किसी प्रकार का एडवांस नहीं दिया गया है।

2. जब एडवांस ही नहीं दिया गया है तो नकद या चेक किसी का विवरण नहीं है। यदि फिर भी आपको बैंक खाते का विवरण बाहिए तो मैं प्रस्तुत कर दूंगी।

3. मैंने कर निर्धारण वर्ष 2016-17 में रिटर्न भरा था। उसके बाद कोई न्टिने नहीं भरा है। क्योंकि मेरी आय 2016-17 के बाद 250000/- रु से कम थी। मेरे पेन नम्बर निम्न प्रकार है- AMZPV1979J.

Further Shin Bhanu Kumar Jain filed reply on 13.12.2019 as under-

"This is in reference to the Notice No ITBA/COM/F/17/2019-20/10214844535(1) dated 02.12.2019 issued under section 133(6) of IT Act, 1961 Please te below the parawise reply of the said notice.

1. No advance was given by me to Shiri Nitin Vijay against gold during the penod from 17.10.2016 to 08.11.2016

2. No advance was given, thus the question of mode of payment do not anse 3. Yes I am taxpayer but not assessed to fax My PAN No is ASTPJ3481H.

From the above, it is evident that both the above persons have specifically denied for the any such transaction of advances with assessee.

1. Therefore, the identity of the person from whom, assessee alleged to have received advances for sale of jewellery is still unproved, what to say of genuineness & creditworthiness.

2. That the verification of Audited balance sheet & Profit & loss A/c details of purchases & sale etc. revealed that, neither there was opening stock of gold ornaments available with the assessee nor there were purchases of gold ornaments prior to 09.11.2016 by the assessee The 1st purchase made by the assessee was on 12.11.2016 le. after demonetization was announced Therefore, without any ounce of doubt, it can very well be stated that the assessee did not possess any stock whatsoever, when the alleged whopping advances of Rs. 1,73,56,000/- were received by the assessee. It is fact on record that assessee since inception of his business in 2014 was engaged in very petty volume or say negligible volume therefore there cannot be any market reputation or goodwill of the business which may lead to receipt of such huge sum from parties and that too as advance for future supply by the assessee. Further, to fortify the contention Reliance is also placed upon celebrated judgment of Hon'ble Apex court in the case of CIT v Durga Prasad More 82 ITR 540(SC) wherein apex court held that human probabilities, surrounding circumstances, circumstantial evidences etc are to be considered while deciding the taxation matters The AO is not expected to put blinkers

on his eyes and mechanically accept what the assessee claims before him it is his duty to ascertain the truth of the facts stated and genuineness of the claim made in the return when the circumstances of the case are such as to provoke enquiry.

3. That the verification of sale book manifest that sale of Rs. 10.51.340/- was made by the assessee upto 07.11.2016, which alone is sufficient to prove that the entire story have been formulated to cover up the undisclosed income deposited into bank account by giving same colour of advance from parties. The receipt of advance of such magnitude by a person who has undertaken sale of Rs. 16,51,348/- during the relevant period prior to 07.11.2016 is unprecedented and therefore even doctrine of preponderance of probabilities will not come to rescue of the assessee.

4. That the verification of business premises of the assessee situated at 84/130 Madhyam Marg, Mansarovar, Jaipur was made, which reveals that neither it is situated on any main/pass through road where in there can be expectation of any walk in customer and more interestingly there is no Sign Board & etc, which may resemble that any business what so ever was carried on from that address.

5. On verification of cash book, it is noticed that the opening cash balance as on 08.11.2016 stood at meager Rs 50.80,806/- and all of sudden, the assessee received Rs. 1,20,13,101/- from 93 persons as advances and that results into available cash balance of Rs. 1,70.93.907/- on 08.11.2016 (night) and which makes deposit of Res 1,73,56,000/- into bank account on various dates. The cash book furnished by the assessee is merely self serving document prepared with sole intent to cloth the unexplained Income with Valid & legal backing and nothing more & thus same is without any base and no reliance on same can be placed.

6. On verification of bank statement, it is revealed that the assessee has deposited cash of Rs. 2.32.327/- only into his bank account in pre-demonetization period. The claim of the assessee is farfetched from reality & attempt to cover up his unexplained money under the garb of cash deposit out of advance from customers.

Therefore, in the backdrop of the above observations, it is evident that the assesseen has failed to prove or explain the credit into books of accounts. The assessee has emphatically failed to prove even the identity of the person from whom advances alleged to have been received, what to say of genuineness or credit worthiness of the advance giving parties.”

As the assessee did not discharge the initial burden casted upon him the case of the assessee falls within the parameters of section 68 of the Act in as much, the assessee maintains the books of accounts, there are credits into these books of account on account of advance from parties and the assessee failed to prove the nature and source of credit the advance receipts vouchers, sale bills & etc., are self servicing and fabricated with the sole intend to explain the unexplained cash of Rs. 1,73,56,000/- and thus all the explanation / documents furnished by the assessee were not considered and a sum of Rs. 1,73,56,000/- found credits into the cash book was considered as unexplained cash credits as per provision of section 68 of the Act.

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

“3.4 Decision

3.4.1 All the contentions raised by the appellant have been carefully perused and considered. The sole issue involved in the assessment is the source of cash deposit of Rs. 1,71,28,000/- made by the appellant during the relevant previous year whether satisfactorily explained by the appellant with support of all the necessary authentic documentary evidences it is the main contention of the appellant that this cash of Rs: 1,71,28,000/- was received by the appellant from 112 persons towards purchase of gold bars as on the date of demonetization ie. 08.11.2016. This explanation of the appellant needs critical examination.

3.4.2 Considering the above facts of the case, it needs to be mentioned that the fundamental question is whether the addition of Rs. 1,71,28,000/- made by the A.O. as unexplained credit under section 68 in the hands of the appellant is justifiable with reference to explanation of the appellant with regard to credits on account of sale of gold bars. There is no, and there cannot be any, dispute on the fundamental legal position that the onus is on the appellant to prove 'bonafides' or 'genuineness' of cash advance received from 112 persons towards supply of gold bars credited in his books of accounts. This approach finds support from the scheme of Section 68, which provides that where any sum is found credited in the books of an appellant maintained for any previous year, and the appellant offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of that appellant for that previous year. The burden is thus on the appellant to prove the nature and source thereof, to the satisfaction of the Assessing Officer. Everything thus hinges on the explanation given by the appellant and on how acceptable is the explanation so given by the appellant.

3.4.3 As held by Hon'ble Kolkata High Court in the case of CIT v. United Commercial and Industrial Co (P) Ltd (1991) 187 ITR 596 (Cal)], that under the scheme of Section 68 "t was necessary for the appellant to prove prima facie the identity of creditors, the capacity of such creditors and lastly the genuineness of transactions. Similarly, in the case of CIT v. Precision Finance (P.) Ltd [1994] 208 ITR 465 (Cal)] it was observed that it is for the appellant to prove the identity of creditors, their creditworthiness and genuineness of transactions". It is thus also a settled legal position that the onus of the appellant, of explaining nature and source of cash advance received, does not get discharged merely by filing self generated documents and without any other third party evidence or authentic documentary evidences. The genuineness of the transaction as a whole is thus a very important and critical factor in the examination of explanation of the appellant, as required under section 68 of the I. T. Act.

3.4.4 It is also important that when we examine the genuineness of the transactions entered into by the appellant, we must also bear in mind Hon'ble Supreme Court's observation in the case of CIT v. Durga Prasad More ((1971) 82 ITR 540 (SC)) to the effect that "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. Similarly, in a later decision in the case of Sumati Dayal v

CIT [(1995) 214 ITR 801 (SC)] Hon'ble Supreme Court rejected the theory that it is for allegor to prove that the apparent and not real, and observed that. "This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities. Similarly the observation that if it is alleged that these tickets were obtained through fraudulent means, it is upon the allegor to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. In our opinion, the majonty opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellants claim about the amount being her winning from races is not genuine. It cannot be sald that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably. We will be superficial in our approach in case we examine the claim of the appellant solely on the basis of documents filed by the appellant and overlook clear the unusual pattern in the documents filed by the appellant and pretend to be oblivious of the ground realities"

3.4.5 As Hon'ble Supreme Court has observed, in the case of Durga Prasad More (supra). "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 appellant who wants to evade tax is to have some recitats 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

3.4.6 Thus the genuineness of a transaction is one of the most important, fundamental and critical factor in determining whether explanation given by the appellant is acceptable or not is its genuineness and this genuineness is to be examined in the light of ground realities, rather than random extracts from judicial precedents isolated from their true context as an exposition of law on a standalone basis

3.4.7 Keeping in mind that above legal position, briefly the facts of the case as stated is that the appellant filed the return of income on 30.10.2017 declaring total income of Rs.3,50,470/-. During the course of assessment proceedings the AO

found that appellant has deposited cash of Rs. 1,71,28,000/- in the bank account no. 200999903652 maintain with Indusind Bank and Rs.2.28.000/- in the bank account no. 677101500312 maintain with ICICI Bank during the demonetization period from 09.11.2016 to 31 12 2016 The appellant explained the A.O that the source of cash deposited into bank account of Rs. 1,73,56,000/- is advance received from customers towards supply of gold bars which has been received just prior to the eve of demonetization period and between the period from 17.10.2016 to 08.11.2016. This explanation of the appellant was not found satisfactory to the AO for various reasons mentioned by the A.O. under para 5, page 2 and 3 of the assessment order, it is found by the A.O. that the nature of business mentioned in all the income. tax returns filed by the appellant including the return filed for the current and earlier assessment years is 'legal profession and not trading in gold bars. On verification of Audited balance sheet & Profit & loss A/c, details of purchases & sale etc. provided by the appellant for relevant previous year, the A.O. noted that, neither there was opening stock of gold bars available with the appellant nor there were purchases of gold ornaments till 09. 11.2016 by the appellant. The 1st purchase of gold bars shown by the appellant was on 12.11.2016 i.e. after demonetization was announced. Therefore, it is evident that the appellant did not possess any stock whatsoever, when the alleged whopping advances of Rs 1,73,56,000/- was taken by the appellant from 112 persons. It is further observed by the A.O that the appellant since inception of his business in 2014 was engaged in very petty volume or say negligible volume of turnover in sale of gold bars and therefore cannot said to be worth any market reputation or goodwill of the business which may lead to receipt of such huge sum of cash from parties and that too as advance for future supply of gold by the appellant, which event may or may not happen. Therefore the A.O. was of the view that receipt of advance of such a huge magnitude by a person who has undertaken sale of only Rs 16,51,348/- during the relevant period prior upto 07.11.2016 is unprecedented and therefore the A.O. doubted about the genuineness of the transaction of cash advance received by the appellant.

3.4.8 The A.O. also carried out physical verification of business premises of the appellant situated at 84/130, Madhyam Marg, Mansarovar, Jaipur and found that neither it is situated on any main/pass through road where in there can be expectation of any walk in customer and more interestingly there is no Sign Board etc., which may resemble that no business of what so ever nature is being carried out from such premise.

3.4.9 Further, on verification of cash book, it is noticed by the A.O. that the opening cash balance as on 08.11.2016 stood at Rs. 50,80,806/- and the

appellant received Rs. 1,20,13,101/- from 93 persons as advances on 08.11.2016 which results into available cash balance of Rs. 1,70,93,907/- as at the end of 08.11.2016 out of which the appellant made deposit of Rs 1,73,56,000/- into bank account on various subsequent dates. Thus the A.O. was of the opinion that cash book furnished by the appellant is merely self serving document prepared with sole intent to cloth the unexplained income with valid & legal backing and nothing more & thus same is without any base and hence no reliance on same can be placed.

3.4.10 Considering the above facts of the case, the A.O. held that the appellant has failed to prove and explain the nature and source of credit appearing in books of accounts on account of said cash deposits. It is held by the A.O. that the appellant failed to prove even the identity of the person from whom cash advances is alleged to have been received, what to say of genuineness of transaction or credit worthiness of the advance giving parties.

3.4.11 It is also observed by the A.O. that the advance receipts vouchers, sale bills & etc furnished by the appellant are merely self-serving documents and are fabricated with the sole intent to explain the unexplained cash of Rs 1,73,56,000/- and thus all explanations /documents furnished by the assessee in this regard are considered non satisfactory hence the sum of Rs 1,73,56,000/- found credited into books of accounts out of advance from parties which was alleged to be subsequently used for making cash(SBN) deposit into bank on various dates is held as unexplained cash credit within the meaning of section 68 of the Income Tax Act and therefore in the assessment completed addition of Rs. 1,73,56,000/- is made.

3.4.12 Accordingly, the A.O. referred to provision u/s 68 of the I. T. Act and also relied upon the decision of Hon'ble Supreme Court in the case of CIT v Durga Prasad More, 82 ITR 540(SC) wherein apex court held that "human probabilities, surrounding circumstances circumstantial evidences etc are to be considered while deciding the taxation matters. The AO is not expected to put blinkers on his eyes and mechanically accept what the assessee claims before him. It is his duty to ascertain the truth of the facts stated and genuineness of the claim made in the return when the circumstances of the case are such as to provoke enquiry Accordingly in the assessment completed addition of Rs. 1,73,56,000/- is made u/s 68 of the I. T. Act

3.4.13 During the course of appellate proceedings, it is contended by the appellant that he is engaged in the business of retail trade of gems & jewellery

and during the relevant year the appellant had received advance of 1,71,28,000 against sale of gold bars before the period of demonetization.

3.4.14 With regard to the cash deposit of Rs 2.28.000/- the appellant contended that the same is out of the accumulated savings of the appellant it is further contended by the appellant that though the AO has not doubted the same made addition of Rs 2,28,000 to the total income of the appellant. It is a fact that after declaration of demonetization on 08.11.2016 every person has deposited whatever cash lying with him in the nature of SBNs. Therefore it is natural that the appellant will also deposit whatever SBNs were in hand as on the date of demonetization. Therefore considering the overall facts of the case, I am of the view that the appellant can have accumulated savings of earlier years amounting to Rs.2.28,000/- Therefore the source of cash deposit of Rs.2.28,000/- made during the demonetization period is held as explained The A.O is therefore directed to delete this addition of Rs.2,28,000/-

3.4.15 With regard to the balance cash deposit of Rs 1,71,28,000/- the appellant alleged that the same is advance received from 112 customers towards purchase of gold bars which was deposited in two of the bank accounts and such deposits in bank, were utilized for making payments against purchases of gold bars. The appellant furnished details of purchase of gold bars as under:-

Particulars	Amount in Rs.
Kahndelwal Impex	1,96,24,625/-
Shrinath Enterprises	17,82,180/-
Sita Ram & Sons	84,165/-
Mansa Enterprises	4,43,698/-
S N Enterprises	12,46,068/-
Total purchases	2,31,80,736/-

3.4.16 Copies of sample purchase invoices are enclosed by the appellant in the written submission made. It is submitted that the appellant used to sale the gold bars only on order based and hence, there was no opening stock available with the appellant. The gold bars are sold in the same condition in which they are purchased and no modification in such bars is done by the appellant.

3.4.17 Before proceed further, the details extracted from the copies of purchase bill is tabulated as under:-

Name of supplier	Date of purchase	Description	Quantity	Value
Khandelwal Impex	14.11.2016	Gold Bars	1000 Grams	30,57,690/-
Khandelwal Impex	17.11.2016	Gold Bars	1000 Grams	30,000/-
Khandelwal Impex	19.11.2016	Gold Bars	1546.470 Grams	46,78,000/-
Khandelwal Impex	23.11.2016	Gold Bars	1000 Grams	29,77,500/-

Khandelwal Impex	24.11.2016	Gold Bars	100 Grams	2,97,500/-
Khandelwal Impex	25.11.2016	Gold Bars	100 Grams	2,95,427/-
Khandelwal Impex	28.11.2023	Gold Bars	449.190 Grams	13,16,573/-
Khandelwal Impex	01.12.2016	Gold Bars	491.730 Grams	14,65,125/-
Khandelwal Impex	06.12.2016	Gold Bars	282.690 Grams	8,10,000/-
Khandelwal Impex	29.03.2017	Gold Bars	242.500	7,00,000/-
Sita Ram & Sons Jewellers	03.12.2016	Gold Ornaments	27.150 Grams	85,000/-
Shrinath Enterprise	17.11.2016	Gold Bar 995	100 Grams	3,00,000/-
Shrinath Enterprise	21.11.2016	Gold Bar 995	200 Grams	6,00,000/-
Shrinath Enterprise	21.11.2016	Gold bar 995	300 Grams	9,00,000/-
			Total	2,05,12,815

3.4.18 It is found from the copies of some of the purchase bills (details mentioned in above table) that the total weight of gold bars purchased is mentioned as 1000.000 Grams, 1546.470 grams etc. however the total number of

gold bars with their individual weight is not mentioned in the purchase bills. It is a common knowledge that gold bar is a single piece of gold weighing in the range of 100 grams, 500 grams, 1000 grams, etc. and thus gold in small weight less than 100 grams is generally not termed as gold bar but it is in the nature of gold coin. Therefore it is not known as to how many pieces of gold bars are purchased by the appellant. Since as per the submission of the appellant he has received advance from 112 persons, it is required that the appellant has to purchase at least 112 gold bars considering that the appellant sales the gold bars only on order basis and that the gold bars are sold in the same condition in which they are purchased and no modification in such bars is done by the appellant. This is required so that at least one gold bar can be supplied to each person giving cash advance to the appellant. It is calculated from the purchase bills provided by the appellant that the total number of gold bars purchased by the appellant is not sufficient to supply it to 112 persons from whom cash advance is alleged to have been taken. It is further to be noted that the appellant has alleged to have taken cash advance of different amount from different persons then it is not known/explained by the appellant as to how he was going to supply gold bars to each individual of different weights especially considering that the appellant is selling the gold bars as it is, as purchased by him and the weight of gold bar is of fixed standard. Also the total weight of gold bar as per the bills provided by the appellant do not show that the appellant has purchased at least 112 pieces of gold bars so that the same can be supplied to the persons giving advance. It is further noted that gold rate of 24 carat on 08.11.2016 in Rajasthan was in the range of Rs. 3000/- per gram. Therefore wherever the appellant has received the exact amount of cash advance of approximate Rs.3,00,000/- he can supply gold bar of 100 grams to such person, but where the cash advance received do not commensurate with the value of gold bar, the appellant will not be in a position to supply gold bars to such persons Since he is not breaking the gold bar into pieces of different weight for different customers accordingly to the amount of cash advance received. Thus in respect of cash advance received is either of less or more amount than the price of gold bar, the appellant cannot supply gold bar to these persons The appellant has not provided any details or documentary evidences showing the weight and number of gold bars ordered by each of the 112 persons. The appellant has also not provided any authentic documentary evidences showing that proper receipt against cash advance is issued by the appellant to the person giving cash advance.

3.4.19 It is further to be noted as pointed out by the A.O. in the assessment order, as per the return of income filed the appellant's nature of activity is 'legal profession. It is also pointed out by the A.O. that since the beginning of trade in gold bar from 2014 the appellant has traded a merger amount of Rs. 16,51,348/- It is further pointed out by the A.O that the appellant do not possess proper establishment to carry out gold trade All these factors indicate that the appellant is not an established gold trader and therefore it is difficult to accept that any person unknown to the appellant would handover substantial amount of cash to the appellant in anticipation of purchase of gold bars. Further it is difficult to

accept that 93 persons will physically contact the appellant in the night of 08.11.2016 and handover cash total amounting to Rs. 1,20,13,101/- without verifying the credentials of the appellant, his creditworthiness, his market standing capacity to supply gold bars, quality and quantity of gold bars to be received, date and place of delivery of gold bar, etc. especially when there are number of reputed and established shops/stores in the market from whom authentic gold bars can be purchased by the person on the spot or where the supply of gold bar is guaranteed.

3.4.20 With regard to the appellant's contention that purchases made by the appellant are through banking channel and supported by proper bills and AO has not doubted the amount of purchases made by the appellant, this is to say that the payment made to the said suppliers of gold bar is out of cash deposited in the bank account, the source of which is the cash advance received from 112 persons which itself is considered not genuine transaction. Therefore it is not free from doubt that the appellant is accommodating these so called gold bar suppliers from whom cash received is deposited in the appellant's bank account against which cheques are issued to these so called gold bar suppliers and to give it a colour of genuine purchase bills are obtained from such suppliers giving vague description of gold bars purchased and to show the source of cash deposit the list of 112 persons is prepared showing cash advance received. As stated by the AO in the assessment order in majority of the cases, the appellant has not given proper identification of the person from whom cash advance is received and wherever name and address is given or PAN is given, in majority of the cases, enquiry made by the A.O did not establish the genuineness of the transaction of advance received from such persons. The appellant even do not have any documentary evidences which can authenticate that against each advance received by the appellant, appropriate weight and value of gold bar is supplied to such person. It is not a case that the AO has accepted the genuineness of purchases made by the appellant. Nowhere in the assessment order the AD has certified that the purchase shown by the appellant is genuine. The A.O in the assessment order has held that the appellant has failed to prove the identity and genuineness of the alleged transaction of cash advance received, onus of which squarely lie on the appellant and it is held by the A.O. that the appellant failed to discharge this onus cast upon him.

3.4.21 With regard to appellant's further contention that the purchases and sales are interlinked and inseparable and every purchase amount to increase in stock and every sale decreases the stock and to disbelieve the amount of sales amount of purchases should have been doubted, this is to say that for the detailed discussion held in earlier para, the whole transaction of receipt of cash advance is held to be non-genuine. Accordingly since the transaction of cash advance received is held to be not genuine, subsequent purchase by utilization of this cash also cannot be held to be genuine since the source of payment is out of such alleged cash advances received. The appellant's contention that the payment towards purchase is made through banking channel do not establish the

genuineness of purchase since the source of fund used for payment of purchase is not proved by the appellant.

3.4.22 The appellant's contention that he maintains regular books of accounts and the same are audited under the provisions of section 44AB of the Income Tax Act, 1961 and there are no adverse remarks of the auditors regarding cash sales recorded in the books of accounts do not in any way establish the genuineness of transaction of alleged cash advance received by the appellant from 112 persons. Only because the auditors has not given any adverse remarks regarding cash sales recorded in the books of accounts, it does not certify the genuineness of sale transactions. It is not within the powers of auditor to scrutinize and offer comments about the genuineness of any transaction recorded in the books of accounts of the appellant. It is the Income tax authority who is empowered to verify and examine the transactions entered into the books of accounts for the purpose of determining the total taxable income and the tax liability payable.

3.4.23 The appellant further alleged that the A.O. has not rejected the books of accounts meaning thereby all the entries in the books of accounts recorded by the appellant are correct and the source of cash deposited in bank is advances received against sales and such sales are forming part of trading account of the appellant and the appellant has already offered income on the same as revenue receipt in this regard, as stated earlier the A.O. in the assessment order has held that the appellant failed to discharge onus cast upon him of proving the identity of the persons from whom cash advance is alleged to have been received and genuineness of transaction of receipt of advance and supply of gold bars. Therefore it is not the case that the A.O. has doubted the trading results of the appellant emanating from the books of accounts maintained. The A.O's scope of verification was limited to the issue of the genuineness of the transaction of receipt of cash advance from 112 persons against proposed supply of gold bars in future which is alleged to be the source of cash deposit of Rs.1,71,28,000/- found deposited in the appellant's bank account in the form of SBNs during the demonetization period.

3.4.24 The appellant's last contention is that provisions of section 68 are not applicable to his case for the reason that credits by way of sales are part of trading account of the appellant and section 68 is only applicable on cash credits such as loans, share applications etc. In this regard, it needs to be stated that plain reading of provision 88 of the IT Act makes it abundantly clear that it is not limited only to credits appearing in the books of accounts in the nature of loans and share application money but the same is applicable to each and every credit appearing in the books of accounts maintained by the appellant, in fact in the instant case, the appellant has received cash advance from 112 persons towards supply of gold bars in future. Therefore in the books of accounts maintained, the appellant must have credited respective account of these persons on account of advance received and subsequently closed the account by passing debit entry on account of alleged sale of gold bars. Thus the credit entry

appearing in the account of such 112 persons as advance received is clearly covered by provision-u/s 68 of the IT Act and hence the appellant is duty bound to discharge onus cast upon him of proving the identity of such person, his creditworthiness and finally the genuineness of transaction of cash advance received. At the cost of repetition it is stated that the appellant failed to discharge this onus cast upon him by section 68 of the I. T. Act

3.4.25 In view of this understanding of the situation, I am unable to accept the plea of the appellant that the transaction of receipt of cash advance total amounting to Rs.1,71,28,000/- received from 112 persons is a bonafide transaction. In view of this discussion, as bearing in mind peculiar facts of this case. I reject the explanation of the appellant with respect to genuineness of transaction of receipt of said cash advance. The case laws relied upon by the appellant are therefore not applicable since the same are distinguishable on the facts of the instant case

3.4.26 I once again reiterate that the onus is on the appellant to prove genuineness of the transaction of receipt of cash advance to the satisfaction of a fact finding authority- something which he has miserably failed, something which the material on record does not justify, and to demonstrate that the facts and circumstances of the transaction as whole must point towards the impugned transaction being a regular transaction in the normal course of business- something which is clearly missing. The burden is thus on the appellant to prove the nature and source of credits in his books of accounts, to the satisfaction of the Assessing Officer which the appellant failed.

3.4.27 In view of the above facts of the case and in law, I am of the considered opinion that the appellant has failed to discharge the onus cast upon it by provision u/s 68 of the I. T. Act to establish the genuineness of transaction of receipt of cash advance amounting to Rs 1,71,28,000/- I therefore concur with the view of the AO. that the amount of Rs.1,71,28,000/- found credited in the books of accounts of the appellant during the relevant previous year is unexplained and therefore required to be brought to tax as unexplained cash credit u/s. 68 of the IT. Act. The action of the A.O in making addition of this amount of Rs. 1,71,28,000/- is therefore confirmed. This ground of appeal raised by the appellant is thus dismissed.

4.1 The second ground of appeal raised by the appellant read as under:-

In the facts and circumstances of the case and in law, the AO has erred in making addition of cash advance received from customers amounting to Rs. 1,73,56,000 as unexplained cash credit u/s 68 of the Act, and invoking the provision of section 115BBE. The action of the AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 1,73,56,000 and liable for tax at normal rates.

4.2 Decision

4.2.1 In view of the detailed discussion made, this ground of appeal need no adjudication. The same is therefore dismissed.

5.1 The third ground of appeal raised by the appellant read as under

The assessee craves his rights to add, amend or alter any of the grounds on or before the hearing.

5.2 Decision

5.2. During the course of appellate proceedings, the appellant neither amended nor altered any ground of appeal. Therefore this ground of appeal need no adjudication and hence dismissed.

6. In the result, the appeal filed by the appellant is dismissed.”

5. As the assessee did not find any favor, from the appeal so filed before the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, has filed the detailed written submissions in respect of the various grounds so raised by the assessee and the same is reproduced herein below:

- I. Assessee appellant is an individual engaged in the business of retail trade of Gems & Jewellery under the name and style of M/s Planet Gems.
- II. During the relevant previous year, assessee filed his return of income u/s 139(1) on 30.10.2017, declaring total income of Rs 3,50,470. Assessment u/s 143(3) was completed *vide* order, dated 23.12.2019, by making additions of Rs 1,73,56,000 u/s 68 of Income Tax Act, 1961, on account of cash deposits in bank account.
- III. Against the order passed by Id. AO, assessee preferred appeal before the National Faceless Appeal Center (“NFAC”/ “Id. CIT(A)”). NFAC, *vide* order dated 06.12.2023, in Appeal No. CIT(A)-1, Jaipur/11281/2019-20, dismissed the appeal

of the assessee. Against the order passed by NFAC, the present appeal has been preferred by the assessee before Hon'ble ITAT, Jaipur Bench.

GROUNDS OF APPEAL

GROUND NO 1-2: ADDITION OF RS 1,71,28,000 U/S 68 AND INVOCATION OF SECTION 115BBE

1. ASSESSING OFFICER AND NFAC

- 1.1. Ld. AO made additions amounting to Rs 1,73,56,000 u/s 68 for the cash deposited in the bank, received from cash sales, during the period of demonetization treating the same to be unexplained. Additions made by the ld. AO were upheld by the NFAC.

2. SUBMISSIONS

- 2.1. Assessee is engaged in the business of retail trade of gems & jewellery. During the relevant year assessee had received advance of 1,71,28,000 against sales of gold bars before the period of demonetization. Balance of Rs 2,28,000 (1,73,56,000-1,71,28,000) deposited in bank was out of the accumulated savings of the assessee.
- 2.2. Advance so received from the customers was then deposited in two of the bank accounts and such deposits in bank, were utilized for making payments against purchases of gold bars. The said gold bars were purchased from the following parties

Particulars	Amount in Rs
Khandelwal Impex	1,96,24,625
Shrinath Enterprises	17,82,180
Sita Ram & Sons	84,165
Mansa Enterprises	4,43,698
S N Enterprises	12,46,068
Total Purchases	2,31,80,736

Sample purchase invoices are enclosed from Paper Book Pages 1 to 14 which were submitted to the lower authorities.

- 2.3. It is submitted that the assessee used to sale the gold bars only on order basis and hence, there was no opening stock available with the assessee. The gold bars are sold in the same condition in which they are purchased and no modification in such bars is done by the assessee.

- 2.4. It is also submitted that in March 2016, jewellery sector was subjected to Excise Duty Laws for the first time, which was widely protested by the jewellers across India. The protest went on for more than 6 months and various representations were made by jewellers across India at various forums. Even all the associations and forums of jewellers across India had instructed all its dealers to shut down their business operations for almost 3-4 months, as a mark of protest which largely affected the business of all jewellery business. This is one the reason that major sales made by the assessee started in the month of October.
- 2.5. It is submitted that all the purchases made by the assessee are through banking channel and supported by proper bills.
- 2.6. It is submitted that the purchases and sales are interlinked and inseparable. Every purchase amount to increase in stock and every sale decreases the stock. To disbelieve the amount of sales, amount of purchases should have been doubted. The same is not done in the present case.
- 2.7. The cursory view of the bank statement already placed on record with Id. AO would also reveal that the entire cash deposited has been utilized for making payment to above mentioned parties at point 2.3 for purchase of gold bars.
- 2.8. Ld. AO has alleged on Page 4 that the assessee made his first purchases on 12.11.2016 and on Page 5 has mentioned sale of Rs 16,51,348 were made by the assessee up to 07.11.2016. It is submitted that the assessee had already made purchases in the month of Oct 2016. The version of Id. AO is contrary to the facts as the assessee had already made its first purchase prior to its first sale.
- 2.9. Ld. AO has alleged that all the transactions have taken place in the month of October-2016 and November-2016. It is submitted that event of demonetization was sudden and transactions of the assessee occurring in the nearby dates of the said event are merely a coincidence.
- 2.10. Ld. AO has doubted the sales only on the account that the same have taken place in cash and huge cash against such sales have been received prior to one month of announcement of demonetization.
- 2.11. The cash sales are one of the common practices in jewellery sector. The law nowhere prohibits cash sales. The assessee by selling the same in cash has not violated any of the provisions of the Act.
- 2.12. The assessee maintains regular books of accounts and the same are audited under the provisions of section 44AB of the Income Tax Act, 1961. Also, there are no adverse remarks of the auditors regarding cash sales recorded in the books of accounts.

- 2.13. The assessee had submitted details of sales, purchase, stock register before Id. AO but Id. AO only on the basis of mentioning nature of business as legal profession in ITR Form has assumed that turnover of the assessee is unverifiable. Ld. AO has erred in ignoring the material facts which clearly indicate that the assessee is engaged in retail trade of gem and jewellery. It is submitted that assessee had inadvertently mentioned the nature of business as legal profession but all the actual evidences placed on record make it evident that the assessee is engaged in retail trade of gems and Jewellery.
- 2.14. It is submitted that for the relevant year accounts of the assessee are audited u/s 44AB of the Act and nature of business has been mentioned as retail trade in the audit report [Form 3CD]. Ld. AO has ignored the same and also stated that the assessee had filed return of income u/s 44AD instead of 44AB for the relevant year i.e., AY 2017-18. This makes it clear that the details are not completely verified by Id. AO.
- 2.15. The assessee had received advances from about 112 parties. It is important to note that out of total advance received amounting to Rs 1,71,28,000 the assessee had already provided details of persons having PAN of Rs 51,81,897 and in which the details of PAN were not available, address of such persons have already been provided by assessee of Rs 66,66,122. This makes it clear that assessee had submitted all the relevant details with respect to customers. Ld. AO has erred in stating that identity of persons from whom advances have been received has not been proven by the assessee.
- 2.16. Further, Id. AO for verifying the advances received by the assessee, issued notice u/s 133(6) to 58 parties. Out of 58 parties, notices were duly served to 38 parties and 18 of them confirmed the fact of giving the advance to the assessee for purchase of jewellery.
- 2.17. The fact that 18 notices out of total 58 notices remained unserved does not go against the assessee. Ld. AO has not confronted the said returned unserved envelopes to the assessee. The reason for not service is normally conveyed by the postal authorities. Without knowing the said reason no adverse inference can be drawn against the assessee.
- 2.18. Only 2 of the total 58 parties did not confirm the fact giving the advance to the assessee. As the two parties have not confirmed the transactions, they become the witness of the department and opportunity of cross-examination should have been granted to the assessee before placing reliance on such replies.
- 2.19. It is worthwhile to note that Id. AO has not rejected the books of accounts meaning thereby all the entries in the books of accounts recorded by the assessee are correct. The source of cash deposited in bank is advances received against sales and such sales are forming part of trading account of

the assessee. The assessee has already offered income on the same as revenue receipt.

2.20. Ld. AO has misdirected himself that if the assessee has made sales only to the tune of Rs 16,51,348 till 07.11.2016, huge amount of sales in further period of the financial year cannot be made. The sales in jewellery sector is seasonal and is dependent on various occasions like marriage, festivals.

2.21. Ld. AO has alleged that the assessee received Rs 1,20,12,101 on 08.11.2016 as advances which resulted in increase in cash balance of the assessee. It is submitted that on the eve of sudden announcement of demonetization i.e., 08.11.2016, there was huge rush for buying of gold. The assessee took the same as business opportunity and took advances for selling the gold bars. The assessee made all the purchases in the month of November-2016 itself and simultaneously made sales as well.

2.22. It is also incorrect assumption of Id. AO that if the business premises of the assessee is not situated in posh area or on main road, the business cannot be run from that premises.

2.23. Reliance is placed on following judgements of jurisdictional ITAT:

2.23.i. Mahesh Kumar Gupta vs. ACIT [2023] 151 taxmann.com 339 (Jaipur Trib) [CLC: 316-335]

Respectfully following the consistent view and after considering the factual matrix of the cash on hand in our considered view the addition made cannot sustain and therefore, we vacate the addition of Rs. 80,00,000/- made under section 68 of the Act as the same cannot be made without rejecting the books of account of the assessee regularly maintained by the assessee and the said cash deposited is duly supported by the entries passed in the books of account and part of the sale accepted by the AO.

2.23.ii. ACIT Central Circle-1 vs. Shri Mahendra Kumar Agarwal ITA No. 172/JP/2022 [CLC Pages 106-143]

We agree with the findings of Id. CIT(A) that the AO has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus and merely having some doubt by twisting the data and giving some findings which are not alone sufficient to justify the addition the income so assessed is not tenable in the eye of law. In fact, the AO neither found any concrete and conclusive evidence of back dating of the entries of sales, evidence of bogus sales, evidence of bogus purchases, and non-existing cash balance in the books of account. The AO did not even reject the books of accounts of the appellant under the provision of section 145(3) of the Act. Therefore, the

contention of the revenue on the facts and circumstances of the case is not accepted and we see no reason to interfere in the order of the Id. CIT(A). Thus, we sustain the order of the Id. CIT (A) with the observations above. The appeal of the revenue stands dismissed.

- 2.23.iii. Similar observations were made by ITAT, Jaipur Bench, in the case of Raj Kumar Nowal, ITA No. 165/JP/2022, Jaipur Bench, [CLC Pages 144 to 182]
- 2.24. Attention is drawn towards Hon'ble ITAT, Vishakhapatnam Bench in the case of Hirapanna Jewellers, I.T.A. No. 253/Viz/2020 [CLC – Pages 198 to 205]. The facts in this case are that the assessee firm was engaged in the business of trading of jewellery. During the period of post demonetisation period, it had deposited Rs. 5.72 crores (SBN) in its bank account. Out of above, Rs. 4.72 crores pertained to sales before demonetisation period. The AO, treated the sales as unexplained cash credits, as no details of sales were provided, and made addition of Rs. 4.72 crores u/s 68 r.w.s. 115BBE. Hon'ble Bench held that where assessee has admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. The relevant para 9 is reproduced hereunder:
“In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House (supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra), Hence, we do not see any reason to interfere with the order of the Id. CIT(A) and the same is upheld.”
- 2.25. Attention is drawn towards Hon'ble ITAT, Delhi Bench in the case of Agson Global Pvt. Ltd vs ACIT (2020) 115 taxmann.com 342 [CLC Pages 206 to 279]. The facts in this case are assessee company was engaged in purchase and sale of dry fruits and other grocery items. It deposited Rs.180.53 crore post-demonetization in its Bank accounts, out of sale proceeds. During the course of assessment proceedings, assessee submitted details of closing stock, list of debtors, details of purchases and sales party-wise for year, VAT returns etc. However, AO made an addition of Rs. 150.53 crore as income u/s 68. CIT (A), restricted addition to Rs. 73.13 crores. Hon'ble Bench deleted the addition. The relevant para 126 (vii) is reproduced hereunder:
“It is not the case of the revenue that assessee has not shown the relevant stock register before the assessing officer. The assessee has maintained the

complete stock tally in its accounting software. Such books of accounts are audited, quantitative records produced before the tax auditor, such quantitative records are certified by tax audit and no questions have been raised by the assessing officer. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details.”

The said decision has also been upheld by Hon'ble Delhi High Court in Agson Global (P.) Ltd [2022] 134 taxmann.com 256 (Delhi). [CLC Page 280-309]

- 2.26. Attention is also invited towards the decision of the Hon'ble Bombay High Court in the case of R.B. Jessaram Fatehchand v. CIT (1970) 75 ITR 33, wherein the Hon'ble High Court at Para 2 of the order held as under:

“In these circumstances, the reason given by the Income-tax Officer for rejecting the book results shown by the assessee's accounts or for not accepting the cash transactions as genuine cannot be accepted as good and sufficient unless there was an obligation on the part of the assessee to keep a record of the addresses of the cash customers. It could not, therefore, be said that the failure on his part to maintain the addresses was a suspicious circumstance giving rise to a doubt the genuineness of the transactions entered into by the assessee.”

The Hon'ble High Court at Para 3 of the order further held as under:

“In the case of a cash transaction where delivery of goods is taken against cash payment, it is hardly necessary for the seller to bother about the name and address of the purchaser.”

The Hon'ble High Court at Para 4 of the order finally held as under:

“Since, having regard to the nature of the transaction and the manner in which they had been effected, there was no necessity whatsoever for the assessee to have maintained the addresses of cash customers, the failure to maintain the same or to supply them as and when called for cannot be regarded as a circumstance giving rise to a suspicion with regard to the genuineness of the transactions. The Tribunal, therefore, was not right, in our opinion, in setting aside the order of the Appellate Assistant Commissioner and restoring that of the Income-tax Officer. There are no circumstances disclosed in the case nor is there any evidence or material on record which would justify the rejection of the book results.”

- 2.27. Ld. AO, unnecessarily emphasising the need of complete identity of buyers in respect of cash sales, held the same to be non-genuine (contrary to the legal provisions) and further erred in invoking the provisions of Section 68 in respect of such cash sales. Attention is drawn towards the judgment of the Hon'ble Jurisdictional High Court in the case of Smt. Harshila Chordia v. ITO (2008) 298 ITR 349 [CLC Pages 310 to 315] wherein the Hon'ble High Court held as under:

“So far as question No. 2 is concerned, apparently when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of account of the assessee would not attract section 68 because the cash deposits becomes self-explanatory and such amounts were received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition of Rs. 6,98,000 would not arise.”

“We, therefore, hold that no addition was required to be made in respect of Rs. 6,98,000, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.”

- 2.28. Attention is invited towards the recent decision of the Hon'ble ITAT, Mumbai bench in the case of R.S. Diamonds India Private Limited vs ACIT, Mumbai, ITA No 2017/Mum/2021 [PB 195-197] wherein it was held as under:

“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 (1974) 97 ITR 258 (Patna), it has been held that, when books of account of the assessee were R.S. Diamonds India Private Limited 3 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 M/s. Hirapanna Jewellers (ITA No. 253/Viz/2020 dated 12.5.2021), 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”.

- 2.29. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram v. CIT (1959) 37 ITR 288 [PB 198-213] in which judgment is delivered in the background of promulgation of High Demonetization Bank Notes (Demonetization) Ordinance, 1946, with effect from January 12, 1946. The Hon'ble Apex Court laid down a ratio that accepting an explanation or books in part and rejecting the same for the remaining part is not justified. It is submitted that in the present appeal, same explanation was accepted for cash sales of Rs15,00,000/- and remaining amount of Rs 72,25,000/- was held to be non-genuine sales rejecting the same explanation. The Hon'ble Apex Court, in the case of LalchandBhagat (supra) further laid down a ratio that various probabilities on a macro level should not influence the decision of the AO in believing that on those macro reasons, the assessee might also be having black money. In the case before the Hon'ble Supreme Court, the Id. AO had made additions in the background of the following facts noted by the Id. AO, which find mention in the order of the Hon'ble Supreme Court at page 7 of the order:

“The Income-tax Officer found that the appellant’s food grains licence at Nawgachia had been cancelled for the accounting year for its failure to keep proper stock accounts and that the appellant was prosecuted under the Defence of India Rules but had been acquitted having been given the benefit of doubt. The Income-tax Officer also had regard to the fact that the appellant was a speculator and that as a speculator the appellant could easily have earned amounts fair in excess of the value of the high denomination notes encashed. He considered that even in the disclosed volume of business in the year under consideration in the head office and in the branches, there was possibility of his earning a considerable sum as against which it showed a net loss of about Rs. 46,000. The Income-tax Officer also noticed that notwithstanding the fact that the period was very favourable to food grains dealers, the appellant had declared a loss for the assessment year 1944-45 up to 1946-47, though it had the benefit of a large capital on hand. The Income-tax Officer further took into consideration the circumstances that Nawgachia and Dhulian were very important business centres and Sahibganj the principal place of business had gained sufficient notoriety for smuggling foodgrains and other commodities to Bengal by country boats. Dhulian which was just on the Bengal-Bihar border was also reported to be a great receiving centre for such commodities. Having regard to all these circumstances, the Income-tax Officer rejected the appellant’s explanation that the high denomination notes formed part of its cash balances and treated the sum of Rs. 2,91,000 as the appellant’s secreted profits from business and included it in its total income and assessed the appellant for the said assessment year on the income of Rs. 1,39,117. Dealing with the excess profits tax assessment, he also held that the said income was derived from the business of the appellant and hence it was liable to excess profits tax also.”

- 2.30. Ld. AO invoked provision of Section 68 in respect of sales. Section 68 deems non-income to be income. In the instant case, the credits by way of sales were already offered for tax. Hence, Section 68 *per se* cannot be invoked. Provisions of Section 68 can only be invoked in cases where an assessee is unable to explain the source of a particular receipt to the satisfaction of the Assessing Officer. These provisions have no application in case where an amount already disclosed by the assessee as his income, while filing the Return of Income on which no further addition has been made by the Ld. AO, during the course of assessment proceedings.
- 2.31. Section 68 creates deeming fictions, whereby certain amounts which are not considered as income by the assessee, are deemed to be income of the assessee. A deeming fiction of income cannot apply to an item which is already treated as income by the assessee himself. The question of deeming an item to be income can only arise if the item is not otherwise an income. Section 68 converts non-income into income and has no application where income is already offered for tax.
- 2.32. Hon'ble Delhi High Court, in the case of Keshav Social and Charitable Foundation (2005) 278 ITR 152, considered a situation where the assessee, a charitable trust, had disclosed donations received by it as its income, and claimed exemption u/s. 11. The Assessing Officer, on finding that the assessee was unable to satisfactorily explain the donations and the donors were fictitious persons, held that the assessee had tried to introduce unaccounted money in its books by way of donations and, therefore, the amount was to be treated as cash credit u/s. 68. The Delhi High Court held that section 68 did not apply, as the assessee had disclosed such donations as its income.
- 2.33. If the contention of the lower authorities is accepted that the same income would be taxed twice, once when being offered for tax by the assessee as part of cash sales and subsequently as addition under Section 68, which is impermissible in law.
- 2.34. Reliance is placed on the below mentioned judicial pronouncements, wherein, under identical set of facts, as in the present case, additions made under Section 68 on account of alleged bogus cash sales were deleted:-
- 2.34.i. ITAT Chandigarh in the case of Smt. Charu Agarwal & M/s. Kalanidhi Jewellers Vs. DCIT ITA No. 310 & 311/Chd/2021 order dated 25/03/2022
The findings of Hon'ble ITAT is in para 10 of the order. Hon'ble ITAT after considering the decision of the Hon'ble Delhi High Court in the case of Pr. CIT (Central)-3 V/s. M/s. Agson Global Pvt. Ltd. In ITA No. 68-73/2021 and various other High Courts and decision of Hon'ble ITAT Vishakhapatnam Bench on identical issue in the case of ACIT

v/s. Hirapanna Jewellers MANU/IV/0034/2021 : (2021) 128 Taxmann.com 29 held that the assessee was maintaining complete stock tally, the sales were recorded in the regular books of accounts and the amount was deposited in the bank account out of the sale proceeds, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified. Sales made by the assessee to cover the cash deposited in the bank post demonetization, was sufficient source of the cash deposited i.e.; the sales from the existing stock available with the assessee and was well explained, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified. - Decided in favour of assessee.

- 2.34.ii. ITAT, Jaipur Bench, in the case of Motisons Jewellers Ltd., ITA Nos. 161 and 178/JP/2022 [CLC – Page 1-93], vide order dated 29.09.2022, dismissed the appeal of the Department. Hon'ble ITAT relied upon the decision of Hon'ble Rajasthan High Court in the case of Smt. Harshil Chordia Vs. ITO reported at MANU/RH/0851/2006 : 298 ITR 349 (Rajasthan-HC) and held as under:-
"...Thus, the fact of the case on hand is similar to the jurisdictional high court decision cited by the Ld. AR of the assessee. The Ld. AR of the assessee also relied upon the coordinate Jaipur ITAT decision also on the issue and the revenue not prove the sale made by the assessee which is executed after giving the goods to the customer, duly reflected in the invoice issued, assessee having sufficient stock in the books, sales is duly reflected in the books of accounts supported by payment of VAT. Therefore, the contention of the revenue based on the facts and circumstance of the case is not accepted and we see no reason to find any fault in the detailed reasoned finding in the order of the Ld. CIT(A). Thus, we sustain the order of the Ld. CIT(A) and based on these observations the appeal of the revenue in ITA No. 161/JPR/2022 stands dismissed..."
- 2.34.iii. ITAT, Jaipur Bench, in Chandra Surana, ITA No. 166/JP/2022 [CLC Page 94-105] held that *"...It is also observed from the assessment order that the AO had not rejected the books of account of the assessee as no contrary material was available with him to reject the books of account of the assessee. As regards the addition of Rs. 2,90,93,500/- made by the AO by applying the provisions of Section 68 of the Act, it is noted that provisions of Section 68 are not applicable on the sale transactions recorded in the books of accounts as sales are already part of the income which is already credited in P & L account. Hence, there is no occasion to consider the same as income of the assessee by invoking the provisions of Section 68 of the Act..."*
- 2.34.iv. ITAT, Chandigarh Bench in the case of Roop Square Pvt Ltd ITA No. 198 and 249/Chand/2021 [CLC Page 183 to 190]

- 2.34.v. ITAT, Kolkata Bench in the case of Senco Alankar, ITA No. 10/Kol/2021 [CLC Page 191-197]
- 2.35. Ld. AO has invoked provision of section 68 in respect of sales. Section 68 deems non income to be income. In the instant case, the credits by way of sales are part of trading account of the assessee and provisions of section 68 are not applicable. It is important to note that section 68 is only applicable on cash credits such as loans, share applications etc. Further, it is an admitted fact that the creditworthiness of the payee is not relevant for the receiver as the amount was received against something sold to him and such transactions cannot be examined with point of view of cash credits.
- 2.36. Sections 68 and 69A create certain deeming fictions, whereby certain amounts which are not considered as income by the assessee, are deemed to be income of the assessee. A deeming fiction of income cannot apply to an item which is already treated as income by the assessee himself. The question of deeming an item to be income can only arise if the item is not otherwise disclosed as income.
- 2.37. Hon'ble Delhi High Court, in the case of Keshav Social and Charitable Foundation (2005) 278 ITR 152, considered a situation where the assessee, a charitable trust, had disclosed donations received by it as its income, and claimed exemption u/s. 11. The Assessing Officer, on finding that the assessee was unable to satisfactorily explain the donations and the donors were fictitious persons, held that the assessee had tried to introduce unaccounted money in its books by way of donations and, therefore, the amount was to be treated as cash credit u/s. 68. The Delhi High Court held that section 68 did not apply, as the assessee had disclosed such donations as its income.
- 2.38. In view of the above, since section 68 is not applicable in the instant case, the very invoking of the provisions of section 115BBE is illegal and deserves to be quashed.
- 2.39. It is also pertinent to note that the books of accounts have not been rejected by the Ld. AO or NFAC under Section 145(3). Under such circumstance, no addition can be made to the income of the assessee under Section 68.
- 2.40. The aforementioned legal and factual position was submitted to the NFAC during the course of first appellant proceedings, however without any cogent basis were not accepted by the NFAC.
- 2.41. Rebuttal to certain contentions raised by NFAC in its order from Page 21 to 28 are set out hereunder: -

Contentions of NFAC	Rebuttal
Weight and number of gold bars are not mentioned in the purchase bills. Therefore, it is not known as to how many pieces of gold bars are purchased by the assessee. [NFAC Order, Page 23]	Purchase invoices were submitted to the lower authorities. The details of the suppliers were mentioned in such invoices. Lower authorities did not carry out any enquiry directly from such sellers and simply raised allegations against the assessee.
Appellant did not provide details and documentary evidences of the sales having undertaken [NFAC Order, Page 24]	All the sales details were provided during the course of assessment proceedings which were completely ignored by the Id. AO.
Difficult to accept that 93 persons physically contacted the appellant in the night of 08.11.2016 and handover the cash to the assessee without verifying his credentials. [NFAC Order, Page 25]	When the demonisation was announced the entire public rushed to purchase gold and jewellery items which is an accepted fact widely reported in the media during such point of time.
PAN is given, however, in the majority of cases, enquiry made by the AO did not establish the genuineness of the advances received. [NFAC Order, Page 25]	PAN and other details of the purchasers were given. Only two purchasers denied the purchases having been made from the assessee directly to the Id. AO. No opportunity of cross examination given of such persons to the assessee.
Assessee was not well known to be able to make sale of such huge amount. [NFAC Order, Page 25]	On the eve of demonetisation many jewellers all across the country could register huge sales. Assessee also being one of them could make sales to different persons.

2.42. The contentions raised by the NFAC in his order were devoid of the submission already filed by the assessee in the first appellant proceedings. Further, the case laws as relied upon by the NFAC were not relevant for the case at hand, as the assessee had already added the amount of sales as part of his income and had paid due taxes on it. Accordingly, such receipts were outside the purview of Section 68.

In view of the above, application of Section 68, read with Section 115BBE, by the Id. AO, to the amount of Rs. 1,71,28,000 accounted for sales by the assessee, is illegal and deserves to be quashed.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	Particulars	Page No.	Quick Ref.
1.	Copy of the order of ITAT, Jaipur Bench in the case of Motisons Jewellers Ltd, ITA No. 161 and 178/JP/2022	1-93	73-74
2.	Copy of the order of ITAT, Jaipur Bench in the case of Chandra Surana, ITA No. 166/JP/2022	94-105	104
3.	Copy of the order of ITAT, Jaipur Bench in the case of Mahendra Kumar Agarwal, ITA No. 172/JP/2022	106-143	142-143
4.	Copy of the order of ITAT, Jaipur Bench in the case of Raj Kumar Nowal, ITA No. 165/JP/2022	144-182	181-182
5.	Copy of the order of ITAT, Chandigarh Bench in the case of Roop Square Pvt Ltd, ITA No. 198 and 249/Chand/2021	183-190	188-189
6.	Copy of the order of ITAT, Kolkata Bench in the case of Senco Alankar, ITA No. 10/Kol/2021	191-197	196-197
7.	Copy of the order of ITAT, Visakhapatnam Bench in the case of Hirapanna Jewellers ITA No. 253/Viz/2020 and C.O. No. 02/Viz/2021	198-205	205
8.	Copy of the order of ITAT, Delhi Bench in the case of Agson Global (P) Ltd. 115 taxmann.com 342 (Delhi-Trib.)	206-279	275
9.	Copy of the order of High Court of Delhi in the case of PCIT vs. Agson Global (P.) Ltd, 134 Taxamann.com 256 (Delhi)	280-309	280
10.	Copy of the order of High Court of Rajasthan in the case of Smt. Harshita Chordia 298 ITR 349 (Rajasthan)	310-315	314-315
11.	Copy of the order of ITAT, Jaipur Bench in the case of Mahesh Kumar Gupta, ITA No. 149/JP/2022	316-335	316

S. No.	Particulars	Page No.
1.	Copy of Purchase Invoices for AY 2017-18	1-14
2.	Copy of Written Submissions filed by the assessee company before Id. CIT(A) in the first appellate proceedings	15-28

7. In addition to the written submission so filed the Id. AR of the assessee submitted that in this appeal effectively the assessee has taken two grounds, one ground related to addition made u/s 68 of the Act and another ground for levy of special rate of tax as per provisions of section

115BBE of the Act. Ld. AR vehemently argued that the addition made u/s 68 of the Act is not correct because the assessee has supplied all the information i.e. required by the AO. The assessee-maintained books of account and submitted, stock details filed, Tax Audit report etc. in support of the ITR filed. There are not adverse comments on these details so produced at the time of hearing before the lower authorities. No specific defects were pointed out by both the lower authorities. Assessee also supplied all the details related to the advance against the sales received by the assessee and subsequently deposited in the bank account. The Id. AO treated advance as unexplained credit u/s 68 of the Act, without rejecting the sales recorded by the assessee. Thus, both the amount received against the sales and the amount recorded as sales both cannot be added and it would be double taxation of the same money. The purchase made by the assessee is duly verifiable and not disputed. The stock record were submitted and were not disputed. In support of this contention, the Id. AR of the assessee relied upon various decision quoted in the written submission so filed by the assessee. As regards the contention of Id. AO that previously the assessee filed the return of income under presumption taxation scheme as per provisions of section 44AD of the Act that cannot be the reason to disbelieve the result of the current year. The Id. AO based

on the information so supplied by the assessee as many as 40 notices were served, this itself suggest that the details supplied by the assessee are correct. The assessee supplied all the details related to customer though it was not required to maintain to the extent it was maintained by the assessee. Out of the notices so issued 20 parties submitted the reply 18 parties confirmed the transaction and only 2 parties denied. That two parties statement that too behind the back cannot be a reason to disbelieve the sale duly recorded by the assessee. As it is widely reported in the newspapers and print media that across the country the sale of gold bar and ornaments made in the midnight on account of announcement of demonetization. The assessee supplied all the details of customers. The Id. AO did not issue summon to any of the parties and have not verified the contention of the assessee. Since the assessee dealing in gold bar there is no need to have the opening and closing stock by the assessee. The spike in the sales is on account of Diwali and marriage seasons. This aspect has not been appreciated by the lower authorities. As regards the contention of the business place of the assessee, Id AR submitted that it should not be decisive factor of the sales made by the assessee. Ld. AO should have appreciated the fact that out of 58 notices so issued, 40 notices were

served itself shows the genuine of the transactions recorded in the books of account of the assessee.

8. Per contra, Ld. DR vehemently argued that this case of the assessee is required to be seen differently as the assessee has deposited heavy amount of cash of the demonetized currency into his bank account. The intention of the announcement of demonetization was to unearth the unaccounted money. As is evident from the record that the assessee has deposited huge amount of money of demonetized currency in the bank account. Based on eyewitness documents which shows no weight of the gold was shown and they merely for the name sake filed the details. Therefore, the provisions of section 68 of the Act have rightly been invoked in the case of the assessee. As is evident from the record that the assessee failed to prove to the satisfaction of the Assessing Officer that the amount received from the customers are genuine while filing the return of income in the earlier year the assessee has so one year in the ITR submitted, legal profession and not so one business of jewellery in the ITR the turnover reported by the assessee in the last year are meagre and there is no reasonable justification to record the spike of sales amount by the assessee. The assessee made story of receipt of advances of more than 100 persons shown advance the money for purchase of gold bar which the

assessee deposited in the bank account the assessee has not furnished the details of quantity of gold bar given to the persons and these aspect has been dealt by the Id. CIT(A). Ld. CIT(A) in his order stated that the story of advances received is not the real. Therefore, the fact of the case being similar to the case of the CIT vs. Durga Prasad More (1972) 82 ITR 540 (SC) decided by the Hon'ble Apex Court, wherein submitted is not real is not based on the set of fact and therefore, the fact of the case being similar theory advances receipt is not correct. The assessee has no stock of gold bar as on the date of receipt of advances and the assessee has no capacity of the stock worth of rupees deposited in to the bank. Therefore, nobody can advance when the assessee is not having any stock of gold bar with him. The notices issued by the Assessing Officer were not served by the assessee two person categorically stated that they have not given any advances to the assessee the place of the business has been visited by the inspector wherein no sign board was appearing the assessee has not done so much business in the past. Therefore, the assessee failed to prove the source of money deposited into the bank and therefore, the provisions of section 68 of the Act were correctly invoked in the hands of the assessee. The assessee has also not submitted the details of purchase of gold bar and therefore the quantitative details are also not deal with the

sales made by the assessee and this meagre in the record produce by the assessee and therefore, the same are not reliable when the assessee has received the advances without any material sold on the date of advances received. Subsequent, theory of sales made by the assessee cannot prove the unexplained receipt money by the assessee. The decision cited by the Id. AR of the assessee are on different on fact and therefore, in the absence of onus costed upon the provisions invoked by this section 68 of the Act is correct and required to be sustained.

9. In the rejoinder, the Id. AR of the assessee stated that the principles of probabilities falls enquiry of the assessee, the assessee has received advances and notices issued in majority of the cases have been served and replies were also received and therefore, the decision of Durga Prasad More (supra) cited by the Id. DR in fact in support of the case of the assessee. The Revenue authority has not debited purchased made by the assessee, every seller on his own selling silent of the case when the assessee has received the money in advance and thereby thereafter delivery of goods for which there is not contrary material placed on record by the Revenue even though the details of parties from whom the advances received were given to the lower authorities out of 58 notices 40 notices were served so burden to safety to the Revenue. After given all the

details no subsequent enquiry were conducted by the lower authorities by summoning those parties who have given the advances and taken delivery of goods the sales as well as money so deposited in the bank account both cannot be added in the hands of the assessee. The Id. AO cannot controvert the case of the assessee from non income to income and not income to none income and therefore, provisions invoked by the lower authorities is incorrect and sales made by the assessee is based on the advances received which was deposited in the bank account are business received duly recorded in the regular books of account required to be considered. The Id. DR also relied upon the following judicial precedent;

S.No.	PARTICULARS
1	[2022] 139 taxmann.com 352 (Calcutta) HIGH COURT OF CALCUTTA Principal Commissioner of Income-tax v. Swati Bajaj
2	[1995] 80 Taxman 89 (SC) SUPREME COURT OF INDIA Sumati Dayal v. Commissioner of Income-tax
3	[1979] 2 Taxman 197 (SC) SUPREME COURT OF INDIA Indian & Eastern Newspaper Society v. Commissioner of Income-tax
4	[1958] 34 ITR 807 (SC) SUPREME COURT OF INDIA A. GovindarajuluMudaliar v. Commissioner of Income-tax
5	[1971] 82 ITR 540 (SC) SUPREME COURT OF INDIA Commissioner of Income-tax v. Durga Prasad More
6	[2007] 161 Taxman 169 (SC) SUPREME COURT OF INDIA Commissioner of Income-tax v. P. Mohanakala
7	[1963] 50 ITR 1 (SC) SUPREME COURT OF INDIA Kale Khan Mohammad Hanif v. Commissioner of Income-tax
8	[1977] 107 ITR 938 (SC) SUPREME COURT OF INDIA Roshan Di Hatti v. Commissioner of Income-tax
9	[2016] 66 taxmann.com 288 (SC) SUPREME COURT OF INDIA Securities and Exchange Board of India v. Kishore R. Ajmera

10	HIGH COURT OF JUDICATURE AT MADRAS DATED: 11.02.2019 Tax Case Appeal No. 128 of 2019 And C.M.P.No. 3353 of 2019 Smt. Tharakumari Appellant Vs. The Income Tax
11	[1995] 82 TAXMAN 31 (CAL.) HIGH COURT OF CALCUTTA Commissioner of Income-tax v. Precision Finance (P.) Ltd.
12	[1991] 56 TAXMAN 304 (CAL) HIGH COURT OF CALCUTTA Commissioner of Income-tax v. United Commercial & Industrial Co. (P.) Ltd.
13	[2012] 18 taxmann.com 217 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax v. Nova Promoters & Finlease (P) Ltd.
14	[2013] 29 taxmann.com 291 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax, Delhi-V N.R. Portfolio (P.) Ltd
15	[2011] 43 SOT 544 (Delhi) IN THE ITAT DELHI BENCH 'B' Hersh W. Chadha v. Deputy Director of Income-tax, Circle-1(1), International Taxation

10. The Id. AR of the assessee filed a detailed distinguishing note on the decisions relied by the revenue and the same is reiterated herein below:

“During the course of hearing before the Hon'ble Bench of the captioned appeal, Id. DR relied upon certain judicial pronouncements. The same are not applicable in the instant case. The same are distinguished hereunder for the sake of ready reference

1. Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta)

The decision of Hon'ble High Court is not applicable to the facts of the present case. The above decision involves the transaction of long-term capital gains in which the price of the shares were inflated. However, the facts of the assessee's case are altogether different and, therefore, the case law is not applicable.

2. Sumati Dayal vs. CIT [1995] 80 [Taxmann](http://taxmann.com) 89 (SC)

The decision of the Hon'ble Supreme Court is not applicable to the facts of the present case, as the transactions, involved in the present case before the Hon'ble Tribunal, are fully supported by evidences. Therefore, the same are not applicable

3. Indian & Eastern Newspaper Society [1979] 2 [Taxman](http://taxman.com) 197 (SC)

This case has no relevance to the issues involved in the present appeal. In this case Hon'ble Supreme Court rendered the decision in favour of the assessee holding that audit observation is not Information for reopening the case.

4. Govindarajulu Mudaliar [1958] 34 ITR 807 (SC)

This decision of Hon'ble Supreme Court is on different facts and context. The decision relates to Gift received by the assessee wherein onus, under section 68, is significantly different and higher on the recipient of Gift. Whereas the present appeal is in respect of cash deposited generated out of cash sales. Since the facts in both the cases are different, the same are not applicable to the case of the assessee.

5. Durga Prasad More [1971] 82 ITR 540 (SC)

This decision of Hon'ble Supreme Court is on different set of facts. The Hon'ble Supreme Court delivered this decision while dealing with the reliability of a self-created document i.e. a trust deed in that case. The Hon'ble Supreme Court held that self-serving recital in any self-created document cannot be accepted without digging deeper. Whereas in the present appeal, the evidences are obtained from the third parties and are in nature of invoices or confirmations. Thus, the facts of both the cases are different and are inapplicable to the present case of the assessee.

6. P. Mohanakala [2007] 161 taxman 169 (SC)

The present decision of the Hon'ble Supreme Court relates to Foreign Gifts and there were grave inconsistencies in facts and statements recorded as finds mention at para 2 of the order as under:

"The dispute in all these appeals essentially relates to the addition made by the Assessing officer in respect of several foreign gifts stated to have been received by the assessee from one common donor namely Sampath Kumar. The gifts received were from one Ariavan Thotan and Suprotoman. It is during the enquiry by the revenue it is asserted that they were the aliases of Sampath Kumar."

7. Kale Khan Mohammad Hanif [1963] 50 ITR 1 (SC) 7

This decision of Hon'ble Supreme Court is on different facts and context. The main issue was whether if in past business income was assessed on estimating gross profit, whether in reassessment for that year unexplained credits can be taxed and same would not amount to double taxation. No such issue is involved in the present appeal. This decision of the Hon'ble Supreme Court rather supports the case of the assessee because Hon'ble Supreme Court has held:

"We concede that the question as to the source from which a particular income is derived is one which has to be decided on all the facts of the case."

8. Roshan Di Hatti [1977] 107 ITR 938 (SC)

The aforementioned case deals with the source of capital introduced by the assessee, The source of such capital was in question and factors did not justify the Tribunal's inference of calculating the value of the assets held by the assessee. The courts ruled in the favour of the assessee.

The fact of sales and capital of the assessee are two different aspects and, therefore, the facts are contrary to the case of the assessee.

9. Securities and Exchange Board of India v. Kishore R. Ajmera [2016] 66 taxmann.com 288 (SC)

The present decision of the Hon'ble Supreme Court is with reference to the following

Acts and has no bearing on the proceedings under the IT Act, 1961:

"Securities and Exchange Board of India Act, 1992, Securities and Exchange Board of India (Stock Brokers and Sub- Brokers) Regulation, 1992 and the Securities and Exchange Board of India (Prohibition of Fraudulent and unfair Trade Practices Relating to the Securities Market) Regulations, 2003."

Therefore, the facts of the aforementioned case are not applicable to the case of the assessee.

10. Tharakumari Appeal No. 128 of 2019 [High Court of Madras] In the present case, the Hon'ble Madras High Court has dismissed the appeal holding that no substantial question of law arises. Thus, no ratio has been rendered by the Hon'ble Madras High Court and, therefore, in that sense of the matter it has no binding force as a judgment of the High Court

Otherwise also, the case before the Hon'ble Madras High Court had a distinguishing fact that the assessee did not cooperate with the lower authorities and did not produce the relevant evidences. As against this, in the present appeal before the Hon'ble Tribunal, assessee fully participated before the lower authorities and submitted all evidences which the assessee was expected, under the law, to produce.

11. Precision Finance (P.) Ltd. [1995] 82 Taxman 31 (Cal.)

The aforementioned case deals with genuineness of loans u/s 68. The company was a loan financing company and failed to prove the genuineness and credit worthiness of the persons granting loan. However, in the present case of the assessee, the issue pertains

to cash sales. The same are already offered for taxation. The onus of proving a loan transaction and sales transaction are different and are contrary to the facts of the present case of the assessee.

12. United Commercial & Industrial Co. (P.) Ltd. [1991] 56 Taxman 304 (Cal.)

The case deals with genuineness of loans u/s 68. It is submitted that onus of proving a loan transaction and sales transaction are different. In the present case, the cash sales are in question which are supported by adequate evidences. Therefore, the facts of both the cases are different.

13. Nova Promoters & Finlease (P) Ltd. [2012] 18 taxmann.com 217 (Delhi)

This decision of Hon'ble Delhi High Court is delivered under different set of facts and context. The issue under consideration was of share application and there was a live link established between the assessee and entry providers. Statements were recorded and relied upon for making additions to the total income of the assessee. However, in the present case, the facts are entirely different. The issue is with respect to the cash deposit which are generated out of cash sales. Therefore, both the cases are altogether different.

14. N.R. Portfolio (P.) Ltd. [2013] 29 taxmann.com 291 (Delhi)

This decision of Hon'ble Delhi High Court is delivered under different set of facts and context. The sole issue was of share application money received. However, the present case involves the issue of cash deposits which are generated out of cash sales. Therefore, both the cases are delivered in different context.

15. Hersh W. Chadha [2011] 43 SOT 544 (Delhi)

The decision of Hon'ble Delhi High Court is on different set of facts. The issue under consideration was of commission received from Govt of India which was not declared in return of income by the assessee. The same was credited in foreign bank accounts. However, the facts of this case do not apply to the case of the assessee.”

11. We have heard the rival contentions, perused the material placed on record and judicial precedent cited by both the parties to drive home to the contentions raised. In this appeal effectively assessee has raised two grounds of appeal. Ground no. 1 relates to the addition of Rs. 1,71,28,000/-

being the amount of making the addition of cash advance received from customers amounting to Rs. 1,71,28,000/- as unexplained cash credits. That addition made by the Id. AO was sustained by the Id. CIT(A). Brief facts to the disputes are that the assessee has filed return of income on 30.10.2017 declaring total income of Rs. 3,50,470/- which was processed u/s 143(1) of the I.T. Act. Subsequently, the case was selected for Scrutiny through CASS. Assessee is engaged in the business of retail trade of Gems & jewellery under the trade name of M/s Planet Gems and contended to carrying business from premises located at 84/130, Madhyam Marg, Mansarovar, Jaipur i.e. residence. In response to the notices so issued assessee complied the same and filed the details as called for by AO. Assessee filed E-return and is subjected to Audit as per provisions of section 44AB i.e Accounts of the assessee are subjected to tax audit and the turnover declared by the assessee for the FY 2016-17 stood at Rs 2,27,25,130/-. Upon verification of ITR & Tax Audit report e-filed by the assessee, Id. AO revealed that assessee has deposited cash of Rs 1,71,28,000/- in the bank account no. 200999903652 maintained with IndusInd Bank and Rs. 2.28,000/- in the bank account no. 677101500312 maintained with ICICI Bank Ltd., during the period of demonetization i.e., from 09.11.2016 to 30.12.2016. With a view to verify the source of cash

deposited to the tune of Rs 1,73,56,000/- (Rs. 1,71,28,000 & Rs 2,28,000), the assessee was required to furnish the details of monthly sales (cash & credit), monthly Purchase (cash & credit) Monthly cash deposit into bank account for the relevant period i.e. 1 April to 08 Nov, 2016 for the financial year, 2015-16 & the relevant year i.e. 2016-17 Moreover, the details of Daily stock register, cash book & etc. was also asked from the assessee in specified format. The assessee submitted reply on various dates through ITBA portal which were examined and verified by AO. Upon verification of information & documents furnished by the assessee, Id. AO revealed that sole source of cash deposited into bank accounts to the tune of Rs. 1,73,56,000/- is claimed as advance received from customers which were contended by the assessee to have been received just prior to evening of demonetization between 17.10.2016 to 08.11.2016. The detailed scrutiny of the details submitted by the assessee revealed certain material discrepancies, abnormal variations, illogical & hard to digest non real/illusory facts. Ld. AO thus examined the submission of the assessee and appraised very carefully but found not acceptable, in as much, same is far-fetched from reality & has no tangible basis / rationale and thus was rejected the contention of the assessee by observing that the assessee has commenced the business in Financial Year 2014 but till 08.11.2016 there

were no sales if there it was very negligible amount. While filling the ITR for earlier year the assessee has shown the nature of business as legal profession and not the legal profession. To verify the contentions of the assessee about the receipt of the advance for supply of Gold Ornaments notices were issued u/s. 133(6) of the Act to 58 cases of which the Id. AO received the reply of 20 parties. Out of 58 notices so issued 18 received back and thus 40 notices issued were served upon the details given by the assessee. Thus, Id. AO taken a view that the assessee failed to prove the identity of the parties from whom the monies were received and therefore, he has not considered the genuineness and creditworthiness. There was not opening stock and closing stock of gold ornaments held by the assessee. Thus, when the assessee has received whopping advance of Rs. 1,73,56,000/- he was not having any stock. Verification of sales revealed that the assessee sold goods worth Rs. 16,51,348/- till 7.11.2016 and therefore, doctrine of preponderance of probabilities will not rescue the assessee. There was no sign board at the address of the business premises. Cash book opening balance as on 08.11.2016 was 50,80,806/- and thereafter assessee stated to have received advance of Rs. 1,20,13,101/- from 93 persons as advances and that results into available cash with the assessee. Thus, the cash book furnished is nothing but the

self-serving documents. Therefore, with this observation Id. AO rejected the claim of receipt of advance of the cash deposited into the bank account by the assessee. When the matter carried before the Id. CIT(A) he has rejected the claim of the assessee were rejected broadly on the five reasons the assessee in the submission made before us countered those contentions and the same is extracted herein below for the sake of brevity:

Contentions of NFAC	Rebuttal
Weight and number of gold bars are not mentioned in the purchase bills. Therefore, it is not known as to how many pieces of gold bars are purchased by the assessee. [NFAC Order, Page 23]	Purchase invoices were submitted to the lower authorities. The details of the suppliers were mentioned in such invoices. Lower authorities did not carry out any enquiry directly from such sellers and simply raised allegations against the assessee.
Appellant did not provide details and documentary evidences of the sales having undertaken [NFAC Order, Page 24]	All the sales details were provided during the course of assessment proceedings which were completely ignored by the Id. AO.
Difficult to accept that 93 persons physically contacted the appellant in the night of 08.11.2016 and handover the cash to the assessee without verifying his credentials. [NFAC Order, Page 25]	When the demonisation was announced the entire public rushed to purchase gold and jewellery items which is an accepted fact widely reported in the media during such point of time.
PAN is given, however, in the majority of cases, enquiry made by the AO did not establish the genuineness of the advances received. [NFAC Order, Page 25]	PAN and other details of the purchasers were given. Only two purchasers denied the purchases having been made from the assessee directly to the Id. AO. No opportunity of cross examination given of such persons to the assessee.
Assessee was not well known to be able to make sale of such huge amount. [NFAC Order, Page 25]	On the eve of demonetisation many jewellers all across the country could register huge sales. Assessee also being one of them could make sales to different persons.

Now the assessee is before us on the facts as narrated herein above. The bench noted that out of the 93 parties Id. AO choose the 58 parties and served the notices. Out of the notices so issued 69 % notices were duly served upon the address and the details submitted by the assessee. Therefore, the contentions of the revenue that the assessee fails in proving the identity of the parties has no merits because out of the selection the assessee details were correct to the extent of 69 %. Even out of the notices so issued confirmation were filed and the parties have expressed their willingness to confirm the said facts in persons and Id. AO did not went to verify the real facts by issuing the summons. He merely relied upon the the reply of two parties who negated having been given any advance to the assessee and the Id. AO made that as basis to reject the whole amount as unexplained money. Here the preponderance of probabilities as held by the apex court in the case of Durga Prasad More (Supra) come to the rescue of the assessee.

We note from the order of the lower authority that the assessee maintains the books of accounts, there are credits into these books of account on account of advance from parties and the assessee submitted all the details related to 93 parties. Id. AO choose to issue notices to 58 parties and out of that 40 were served this shows that details submitted by

the assessee in majority part is correct. Merely two parties denied should not be considered as base to reject the evidence and records produced before the Id. AO. Ld. AO failed to prove that the details so furnished by the assessee are incorrect. After receipt of the advance the assessee purchased the goods and given the delivery of the same to various parties who submitted the advances. As is clear from the cash book that as on 08.11.2016 the assessee was having cash balance of Rs. 50,80,806/- and on 08.11.2016 assessee received a sum of Rs. 1,20,13,101/- as advances for purchase of gold/ gold ornaments. The money was received from 93 different persons. The assessee has submitted the details of the parties from whom the advances were received. The said advances were utilized to make the purchase and the same were considered as sales. Both the purchase and sales are not doubted merely the transaction of receipt of the advances is doubted merely on the reasons that the assessee has accumulated that money and on account of the demonetization deposited in the bank account. In fact the assessee submitted all the details and related to the parties giving advances to the assessee. Ld. AO in 58 cases notice u/s. 133(6) were issued and out that notices 40 were served. Thus, the contention of the assessee having receipt of the advances is not a story in fact is support the contention of the assessee that how the assessee in

possession of the exact details of the two parties who have given the advances taken away the goods sold and thereafter repudiating the purchase will not decide the other 91 parties. The books of accounts were duly audited, purchase and sales are duly supported by invoices. There is no iota of doubt on the records so produced by the assessee. Merely the assessee has taken the advances for purchase of gold by those parties and that too on the eve of demonetization, cannot be doubted when the assessee has provided all the details related to the advances so received and the same were verified on majority cases. Thus, source for the sales is already considered and assessed as such as income and the profit from that has already been considered and not objected by placing any contrary evidence. The assessee shifted the burden casted upon him to the revenue to establish that the amount that the assessee has received is the unaccounted income of the assessee. Nothing contrary to the records were proved in even though all the details were placed on record by the assessee regarding the receipt of the advances, sales, and purchases from the said source of money. The assessment has been completed in the case of the assessee u/s. 143(3) of the Act without rejecting the book results. Therefore, once the sales is accepted the source of making that sales again cannot be added as unexplained receipt in the hands of the assessee as

per provision of section 68 of the Act. We get strengthen of our view from the decision of our High Court of Rajasthan in the case of Smt. Harshila Chordia v. ITO (2008) 298 ITR 349 wherein High Court held as under:

“So far as question No. 2 is concerned, apparently when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of account of the assessee would not attract section 68 because the cash deposits becomes self-explanatory and such amounts were received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition of Rs. 6,98,000 would not arise.”

Considering that binding precedent and the fact that the assessee made sales out of the money so received as advances cannot be considered as unexplained money u/s. 68 of the Act. Assessee has placed on record all the details related to the sales and that of the advances received by the assessee. The assessee has furnished all those details which the Id. AO has also verified by issuance of notice u/s. 133(6) of the Act, majority of the notices were served and they have confirmed the transactions. Thus, the contention raised by the assessee cannot be rejected without placing anything contrary on record. If the assessee supports the contention based on the evidence, department cannot act unreasonably and reject that explanation to hold that it was unexplained income. If the explanation is unconvincing, the department can reject it and draw the inference that the

amount represents income either from the source already disclosed by the assessee or from some undisclosed source. Before the department rejects such evidence it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The fact that there was receipt of money as an advance from the customer is even verified by issuance of notice u/s. 133(6) of the Act is itself prima facie evidence support the contention of the assessee. Not only that the parties who have replied the notices have also shown willing to support the contention if required in person. Thus, once all this evidence placed on record merely based on surmises and conjecture that the assessee has taken the advance before the receipt of the stock where the identity and sales made by the assessee is not disputed cannot be added in the hand of the assessee as unexplained money. Based on these observations ground no. 1 raised by the assessee is allowed.

Ground no. 2 relates to the levy of tax at the special rate on the addition as per provision of section 115BBE of the Act, since the assessee got relief in respect of the addition on merits this ground becomes infructuous.

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

Order pronounced in the open court on 10/10/2024.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 10/10/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Nitin Vijay, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward- 1(4), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 12/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar