

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" B " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
And  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 563/AHD/2024

निर्धारण वर्ष/Asstt. Year: 2017-2018

Mayurkumar Vinodchandra Surani, C/O. MS Chhajer & Co. CA, "Kamal Shanti", Nr.Sardar Patel Statue, Ahmedabad-380014.  <b>PAN: AWCP51734P</b>	बनामVs	A.C.I.T, Central Circle-2(4), Ahmedabad.
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(अपीलार्थी /Appellant		(प्रत्यर्थी /Respondent)
Assessee by :		Shri Mahesh Chhajer, AR
Revenue by :		Shri C. Dharninath V.S Sr.DR

सुनवाई की तारीख/Date of Hearing : 18/09/2024  
घोषणा की तारीख/Date of Pronouncement: 15/10/2024

आदेश/O R D E R

PER NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee as against the order of Learned Commissioner of Income Tax(Appeals), Ahmedabad, (in short "the Ld. CIT(A)") dated 07.02.2024 for Assessment Year 2017-18.

2. The brief facts of the case are that the assessee had filed his return of income for A.Y 2017-18 on 31.10.2017, declaring total income of

Rs.43,74,040/- . A survey u/s.133A of the Act was conducted in the case of the assessee, who is the proprietor of M/s. Vasupujaya Ornaments, on 19.12.2016. It transpired that the assessee had deposited cash of Rs.88,85,000/- during the demonetization period from 09.11.2016 to 30.12.2016. The AO was not satisfied with the explanation of the assessee regarding this cash deposits and addition of Rs.88,85,000/- was made u/s. 68 r.w.s 115BBE of the Act in respect of the cash deposits. Further, the addition in respect of stock difference of silver found during the survey was also made and the assessment was completed u/s.143(3) of the Act on 23.12.2019 at total income of Rs.1,35,04,286/-.

3. Aggrieved with the order of the AO, the assessee has filed an appeal before the First Appellate Authority, which was decided vide the impugned order and the appeal of the assessee was partly allowed.

4. Now the assessee is in second appeal before us. The following grounds have been taken in this appeal:

1. *The order passed by the Ld. CIT(A) is against law, equity & justice.*
2. *The assessment order passed by the A.O is bad & illegal as no opportunity was provided to the appellant in spite of specific request of personal hearing or video conferencing.*
3. *The Ld. CIT(A) has erred in law and on facts in upholding addition made by the Ld.AO u/s.68 r/w 115BBE of the Act of Rs.87,80,000/-*
4. *The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.*

5. Shri Mahesh Chhajed, Ld.AR appearing for the assessee submitted that the only grievance of the assessee in respect of the present appeal is in respect of the addition for cash deposits. He submitted that the source of cash deposits was duly explained before the AO. The total cash sale during the

year was Rs.1,92,01,869/- as compared to cash sales of Rs.1,75,60,896/- in the preceding year. He further explained that the cash sales were made during the entire year and not only during the proximity of demonetization period. Under the circumstances, the Revenue was not correct in disbelieving the cash sales and making the addition in respect of cash deposits during the demonetization period. The Ld. AR further submitted that no defect in the books of account of the assessee was pointed neither the account of the assessee were rejected. Therefore, the addition as made by the Revenue was not correct. He further submitted that the finding recorded by the Ld. CIT(A) that the sales in period around demonetization were inflated, was not correct particularly when the Ld. CIT(A) had acknowledged that Diwali during the FY 2016-17 was on 30.10.2016 and accordingly there was an increase in cash sales during that period. He further submitted that no discrepancy was found in the form of shortfall of stock during the survey, so as to cast any doubt on the genuineness of the sales.

6. Per contra, Shri C. Dharninath V.S, Sr. DR relied upon the order of the AO and the Ld. CIT(A). He has drawn our attention to the findings recorded by the Ld. CIT(A) in para 10.3 and 10.3.1 of the order and submitted that assessee had shown increased cash sales during the demonetization period.

7. We have carefully considered the rival submissions. Out of the total addition of Rs.88,85,000/- made by the AO, the Ld. CIT(A) has allowed relief in respect of cash deposit of Rs.99,600/- made on 08.11.2016 and the balance addition of Rs.87,80,000/- was confirmed. It is an accepted fact that the assessee was showing cash sales in all the years which is a normal phenomenon in the Jewellery line of business. The total turnover and cash

sales of the assessee during the current year and in the preceding year are found to be as under:

<b>Particulars</b>	<b>AY 2017-18</b>	<b>AY 2016-17</b>
Total Turnover	6,40,82,582/-	6,60,29,584/-
Cash Sales (Incl. VAT)	1,92,01,869/-	1,75,60,896/-

8. It is thus seen that in the current year the cash sales had marginally increased. The percentage of increase in cash sales was less than 10%, which can't be considered as abnormal increase. The AO has not disputed the cash sales as disclosed by the assessee but has only doubted the veracity of cash deposited during the demonetization period. The details in respect of cash balance available with the assessee at the time of demonetization was explained as under:

<b>Particulars</b>	<b>Amount</b>
Opening Cash Balance as on 01.04.2016	Rs.75,338/-
Add: Cash sale during the period 01.04.2016 to 08.11.2016	Rs.1,54,43,683/-
Add: Cash payment during the period 01.04.2016 to 08.11.2016	Rs.19,58,189/-
Less: Cash deposit in bank during the period 01.04.2016 to 08.11.2016	Rs.47,28,085/-
Cash Balance available as on 08.11.2016	Rs.88,32,747/-

9. It is seen from the above table that the assessee has made cash sales of Rs.1,54,43,683/- during the period from 01.04.2016 to 08.11.2016. As per the findings recorded by the Ld. CIT(A), there was a sudden increase in cash sale during the period from 27.10.2016 to 02.11.2016, which cannot be held as exceptional or extra ordinary considering the fact that Diwali fell in that year on 30<sup>th</sup> October and there is increased sale around Diwali every year. The spurt in the sale of Gold around Diwali is an accepted phenomenon. The Ld. CIT(A) has observed that the cash sales continued till 02/11/2016, which was 'labh pancham' occasion and most of the markets in Ahmedabad were closed. We find this to be a casual observation without any facts and findings. No

specific finding has been given that the assessee has shown cash sales on the date when the shop was closed. Further, the quantum of sales on these dates and whether it was only cash sales, has not been specified. In the absence of these specific particulars and details, we can't take any adverse view in the matter.

10. The Ld. CIT(A) has also observed that the assessee had laundered his unaccounted cash post demonetization to give it colour of genuineness. However, no evidence has been brought on record to substantiate this allegation. The Revenue had conducted survey operation at the premises of the assessee and in the course of survey also no such evidence was found. Thus the findings as recorded by the Ld. CIT(A) is found to be based on mere presumption and without any basis. Further, there was no evidence found during the survey that assessee had recorded non existing sales in its books of accounts post demonetization. No shortfall in stock was found during the survey, to back the allegation of recording non-existing cash sales. The difference of stock found during survey was in respect of 174.48 kg of silver which was already offered for tax. In addition, no evidence of any back dating of entry was found during the survey, as alleged in the orders. The Revenue had not doubted the cash sales made prior to demonization as well as the cash deposit of Rs.47,28,085/- in the bank account during the period from 01.04.2016 to 08.11.2016. No defect was pointed out in the books of accounts of the assessee. In view of these facts, the addition made by the Revenue in respect of cash deposit of Rs.88,85,000/- during the demonetization period cannot held as correct. The Revenue had conducted survey operation at the premises of the assessee during demonetization period on 19.12.2016. In the absence of any incriminating evidence found during the survey in respect of

backdating of sales entries or recording of non-existent sales or in the shortfall of stock, the addition for the cash deposits, as made by the Revenue was not justified. Considering the totality of the facts and the explanation of the assessee, the addition in respect of cash deposit of Rs.87,80,000/- upheld by Ld. CIT(A), made during demonetization period, is deleted.

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

**Order pronounced in the Open Court on 15 October, 2024 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-  
(NARENDRA PRASAD SINHA)  
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 15/10/2024

*Manish, Sr. PS*

True Copy

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NFAC)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad

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|----|--|---|-----------|
| 1. | Date of dictation  | : | 24.9.2024 |
| 2. | Date on which the typed draft is placed before the Dictating Member. | : | 25.9.2024 |
| 3. | Date on which the approved draft comes to the Sr.P.S./P.S            | : | .09.24    |