

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष

BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &  
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 556/JP/2024  
निर्धारण वर्ष/Assessment Year : 2017-18.

Income Tax Officer, Ward 1(2), Jaipur.	बनाम Vs.	Gordhandas Nandkishore Jewellers, 6-7-8, Ganpati Plaza, M.I. Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAKFG 3502 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Sanjay Nargas, Addl. CIT

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani, CA

सुनवाई की तारीख / Date of Hearing : 10/09/2024

उद्घोषणा की तारीख / Date of Pronouncement: 04/10/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the revenue is directed against the order dated 26.02.2024 of Id. CIT (Appeals), National Faceless Appeal Centre (NFAC) Delhi passed under section 250 of the Income Tax Act, 1961 for the assessment year 2017-18. The ground raised in the appeal is reproduced as under :-

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A), NFAC is justified in deleting the addition of Rs. 70,46,965/- made by AO under section 68 of the IT Act ignoring the fact that the assessee failed to prove

the correctness of the financial statements and genuineness of the transaction, during the assessment proceedings.

2. The brief facts of the case are that the assessee a partnership firm is engaged in the business of manufacturing and sale of Jewellery items. Return of income for the year consideration was filed by the assessee along with computation of income and Audited financial statements. However, assessment proceedings under section 143(3) were completed by making additions of Rs. 70,46,965/- on account of cash deposited in the bank account during the demonetization period. Against this order of the AO, the assessee preferred appeal before the Id. CIT (A) NFAC. The Id. CIT (A) vide his order dated 26th February 2024, deleted the addition. Aggrieved by the order of Id. CIT (A), NFAC, the revenue has preferred the present appeal before us on the ground mentioned here in above.

3. The solitary ground raised by the department relates to challenging the order of Id. CIT (A) NFAC in deleting the addition made by the AO under section 68 of the Income Tax Act.

4. In this regard the Id. D/R, while placing reliance upon the order of the AO, submitted that the source of cash deposit in the bank account of the assessee is not found to be genuine. It was further submitted that the assessee did not maintain any stock register and in the absence of which the claim of such a huge amount of sales of Rs. 74,15,738/- from 05.11.2016 to 08.11.2016 was not accepted to be genuine. It was further submitted that the assessee has failed to prove the correctness of the financial

statements as no evidence was furnished by the assessee to establish the claim that the assessee was able to achieve sales of Rs. 74,15,738/- in just 4 days.

5. On the contrary, the Id. A/R of the assessee while relying upon the order passed by the Id. CIT (A), NFAC, also relied upon his written submissions which are reproduced herein below :

1. "The assessee firm had deposited cash amounting to Rs 83,08,500 in its bank account during the period of demonetization. Ld. AO granted relief of Rs 9,13,703 which was opening balance of cash as on 05.11.2016 in the books of the assessee firm. He further accepted cash sales of Rs 3,47,832 out of the total cash sales of Rs 74,15,738. However, added the remaining amount of Rs 70,46,965 (83,08,500-9,13,703-3,47,832) to the total income of the assessee firm. Ld. CIT-(A) granted relief of the said amount. The present appeal by the Department is against the relief of Rs 70,46,965 granted by CIT-(A) to the assessee.
2. Elaborate submissions were made before Id. CIT-(A) which have been reproduced by him at **Pages 4-30 of his order [PB 35-72]**. After going through the submissions and appreciating the facts in the background of the relevant law, being convinced, Id. CIT-(A) allowed the assessee's appeal through a reasoned order.
3. The assessee is based out of Jaipur, with their showroom situated at Ganpati Plaza, MI Road, which is recognized as one of the most prime locations in the city. The location of showroom plays a pivotal role in attracting the customers which significantly impacts the business of the assessee firm.

4. The jewellery business began as a proprietorship concern over twenty years ago and, later, got converted into a partnership firm. The business structure has changed; however, it remains a business with legacy along with heritage reflecting its commitment to the customers.”

Apart from the above written submission, Id. A/R also relied upon the detailed submissions which were put-forth before Id. CIT (A) NFAC and the same are reproduced below :

1. The books of accounts are regularly maintained by the assessee and are audited with no adverse remarks by the auditor **[Page-4]**
2. Sales have fallen from Rs 6.56 Cr in FY 2015-16 to Rs 6.20 Cr in FY 2016-17. There are no sales which are artificially inflated to accommodate any unaccounted cash held by the assessee firm.**[Page-5]**
3. There was no requirement as per the law to maintain the name of the customers to whom goods were sold below the threshold of Rs 2,00,000. **[Page-5]**
4. Ld. AO did not reject the books of accounts **[Page-5]**
5. Ld. AO has erred in mentioning that stock register is not forming part of the list of documents maintained and examined. However, audit report [Form 3CD] placed at**PB6** of the assessee is indicative of the fact that such documents have been maintained and examined by the tax auditor**[Page-6]**

maintained at each location.) Same as 11(a) above			
Books maintained	Address Line 1	Address Line 2	City or Town or District
CASH BOOK	1, GANPATI PLAZA, MI ROAD		JAIPUR
BANK BOOK	1, GANPATI PLAZA, MI ROAD		JAIPUR
SALES BOOK	1, GANPATI PLAZA, MI ROAD		JAIPUR
PURCHASES BOOK	1, GANPATI PLAZA, MI ROAD		JAIPUR

STOCK REGISTER	1, GANPATI PLAZA, MI ROAD		JAIPUR
JOURNAL	1, GANPATI PLAZA, MI ROAD		JAIPUR

6. The assessee had maintained detailed quantitative records of stock movements **[PB 12]**, which have not been questioned by Id.AO. Moreover, there are no discrepancies which have been noticed in the opening and closing stock, which are directly related to the sales **[Page-6]**

35 a	In the case of a trading concern, give quantitative details of principal items of goods traded						
	Item Name	Unit	Opening stock	Purchases during the previous year	Sales during the previous year	Closing stock	Shortage, excess, if any
	Alloy	grams	1177		492	685	
	Diamond (Loose)	carat	104			104	
	Diamonds (Studded)	carat	776		32	745	
	Gold Jewellery 14k	grams	1141		73	1068	
	Gold Jewellery 18k	grams	1739		508	1231	
	Gold Jewellery 22k	grams	24848	13453	19897	18404	
	Loose Wax, Beeds, Pearl, Col St, Sy. St	grams	3485		185	3300	
	Old Jewellery Gold	grams		283		283	
	Old Silver Jewellery	grams	5			5	
	Silver Bar	grams	1000			1000	
	Silver (Utencils, Coins & Jewellery)	grams	368		220	148	
	Studded in 18 K (Wax, Beeds, Pearl, Col St, Sy. St)	grams	324			324	
	Studded in 22 K (Wax, Beeds, Pearl, Col St, Sy. St)	grams	3800	2565	801	5564	

7. The sales were supported by the stock register, and the financial statements showed a reduction in stock matching the sales, indicating that the cash generated represented the sales **[Page-6]**
8. Ld. AO has erred in not issuing show-cause notice before making addition to the total income of the assessee **[Page-6]**

9. Cash sales and corresponding cash deposits are regular feature of the business of the assessee since several years[**Page-10**]

10.The provisions of Section 68 are not applicable to the case of the assessee for the reasons mentioned as under:[**Page-12**]

- The sales are already recorded in the books of accounts maintained by the assessee and, therefore, cannot be considered again for taxing the same u/s 68.
- It is an admitted fact that the provisions of section 68 are applicable to cash credits like loans, share applications, etc. and not on the transactions which are already credited in the profit and loss account.

6. We have heard the Id. Counsels for both the parties and have also perused the material placed on record, judgements cited before us and also the orders passed by the revenue authorities. Before we decide the merits of the grounds raised by the department, it is necessary and imperative to evaluate the order passed by Id. CIT (Appeals). The Id. CIT (A), NFAC has dealt with the grounds raised by the department with regard to addition on account of cash deposit in the bank during demonetization period in his order, but the relevant portion is contained in para number 8.0 to 8.8 and the same is reproduced below :-

“ 8.0. Ground Nos. 2 and 5 : The Assessing Officer did not accept the submission made by the appellant that the source of cash deposits is from the cash sales of the appellant. The brief facts of the addition are that the closing cash in hand balance of the appellant as on 30.10.2016 was Rs 9,29,702/-. In the online response sheet filed by the appellant, it was claimed that amount of Rs. 2,25,000/- was received from partners in the form of partners capital and balance amount of Rs. 80,83,500/- was out of

cash sales made by appellant. The amount of Rs. 2,25,000/- was received by appellant on 03.10.2016. Since, the figures reported by appellant till 30.10.2016 has been accepted, the amount of Rs. 2,25,000/- received from partners has been taken care of in the opening balance of Rs. 9,13,703/- as on 05.11.2016. The total amount deposited in the bank during demonetization period was Rs. 83,08,500/- The appellant is allowed to claim source of Rs. 9,13,703/- as explained on account of opening cash balance of Rs. 9,13,703/- as on 05.11.2016. Thus, the source of remaining amount of Rs. 73,94,797/- remained in dispute. The appellant did not maintain any stock register in the absence of which claims of astronomical sales of Rs 74,15,738/- from 05.11.2016 to 08.11.2016 was not accepted to be genuine. Appellant failed to prove the correctness of the financial statements as no evidence was furnished by the appellant to establish the claim that it was able to achieve sales of Rs 74,15,738/- in just four days. Accordingly, taking a considerate view, appellant is allowed to claim cash sales of Rs 3,47,832 (equal to what has been credited in the month of October 2016) in the period from 05.11.2016 to 8th November 2016 as well and the balance cash sales of Rs.71,17,906/- ( Rs.74,65,738/- - Rs.3,47,832/-) is rejected. If the figure of Rs 3,47,832/-, was added to the opening cash balance of Rs.9,13,703/- as on 05.11.2016, the source of Rs 12,61,535 out of total cash deposit of Rs 83,08,500/- stands explained. The balance amount of Rs 70,46,965/- was added to the income of the appellant u/s 68 of the Act.

8.1 In response to the said notices the appellant made submission on 11.08.2023 regarding addition of Rs. 70,46,965/- u/s 68 of the Act on account of unexplained credits, relevant portion of the same is reproduced as above and the appellant rely on the following judgment:-

- a. ACIT v. Chandra Surana
- b. Mahesh Kumar Gupta v. ACIT
- c. ACIT v. Motisons Jewellers Limited
- d. ACIT v. Mahendra Kumar Agarwal
- e. PCIT v. Agson Global P. Ltd.

8.2 While going through the submission during the appellate proceeding it is noted that the cash book of the appellant to show that whenever cash

has been deposited in the bank account the same is out of cash available with the appellant the fact that the total sales of the appellant in the F.Y. 2016-17 amounted to Rs.6.20 crores giving a G.P. rate of 9.94%, as compared to Rs.6.56 crores during the F.Y. 2015-16 giving a G.P. rate of 6.71% and Rs.10.04 crores in the F.Y. 2014-15 giving a G.P. rate of 3.32%. Thus, it is quite clear that the sale of the appellant during the year under assessment has not been artificially inflated to accommodate any unaccounted cash held by the appellant. The Assessing Officer has also not rejected the books of accounts but merely rejected some sales and even after rejecting the said sales, he has merely reduced the net profit on these sales from the income declared by the assessee. When the Assessing Officer has not rejected the books of accounts and has also not reduced the sales which have been rejected by him but merely reduced the N.P. rate on the sales rejected, it is not understandable as to why the addition of the amount of cash deposited out of sales has been added to the income of the appellant.

8.3 In the present case the appellant also explained that the sales during the period of 05.11.2016 to 08.11.2016 attention was invited to the fact that cash sales during the said period were higher as compared to the rest of the year as higher cash sales were made in the peak season of Diwali and marriage. The appellant is engaged in jewellery business and it is an accepted fact that the said business is seasonal where substantially higher sales are recorded during the peak seasons of Diwali and Marriage. The said explanation cannot be brushed aside considering the trend of the society in India during the festive season.

8.4 As per the contention of the appellant, the assessing Officer has accepted the closing stock which has direct nexus with the sales. Further as per the appellant, no evidence was produced by the AO on record that the cash has been utilized elsewhere by the appellant.

8.5 Further the appellant has relied on the decision of Hon'ble Supreme Court in State of Kerala Vs. L.T. Shaduli AIR 1977 SC 1627 where the return filed by the respondent assessee on the basis of his books of account appeared to Sale Tax Officer as incorrect, since certain sales appearing in the books of account of wholesale dealers were not mentioned in the account books of the respondent. He applied to Sales Tax Officer for giving opportunity to cross examine wholesale dealers which was rejected by him. Holding that the denial of dealer's request to

cross examine wholesale dealers was denial of fair hearing, the Supreme Court stated that it was only through cross examination that the assessee could establish that what mentioned in his account books was correct and that mentioned in the accounts of whole sale dealers was wrong.

**8.6 Determination:-** Having gone through submission made by the appellant it is very much clear that the Assessing Officer did not believe in the explanation filed by the appellant in respect of the Cash Deposits made by the appellant. But the Assessing Officer had not discharged the onus of proving how the submission made by the appellant is not satisfactory. If the Assessing Officer was not satisfied with the submission made by the appellant then the burden lies on him to point out evidence to support his decision. Moreover, the AO has not even rejected the books of accounts of the appellant. The appellant has also relied on various case laws stated above which are squarely applicable in his case.

8.7 Drawing inference from the above cited cases, in the instant case, the Appellant furnished a reasonable explanation with regard to the nature and source of the cash deposited in banks during the demonetization period which was not found to be false by the AO. No material was brought on record by the AO to draw an inference that the explanation offered by the appellant was incorrect or unreasonable or that the impugned sum represented income of the appellant from undisclosed sources as against the entries recorded in the audited books of the appellant. Once the books of account of F.Y. 2016-17 were accepted by the Department and the cash sales recorded therein were considered in arriving at the assessed income of the Assessee for the impugned financial year, the cash deposited in banks against such cash sales could not be treated as undisclosed income of the Assessee u/s 68 without bringing on record any credible evidence/material in support of such allegation merely on the basis of surmises and conjecture of the Revenue Authorities.

8.8 I have duly considered the submissions of the appellant, assessment order and the material placed on record. During the appellate proceeding, the appellant had brought out sufficient evidences to prove the source of cash, deposits made in the bank account during the period of demonetization. After perusal of entire material on records, accordingly addition of Rs. 70,46,965/- u/s 68 of the Act on account of unexplained credits is not found sustainable and, hereby, deleted. The grounds of the appeal are thus allowed.”

After having gone through the orders passed by the Id. CIT (A) NFAC and after hearing the parties at length, we found from the records that the assessee had deposited cash amount in its bank account and in support of its submissions and in order to substantiate the source of cash amount, the Assessee has placed on record copy of ITR, computation of income and Audited financial statements for the year under consideration.

6.1 After evaluating the documents placed on record by the assessee, we found that the AO rejected the contentions of the Assessee by merely holding that assessee had not maintained any stock register and in the absence of which claim of astronomical sales of Rs. 74,15,738/- from 05.11.16 to 08.11.16 cannot be accepted as genuine. It was also held that assessee had failed to establish the correctness of the financial statement as no evidence was furnished by the assessee to establish the claim that it was able to achieve sales in just 4 days of Rs. 74,15,738/-.

6.2 It is important to mention here that the AO during the assessment proceedings, misdirected himself and has proceeded on the wrong premise that no stock register was maintained by the assessee whereas this finding of the AO is factually incorrect, as the assessee has drawn our attention to the copy of ITR, computation of income and Audited financial statements for the year under consideration wherein it is clearly mentioned that the assessee has maintained stock register. More so, it is noted that the cash book of the assessee to show that whenever cash has been deposited in the bank account, the same is out of cash available with the assessee. From the financial

statements furnished by the assessee, it is evident that the assessee was earning good profit margin on the total sales of the assessee in the FY 2016 – 17 amounting to Rs. 6.20 crores giving a GP rate of 9.94% as compared to Rs 6.56 crores during the F.Y. 2015 – 16 giving a GP rate of 6.71% and Rs. 10.04 crores in the FY 2014-15 giving a GP rate of 3.32%. Thus, it is quite clear that the sale of the assessee during the year under assessment has not been artificially inflated to accommodate any unaccounted cash held by the assessee. The AO has also not rejected the books of accounts but merely rejected some sales and even after rejecting the said sales, he has merely reduced the net profit on these sales from the income declared by the assessee. Thus we are of the view that when once the assessing officer has not rejected the books of accounts and has also not reduced the sales which have been rejected by him, but has merely reduced the NP rate on the sales rejected, then in our view, it is not understandable as to why the addition of the amount of cash deposited out of sales has been added to the income of the assessee.

6.3 In our considered view the appellant furnished a reasonable explanation with regard to the nature and source of the cash deposited in banks during the demonetization period which was not found to be false by the AO. No material was brought on record by the AO to draw an inference that the explanation offered by the appellant was incorrect or unreasonable or that the impugned sum represented income of the appellant from undisclosed sources as against the entries recorded in the audited books of the appellant. Once the books of account of FY 2016-17 were accepted by the Department and the cash sales recorded therein were considered in arriving at the

assessed income of the assessee for the impugned financial year, the cash deposited in banks against such cash sales could not be treated as undisclosed income of the assessee under section 68 without bringing on record any credible evidence/material in support of such allegation merely on the basis of surmises and conjecture of the Revenue Authorities. We also rely upon the following decisions of Hon'ble Jurisdictional High Court / Jaipur Tribunal as under :-

**Smt. Harshila Chordia vs. ITO (2008) 298 ITR 349 (Raj.)(CLC 1-5) :**

*"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."*

**ACIT vs. Chandra Surana (2023) 104 ITR (Trib.) 103 (CLC : 6-14)**

*In the said case the Assessing Officer made an addition to the declared income of the assessee under section 68 of the Income-tax Act, 1961 holding that the cash deposited by the assessee in his bank account during the demonetization period was undisclosed income under the garb of cash sales. In first appeal, the Commissioner (Appeals) observed that a portion of the deposits*

*was not of specified bank notes, that section 68 of the Act was not applicable in respect of sales recorded in the books of account because they were already a part of the income returned and that the books of account had not been rejected as no discrepancy was found therein. The Commissioner (Appeals) thus deleted the addition. On further appeal it was held "that regular books of account, bills, vouchers and stock registers having complete quantitative details had been maintained by the assessee. These books of account were audited. Thus, the cash sales were recorded in the assessee's books of account and were made out of stock-in-trade. No adverse finding had been reached by the Assessing Officer in this respect except for the change in the methodology in issuing bills. It was not the case of the Assessing Officer that the assessee did not have sufficient stocks for making the sales. It could not be said that the figures of sales and purchases were not supported by quantitative details. The Assessing Officer neither brought any material on record to establish that the sale bills were bogus nor provided any evidence to show that such sales were bogus. The assessee had duly substantiated his claim with documentary evidence. The Assessing Officer had not rejected the books of account of the assessee as no material was available with him so to do. Section 68 of the Act is not applicable to sale transactions recorded in the books of account as such sales would already be a part of the income credited to the profit and loss account. The Assessing Officer was not justified in making the addition. The addition was rightly deleted by the Commissioner (Appeals)."*

**Mahesh Kumar Gupta vs. ACIT [2023] 104 ITR (Trib) 519  
[CLC: 15-34]**

*The assessee, engaged in the business of wholesale and retail trade in gold and silver ornaments, made a large cash deposit during the demonetization period.*

*The Assessing Officer found that the assessee had been regular in depositing cash arising from sales in his bank accounts on a regular basis. The Assessing Officer observed that if the assessee had cash generated through cash sales, that would have been deposited in*

*his bank accounts proximately to the sales. Accordingly, this explanation was held not to be satisfactory. He held that this was a colourable device of the assessee trying to explain the source of the cash deposited in the bank account and that this cash represented income of the assessee from undisclosed sources and not from actual sales. The Assessing Officer also observed that the bills showed that they were for sales for less than two lakh rupees and that the names, addresses and mobile numbers of the purchasers were not mentioned on most of the sale bills. An addition in respect of this large deposit was made under section 68 of the Income-tax Act, 1961. In first appeal, the Commissioner (Appeals) upheld the actions of the Assessing Officer. On further appeal : Held, allowing the appeal, "that it was not in dispute that in the assessee's line of business, the sale of jewellery in cash was a normal trade practice. The books of the assessee were audited by an independent chartered accountant and a copy of the audit report and the profit and loss account of the assessee were filed. The assessee had sold jewellery in cash in earlier years. The assessee explained that in the year under consideration, the overall cash sales as a percentage of total sales had reduced. The claims of the assessee were supported by bill-wise details in respect of cash sales during the few days preceding demonetization, a monthly summary of the assessee's stock register, the assessee's sales register, the assessee's cash book, returns filed by the assessee under the value added tax laws, and the assessee's tax audit report and audited financial statements. None of these records was disputed by the Assessing Officer. The Commissioner (Appeals) had not dealt with the specific submissions of the assessee and had merely confirmed the view of the Assessing Officer in one paragraph. The Assessing Officer accepted the opening stock, purchases, as well as the closing stock at the yearend to be genuine and correct. The Assessing Officer did not reject the books of account of the assessee under section 145(3) of the Act. The order did not allege any defects in the books of account. The Assessing Officer did not bring any material on record to establish that the sale bills or the sales were bogus. The Assessing Officer was wrong in not accepting the declared cash sales as not 20 verifiable when they were recorded in the books of account which were found to be correct and complete. The only*

*reason given by the Assessing Officer in his order was that particulars of the customers to whom goods were sold in cash had not been furnished. The action of the Assessing Officer making the addition under section 68 of the Act without rejecting the books of account was thus unwarranted. If an assessee admits a sale as a revenue receipt, there would be no case for making an addition under section 68 of the Act. The opinion of the Assessing Officer in not accepting an explanation offered by an assessee is required to be formed objectively with reference to the material available on record. Hence, application of mind is sine qua non for forming the opinion. The law does not mandate that the assessee should disclose particulars of the customers where the sale is for an amount up to two lakhs rupees. Sales cannot be doubted merely on surmises and conjectures on the ground of non-furnishing of the particulars of customers.”*

**ACIT vs. Motisons Jewellers Limited [2023] 104 ITR (Trib) 304IT Appeal Nos. 161 & 178 (JP.) of 2022, dated 28-9-2022[CLC: 35-158]**

*The assessee-company derived income from manufacture and trading of jewellery. The books of the assessee were audited by an independent chartered accountant and the audit report and statement of profit and loss account were filed by the assessee. During the course of assessment proceedings for the assessment year 2017-18, the Assessing Officer rejected the books of account of the assessee under section 145(3) of the Income tax Act, 1961 and estimated the net profit at the rate of 2.59 per cent. being the average net profit of the last three years and applied it to the sales of Rs. 1,96,92,45,899 comprising sales according to the books in sum of Rs. 2,09,09,94,399 and cash deposited in the bank during the demonetisation period of Rs. 12,17,48,500 (which the assessee claimed to be from cash sales, realisation from debtors and advances from customers). The Assessing Officer reduced the sum of Rs. 12,17,48,500 deposited in the demonetisation currency out of the total sales of Rs. 2,09,09,94,399 declared by the assessee and treated the sum of Rs. 12,17,48,500 as unexplained cash credit of the assessee under section 68 of the Act and taxed it according*

*to the provisions of section 115BBE of the Act. In first appeal, the Commissioner (Appeals) deleted the addition of Rs. 12,17,48,500 made by the Assessing Officer under section 68 of the Act alleging the cash deposited in the bank in demonetised currency as unexplained cash credit, upheld the rejection of books of account and the estimation of net profit at the rate of 2.59 per cent. as against 2.36 per cent. declared by the assessee. On appeals by the assessee and the Department : Held, dismissing the Department's appeal and allowing the assessee's, "(i) that the Department did not pin point which of the findings of the Commissioner (Appeals) was incorrect and against the facts placed on record by the assessee. All the details required to prove the sales made by the assessee were provided in the assessment proceedings. As regards the receipt of cash from customers such amount standing in the books of account of the assessee would not attract section 68. There was no fault in the detailed reasoned finding in the order of the Commissioner (Appeals).*

**ACIT vs. Mahendra Kumar Agarwal [2023] 104 ITR (Trib) 455 [CLC: 159-174]**

*In the said case for the assessment year 2017-18 , the Assessing Officer made addition under section 68 read with section 115BBE of the Income-tax Act, 1961, of the large cash deposit of demonetised currency made by the assessee, an individual deriving income from the business of trading in bullion, precious stones, diamond and manufacturing of jewellery in his proprietorship concern, treating it as his undisclosed income. According to the Assessing Officer, the assessee had not submitted any details such as the buyers' names, addresses or permanent account numbers to establish the genuineness of the high cash sales during the year. The Commissioner (Appeals) deleted the addition on the ground that the assessee had substantiated his claim on documentary evidence and also with facts, which duly supported his own previous history and trend ; that having not rejected the books of account as being discrepant, the Assessing Officer had firstly treated the cash as sales and then again as unexplained cash credit, which was tantamount to double taxation of income and impermissible in law.*

*On appeal by the Revenue : Held, dismissing the appeal, that the Commissioner (Appeals) had duly addressed all points mentioned by the Assessing Officer and the Revenue could not pinpoint which of those findings was incorrect or against the facts on record. It was apparent from the © Company Law Institute of India Pvt. Ltd. - 2 - summary of the assessee's cash book that the cash balance was generated from cash sales and such sales were part of the total sales credited in the trading account, the income wherefrom had already been offered by the assessee by reducing the cost of sales from the sales. The Assessing Officer had not pointed out any defect in the cash books and other books of account. The sales were duly supported by the sale bills and invoices and duly verifiable from the books of account including the stock register. Further, the availability of stocks in hand showed that the sales made by the assessee were genuine and duly recorded in the books of account. All details required to prove the sales were provided in the assessment proceedings : cash book, sales register, monthly summary of stock register and value added tax assessment order. As the sales were below the prescribed limit, it was not compulsory or mandatory under the Act to collect the information relating to customer's name, address and permanent account number, which practice had been accepted in the preceding and succeeding financial years by the Assessing Officer, who, in the year under consideration, did not make any enquiry on the material submitted by the assessee but proceeded to make additions on statistical analysis. The finding of the Commissioner (Appeals) that the Assessing Officer had not brought any material or evidence on record to establish the sales as bogus was proper. The order of the Commissioner (Appeals) was sustained, and the addition was deleted."*

Although the AO relied upon certain judgements, but the pari materia contained in those judgements are all together different from the facts and circumstances of the present case and are thus distinguishable on facts as observed in the following cases :

**Durga Prasad More [1971] 82 ITR 540 (SC) [Page 12 , AO Order]**

- i. 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 there was no source of income of wife of the assessee from which she could generate funds for purchase of property. Therefore, treated the income from property as the income of the assessee.
- ii. Whereas in the present appeal, the source of cash is clearly established. The evidences for cash sales are on record and there are no defects pinpointed by the Id. AO contrary to the facts submitted by the assessee.
- iii. The observation of the Hon'ble Supreme Court, in this case, at para 9, reproduced below supports the case of the assessee:

*"Now, coming to the question of onus, the law does not prescribe any quantitative test to find out whether the onus in a particular case has been discharged or not. It all depends on the facts and circumstances of each, case. In some cases, the onus may be heavy whereas, in others, it may be nominal. There is nothing rigid about it."*

**Sumati Dayal [1995] 80 Taxmann 89 (SC)[Page 13, AO Order]**

- i. The decision of the Hon'ble Supreme Court is not applicable to the facts of the present case. In the said case, the evidences filed by the assessee were not in her favour, no expenditure or incidental expenses were booked against the income credited in her capital account.
- ii. In the present case, the assessee has all the evidences which were filed before the lower authorities. The said evidences clearly support the contention of the assessee to be the income of the assessee firm and the same is already offered for taxation in the form of revenue receipt i.e., sales. The sales are interlinked to purchases made by the assessee firm, which are not doubted by the lower authorities. Therefore, the theory of human probabilities would only arise when the evidences are controverted by the lower authorities, which is not done in the present case.

**A. Rajendran [2011] 198 taxman 509 (Delhi)[Page 14 , AO Order]**

- i. In the above decision, being in favor of the assessee, Hon'ble High Court has held that "*the reasons which entered the mind of the authorities to reject the explanation offered by the assessee in each case and in the context of the case laws referred above, we have no doubt at all that the explanation offered by the assessee in each case has been arbitrarily and unreasonably rejected. All the reasons we have no doubt at all, are in realm of surmises, conjectures and suspicions, which approach stands totally prohibited by the decided case laws referred to above.*"
- ii. It is important to note that decisions of Hon'ble Supreme Court in the case of **Durga Prasad More [1971] 82 ITR 540 (SC) and Sumati Dayal [1995] 80 Taxmann 89 (SC)** have also been referred in the said case. However, Hon'ble Court has held that such decisions have been delivered in different set of facts and circumstances and are not applicable to the present case.
- iii. In the light of the above, above decision does not apply to the present case of the assessee firm.

**Hacienda Farms (P.) Ltd [2011] 198 taxman 509 (Delhi)[Page 14, AO Order]**

- i. The facts in the above decision are entirely different from the present case. In the said decision, the assessee had received advances in form of cash from vegetable vendors and supplied vegetables in a time-frame of four to nine months. Such advances were against the prevailing trade practise of vegetable trade. Thus, the contention of the assessee was not accepted and advances were treated as undisclosed income.
- ii. In the present case, there is no doubt on the purchases made by the assessee. The sales were before the announcement of demonetization. Therefore, the facts of above-mentioned decision are clearly different from the present case.

**Pradip Kumar Loyalka [1997] 63 ITD 87 (Pat.)[Page 14, AO Order]**

The above decision was pronounced in different set of facts. The facts are that the assessee received certain amount of gifts, for which no returns of gift were filed. In the present case, the sales are added as

income u/s 68. It is important to note that sales are already offered for taxation and such sales are not disturbed.

**Major Metals Ltd. vs. Union of India [2012] 251 CTR 385 [Page 14, AO Order]**

- i. In the above decision, Settlement Commission has confirmed additions u/s 68 on non-furnishing of documents by the company. The decision of **Sumati Dayal [1995] 80 Taxmann 89 (SC)** has also been referred in the said case.
- ii. The set of facts referred in the above case and instant case of the assessee firm are totally different as in the above decision a list of documents were asked to produce by the company in order to pass triple test laid down u/s 68. However, the company could not furnish those documents and then question of probabilities was arisen and addition was confirmed. In the instant case of the assessee firm, documents are produced before the lower authorities and, therefore, when documents are submitted for substantiating the claim, the same have to be looked first before examining the probabilities. Also, Id. CIT-(A) has made accepted all the contentions of the assessee thereby allowing the appeal in the favour of the assessee.

Hence, the above decision does not apply to the present case.

**Sampat Raj Ranka[2001]73TTJ642 (JD.)[Page 14, AO Order]**

- i. The decision of Hon'ble ITAT, Jodhpur Bench is applicable to the present case. The decision of ITAT in fact supports the case of the assessee. Hon'ble Bench has itself admitted that "*the lower authorities had rejected the direct evidence on the basis of assumptions and presumptions ignoring that that the assumptions and presumptions had to be examined in the light of evidence on record and the same could not override the facts*" **[Headnotes reproduced]**
- ii. In Para-10, it has been stated that, "*preponderance of human probability is a circumstantial evidence and if, direct evidence is placed on one scale and human probabilities on the other, direct evidence is bound to carry more weight*".

- iii. Therefore, it is clear that direct evidence carries more weight than the theory of human probability. The same is applicable to the facts of the present case.

**R.S. Rathore [1996] 86 taxman 20 (Raj.)[Page 14, AO Order]**

The above decision of Jurisdictional High Court is totally based on different facts. The said decision was delivered in respect of certain investments made in a company and the money was borrowed for the said investment. In the present case, the set of facts are totally different. Sales which are already offered for taxation are doubted and that too without bringing on record any iota of evidence which could establish that the sales made by the assessee are not genuine. Therefore, the decision does not apply to the present case.

6.4 Considering the totality of the facts and circumstances as discussed by us above, we are of the considered view that NFAC has passed a well reasoned and speaking order, therefore, we see no reasons to interfere into or deviate from such well reasoned finding of Id. CIT (A) NFAC. The department has not been able to controvert or rebut the findings so recorded by Id. CIT (A) NFAC, therefore, we find no hesitation in rejecting this ground of appeal raised by the department and thereby upholding the order passed by the Id. CIT (A) NFAC. Hence this ground of appeal stands dismissed.

7. In the result, appeal filed by the Revenue stands dismissed with no orders as to cost.

Order pronounced in the open court on 04/10/2024.

Sd/-

( राठौड़ कमलेश जयंतभाई )

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाई)

(SANDEEP GOSAIN)

न्यायिक सदस्य / Judicial Member

Das/  
जयपुर / Jaipur

दिनांक / Dated:- 04/10/2024.

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

1. अपीलार्थी / The Appellant- The ITO Ward 1(2), Jaipur.
2. प्रत्यर्थी / The Respondent- Gordhandas Nandkishore Jewellers, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 556/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar