

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.2630/Del/2022
निर्धारणवर्ष/Assessment Year: 2017-18**

DCIT, Central Circle-17, Room No.244A, 2 nd Floor, ARA Central E-2, Jhandewalan, New Delhi.	बनाम Vs.	Diamond Tradex Company Ltd. 2656, 2 nd Floor, Ajmal Khan Road, Karol Bagh, Bank Street, Central, New Delhi. PAN No.AACCD3460E
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Nirbhay Mehta, Adv.
Revenue by	Shri T James Singson, CIT DR

सुनवाईकीतारीख/ Date of hearing:	29.07.2024
उद्घोषणाकीतारीख/Pronouncement on	25.10.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-27, New Delhi dated 18.08.2022 for the AY 2017-18. The Revenue raised the following grounds: -

1. The Id. CIT (A) has erred in deleting the addition of Rs. 16,23,99,500/- on account of cash deposited during the demonetization period, ignoring the fact that the AO had rejected the books of accounts of the assessee u/s 145 of the IT Act, 1961 during the assessment proceedings and Id. CIT(A), himself in Para 8.1 of his order stated that the AO had discussed the reasons in details why he is rejecting
2. The Id. CIT(A) has erred in deleting the addition of Rs. 16,21,99,500/- ignoring the fact that when books of accounts were already rejected by AO then there was no need to identify any specific defect in sales register, stock register and purchase register.
3. The Id. CIT(A) has erred in ignoring the fact pointed out by the AO that, if the sales are very high just before the search, then, how the extra (excess) stock was found at the business premises of the assessee on the date of search.
4. The Id. CIT(A) has erred in ignoring the fact that the assessee also surrendered the extra stock found at the premises during the search and declared in its return of income filed which also proves that the stock register, sales register produced by the assessee before Id. CIT(A) cannot be relied upon.
5. The Id. CIT(A) has erred in ignoring the fact that although, the purchases and sales itself were not in line with the stock then the contention of the assessee regarding cash deposited during the period of demonetization due to a spurt in cash sales cannot be accepted.
6. The Id. CIT(A) has erred in restricting the addition on account of unaccounted cash sales from Rs. 1,9,63,410/- to Rs. 16,30,806/-, ignoring the fact that the assessee, during the time of assessment proceedings as well as remand proceedings, has grossly failed to discharge its onus to prove that the corresponding purchases of these unaccounted sales have not been claimed by it in its Trading and Profit and Loss account.
7. The Id. CIT(A) has erred in restricting the addition of unaccounted cash sales to only gross profit earned on such cash sales ignoring the fact that unaccounted sale should be charged to taxation on whole amount unless specifically proved by the assessee that some expenditures were also incurred by the assessee to materialize such unaccounted sales which in this case was not proved by the assessee.
8. The Id. CIT(A) has erred in deleting the addition of Rs. 1,08,000/- made by the AO on account of unsecured loans taken from the M/s Annie Apparels Private Limited ignoring the fact that M/s Annie Apparels Private Limited neither filed any confirmation nor any details regarding genuineness and creditworthiness was filed by the assessee during assessment as well as remand proceedings.
9. The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal

2. Briefly stated the facts are that the assessee company is in the business of trading in diamonds. A search and seizure operation u/s 132 of the Act was conducted at various residential and business premises of the assessee by the Investigation Wing of the Department on 14.12.2016. The assessee filed its return of income declaring return of income on 30.03.2018 declaring income of Rs.8,47,55,540/-. The assessment was completed on 24.12.2018 determining the income of the assessee at Rs.46,01,57,480/-

observing that the assessee could not attend the hearings on the dates issue. The additions have been made on account of disallowance of expenses, unsecured loans, sundry creditors, cash, unaccounted cash sales.

3. On appeal the Ld.CIT(A) deleted the additions made on account of cash deposit of Rs.16.29 crores, cash sales to the tune of Rs.1.75 crores.

4. Aggrieved by the order of the Ld.CIT(A) the Revenue filed appeal before the Tribunal.

5. Before us the Ld. DR strongly supported the orders of the Assessing Officer (AO) and on the other hand, the Ld. Counsel for the assessee supported the order of the Ld.CIT(Appeals).

6. We observe that during the assessment proceedings the assessee failed to appear before the AO and the AO made the addition of Rs.16,23,99,500/- on account of cash deposited during demonetization. The assessee company during appellate proceedings filed additional evidences before the Ld.CIT(Appeals) under Rule 46A and the Ld.CIT(A) duly accepted and considered the additional evidences filed before him. The Ld.CIT(A) deleted the addition on the ground that the AO has accepted the stock as per

the books of accounts while arriving the undisclosed stock and accepted the profit earned thereof. Therefore, the Ld.CIT(A) held that the AO cannot blow hot and cold and thus, the addition was deleted. We have gone through the entire material placed before us. The data of the total sales, cash sales and cash deposits in the bank account are as under:

Month	FY 2015-2016			FY 2016-2017			FY 2017-2018		
	Total sales	Cash sales	Cash deposit	Total sales	Cash sales	Cash deposit	Total sales	Cash sales	Cash Deposit
April	1,28,83,604	13,18,971	97,63,500	31,86,950	2919171	2466500	15058815	110629797	11019920
May	71,48,721	26,66,929	79,50,000	47,46,757	4298542	5745000	218590980	166105376	17801760
June	66,16,228	61,29,313	1,00,78,000	1,10,49,447	7985419	5750000	35442419	12550124	9169245
July	1,50,22,387	1,04,23,844	1,14,94,000	1,45,08,800	1112401	20550000	2709871	802617	8998000
August	1,85,41,410	1,16,17,107	1,30,71,500	36,42,752	3573352	2460000	34760192	2361824	10430000
September	2,25,61,359	1,92,33,259	1,92,70,000	62,17,214	3607282	3950000	845363264	366853	22810000
October	1,72,80,304	1,18,73,695	1,56,11,000	9,13,23,366	88546264	2975000	639078157	304598	-
November	2,56,04,294	1,78,47,004	1,52,85,000	18,45,93,210	73181579	159100000	25412638	702561	7403000
December	3,25,12,321	3,14,33,252	3,41,50,000	6,00,00,844	373199	1399500	43542717	444188	721000
January	2,76,02,302	1,55,64,952	1,53,60,000	2,66,50,421	2625387	1000000	164063760	2623999	2221800
February	3,53,27,706	1,05,43,221	48,55,000	10,14,70,589	1460045	2700000	168837573	2210882	5601000
March	2,15,46,593	2,43,231	18,17,000	33,93,19,335	10,65,47,595	104425000	173301717	719642	1251000
TOTAL	75,45,15,984	13,69,19,648	16,36,05,000	72,75,81,685	306270336	311121000	2814692311	299919759	361165841

7. The comparative data of cash sales to total sales is also examined and the same is tabulated as under: -

Month	FY 2015-2016			FY 2016-2017			FY 2017-2018		
	Total sales	Cash sales	% of cash sales to total sales	Total sales	Cash sales	% of cash sales to total sales	Total sales	Cash sales	% of cash sales to total sales
April	12883604	1318971	10.2	3186950	2919171	91.6	15058815	110629797	73.5
May	7148721	2666929	37.3	4746757	4298542	90.6	218590980	166105376	76.0
June	6616228	6129313	63.2	11049447	7985419	72.3	35442419	12550124	35.4
July	15022387	10423844	69.4	14508800	1112401	76.6	2709879	802617	33.3
August	18541410	11617107	62.7	3642752	3573352	98.1	34760192	2361824	6.8
September	22561359	19233259	85.3	6217214	3607282	58.0	845363264	366853	0.0
October	17200304	11075695	64.4	91323366	88546264	97.0	639078357	304598	0.0
November	25604294	17047604	66.6	184593210	73181579	39.6	25412638	702561	2.8
December	32512321	31433252	96.6	60000844	373199	0.6	43542717	444188	1.0
January	27602302	15564952	56.4	26650421	2625387	9.9	164063760	2623999	1.6
February	35327706	10549221	3.0	101470589	1460045	1.4	168837573	2210882	0.0
March	21546593	243231	0.1	219319335	106587695	48.6	173301717	715642	0.4

8. From the examination of the above data the following emanates:

- i. The appellant had been making regular cash sales in preceding as well as succeeding assessment years, apart from the year under consideration. This data shows that the appellant had sufficient items below Rs. 2 lakhs which are being sold in cash regularly.
- ii. The appellant is depositing all these cash sales in its regular bank accounts only as is evident from the above tables. In some years, the cash deposits are more than the cash sales, which
- iii. Month wise cash sales of the appellant for various months for FY 2015-2016 to FY 2017-2018 do not show any abnormal trend.
- iv. % of cash sales to total sales for the month of October 2016 vis a vis October 2015 is higher at 97% but similar trend is also observed with other months like April, May and August when there was no impact of demonetization and VAT returns had been filed before the date of search.
- v. VAT returns have also been filed and accepted by the Sales Department.

9. In the case of CIT Vs. Kailash Jewellery House in ITA No.613/2010 the Hon'ble Delhi High Court held as under: -

"3. The Commissioner of Income-tax (Appeals) had returned a finding that the stock and cash found at the time of search had been examined by the Assessing Officer and was compared with the stock and cash position as per books. The stock and cash position as per the books had been arrived at after the effect of the aforesaid cash sales. The stock position as well as the cash position as per the said books had been accepted by the Assessing Officer. The Commissioner of Income-tax (Appeals) also noted that the appellant had furnished the complete set of books of accounts and the cash books and no discrepancy had been pointed out. The Assessing Officer had doubted the aforesaid sales as bogus and had made the aforesaid addition. However, the Commissioner of income-tax (Appeals) as well as the income-tax Appellate Tribunal returned findings of fact to the contrary.

4. The Tribunal also noted that the departmental representative could not challenge the factual finding recorded by the Commissioner of Income-tax (Appeals). Nor could he advance any substantive argument in support of his appeal. The Tribunal also observed that it is not in dispute that the sum of Rs.24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. It is in these circumstances that the Tribunal observed that the cash sales could not be treated

as undisclosed income and no addition could be made once again in respect of the same.

5. The findings of the Commissioner of Income-tax (Appeals) and the Tribunal, which are purely in the nature of the factual findings, do not require any interference and, in any event, no substantial question of law arises for our consideration. The appeal is dismissed."

10. Similar issue has been considered by the coordinate bench of the Tribunal in the case of ACIT Vs. Heera Panna Jewellers in ITA No.253/Viz/2020 and the Tribunal held as under: -

"2. All the grounds of appeal are related to deleting the addition of Rs. 4,71,35,500/- made u/s 68 r.w.s 115BBE of the Income-tax Act, 1961 (in short 'Act'). Brief facts of the case are that the assessee is a firm with two partners i.e. Sri Mahendra Kumar Jain and his son Sri Rajendra Kumar Jain engaged in the business of jewellery trading has filed its return of income on 4-11-2017, admitting total income of Rs. 95,59,210/-. A survey u/s 133A of the act, was conducted in the business premises of the assessee on 27-3-2017 by the Deputy Director of Income-tax (Investigation) [DDIT(Inv)], Unit-III(2), Visakhapatnam and found that the assessee had deposited the sum of Rs. 5,72,00,000/- in high denominations of specified bank notes (SBNs) post demonetization. The assessee has explained the sources of cash deposits as cash sales and the advances received on 8-11-2016 against the sales. In support of its explanation, the assessee also produced the sale bills and books of accounts before the DDIT(Inv.). However, the DDIT was not satisfied with the assessee's explanation of sales, since, the assessee could not furnish proper KYC documents of the buyers during the course of survey, the average sales of the firm was not matching with peak and non-peak season. Even on special occasions like Akshaya Tritiya, Dhanteras, Ugadi etc. the average sales were Rs. 1.5 to 2.0 crores and whereas on 8-11-2016, on a single day, the sales were increased by Rs. 4.72 crores during 7.50 P.M to 12 A.M consisting of 270 bills and the cash was received only in high denomination notes which were hitherto banned by Govt. of India from 9-11-2016. Further, there were no details of the customers like phone number, address etc. and no signatures were obtained in sale acknowledgements of the ornaments. There were no tag number details for some bills and CCTV footage was also not available to support the entry of large number of customers on 8-11-2016. crores increase, the DDIT(Inv.) viewed that the assessee has taken shelter of sales to divert the black money of the assessee as well as his friends.

3. During the assessment proceedings, the AO has conducted one more survey on 16-9-2019 and examined Sri M.K. Jain who had explained that the sale of jewellery on 8-11-2016 was Rs. 5.50 crores and business was done till midnight and the shop was closed at 1.00A.M and made separate counters to meet the increased demand of customers. He stated that the CCTV camera footage automatically gets deleted after 15 days, therefore, not possible to supply the CCTV footage of 8-11-2016. With regard to KYC and mobile numbers, Managing Partner stated that they do not insist for mobile numbers or addresses of customers, since, it was not mandatory in the case of sales below Rs. 2 lakhs and all the sales that were made on 08.11.2016 was below Rs. 2 lakhs only. He further explained to a question that the sales after 8.00 P.M to 12 A.M on 08/11/2016 were extraordinary due to the announcement of demonetization. Since, the assessee failed to furnish the evidences of CCTV footage, KYC documents etc. for abnormal sales on 8-11-2016 the AO believed that the sales stated to have been made between 8.15 p.m. to 11.58 p.m. amounting to Rs. 4.71 crores consisting of 270 bills are nothing but unexplained cash credits representing unaccounted money brought in to the business in the guise of jewellery sales and the paper work was done, merely to give the colour of authenticity of sales and accordingly made the addition of Rs. 4,71,31,500/-u/s 68 r.w.s.115BBE of the Act and taxed the same @60%.

The AO also relied on the decision of CIT v. Durga Prasad More [1971] 82 ITR 540 (SC), wherein, Hon'ble apex court held that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. The AO also relied on the decision of Sumati Dayal v. CIT [1995] 80 Taxman 89/214 ITR 801 (SC). 4. Against the order of the AO, the assessee went on appeal before the CIT(A) and made written submissions and submitted that there was huge rush on 8-11-2016 for sale of jewellery not only in the assessee's shop, but also in all the shops in Visakhapatnam as well as throughout the country, since, the citizens intended to liquidate the old notes in view of the demonetization and made invalid from the mid night of 8-11-2016 i.e. 9- 11-2016. The assessee further submitted before the Ld.CIT(A) that the assessee has made the sales and the same was offered as revenue receipt in the return of income. The Ld.A.R argued that since, the sale proceeds were offered and admitted as income, hence the AO is not permitted to make the same amount as addition u/s 68 of the Act, which amount to double addition once as sales and secondly as unexplained cash credit. The assessee further argued that since the assessee is engaged in the jewellery business and having no other source of income, the AO is not permitted to tax the same u/s 115BBE of the Act as income from other sources. The assessee relied on the decision of Hon'ble Gujarat High Court in [IT Appeal No. 2471 of 2009, dated 3-7- 2012] in CIT v. Vishal Exports Overseas Ltd. and in the case of CIT v. Kailash Jewellery House in [IT Appeal No. 613 of 2010, dated 9-4-2012]. The assessee also submitted that the day 8-11-2016 is an exceptional day in view of demonetization of old notes, therefore, the public were in fanatic move and were anxious to convert the SBNs into some other form and felt wiser to make investment in jewellery. The assessee being one of the reputed shops having long time presence, the customers have stepped into their show room in large numbers. Since large number of customers have stepped into the showroom within a short span of time of 4 to 5 hours, the assessee made necessary arrangements in cannot but conditions for attending the customers for sale of gold jewellery, however, could not take the details which were not mandatory in respect of the sales below Rs. 2 lakhs. In support of the argument that there was huge rush for sales, the assessee placed certain newspaper clippings before the CIT(A).

4.1 The Ld.CIT(A) after having considered the submissions of the Ld.A.R found merit in the arguments of the assessee and agreed with the assessee's argument that due to unexpected announcement of demonetization on the night of 8-11-2016 the public largely purchased the the jewellery as alternative for exchange of currency, and held since, the sales were credited in the assessee's books of accounts as revenue receipt and offered for taxation, the same amount cannot be taxed again u/s 68 of the Act as unexplained cash credit. The Ld.CIT(A) relied on the decisions of Vishal Exports Overseas Ltd. (supra) of Hon'ble Gujarat High Court. The Ld.CIT(A) further observed that the decisions of Hon'ble Supreme Court in the case of SumatiDayal and Durga Prasad More's case (supra) has no application in assessee's case. The ld. CIT(A) also observed that there was ample evidence to show that there were large number of public thronged the jewellery shops on 08/11/2016, and thus held that there is no justification for the AO to treat the sum of Rs. 4,71,35,000/- as unexplained cash credit and accordingly deleted the addition and allowed the appeal of the assessee.

5. Against the order of the Ld.CIT(A), the department is in appeal before us. During the appeal hearing, the Ld.DR heavily placed reliance on the findings of the AO and the DDIT (Inv) which was discussed in detail in the assessment order and also discussed in this order in the earlier paragraphs. The Ld.DR argued that it is impossible to believe that the assessee had prepared 270 bills in short span of time and made the sales to the extent of Rs. 4.71 crores when the daily sales of the assessee was Rs. 10 - 16 lakhs in normal period and Rs. 40-50 lakhs per day in the peak time and Rs. 1.5 to 3 cores on specific occasions like Dhanteras etc. The Ld.DR further argued that in the absence of CCTV footage, details of KYC of customers, non availability of details of tag numbers of the jewellery, non identification of the customers, the AO rightly held that the sum of Rs. 4.72 crores was nothing but sham transaction to bring unaccounted money in the guise of jewellery, sales and paper work is nothing but a device. Therefore, argued that the AO rightly made the addition and the deletion of addition by the Ld.CIT(A) is bad in law. The Ld.DR relied on the decisions of Naresh Kumar Tulshan v. 5th ITO, ITAT Bombay [1985] 11 ITD 537 (Bom.), the decision of coordinate bench of ITAT in J.M.J. Essential Oil Company v. CIT [2018] 100 taxmann.com 181/259 Taxman 546/[2019] 415 ITR 17 (HP), the decision of Hon'ble Supreme Court of India in the case of Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC), CIT v. P. Mohanakala [2007] 161 Taxman 169/291 ITR 278 (SC), CIT v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC), the decision of Hon'ble High Court of Bombay & Goa in CIT v. Sadiq Sheikh [2021] 276 Taxman 292/[2020] 122 taxmann.com 39/429 ITR 163, the decision of High Court of Kerala in Oceanic Products Exporting Co. v. CIT [2000] 241 ITR 497 (Kerala), Anil Kumar Singh v. CIT [1972] 84 ITR 307 (Calcutta).

6. On the other hand, the Ld.AR heavily placed reliance on the order of the Ld.CIT(A) and argued that in the instant case, the assessee has made the sales of Rs. 5.5 crores on 8-11-2016 which included Rs. 4.72 crores treated by the AO as unexplained cash credits. The entire sum of Rs. 5.5 crores sales made on 8-11-2016 was credited in the books of accounts and offered for taxation. The AO had accepted the books of accounts and also the sales, hence, the AO cannot make the addition of the same amount u/s 68 which amounts to double addition. The assessee produced the newspaper clippings of The Hindu, The Tribune and demonstrated that there was huge rush of buying the jewellery in the cities consequent to declaration of demonetization of Rs. 1000 and Rs. 500 notes on 8-11-2016. The Ld.AR also distinguished the case laws relied upon by the Ld.DR stating that facts are not identical and none of the case laws relied upon by the DR are applicable in the assessee's case. In none of the cases, sales that were offered for taxation, was brought to tax again u/s 68 and hence argued that the Ld.CIT(A) has rightly deleted the addition and no interference is called for in the order of the Ld.CIT(A)..

7. We have heard both the parties and perused the material placed on record. In the instant case, the assessee has admitted the receipts as sales and offered for taxation. The assessing officer made the addition u/s 68 as unexplained cash credit of the same amount which was accounted in the books as

sales. In this regard, it is worthwhile to look into section 68 which reads as under: 68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year: From the perusal of section 68, the sum found credited in the books of accounts for which the assessee offers no explanation, the said sum is deemed to be income of the assessee. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. The assessee is engaged in the jewellery business and maintaining the regular stock registers. Both the DDIT (Inv.) and the AO have conducted the surveys on different dates, independently and no difference was found in the stock register or the stocks of the assessee. Purchases, sales and the Stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/stocks. Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. The assessing officer accepted the sales and the stocks. He has not disturbed the closing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales. Audit report u/s 44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. The assessee has furnished the trading account, P& L account in page No. 7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared the exorbitant profits. Though certain suspicious features were noticed by the AO as well as the DDIT (Inv.), both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the assessee. Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence.

7.1 In the case of CIT v. Associated Transport (P.) Ltd. [1996] 84 Taxman 146/[1995] 212 ITR 417 (Cal.) the Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, therefore, held that there was no reason to treat this amount as income from undisclosed sources and it was not a fit case for treating the said amount as concealed income of the assessee. The revenue moved to Calcutta High Court against the order of the tribunal and the Hon'ble High Court has confirmed the order of the Tribunal while deleting the penalty, Hon'ble Calcutta high court held as under: "

8. The Tribunal was of the view that the assessee had sufficient cash in hand. In the books of account of the assessee, cash balance was usually more than Rs. 81,000. There is no reason to treat this amount as income from undisclosed sources. It is not a fit case for treating the amount of Rs. 81,000 as concealed income of the assessee and consequently imposition of penalty was also not justified in this case." In the case of Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC), the Hon'ble Apex Court decided the matter in favour of assessee of the ground that it was clear on the record that the assessee maintained the books of accounts according to the mercantile system and there was sufficient cash balance in its cash books and the books of account of the assessee were not challenged by the Assessing officer. If the entries in the books of accounts are genuine and the balance in cash is matching with the books, it can be said that the assessee has explained the nature and source of such deposit. In the case of Lakshmi Rice Mills v. CIT [1974] 97 ITR 258 (Pat.) Hon'ble Patna High court held as under:

"It is, in my view, a fundamental principle governing the taxation of any undisclosed income or secreted profits that the income or the profits as such must find sufficient explanation at the hands of the assessee. If the balance at hand on the relevant date is sufficient to cover the value of the high denomination notes subsequently demonetised and even more, in the absence of any finding that the books of account of the assessee were not genuine, the source of income is well disclosed and it cannot amount to any secreted profits within the meaning of the law." All the decisions cited supra suggest that once, the assessing officer accepts the books of accounts and the entries in the books of accounts are matched, there is no case for making the addition as unexplained. Hon'ble Delhi High court considered the issue of taxing the opening stocks in the case of CIT v. Akshit Kumar [2021] 124 taxmann.com 123/277 Taxman 423 (Delhi), and upheld the order of the ITAT in deleting the addition related to sales. The Hon'ble High Court has extracted the relevant part of the order of the ITAT which reads as under: "17. Thus, in our opinion the sale made by the assessee out of his opening stock cannot be treated as unexplained income to be taxed as 'income from other sources'; firstly, the stock was available with the assessee in his books of account and trading in such stock including purchase, sale, opening and closing stock (quantity wise and value wise) has been accepted by the department year after year and in some years under scrutiny proceedings, therefore, non existence of stock or business cannot be upheld; secondly, the sale of stock in the earlier years and the sale of balance left out stock in subsequent years has been accepted or has not been disturbed, then to hold that no stock was sold in this year and remained with the assessee will be difficult proposition; thirdly, inquiry and inspection by the AO done much after the closure of business may not be persuasive for the past events especially in wake of facts as discussed above; and lastly, once neither any item in the trading account, nor gross profit has been rejected, then one part of credit side of the trading account, that is, sales cannot be discarded completely so as to hold that it is unexplained money."

7.2 In the instant case the assessee has established the sales with the bills and representing outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. In spite of conducting the survey the AO did not find any defects in sales and the stock. Therefore we do not find any reason to suspect the sales merely because of some routine observation of suspicious nature such as making sales of 270 bills in the span of 4 hours, non availability of KYC documents for sales, non writing of tag of the jewellery to the sale bills, non-availability of CCTV footage for huge rush of public etc. The contention of the assessee that due to demonetization, the public became panic and the cash available with them in old denomination notes becomes illegal from 9-11-2016 and made the investment in jewellery, thereby thronged the jewellery shops appear to be reasonable and supported by the newspaper clippings such as The Tribune, The Hindu etc. It is observed from the newspaper clippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through the country.

8. The Ld.DR placed reliance on various decisions. In the case of Sumati Dayal (supra), Durga Prasad More (supra), Durga Prasad More (supra) both the cases are related to the circumstantial evidences in the absence of direct evidence. In the instant case, the facts clearly support that the assessee has made the sales and there were sufficient stocks to meet the sales. Thus, the facts of the assessee's case are clearly distinguishable. The Ld.DR further relied on the decisions of Kale Khan Mohammad Hanif (supra), wherein, the Hon'ble Supreme Court held that the AO is permitted to make addition of unexplained cash credits even though the income is estimated on sales. In the instant case, the AO had accepted the sales and no unexplained cash credits were found, thus, the case law relied upon by the Ld.DR is also distinguishable on the facts of the case. The Ld.DR TANVI relied on the decision of P. MohanaKala (supra), Devi Prasad Vishwanath Prasad (supra) both the cases refer to the sums found credited in the books of account but not offered as income, whereas in the instant case the assessee

admitted the same as sales and offered for taxation, hence, the case laws has no application in the assessee's case. The Ld.DR also relied on the decision in Naresh Kumar Tulshan (supra), the decision was related to the addition u/s 69A representing huge deposit of cash in bank for which the initial source was declared as past profits and subsequently explained as withdrawal from partnership firm without relevant matching entries in the banks, therefore, the coordinate bench of ITAT held that withdrawal of such huge amount in high denomination was not practicable. The Ld.DR also relied on the decision of J.M.J. Essential Oil Company (supra) in the cited case, the assessee effected large sales in one month of each year continuously for two years and the assessee is eligible for deduction u/s 80IC and the AO observed that the assessee was inflating the sales and claiming the huge deductions. No such cash inflow is involved due to demonetization. Whereas in the assessee's case there were no such deduction or the exempt income and the profits were also not abnormal. The assessee explained the reason for huge sales with evidence and thus the case law relied up on by the DR is distinguishable. The Ld.DR relied on various case laws and all the case laws more or less are related to the additions made u/s 68 as unexplained cash credit and in none of the cases the assessee have admitted the same as income. Therefore, we find that the case laws relied up on by the Ld.DR has no application in the instant case and the same are distinguishable.

9. 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 Ld. CIT(A) and the same is upheld. 10. The assessee filed cross objections supporting the order of the Ld. CIT(A). Since, the appeal of the revenue is dismissed, the cross objection filed by the assessee becomes infructuous, hence, dismissed."

11. From the above, it can be held that as per data the assessee had sufficient stock which is being sold in cash regularly and the stock available and the sales in cash during the year has not been in dispute. All the cash sales have duly been reflected in the regular books of account. The cash sales do not show any abnormal trend when compared month-wise cash sales during the period of three years. The allegations of higher cash sales is neutralized by the same level of cash sales in the month of April, May, August and it is a fact on record that the VAT returns have been filed even before the date of search. It is not in dispute that the AO has accepted the

stock as per books of account while arriving the undisclosed stock and applied same GP as declared by the assessee while calculating the profit element on the sales which have already been part of the books of account. No defects have been identified in the books of accounts and no rationale has been given by the AO.

12. Therefore, keeping in view the entire facts and circumstances in this case. We hold that the Ld.CIT(A) gave a finding rightly that the assessee company had been making regular cash sales in preceding as well as succeeding assessment years. Furthermore, the assessee company is also depositing all these cash sales in its regular bank accounts.

13. In the result, the order of the Ld.CIT(Appeals) is affirmed on this issue and the grounds 1 to 5 raised by the Revenue are dismissed.

14. Coming to ground nos. 6 & 7 i.e. in respect of unaccounted cash sales. The AO made addition of Rs.1.19 crores on the basis of seized material. The AO treated the amounts mentioned in the seized material as unaccounted sales. The Ld.CIT(A) duly considered the remand report and determined gross profit at 8.51% on the unaccounted sales. The ratio of the Ld.CIT(A) was that when the assessee sold goods/jewellery which is unaccounted there must

have been unaccounted purchases also. Hence, the profit derived by the assessee on the transaction is only to be taxed. We find the ratio of the Ld.CIT(A) is acceptable as no sales can be affected without corresponding purchases. Thus, we decline to interfere with the order of the Ld.CIT(A) on this issue and reject ground no.6 & 7 of the Revenue.

15. Coming to ground no. 8 of the grounds of appeal of the Revenue which is in respect of unsecured loans of Rs.11,08,000/- taken from M/s Annie Apparels Pvt. Ltd. We observe that the AO made addition owing to non-compliance of the assessee on this issue. The Ld.CIT(A) has called for a remand report from the AO and found that the loan has been duly repaid on 01.07.2018. Since the amounts have been repaid and even in the remand report no adverse finding has been given by the AO and since no other contention has been brought to our notice, we decline to interfere with the order of the Ld.CIT(A) on this issue and the grounds raised by the Revenue on this issue is rejected.

16. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 25/10/2024

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 25/10/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi