

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

**Before: Shri T.R.Senthil Kumar, Judicial Member  
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 194/Ahd/2023  
Assessment Year 2017-18**

The ACIT, Circle-2(1)(1), Ahmedabad  (Appellant)	Vs	Shri Mahendrakumar Laljibhai Patel, 13, Amiganga Complex, Rohit Mill Circles Kokhra, Ahmedabad – 380026  PAN: <b>ABR PP 5735 B</b> (Respondent)
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**Assessee by: Shri S.N. Soparkar, Sr. A.R. &  
Shri Parin Shah, A.R.**  
**Revenue by: Shri Sudhendu Das, CIT-D.R.**

Date of hearing : 27-08-2024  
Date of pronouncement : 06-11-2024

**आदेश/ORDER**

**PER : TR SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue as against the appellate order dated 15-02-2023 passed by the Commissioner of Income Tax [Appeals], National Faceless Appeal Centre, Delhi, arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 [hereinafter referred as 'the Act'] relating to assessment year 2017-18.

2. The brief facts of the case, the assessee is an individual and engaged in the business of trading gold, diamond, silver ornaments. For the assessment year 2017-18 the assessee filed his Return of Income on 30-10-2017 declaring total income of Rs. 25,42,750/-. The return was taken for scrutiny assessment and the Assessing Officer found the assessee made cash deposit of Rs. 2,17,41,000/- in his bank account with demonetization currency with denomination of Rs.1000 and Rs.500. The assessee explained that the source of deposits were cash sales made by him during the demonetization period. The assessee produced purchase and sales register, stock register, copies of sales and purchase invoices, details of the parties to whom sales were made and also demonstrated that the sales of ornaments were from the stocks in hands only.

2.2. The Ld AO verified the submissions of the assessee and called for month-wise cash position and made comparison of sales during the demonetization period with that of the rest of the financial year. Thus, the AO held that the assessee made higher cash sales during the evening of announcement of demonetization period and the assessee has shown bogus sales to convert his unaccounted cash at hand as cash sales made. Accordingly, the ld. A.O. treated the cash deposit during demonetization period as unaccounted credit u/s. 68 of the Act and added the sum of Rs. 2,17,41,000/- as income of the assessee and also taxed u/s. 115BBE of the Act and demanded tax thereon.

3. Aggrieved against the assessment order, the assessee filed appeal before the Id. CIT(A), who after considered the entire facts on record and held comparing with the average stock maintained by the assessee throughout year with that of the cash deposits or relating to the sales made by the assessee. Since the cash deposits are relating to the sales turnover, the question of invocation of section 68 does not arise and thereby deleted the addition made by the Assessing Officer by observing as follows:

“... 7.4. During the proceedings the appellant submitted to purchase register sales register stock register, copies of sale and purchase invoices. Names of parties to Whom sales were made. The appellant also demonstrated that had maintained average stock around 24,000 grams to 25,000 grams throughout the whole year. During the demonetisation period also the stock in hands of appellant was in this range only. Thus, it is evident that the appellant is not artificially increasing stock by showing purchases and then selling.

7.5 In view of the submission made by the appellant it is evident that sales made on the evening of announcement of demonetization was from said stock in hand and ought to have been concluded as genuine cash sales Further the learned Assessing Officer had not provided any adverse finding made on stock as well as Purchase by the Learned Assessing Officer in his Aor.

7.6 Provision of section 68 is reproduced here under

‘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.

In order to invoke section 68, the most essential aspect is that the tax payer does not offer any explanation towards source and nature of such cash credit. In the underline case the appellant has very well explained the

source of Sales proceed from the business. Further the learned AO had also not objected on the stock register, sale register and purchase register of the appellant.

7.7. In this regard it is also worth noting that the actual quantity of stock maintained by appellant was not fluctuating abnormally. The movement of stock is directly linked to the purchase and the sales. In absence of any such adverse finding of learned Assessing Officer, the cash deposited shall not be treated as unexplained cash credit.

7.8 In this regard, reliance can be placed on following judicial pronouncements **ACIT VS Hirapanna Jewellers** [ITA No.253/Viz/2020]-Vishakhapatnam:

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..."

Further in case of 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."

In case of **CIT VS KAILASH JEWELLERY HOUSE**, Hon'ble Delhi High Court [in ITA 613/2010] upheld the findings of CIT(A) and ITAT, that once the amount was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return, the same

could not be treated as undisclosed income and no addition could be made once again in respect of the same.

7.9. Having regards to judicial pronouncements of honourable courts and facts of the appellant case, I am of the considerate view that the cash deposited once treated as turnover, the same shall not be considered as unexplained cash credit. It would lead to unjustified addition to the appellant's case. Therefore, the addition proposed by learned NEAC for sum of Rs. 2,17,41,000/- u/s 68 (i.e. unexplained cash credit) is deleted.

8. Accordingly, the grounds number 1 to ground no 9 of the appeal of the Appellant for AY 2017-18 are allowed. "

4. Aggrieved against the appellate order, the Revenue is in appeal before us raising the following Grounds of Appeal:-

*"1. "Whether on facts and circumstances and in law, the Ld. CIT(A) has erred in deleting undisclosed income in the form of unaccounted cash amounting to Rs.2,17,41,000/-."*

*2. "Whether on facts and circumstances and in law, the Ld. CIT(A) has erred in observing that the AO has accepted the cash deposits from manipulated cash sales in the total turnover even though the AO has treated this inflated/manipulated cash sales of Rs.2,17,41,000/- as closing stock of the assessee and increased the stock to that extent."*

*3. "The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary".*

*4. "It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored"."*

4.1. In support of the Grounds raised by the Revenue, the Ld. CIT DR Shri Sudhendu Das appearing for the revenue requested to confirm the addition made by the Assessing Officer and allow the appeal.

5. Per contra ld. Senior Counsel Shri S.N. Soparkar appearing for the assessee submitted a detailed paper book consisting of sales register, stock summary details of cash deposits and also quantity records of diamonds, platinum, precious stones and 18, 22 carat gold maintained by the assessee. The ld. Sr. Counsel further submitted that the assessee furnished the sales register to the AO and also submitted assessee's VAT return for the financial year 2016-17 and there is no mismatch in the data submitted to the VAT authority. Further, the cash deposits report filed before the Ld AO also carry the address of the customers. The assessee also produced the stock register as on 7<sup>th</sup> to 9<sup>th</sup> November 2016 of 18 carat, 22 carat gold, diamonds, platinum, imitation jewellery, silver ornaments and precious stones. Thus, the AO has not found any shortage of physical stock with that of the sales made by the assessee. Thus, full verification of the Stocks versus Sales, and thereafter the ld. CIT(A) concluded the cash sales as genuine and thereby deleted the addition made u/s. 68 of the Act. Thus, findings arrived by the ld. CIT(A) does not require any interference and the Revenue's appeal is liable to be dismissed.

6. We have heard the rival submissions as well as paper books and case law compilation filed by the assessee. The addition was made by the Ld AO on the basis that after demonetization, demonetized currencies could not have been accepted as valid legal tender. However, the sale proceeds from which demonetization cash was received from various customers were already admitted as income of the assessee and duly recorded its books of accounts. Thus, the Assessing Officer's attempt to invoke section 68 of the

Act, amounts to double taxation of the same transaction, which is against the Principle of Taxation. Since the addition is made on account of sales of gold, silver, diamond ornaments, therefore invocation of provisions of section 115BBE of the Act will also have no application, since the cash deposits are out of sales of ornaments and income from business having been already taxed. Therefore, the impugned addition made by the Assessing Officer is liable to be deleted. Thus, there is no reason to treat the cash deposit as income from undisclosed source.

6.1. The above view of ours are supported by the Co-ordinate Bench of this Tribunal in the case of ACIT vs. Hirapanna Jewellers reported (2021) 128 taxman.com 291 (Visakhapatnam Trib.) wherein it was held as follows:

“9. We have carefully considered the rival submissions. Both the AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. **Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation.** It is also on record that the assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of Associated Transport (P.) Ltd. (supra) on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon'ble Vishakapatnam Tribunal in the case of Hirapanna Jewellers (supra) on identical facts held that when cash receipts represent

the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee 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. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted.”

6.2. The Co-ordinate Bench of this Tribunal in the case of ITO -Vs- Rakesh Kumar Chhanalal in ITA No.2159/Ahd/2016 dated 21-04-2023 held as follows:-

“17. As for the cash deposits not accepted as explained by the AO, his contention we find is that the invoices of the sales made in Jalgaon produced by the assessee did not corroborate the explanation of the assessee that the sales were made outside the Gujarat, since the invoices to the extent of Rs.9.73 crores were raised for clients in Gujarat. We agree with the Id.CIT(A) that this argument merits no consideration.

The case of the Revenue is that the cash deposit of Rs.9.73 Crs in Jalgaon bank account, which apparently does not conform to the assessee's explanation of being cash sales outside Gujarat, is unaccounted income of the assessee. But the fact of the matter is that all cash deposit in Jalgaon bank account was already accounted for as income by the assessee by way of sales in its Books of accounts and the sales and purchases made by the assessee was shown to tally quantitatively to the Revenue authorities. The AO found no infirmity in the quantitative tally.

In the light of the same, **with all the cash deposits in the Jalgaon Bank account of the assessee admittedly treated as sales by the assessee and the sales and purchases found to tally quantitatively also, there cannot be any case for treating any portion of the cash deposits as unexplained income of the assessee.**

18. In view of the above, we uphold the order of the Id.CIT(A) deleting the entire addition of Rs.86.75 crores made under

section 69A of the Act and grounds of the appeal raised by the Revenue are dismissed.

19. In the result, appeal of the Revenue is dismissed.”

6.3. Similarly, the Co-ordinate Bench of this Tribunal in the case of ACIT vs. Zinzuwadia & Sons IT(SS)A no. 50/Ahd/2021 dated 10-05-2024 observed as under :

“20. Taking up first the anomaly noted by the AO that it was not possible to make sales to 223 customers in short span of 240 minutes on 08/11/16, the CIT(A) has dealt with the same at para 6.11 of his order as under:

“6.11. On perusal of assessment order, it is observed that AO has proceeded to make addition of treating accounted sales in books of account as bogus sales through backdating on assumption that it was not possible to make such sale of huge jewellery post announcement of demonetization In the present case, sales on 08/11/2016 was claimed to have been made for Rs 3.58 crore out of aggregate addition of Rs 7.88 crore. The following is the few video and news items available in public domain justifying that post declaration of demonetization till the midnight of 8th November, 2016, there were huge rush of people to buy the jewellery all over the India.

Sr. No.	Headline of News/video	Link of Youtube Video
1	People rush to goldsmiths in Jalandhar to convert black currency into gold at midnight	<a href="https://www.youtube.com/watch?v=mep1rEP1rE NTuKiW">https://www.youtube.com/watch?v=mep1rEP1rE NTuKiW</a>
2	People rush to buy gold jewellery after 500 & 1000 notes banned	<a href="https://www.youtube.com/watch?v=bLfxEyWXV U">https://www.youtube.com/watch?v=bLfxEyWXV U</a>
3	People take note of change rush to ATMS and jewellery shops Daijiworld Television	<a href="https://www.youtube.com/watch?v=A 97EQ8RO-YO">https://www.youtube.com/watch?v=A 97EQ8RO-YO</a>

The AO has observed that it was impossible to cater such huge customers in very short time, appellant has provided its modus operandi of doing sales on a particular day, how accounting was made etc. The reasons provided by appellant from the perspective of a prudent and pragmatic businessman as well as based on the advanced billing technology adopted by appellant, that due to unprecedented rush of customers post-demonetization the appellant realized a huge business opportunity and decided to keep showroom open till 12 o'clock of the night on 8th November 2016 **The appellant realized that it would not be possible to cater such huge crowd of customers if the option of selection of ornaments of their choice is provided and such option of selection could also increase the risk of theft/defalcations of Gold Ornaments from showroom and therefore the appellant decided not to give option of selection of jewellery but to give readily prepared packet of Gold Ornaments only, that the administrative staff and family members were instructed to keep aside all other work and to prepare such small package of gold ornaments, two persons were exclusively allotted the work of preparing and handling the bills to the customers through the computerized billing process, due to barcode labels on each and every jewellery/ ornaments of showroom with all the requisite details of jewellery for preparing bills mere scanning the barcode through barcode reader would fetch all the details of the jewellery on the ORNET Software for billing purpose and there is no need to enter the details of the jewellery and therefore billing process was quick and easy The circumstantial evidences as referred supra and billing processes adopted to cater huge rush, AO's contention that it was not possible to make sale to 223 customers cannot be accepted.**

21. As is evident from a bare perusal of the above AO found the assessee's explanation plausible of having managed its affairs in such a manner so as to grab the opportunity of huge rush of public to jewellers on account of demonetization announced by the Government which was acknowledged by reports in the public domain. No infirmity in the explanation of the assessee has been pointed out to us during the course of hearing, neither do we find any in the same. **Therefore we find no infirmity in the order of the Ld. CIT(A) accepting the assessee's explanation with regard to allegedly unusually large**

**number of customers catered to by the assessee on one single day."**

6.4 Respectfully following the above judicial precedents, we have no hesitation in confirming the order passed by the ld. CIT(A) and delete the addition made u/s. 68 of the Act. Thus, the grounds of appeal raised by the Revenue are devoid of merits and liable to be dismissed.

7. In the result, **the appeal filed by the Revenue is hereby dismissed.**

Order pronounced in the open court on 06-11-2024

**Sd/-**

**(NARENDRA PRASAD SINHA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad**  
**Dated 06/11/2024**

**Sd/-**

**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद