

**आयकर अपीलिय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**Before Shri Manjunatha, G. Accountant Member**  
**and**  
**Shri K. Narasimha Chary, Judicial Member**

आ.अपी.सं / **ITA No.100/Hyd/2021**  
(निर्धारण वर्ष / Assessment Year: 2017-18)

ACIT Central Circle-1(1) Hyderabad	Vs.	Anand's Gold Private Limited Hyderabad [PAN : AABCU0225F]
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Shashank Dundu, AR	
राजस्व द्वारा / Revenue by::	Shri Shiva Sewak, CIT, DR	
सुनवाई की तारीख / Date of hearing:	29/10/2024	
घोषणा की तारीख / Pronouncement:	13/11/2024	

**आदेश / ORDER**

**PER. MANJUNATHA G., A.M:**

This appeal filed by the Revenue is directed against the order dated 11/11/2020 of the learned Commissioner of Income Tax (Appeals) [Learned CIT(A)] relating to A.Y.2017-18.

2. Brief facts of the case are that the assessee company is engaged in the business of trading in bullion and gold jewellery and other precious metals. The assessee has filed return of income for the A.Y.2017-18 on 31/10/2017, declaring total income of Rs.1,54,546/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing

Officer noticed that the assessee has made cash deposit of Rs.16.24 crores in the bank account held with State Bank of India during the demonetization period. The Assessing Officer further observed from the bank statement of the assessee that there is abnormal variation in cash deposited during the demonetization period and before the demonetization period and therefore, called upon the assessee to file necessary evidence including details of purchases, sales, cash deposited into bank account etc. In response, the assessee has submitted books of accounts along with comparative purchases, cash sales, and cash deposits into bank account for two financial years and more particularly during the demonetization period and also corresponding period in earlier financial year. The Assessing Officer, from the details filed by the assessee observed that the assessee has made negligible cash sales upto 31/10/2016 and suddenly cash sales has been increased substantially from 01/11/2016 to 08/11/2016. The Assessing Officer further noticed that the assessee has maintained closing cash in hand upto date of demonetization period which was in few lakhs, whereas from 01/11/2016 to 08/11/2016 maintained huge cash in hand of Rs.16.7 crores. Therefore, taking note of abnormal deviation in cash sales during the demonetization period when compared to earlier period and also cash in hand maintained for the period prior to demonetization period and during demonetization period observed that the conduct of the assessee in maintaining huge cash balance during demonetization period is against human probability. Further no prudent business man keeps such huge cash going by the past history of the assessee and therefore, by taking note of relevant

details, abnormal deviation in purchases and sales during the demonetization period when compared to period prior to demonetization period, observed that the assessee could not explain the huge increase in cash balance during demonetization period when compared to period prior to demonetization period. The assessing Officer further observed that although cash in hand as on 08/11/2016 is supported by necessary sales, but on perusal of pattern of sales made prior to demonetization period, it is observed that all sales made to the individual parties is below Rs.2,00,000/- and no proper details as to name of the customer, address, mobile number etc. have been maintained by the assessee. Further, the assessee has shown purchases from related parties on credit basis and made payments after 10/11/2016 through RTGS. Therefore, observed that the tendency to keep huge cash balance during demonetization period when compared to earlier period is against human probability and therefore, by following the decisions of Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad More (1971) 82 ITR 540 (SC) and Sumati Dayal Vs. CIT (1995) 214 ITR 801(SC) held that the assessee could not explain the source for cash deposit into bank account during the demonetization period amounting to Rs.16.24 crores and thus, by taking note of the fact that the assessee has declared Rs.50,00,000/- under the PMGKY, the balance amount of Rs.15.74 crores cash deposited into bank account has been treated as unexplained cash credit u/s 68 of the Income tax Act, 1961 ("the Act").

3. Aggrieved by the assessment order, assessee preferred appeal before the CIT(A). Before the learned CIT(A), assessee has filed detailed written submissions on the issue, which has been extracted in para 4.2 from pages 13 to 15 of the learned CIT(A) order. The sum and substance of the arguments of the assessee before the learned CIT(A) is that cash deposited into bank account during the demonetization period is explained out of cash in hand as on 03/11/2016, which is further supported by cash sales made before the date of demonetization. The assessee further submitted that the Assessing Officer compared the closing cash in hand maintained during the demonetization period and before demonetization period to draw an adverse inference against cash sales declared by the assessee, which is supported by valid sales bills and stock-in-trade maintained by the assessee. Further the adverse inference drawn by the Assessing Officer is purely suspicious and surmises without there being any evidence to allege that the sales declared by the assessee is not supported by any evidence and further ignoring the fact that there cannot be any uniform sales throughout the year and it depends purely on various factors including festival seasons etc. The assessee further submitted that there is no hard and fast rule for applying the decision of Hon'ble Supreme Court in the cases of CIT Vs. Durga Prasad More and Sumati Dayal Vs. CIT (supra) and it needs to be applied to the facts that are identical to the facts considered by the Hon'ble Supreme Court. Therefore, submitted that the additions made by the Assessing Officer towards cash deposited into bank account during the demonetization period should be deleted.

4. Learned CIT(A) after considering the submissions of the assessee and also taking note of enquiry conducted by the Investigation Wing in respect of cash deposited during demonetization period observed that, the Assessing Officer erred in comparing cash in hand maintained by the assessee during the demonetization period and before demonetization period, even though he could not point out any discrepancy either in sales declared by the assessee and the books of accounts maintained for the relevant period. Learned CIT(A) further observed that from the details filed by the assessee to explain the cash deposit during the demonetization period, it appears that there is no abnormal deviation in cash sales during the demonetization period as compared to corresponding period in earlier financial year. The assessee has also explained the reasons for the sudden increase in sales during October and November every year. The Assessing Officer has not disputed the purchases, stock-in-trade nor there is any adverse inference as to sales also. The only ground on which the Assessing Officer disputed the sales executed by the assessee and cash in hand during 08/11/2016 is application of theory of human probability, although the theory of human probability cannot be universally applicable to all cases. Therefore, observed that the Assessing Officer without bringing on any evidence contrary to appellant's claim nor conducting any enquiry to disprove the explanation with regard to cash deposited into bank account treated as unexplained purely on the basis of human probability. Therefore, directed the AO to delete the additions made amounting to Rs.15.74 cores u/s 68 of the Act.

5. Aggrieved by the learned CIT(A) order, Revenue is in appeal before the Tribunal.

6. Learned CIT-DR submitted that the learned CIT(A) erred in deleting the additions made towards cash deposited during demonetization period without appreciating the fact the assessee has made cash deposit of Rs.2.22 crores prior to demonetization period, but however made cash deposit of Rs.16.24 crores during the demonetization period. Learned CIT-DR further submitted that the assessee was maintaining minimum cash balance prior to demonetization period, whereas cash balance during the demonetization period was more than 16.5 crores. Further, from the analysis made by the Assessing Officer with regard to cash sales and cash deposit during the demonetization period and the corresponding period of earlier year, there are clear anomalies with regard to cash sales and cash deposited which is against not only human probability, but also shows an attempt of the assessee to explain cash deposited during the demonetization period. The Assessing Officer had also brought out clear facts to the effect that there was a uniform pattern in cash sales, which is almost below Rs.2,00,000/- in all cases, which is against the theory of human probability. Further, the assessee has not maintained relevant details of names and addresses of the customers, their phone number and PAN. The Assessing Officer, after considering relevant facts and also by following the decisions of Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT and CIT Vs. Durga Prasad More (supra), held that even sales can be considered as unexplained cash credit under section 68 of the

Act, if the assessee does not explain the credits with necessary evidence. Learned DR further referring to report of investigation carried out by the DDIT (Investigation) Wing-2, Hyderabad submitted that the report has brought out clear fact to the effect that the sales and purchases reported by the assessee is not genuine and therefore passed on the information to the Assessing Officer for taking necessary action as per the provisions of the Act. Learned CIT(A) without appreciating the facts simply accepted the explanation of the assessee and deleted the addition made by the Assessing Officer towards cash deposits. Therefore, he submitted that the addition made by the Assessing Officer should be upheld. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT and CIT Vs. Durga Prasad More (supra). Learned DR also relied upon the decision of ITAT Hyderabad in the case of Vaishnavi Bullion Private Limited 2022(12) TMI 1309.

7. Learned Counsel for the assessee on the other hand supporting the order of the learned CIT(A) submitted that the sole basis for the Assessing Officer to disbelieve the sales declared by the assessee is on the basis of cash balance maintained by the assessee before the date of demonetization, during the demonetization and after demonetization period, but the fact remains that sales declared by the assessee cannot be doubted on the basis of cash in hand held by the assessee. Learned counsel for the assessee further submitted that the Assessing Officer conveniently ignored comparative analysis of total sales, cash sales, credit sales of last two years and

subsequent one year to demonetization period and if we go by the reports submitted by the assessee, there is no abnormal variation in total sales, cash sales and credit sales. Further, the assessee also explained the reasons for the increase in cash sales during October and November 2016 when compared to earlier months and explained that during festival season, sales of jewellery is always increased when compared to other periods. Further, the assessee had also explained sales declared during demonetization period with relevant sales bills, which is further supported by stock-in-trade held by the assessee. Although the Assessing Officer doubted the purchases made during the financial year and has drawn adverse inference only on the basis of purchases from related parties. But the assessee has filed all the details including the name and address of the person from whom purchases were made and also filed relevant evidence to prove the payments against purchases through banking channel. The assessee had also explained reasons for not obtaining phone number and PAN of the customers and submitted that in case of sales is less than Rs.2 lakhs, there is no requirement of obtaining PAN of the buyer as per Rule 114B of IT Rules, 1962. Learned CIT(A) after considering the relevant facts had rightly deleted the additions made by the Assessing Officer, and therefore the order of the learned CIT(A) should be upheld.

8. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. We have also carefully considered relevant case laws cited by both the parties in support of their contentions. The facts borne out

from records show that the assessee has made cash deposit of Rs.16.24 crores into bank account held with State Bank of India during the demonetization period. The assessee has explained sources for cash deposit out of sales declared prior to the date of demonetization. In fact, the Assessing Officer never disputed the fact that the cash deposited into bank account during demonetization period is out of cash in hand available as on 08/11/2016 as per cash book maintained by the assessee. However, the sole ground on which the Assessing Officer rejected the explanation of the assessee with regard to cash deposit is analysis of cash in hand maintained by the assessee during the demonetization period when compared to corresponding period of previous year and subsequent year. In other words, the Assessing Officer did not make out any case of incorrectness in books of accounts maintained by the assessee or sales declared for the relevant period. Therefore, the issue of additions towards cash deposited into bank account during demonetization period u/s 68 of the Income Tax Act, 1961 needs to be examined in light of explanation of the assessee and the theory of human probability brought out by the Assessing Officer to disbelieve the sales declared by the assessee.

9. There is no dispute with regard to the fact that there is no abnormal variation in total sales, cash sales, credit sales and also cash deposited into bank account for the financial year 2016-17 when compared to financial year 2014-15 and 2015-16. Assessee has filed a comparative statement of purchase, sales, cash sales and cash deposited into bank account for four financial years including the financial year 2016-17 and from

the details filed by the assessee, we find that there is uniform pattern of cash sales, credit sales and total sales. In fact, the cash sales during the financial year 2016-17 is less when compared to cash sales during the financial year 2014-15 and 2015-16. Therefore, going by the analysis of purchase and sales, there is no abnormality in sales declared by the assessee during the demonetization period. From the above, it is undisputedly clear that the Assessing Officer has conveniently ignored the supporting evidences filed by the assessee to justify the cash sales made during the period October 2016 and upto 08/11/2016, because, if we go by the analysis of purchase and sales, there is no reason for doubting the sales declared by the assessee during the period of October and November, 2016. Further, the Assessing Officer has not made out any case of discrepancy in the books of accounts maintained by the assessee nor made out a case for any incorrectness in purchase, sales declared during relevant period. In fact, purchases are supported by necessary purchase bills and sales declared by the assessee including cash sales are supported by sale bills. Although the Assessing Officer made observation with regard to uniform cash sales, in our considered view, only on the basis of uniform pattern of sales, it cannot be held that the sales declared by the assessee is not genuine. Further in so far as the non-maintenance of phone number and PAN of the buyers, in our considered view, as per Rule 114B of IT Rules, 1962 there is no mandatory requirement of PAN of the buyers in case sales to single customer does not exceed Rs.2 lakhs. Similarly, in respect of KYC compliances, the same is mandatory, in view of amendment to provisions of Money Laundering Act,2002 w.e.f.

04/05/2022 and the same is not applicable for the impugned assessment year. Therefore, in our considered view, the observation of the Assessing Officer on non-maintenance of phone and PAN number of the customer and adverse inference drawn against sales declared by the assessee is devoid of merit and cannot be accepted.

10. We, further noted that in the first available opportunity, the assessee has furnished all relevant details in respect of cash deposited during demonetization period into bank account when the DDIT(Investigation) Wing has carried out enquiries with regard to source for huge cash deposit into bank account. In fact, the appellant has submitted all relevant information including supporting evidence for sales and cash in hand available as on 08/11/2016 to explain the source for cash deposits. From the above, it is undoubtedly clear that the additions made by the Assessing Officer towards cash deposited into bank account u/s 68 of the Act is purely on suspicion and surmises, without there being any contradictory evidence to suggest that the sales declared by the assessee is not genuine. It is not the case of the Assessing Officer that the cash sales made prior to 08/11/2016 were not recorded in the books of accounts. It is also admitted fact that the assessee has filed VAT returns and declared sales to VAT authorities. Closing stock of the year is carried forward as opening stock of the next year and even in the subsequent year, scrutiny assessment was made by accepting the opening stock which shows that the sales made in the year under consideration and income earned thereon was never disputed. Although the Assessing Officer doubted

purchases made from related parties, the fact remains that there is no evidence with the Assessing Officer to allege that said purchases are not genuine. Therefore, in our considered view, merely for the reason of purchase from a related party, genuineness of purchases cannot be doubted in case said purchases are supported by necessary evidence. Further, the assessee has made payment against purchases through proper banking channel. Therefore, in our considered view, the adverse inference drawn by the Assessing Officer is devoid of merit.

11. We note further that the Assessing Officer ignored all evidence filed in support of the claim for cash deposit, which is in favour of the assessee. However, consider only the elements which go against the assessee, which is evident from the discussion of the Assessing Officer in the assessment order to draw adverse inference against the assessee. The Assessing Officer rested his discussion only on the basis of cash in hand maintained by the assessee during demonetization period, prior to demonetization period and post demonetization period. According to the Assessing Officer, the cash balance held by the assessee is against human tendency. In our considered view, theory of human tendency or probability cannot work in a situation which is an exception to the normal conditions / situations. No one was aware as to what was the right step to move. Further huge amounts cannot be sent at a time through any one employee to avoid the risk of employees running away, theft, snatching money from employees etc. Therefore, the adverse inference drawn by the Assessing Officer considering human probability that no prudent person would carry huge

cash in hand is only on suspicion and surmises. Therefore, in our considered view, the Assessing Officer is not justified in giving more weightage to unnecessary factors even though the evidence filed by the assessee clearly shows that the cash deposited in the bank account during demonetization period is out of opening cash in hand available as on 08/11/2016, which is supported by sales declared with supporting evidence.

12. Coming back to various case laws relied upon by both the authorities. The Assessing Officer took support from the decision of Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT and CIT Vs. Durga Prasad More (supra). In our considered view, both the cases are on the theory of human probability and if we go by the facts of both the cases, the argument taken by the assessee before the authorities is contrary to the theory of human probability. Therefore, on the basis of the facts of both the cases, Hon'ble Apex court came to a conclusion that the conduct of the assessee is against human probability and therefore cannot be accepted. In the present, although the Assessing Officer took support from the decisions of these two cases, but facts are entirely different. In fact, the evidence submitted by the assessee in support of sources for cash deposit undoubtedly proves the genuineness of sales declared by the assessee and the cash balance held as on 08/11/2016. Therefore, merely for the reason of carrying excess cash balance during a particular period when compared to other periods, it cannot be held that the argument of the assessee is against the theory of human probability, more particularly, when evidences clearly suggest that the explanation of the

assessee is genuine and supported by necessary evidences. Therefore, in our considered view, reliance placed upon by the learned Assessing Officer on the above cases is misplaced and cannot be accepted. The Assessing Officer had also relied upon the decision in the case of Rekha Kishnaraj Vs. CIT (250 Taxmann 333)(SC) to argue that even sales can be considered as unexplained cash credit. No doubt even unexplained credits on account of supply of goods also can be considered u/s 68 of the Act, if the assessee is unable to satisfy three conditions provided therein. Further, if the explanation of the assessee with regard to sale of goods and revenue generated there from is supported by relevant evidence, then the credits out of sales cannot be treated as unexplained cash credits. In the present case, sales declared by the assessee are fully supported by necessary evidence including purchase bills, sales bills and stock-in-trade held by the assessee. The AO, neither made out a case of sales without purchases or negative stock-in-trade when compared to sales declared by the assessee. In absence of any finding as to genuineness of purchases and negative stock-in-trade, in our considered view, sales declared by the assessee, which are supported by relevant sale bills and stock in trade need to be accepted. Therefore, in our considered view, case laws relied upon by the AO are not applicable. Learned DR relied upon the decision of ITAT Hyderabad in the case of Vaishnavi Bullion Private Limited Vs. ACIT in ITA No.561/Hyd/2020, 58/Hyd/2021, 560/Hyd/2020, 59/Hyd/2021. We find that the facts of the present case are entirely different from the facts considered by the coordinate Bench of ITAT in the case of

Vaishnavi Bullion Private Limited and therefore, the case law relied upon by the Learned LD. DR is not considered.

13. The assessee has relied upon the decision of ITAT Visakhapatnam Bench in the case of ACIT Vs. M/s Hirapanna Jewellers in ITA No.253/Viz/2020 [2021] (28 taxmann.com 291). The coordinate Bench of ITAT dealt with case having similar facts ,wherein, the assessee was also jeweller and deposited cash into bank account during demonetization period. The Bench after considering the relevant facts held as under:

*“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 (Para 9, Pg.17 of the case law)”*

14. In view of this matter and considering the facts and circumstances of the case, we are of the considered view that the Assessing Officer has erred in making addition towards the cash deposited into bank account during demonetization period as unexplained cash credit u/s 68 of the Act. The learned CIT(A)

after considering the relevant facts has rightly deleted the additions made by the Assessing Officer. Therefore, we are inclined to uphold the findings of the learned CIT(A) and dismiss the appeal filed by the Revenue.

15. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 13<sup>th</sup> November, 2024.

<b>Sd/-</b>	<b>Sd/-</b>
<b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>(MANJUNATHA, G.)</b> <b>ACCOUNTANT MEMBER</b>

Hyderabad, dated 13<sup>th</sup> November, 2024

**L.Rama, SPS**

Copy to:

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1	The ACIT, Central Circle-1(1), Hyderabad
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3	Pr. CIT, Central Circle, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*