

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

डॉ. एस.सीतालक्ष्मी, न्यायिकसदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHA LAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 879/JP/2024
निर्धारणवर्ष/Assessment Year :2017-18

Mohan Lal Ashok Kumar Saraf 223, Johri Bazar Jaipur	बनाम Vs.	The DCIT Central Circle-1 Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AACFM 6432 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Ankit Totuka, Advocate
राजस्व की ओरसे / Revenue by: Ms. Alka Gautam, CIT-DR

सुनवाई की तारीख / Date of Hearing : 11/11/2024
उदघोषणा की तारीख / Date of Pronouncement: 28 /11/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM:

By way of present appeal the assessee challenges the finding of the learned Commissioner of Income Tax, Jaipur-4, Jaipur [for short CIT(A)] which was passed on 15-04-2024. The dispute relates to the assessment year 2017-18. That order of Id. CIT(A) came to be passed because the assessee challenged the assessment order dated 31.12.2019 passed as per provisions of section 143(3) of the Act by DCIT, Central Circle-1, Jaipur.

2. The assessee assailed this appeal on the following grounds ;

"1. Because in facts and circumstances of the case the Ld. CIT(A) had grossly erred in confirming the Income Tax demand of Rs. 2,90,92,000/- vide its Order u/s 250 dated 15.04.2024 on account of cash deposited in bank by wrongly invoking section 68 r.w.s 115BBE of the Act. The said order has been passed without considering the documents available on record and without considering the written submissions given by the appellant only on assumption and presumption in an arbitrary manner and thus it is perverse, unsustainable being devoid of any merits and deserves to be set aside on this ground alone.

2. Because the contention of the Ld. CIT (A) that the Appellant had shown inflated cash sales and also made deposits in the bank account which was completely abnormal as compared to the earlier year and also subsequent year is inadmissible and untenable as the same are purely on the basis of assumption and presumption without any cogent evidence. The Ld. CIT (A) has ignored the fact that after hearing the news of demonetization on television channels the jewellery shops were flooded with people for buying jewellery and bullions for dispensing with such SBN's. There was certain euphoria immediately after the announcement as the people having sums of money rushed to the jewellers to buy gold and other precious items. During such period gold worth crores of rupees was sold in few hours across the country and the jewellers have to do their business until midnight. This issue was also widely circulated in print media Similarly, the comparative sales of other products across the country in various business segments also increased during such period. The effect of the same was that the sale had undertaken any marketing action to boost sales. The appellant submits that it had explained to the AO that during the later part of the FY 2015-16 there was significant jump in the sales on account of following reasons-

a. That excise duty was levied for the first time in March 2016 on the jewellery which was widely protested by the Jewellers all across India. The protest went on for more than 6 months and various representations were made by jewellers across India at various forums. Even all associations and forums of jewelers and bullions dealers across India including Rajasthan Sarafa Traders Committee, of which appellant firm is a member, had instructed all the dealers associated with them to shut down their operations for almost 3-4 months, as a mark of protest, which largely affected the business of the appellant firm, for the first half of relevant Previous Year Thereafter, when the protest was called off, the appellant firm tried its level best to increase the sales for the remaining part of the year and changed its business strategy and started focus on rural customers who buys cheaper jewellery in cash only as it results in fast turnaround of inventory.

b. During the festive season of Diwali from 27.10.2016 to 30.10.2016, the appellant had made significant cash sales of Rs. 1,01,47,305/-, Just before the demonetization on 28th day of October, 2016 there was 'Dhanteras' and after that Diwali Festival was there. These are very auspicious day for Hindus, and they prefer to buy gold/silver and other items (depending on their

capacity) which is considered very auspicious. This is also one of the reason for such high sale on that day

c. On 8th November, 2016 demonetization was announced around 8:00 pm IST whereby the old Specified bank Notes (Rs. 500 and 1000 Notes) were discontinued from midnight. Soon after the announcement there was big rush to purchase the jewellery till late night resulting into significant sales on 8 November, 2016.

The authenticity of making the cash deposits out of such cash sales cannot be disregarded and rejected merely on account of variation or deviation of cash sales, cash deposits of earlier year or the ratio of cash sales in the current period with that of an earlier period when the prevailing circumstances and factors were substantially different figures of the demonetization period of the jewellery businesses was significantly higher than that of previous years. In case of Appellant also the sales figures of November, 2016 increased as compared to November, 2015 as that of other jewellers in the country. Demonetization was not a normal event. It was a historic event which had impacted the economy of India 360 degree. The CIT(A) as well as AO has erred in comparing the sales for the demonetization period with that of previous year. The comparison between different period is justifiable when all the factors such as market conditions, government rules and regulations and other factors are constant or remained unchanged. Demonetization which resulted in banning of specified bank notes of Rs. 500 and Rs. 1000 resulted into an exceptional situation and unprecedented move and reaction of the people. Lot of people having liquid currency in hand had opted for converting it into kind by buying jewellery in the absence of any better alternative option available at that point of time as according to them there was no better option than converting the liquid money into jewellery under such situation of uncertainty and chaos. So making an addition on the ground that the cash sales made by the appellant during that period in preceding FY was significantly lower than the case sale made during the year under consideration is not tenable.

3. Because the Ld. CIT (A) has erred in arriving at the conclusion that cash deposited by the appellant during demonetization period is its undisclosed income and in order to evade tax liability the appellant has attempted to disclose it under the garb of cash sales. Such conclusion by the department is purely based on assumption and presumption without producing any evidence in that regard. The department had not neither considered the submissions of the appellant made in that regard nor considered the records such as sales register, purchase register, stock register and other records submitted which substantiates such cash sales and thereby discharging the burden of proof.

4. Because the Ld. CIT(A) has erred in not considered the records and registers of the appellant submitted for the period of demonetization on the ground that since the appellant had not submitted the same for the entire year the department cannot place reliance on such records. The CIT(A) has not considered the fact that the appellant had submitted the records for the specified period and not for the

entire year to avoid appeal becoming voluminous. The appellant had specifically stated in its appeal that the same shall be produced on requisition of the appellate authority. However, the appellate authority instead of issuing direction to the appellant to produce the records for entire year had chosen to disregard its submissions by alleging that the appellant had failed to produce the same deliberately. The Ld. CIT(A) had failed take cognizance of the fact that when the appellant had produced the records for the entire year why would he not present the record for the entire year. The appellant had submitted all the documents and evidences asked for by the department. The contention of the department that the documents were submitted for the period 01.10.2016 to 31.12.2016 only and not for the complete year and not for the entire year is not tenable and inadmissible as the entire addition was pertaining to the cash deposition during the period of demonetization, therefore, the appellant had furnished the documents for that period only. There is no reason why the appellant would not submit the documents for the remaining period if the same would have been asked for by the department. Rather than acting judiciously the appellate authority had chosen to act mechanically.

5. Because the Ld. CIT (A) has erred in confirming the demand upholding the allegation of AO that Appellant has made cash sales below Rs. 2 lakh in every transactions to avoid the application of provision of section 285BA read with rule 114E. The said allegation is without any material on record. There is no prohibition under law to make sale transaction below Rs. 2 lakhs as such the Appellant is at liberty to manage his own affairs. Law nowhere prohibits cash sales. Appellant by selling the goods in cash did not violate any of the provisions of the Income-tax Act, 1961 and Ld. CIT (A) has not mentioned any provisions of the Act/Rules having been violated by the Appellant while undertaking such cash sales. Moreover, cash sales made by the Appellant were duly supported by valid Invoices. From the action of the Appellant in raising the sales bill below Rs. 2 lakhs the Ld. CIT (A) cannot interpret as the sale are bogus only to give colour to non-genuine transaction as genuine transaction when all the transactions have been substantiated with purchase and sale register as well as stock register.

6. Because the L.d. CIT(A) has not accepted the contention of the appellant that it had changed its sales strategy in the later part of the FY 2015-16 whereby the appellant had also started focusing on rural customer who prefer to purchase jewellery in cash on the ground that the appellant had not produced any evidence regarding the marketing actions taken in that regard. The appellant submits that it had nowhere claimed it.

7. Because the Ld. CIT(A) has not considered the submission made by the appellant that the AO had wrongly rejected the books of accounts on the ground that the total turnover of the appellant had increased by more than twice as compared to the previous year and majority of the turnover is from cash sales during the year that too during the period of demonetization. This ground for rejection of books of accounts is prima facie incorrect, against the statutory provisions and settled legal position and is thus not legally sustainable when the

appellant has made available sales register, purchase register, stock register, bank book and cash book for the period 01.0.2016 to 31.12.2016, audited balances sheet and profit and loss account, balance confirmation of unsecured loans, vat returns and is willing to produce the said documents/records for the entire year if asked for. There is no justifiable reason for rejection of books of accounts merely on assumption and presumption without pointing out any discrepancy in the records so produced by just citing that turnover has doubled and cash sales has increased significantly when there is justifiable ground for such increase as mentioned in the aforesaid paras on account of demonetization and festival of Diwali. The L.d. AO before rejecting the books of accounts of the appellant should have pointed out discrepancy if any existed in the books of accounts and stock records maintained by the appellant.

8. Because the Ld CIT(A) has erred in upholding the order of the AO confirming the demand under section 68 of the Income Tax Act, 1961 read with Section 115BBE of the Act as the provisions of section 68 are only attracted where any sum is found credited in the books of a person maintained for any previous year, and the said person 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 and provisions of section 115BBE can be subjected to only when section 68 is attracted. In the case of the appellant there is no unexplained cash credit in the form of unsecured loan, share capital or share application money which has been recorded in the books and source of which remained unexplained. The basic genesis of invoking provisions of section 68 is to catch-hold of unexplained cash credit which has been recorded in the books of accounts and has not been offered for tax. In other words if there is any entry of unsecured loan, share capital or share application money recorded in the books of accounts and the assessee fails to offer explanation of the source of such entry then the provisions of section 68 are invocable. As already explained, in the case of the appellant there is no such amount and thus the provisions of section 68 are wrongly invoked. On the contrary the department has raised the demand on the amount of cash sales which the appellant had suo-moto recorded in the books of accounts in its trading profit and loss account and income from which has already been offered for tax purpose. The appellant had repeatedly submitted and explained in its various replies along with data and documents submitted that the cash deposited during the period of demonetization in its bank account is on account of receipts from cash sale made during the period 01.04.2016 to 08.11.2016 and that the same already stands accounted in the books of accounts of the appellant and has already been considered while calculating the total income of the appellant, then there is no reason for invoking the provisions of section 68. The appellant had submitted the copy of stock register, sale and purchase register, cash and bank book, audited balance sheet, vat return and various other documents which proves that all the cash sale executed by it are genuine then merely because of the suspicion, assumption and presumption of the Ld. AO the provisions of section 68 cannot be invoked unless the AO proves his allegation by some tangible corroborative contrary evidence to prove that the appellant in the garb of such cash sale has evaded his tax liability on his

unexplained cash deposit. As the Ld.AO has neither been able to prove the source of cash deposited in the bank account if the same has not been received from cash sales as claimed by Ld. AO nor been able to show any discrepancy in the records submitted by the appellant and therefore, allegation that the appellant had deposited its undisclosed income in the bank account during demonetization in order to evade tax liability is untenable and baseless as making cash sales and depositing it in bank account is a normal feature considering the nature of appellant's business.

9. Because Ld. CIT(A) has erred in confirming the demand of tax at the rate of 60% instead of 30% as the amendment in section 115BBE by the Taxation Laws (Second Amendment) Act, 2016 under which income tax on an income determined by Assessing Officer under section 68, section 69, Section 69A, section 69B, section 69C and section 69D was made taxable 60% was made w.e.f 01.04.2017 after receiving the assent of president on 15.12.2016. The appellant submits that rate of 60% has been wrongly applied in his case by the department as such amendment was made on 15.12.2016 whereas in case of appellant the amount of cash on which the demand has been confirmed under this section was deposited on 15.11.2016 and 21.11.2016 before the said amendment was made. Therefore, the demand has been wrongly calculated 60% instead of normal rate of 30% resulting in creation of such exorbitant demand which even otherwise is not sustainable on merits.

10. That in the light of aforesaid submissions the action of Ld. CIT (A) is illegal, unjustified, arbitrary, and perverse and the impugned order deserves to be set aside and the demand/recovery / penalty proceedings if any initiated against the appellant deserves to be dropped.

11. The appellants crave leave to add, amend, alter or delete any one or all the above grounds/ submissions/documents on or before the date of hearing and it is further requested that the appellants may be accorded an opportunity of hearing.”

2.1 Apropos Ground No. 1 to 10 of the assessee, the facts as emerges from the order of the Id.CIT(A) and that of the assessment order are not in dispute and therefore, we do not intend to repeat those facts. While partly allowing the appeal of the assessee Id. CIT(A) vide para 4.2 onwards held as under:-

“4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order

for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The learned AO has noted that the appellant had deposited a total of Rs. 3,15,92,000/- in cash during the demonetization period, specifically between November 9, 2016, and December 30, 2016. Additionally, it was noted that a portion of this cash deposit was made in Specified Bank Notes (SBNs). The appellant's claim regarding the amount of cash deposited during the demonetization period as Rs. 3,13,82,000 is deemed incorrect. The accurate figure, as per their Income Tax Return (ITR), is Rs. 3,15,92,000/- The appellant's cash deposits during the demonetization period were found to be significantly higher compared to the same period in the previous year While they deposited only Rs. 40,00,000/- from November 9, 2015, to December 31, 2015, during the demonetization period, they deposited Rs. 3,15,92,000/-. In FY 2016-17, the appellant deposited Rs. 4,19,97,000/- in cash, of which Rs. 3,15,92,000/- was during demonetization. They claimed it was from cash sales, but this was deemed unreasonable. After detailed analysis of the facts and law, the Id. AO held that cash deposited during the demonetization period is nothing but undisclosed income of the assessee which was deposited in his bank account during demonetization and in order to evade the tax liability on this unexplained cash deposit the assessee has tried to explain it under the garb of cash sales and that the cash deposited during demonetization amounting to Rs. 3,15,92,000 was added to the total income of the assessee under section 68 r.w.s. 115BBE of the Act.

The appellant has challenged the addition in the appeal. The appellant has inter-alia submitted that the cash sale from the stock available with the appellant and during the year the appellant adopted new strategy during the month of October 2016 which resulted into high sales for them and further that high sale was made by the appellant after the announcement of the demonetisation during the last few hours of 08-11- 2016. And the appellant has made submissions in order to justify the genuineness of the cash deposited in the bank. The appellant has also submitted that "during the period 01.04.2016 to 07.11.2016 it had made the total cash sales of Rs. 2.17 crores out of which cash sale of Rs. 1.01 crore were made during the period of 27.10.2016 to 30.10.2016 and thereafter, on 08.11.2016 total cash sales of Rs. 2.31 crore was made. The appellant had deposited cash in its bank account of Rs. 76. 10 lacs during the period 01.04.2016 to 26.10.2016, Rs. 14.50 lacs from 27 10.2016 to 07 11.2016 and Rs. 3.15 crores during the period 08.11.2016 to 31.12.2016 The appellant submitted during the assessment proceedings that "The assessee Firm caters to large number of rural customers and jewelers from Jaipur who want to purchase bullion In addition on account of large base of rural customers, bulk of sale is made in cash" and also submitted during assessment proceedings that "The assessee Firm changed its business strategy and started focus on rural customer, who buys in cash only On account of new strategy, the assessee Firm, during the festive season of Diwali from 27 10.2016 to 30-10-2016, had made significant cash sales of Rs. 1,01,47,305 The appellant had also submitted that "Assessee Firm had also made cash sales of

Rs. 2,31,12,813/- on 8th November, 2016 ie on the date of demonetization announced. The demonetization was announced around 8:00 pm 1ST Thereafter, there was big rush to purchase the jewellery till late night resulting into significant sales on 8th November, 2016. The appellant also submitted during assessment proceedings that "It is submitted that in case of cash sales, all sales are less than Rs. 2 lacs. In case of cash sales less than Rs 2 lacs, there is no requirement to keep details of buyer. It is relevant to note here that in case of sales in cash exceeding Rs 2 lacs, provision of section 285BA read with rule 114E requires details of cash sales to be reported in Form No. 61A"

The Id. AO concluded in the assessment order that "1. Despite repeated opportunities the assessee has not submitted stock register, sales register, purchase register, and cash book of complete year. He has only submitted the books for months of October, November and December Thus the position of the entire year has deliberately not been submitted by the assessee. 2. The assessee has justified the source of cash deposits from cash sales. The assessee has made cash sales throughout the year. Out of this cash sale during the period of 1.4 2016 to 07.11.2016 only Rs. 90,60,000/- has been deposited in the bank account of the assessee. Whereas, during demonetization period cash of Rs 3,15.92,000/- has been deposited in his bank account There is no reasonable justification to believe that such huge cash sales were made from the month of Oct, to November only. In absence of complete stock register of the assessee it is difficult to say whether sufficient stock was available with him to make such high sales during these 3 months. 3. The total turnover of the assessee increased more than twice as compared to previous years turnover. Majority of the turnover is from cash sales during the year that too during the period of demonetization. This clearly shows that the books of the assessee are fabricated and deserve to be rejected u/s 145(3) 4 The assessee has not submitted any details like the name, address, PAN No of the buyer to establish the genuineness of high cash sales during the course of the year under consideration. 5. The high cash sales shown by the assessee during the year is unrealistic, if the assessee was making such high cash sales every year then why corresponding amounts of cash deposits were not found in earlier years."

On the issue noted in the assessment order that despite repeated opportunities the appellant has not submitted stock register, sales register, purchase register, and cash book of complete year and that only submitted the books for months of October November and December and thus, the position of the entire year has deliberately not been submitted by the appellant, the appellant in this regard in the appeal proceedings has stated that these were not produced before the learned AO because of the reason that these are "bulky and voluminous The appellant has also stated that these "will be submitted on request of the undersigned in the appeal proceedings. This further shows that even after adverse view was taken in the assessment proceedings on the issue because the appellant only produced limited and selective books and records during the assessment proceedings, the appellant has not produced the same even during the appellate proceedings and

no application for additional evidence has also been filed for the consideration as per law.

The appellant has also submitted that Investigation Wing, of the Income Tax Department, also issued summon dated 17-3-2017 to the appellant firm calling for various details of the transactions undertaken by the appellant firm from 1st October, 2016 to 31st December, 2016 and the same were submitted by the appellant and no action was taken by the Investigation Wing against the appellant in this regard and hence the appellant has drawn the analogy that adverse view cannot be taken by the learned Assessing Officer on the issue during the subsequent assessment proceedings. This contention of the appellant is misfounded as apparently the information was called by the Investigation Wing for their own investigation and intelligence purposes and the same was not called for the assessment of the tax demand. Further the field action by the Investigation Wing is taken only limited number of cases and where no intrusive action is taken that is not the proof that all affairs of the such assessee are perfect and are accepted by the Department as a whole. Further the addition in the assessment order is after a thorough examination of the facts and gathering of much more detailed information from the appellant then was called by the Investigation Wing and after providing opportunities to the appellant and after considering the law on the issue. Accordingly this contention of the appellant is rejected

The appellant has stated that excise duty was levied for the first time in March 2016 on the jewellery which was widely protested by the Jewellers all across India. The protest went on for more than 6 months and shut down their operations for almost 3-4 months, as a mark of protest. The protests lasted for the first half of relevant Previous Year. Thereafter, when the protest was called off, the appellant firm changed its business strategy. On account of new strategy, the appellant Firm, during the festive season of Diwali from 27-10-2016 to 30-10-2016, had made significant cash sales of Rs. 1,01,47,305. However the appellant has not produced any verifiable evidences regarding what changes were done in the strategy to support and substantiate this abnormal claim of sales during the period of four days only. The appellant has also not produced any evidences regarding the specific marketing actions taken in rural areas and in which rural areas such marketing was carried out. Further it is abnormal and very much unlikely that any such small-scale and on verifiable strategy could lead to such abnormally high sales within few days of its launch in the month of October itself. The claim of the appellant also stands falsified and is disproved also from the fact that in the next years also there are no such abnormal sales as in the next year (FY 2017-18) the total cash sales are Rs. 2,23,34,502 and in the further next year (FY 2018-19) the total cash sales are Rs. 1,52,39,611 as against the total cash sales claimed during the year under appeal of Rs. 4,80,21,259. As per the submissions of the appellant itself the business in the first six months was almost shut during the year under appeal and still the appellant has claimed the cash sales of Rs. 4,80,21,259 during the year under appeal. At the same time the non-cash sale is almost in the similar rage in each year in the years FY 2014-15 to FY 2018-19. The drastically diminishing cash sales in subsequent periods further proves that there was no

such magical strategy of abnormal cash sales to rural customers in existence in October 2016. Further the appellant did not produce the complete set of stock register and purchase ledger and the sales ledger etc. This claim of the appellant also needs to be seen in the context of the demonetisation when the cash claimed to have been received from such sales is claimed to have been deposited during the demonetisation period whereby it is a known fact that the black money hidden and hoarded by the tax evaders in old currency notes was soon going to become worthless if not deposited in the bank account within the time specified. In view of these facts and the preponderance of the probabilities, this claim of the appellant remains a self-serving statement and is rejected.

Appellant has also submitted that, appellant firm had also made cash sales of Rs. 2,31,12,813 on 8th November, 2016 after the announcement of the demonetisation at 8 PM. The appellant has claimed to have made 163 such cash sales. This statement of the appellant is also contradictory to all the earlier stand of the appellant as appellant itself has stated that their shop is located in Johri Bazar Jaipur and appellant was focusing on the rural customers for making cash sales 163 rural customers are not at all expected to start the travel tens and hundreds of kilometres and reach the shop of the appellant to buy the jewellery whereas they could very well deposit the reasonably small amount of Rs. 2 lakhs of old currency in the bank account. As the appellant has claimed that all the cash sales are of value less than Rs. 2 lakhs. Further, it was not the case that the prices of gold were doubling or tripling after the next day or the jewellery would not have been available on the next day. The rush was at the Jewellers apparently due to the reason that some people wanted to buy jewellery in cash using the demonetised currency which they could not have deposited in the bank account as that was unaccounted or tax evaded money In such a scenario such rich people would have purchased the jewellery of several lakhs of rupees and not merely Rs. 2 lakhs. This coupled with the fact that appellant has shown abnormally large number of sale bills and the last few hours of the date and shown all bills to be below Rs. 2 lakhs further points to the direction that these sales/bills are not genuine. Further there has to be some proportion of correlation between the cash sales made by an assessee in normal course i.e. on 07-11-2016 or

06-11-2016 or 05-11-2016 etc. before the announcement of demonetisation and sales made by the same assessee on 08-11-2016 after the announcement of demonetisation. Merely because one business may be having stock in hand on that date does not allow him to make non-genuine bills of sales in cash to accommodate the unaccounted cash for already lying with him. Further the appellant has shown Sales Under Composition Scheme of VAT Further, the appellant did not produce the complete books of accounts during the assessment proceedings and as such these claims of the appellant are not verifiable and are thus rejected.

In continuation of the above it is noted that, the purchases claimed by the appellant appear to be non-realistic. The appellant has shown purchases on credit in October 2016. This is due to the reason that sales are shown in cash in October

2016 and most of the cash was not deposited in the bank account before the date of demonetisation and the question of making payment to such creditors do not arise. Further even though large sales are reported were claimed in October however comparatively small purchases are made to have been shown in that month. Total purchases during the period from 01 Oct. 2016 to 08 Nov 2016 are roundly Rs. 71 lakhs. Further, the appellant did not produce the complete books of accounts during the assessment proceedings and as such these claims of the appellant regarding earlier purchases during the year and opening stock (jewellery and bullion) etc. are not verifiable and are thus rejected.

It is to be noted that each entry must be separately explained by assessee to prove the genuineness of the transaction. While explaining the various credits and investments, it is possible that the assessee may be successful in explaining some of them, but that does not by itself mean that the entire investments has to be considered as explained. The Assessing Officer has to apply his mind in each and every individual entry when an explanation is offered by the assessee as observed by the Hon'ble Rajasthan High Court in the case of CIT v. RS. Rathore [1995] 212 ITR 390 (Raj.).

The Assessing Officer is not required to show the source of the money deposited in the bank account. There can be several possibilities. Such details are only in the possession of the assessee and onus lies on her. Where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the department to locate its exact source-CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC), A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC).

The explanation of the assessee is to be seen in totality and as a whole and the same can either be found satisfactory or not satisfactory as a whole. The story or the explanation of the assessee cannot be modified to allow relief. It is possible that a single material fact or single material part of the explanation may render the entire explanation dis-believable or unsatisfactory. That is to be seen as per the facts and circumstances of the case and of the explanation. Explanation is to be examined for the availability of such exact amount of physical cash/money with the assessee which was deposited in bank in demonetization period.

The Hon'ble Supreme Court in the case of Sreelekha Banerjee v. CIT [1963] 49 ITR 112 has observed as under:-

"If there is an entry in the account books of the assessee which shows the receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee himself, it is necessary for the assessee to establish, if asked, what the source of that money is and to prove that it does not bear the nature of income. The department is not at this stage required to prove anything. It can ask the assessee to produce any books of account or other documents or evidence pertinent to the explanation if one is furnished, and examine the evidence and the

explanation. If the explanation shows that the receipt was not of an income nature, the department cannot act unreasonably and reject that explanation to hold that it was income. If, however, the explanation is unconvincing and one which deserves to be rejected, the department can reject and draw the inference that the amount represents income either from the sources already disclosed by the assessee or from some undisclosed source. The department does not then proceed on no evidence, because the fact that there was receipt of money is itself evidence against the assessee. There is thus, prima facie, evidence against the assessee which he fails to rebut, and being unrebutted, that evidence can be used against him by holding that it was a receipt of an income nature. The very words 'an undisclosed source' show that the disclosure must come from the assessee and not from the department."

(emphasis supplied)

It is further observed in this case by the Hon'ble Supreme Court as under:--

In the present case, the assessee claimed that the high denomination notes were a part of the cash balance at the head-office. The Income-tax Office found that at first the cash on hand was said to be Rs. 1,62,022, but on scrutiny, it was found to be wrong. Indeed, the assessee himself corrected it before the Appellate Assistant Commissioner and stated there that the balance was Rs. 1,21,875. Ordinarily, this would have prima facie proved that the assessee might have kept a portion of this balance in high denomination notes. But the assessee failed to prove this balance, as books of the assessee did not contain entries in respect of banks. Though cash used to be received from banks and sent to the various places where works were carried on and vice versa, no central account of such transfers was disclosed. There was also no account of personal expenses of the assessee and he had failed to prove why such large sums were kept on hand in one place when at each of the places where work was carried on, there were banks with which he had accounts. The Appellate Assistant Commissioner also went into the question and found that on the same day when the high denomination notes were encashed, a sum of Rs. 45,000 was drawn by cheque. The next remittance immediately afterwards was of Rs. 16,000 to Bokaro, but Rs. 17,000 were withdrawn a few days before to meet this expense. A withdrawal of Rs. 8,000 was made a day later and Rs. 20,000 were withdrawn ten days later to finance the business. It appears that the money on hand (Rs. 45,000) was not touched at all, but on January 30, 1946, a further sum of Rs. 6,005 was withdrawn and not utilised, which made up the sum of Rs. 51,000 for which the high denomination notes were encashed.

On these facts, the Tribunal came to the conclusion that the high denomination notes represented not the cash balance but some other money which remained unexplained, and the Tribunal treated it as income from some undisclosed source. The High Court held on the above facts and circumstances that there were materials to show that Rs. 51,000 did not form part of the cash balance, and the source of money not having been satisfactorily proved, the department was justified in holding it to be the assessable income of the assessee from some

undisclosed course. In this conclusion, the High Court was justified, regard being had to the principles we have explained above"

One of the important factual-legal relevant questions emerging from the above judgement is as under

Question of justification of keeping large sums on hand whereas the facility of withdrawing cash was available at the time and place it was required.

The above is from the observation "failed to prove why such large sums were kept on hand in one place when at each of the places where work was carried on, there were banks with which he had accounts"

In view of the above, the judgement of Hon'ble Supreme Court is squarely applicable to the facts of the case

It is observed by the Hon'ble ITAT in the case of Renu T Tharani vs Dy Commissioner of Income Tax in ITA No. 2333/Mum/2016 as under:-

"These evidences and statements cannot always be accepted at the face value without application of mind about their reliability. A conscious call is to be taken, in a fair and objective but a realistic, manner about reliability of such evidence. As observed by Hon'ble Supreme Court in the case of CIT Vs Durga Prasad More [(1971) 82 ITR 540 (SC)], " Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities". As Hon'ble Supreme Court has observed, in this case, "it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make selfserving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents". As a final fact finding authority, this Tribunal cannot be superficial in its assessment of genuineness of a transaction, and our call is to be taken not only in the light of the face value of the documents sighted by the assessee but also in the light of all the surrounding circumstances, preponderance of human probabilities and ground realities. There may be difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the fact finding authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidences. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that "human minds may differ

as to the reliability of a piece of evidence but in that sphere the decision of the final fact finding authority is made conclusive by law. This faith in the Tribunal by Hon'ble Courts above makes the job of the Tribunal even more onerous and demanding and, in our considered view, it does require the Tribunal to take a holistic view of the matter, in the light of surrounding circumstances. Preponderance of probabilities and ground realities, rather than being swayed by the not so convincing, but apparently in order, statements and letters and examining them, in a pedantic manner, with the blinkers on. The same has been the approach adopted by Hon'ble Supreme Court, in the case of Sumati Dayal Vs CIT ((1995) 214 ITR 801 (SC)) wherein Their Lordships have, inter alia, disapproved acceptance of a claim of winning the appellant claims to have won in horse races a total amount of Rs. 3,11,831 on 13 occasions out of which 10 winnings were from Jackpots and 3 were from Treble events by Chairman of the Income Tax Settlement Commission, and observed that "This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities". Their Lordships further observed that "Similarly the observation by the Chairman that if it is alleged that these tickets were obtained through fraudulent means, it is upon the alleege to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence""

In view of the above discussion the claim of the appellant is to be adjudicated as per the principles of human probabilities. The onus is on the assessee to prove that the funds deposited in his bank account are from the sources claimed by the assessee. All these transactions has to be linked and proved. The onus in this regard is on the assessee which has not been discharged.

Hon'ble Madras High Court in the case of Durai Murugan Kathir Anand v. Additional Commissioner of Income-tax [2022] 136 taxmann.com 70 (Madras)/[2022] 443 ITR 423 (Madras) [25-02-2022] has observed as under:-

Extract from headnotes

Section 69A, read with sections 144A and 153A, of the Income-tax Act, 1961 Unexplained moneys (Cash)- Assessment year 2019-20-Pursuant to cash seized

at premises of employee of a trust where assessee was a trustee, a show cause notice was issued to assessee for addition of seized cash to assessee's total income as undisclosed income - Cash had been recovered on packet with markings of municipal ward from where assessee was contesting elections Assessee filed an application seeking that directions be issued for completion of assessment under section 153A considering that cash recovered did not belong to assessee and a party worker 'S' had given a voluntary statement that cash belonged to him and had filed an application before ITSC for settlement and addition would result in double taxation in hands of assessee and person who claimed ownership of seized cash However, said application was rejected and order under section 153A was passed making addition to assessee's total income under section 69A- It was found that one 'S' had given statement that cash belonged to him for distribution to voters, however statement of 'S' did not satisfy test of preponderance of probability, as, 'S' had not produced any records to substantiate that cash belonged to him and also, he was a man of insufficient means - Further, show cause notice also indicated that 'S' had not filed any income tax returns to justify his version - Moreover, documents pertaining to college/trust of assessee found along with seized cash indicated that cash belonged to assessee which was not disclosed by assessee in his regular return - Whether therefore, since preponderance of probabilities indicated that seized cash was undisclosed income of assessee, additions under section 69A to assessee's income were justified-Held, yes (Paras 49 to 54)

Relevant paras are extracted below-

49. The statement of Mr.S. Srinivasan claiming that the cash belonged to him does not satisfy the test of preponderance of probability that the cash indeed belongs to him. Mr.S. Srinivasan has not produced any records to substantiate that the cash belonged to him. The show cause notice also indicates that Mr.S. Srinivasan has not filed any income tax returns to justify his version. Mr.Srinivasan has also not given any satisfactory explanation to substantiate his claim. On the other hand, there is a preponderance of probability that the cash belonged to the petitioner

50. Since preponderance of probability indicate that the seized cash was an undisclosed income of the petitioner and was kept at the residence of Mr.Damodaran and Mrs. Vimala Damodaran by the petitioner. These facts suggest that Mr.S.Srinivasan, Mr.Damodaran and Mrs Vimala Damodaran are trusted person of the petitioner.

51. Merely, because Mr.S.Srinivasan came forward and gave a sworn statement claiming ownership over seized money does not mean that the liability which can be fastened on the petitioner under the IT Act. 1961 can be shifted on Mr.S. Srinivasan. Merely, because Mr. S. Srinivasan has filed application to settle case before the the Settlement Commission, by declaring the seized cash to his cash is of no relevance.

52. The subsequent engineering of an application of settling the dispute before the settlement commission by Mr.S. Srinivasan appears to be a mere ploy, ruse to divert attention. It was filed to detract the assessment proceedings. The application under section 144A of the IT Act itself appears to be an afterthought. Instead of giving attention to the show cause notice and participating in the adjudication, the petitioner appears to have been ill-advised to venture out in filing the above application.

53. Further, the cash was not found under the control and the possession of the said Mr.S. Srinivasan. It was found in the residence of Mr.Damodaran and Mrs. Vimala Damodaran with packet markings as Alangayam, Pallikonda etc. with the marking of the Municipal Wards, falling under the Vellore Parliamentary Constituency from where the petitioner was contesting. The presumption under sections 132(4A) and 292C of the IT Act though a rebuttable presumption, is to be presumed against the petitioner

54. Mere voluntary sworn statement on the same day by Mr.S.Srinivasan claiming that the seized cash were his, is not sufficient Mr. S. Srinivasan has not shown himself to be a man of substantial means. On the other hand, the fact that the documents pertaining to the College/Trust of the Petitioner were found along with the seized cash as indicated above show that cash belonged to the petitioner which was not disclosed by the petitioner in his regular return."

In the above case a third person made a sworn statement and owned up the cash found in the premises of petitioner. Such third person also filed an application before the Settlement Commission. However such sworn statement was rejected by the Hon'ble High Court. The matter was decided as per Preponderance of Probability

Judgement in the case of Vivek N. Jajodia v. Income-tax Officer, 16(2)(2), Mumbai [2011] 10 ITR(T) 581 (Mumbai)/[2010] 123 ITD 136 (Mumbai)/[2010] 134 TTJ 806 (Mumbai) [23-01-2009]

The relevant para of the judgement are extracted here under as relied upon-

*8. The learned D.R. in reply submitted that there is pre-ponderance of probability against the assessee as the gifts are not customary. There are no mutual gifts given by the assessee to the foreign persons. The basic responsibility of providing evidences for proving the gift as genuine has not been established.....

.....

12 In order to decide as to whether the impugned gifts in the present case are genuine or not, one has to look not only at the documents produced but also at the surrounding circumstances. In this connection, we may fruitfully notice and reproduce the following observations made by the Hon'ble Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540

"It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.

13. According to section 3 of the Evidence Act, a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that the prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. The aforesaid provisions are nothing but recognition of basic principles of common law governing the issue under consideration

14. In CIT v. P. Mohankala [2007] 291 ITR 278 1 (SC), the assessee had received foreign gifts from one common donor. The payments were made by instruments issued by foreign banks and credited to the respective account of the assessee by negotiation through a bank in India. Most of the cheques, in that case, sent from abroad were drawn on the Citibank, NA Singapore. The Assessing Officer held that the gifts though apparent were not real and accordingly treated all those amounts, which were credited in the account books of the assessee as their income applying section 68 of the Income-tax Act. The Hon'ble Supreme Court held that in cases where the explanation offered by the assessee about the nature and source of the sums found credited in his books is not satisfactory, there is prima facie evidence against the assessee, viz, the receipt of money and that the burden is on the assessee to rebut the same, and, if he fails to rebut it, it can be held against the assessee that it was receipt of an income nature. The Hon'ble Court further observed: 'May be the money came by way of bank cheques and was paid through the process of banking transaction but that itself is of no consequence

15. After considering the explanation of the assessee in the light of the facts and circumstances of the case, we are not inclined to interfere with the order of the learned CIT(A) in this behalf. The so-called gifts credited in assessee's capital account is not acceptable as it is contrary to the preponderance of probabilities and common course of human conduct. In view of this, we confirm the order of the Assessing Officer and the learned CIT(A) in this regard. The ground is rejected"

Some of the factors which weighed in deciding the matter are as under:-

-Whether the claim made by the assessee is customary?

-Whether the assessee received similar benefit from the person to whom he is claiming to have provided the benefit?

-To ascertain the genuineness, one has to look not only at the documents produced but also at the surrounding circumstances

-A party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals [Hon'ble Supreme Court in CIT v. Durga Prasad More [1971] 62 ITR 540]

-If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. [Hon'ble Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540)

-The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents [Hon'ble Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540]

-The Hon'ble Supreme Court held that in cases where the explanation offered by the assessee about the nature and source of the sums found credited in his books is not satisfactory, there is prima facie evidence against the assessee. viz, the receipt of money and that the burden is on the assessee to rebut the same, and, if he fails to rebut it, it can be held against the assessee that it was receipt of an income nature. The Hon'ble Court further observed May be the money came by way of bank cheques and was paid through the process of banking transaction but that itself is of no consequence (CIT v. P. Mohankala [2007] 291 ITR 278 1 (SC))

In the case of Konathala Nooku Naidu v. Income-tax Officer, Ward-1 [2024] 160 taxmann.com 758 (Visakhapatnam Trib.) [18-03-2024] [IT.A. No.269/Viz/20231 Hon'ble ITAT upheld the addition and found the explanation as unacceptable when the source of cash deposited in the bank on 13-11-2016 was stated to be the loan which was further withdrawn in cash on 29-09-2016 in view of the fact that the assessee has not properly explained as to why the loan was availed by the assessee and for what purpose he has withdrawn the amount on 29-09-2016 and deposited the same after one and half months.

6. Insofar as the loan of Rs. 2,60,000/- is concerned the contention of the assessee is that he has availed a loan and withdrawn the amount and redeposited the same in his bank account. On perusal of this transaction of the assessee, I find

that the assessee has availed a loan on 26/9/2016 and withdrawn the same on 29/9/2016. But, the assessee has deposited the said amount on 13/11/2016. The assessee has not properly explained as to why the loan was availed by the assessee and for what purpose he has withdrawn the amount on 29/11/2016 and deposited the same after one and half months. Therefore, the contention of the assessee is not tenable. Hence, I am of the view that the assessee has not properly explained the source for the cash deposit of Rs. 2.60,000/- and thus I sustain the addition to this extent."

The claim of the appellant is not supported by preponderance of probability in its favour. In such situation, onus is on the appellant to prove that what is improbable has happened. The dictionary meaning of the word "preponderance" is superiority in weight, power, importance, or strength. Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true. This preponderance is based on the more convincing evidence and its probable truth or accuracy.

According to section 3 of the Evidence Act, a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that the prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. The aforesaid provisions are nothing but recognition of basic principles of common law governing the issue under consideration.

The case laws relied upon by the appellant are in the different context of the case and the facts in comparison to the facts of the case of the appellant as have been discussed in detail in the paragraphs above and as discussed in the assessment order and as such are not directly applicable to the case of the appellant.

Now coming back to the facts of the case, the opening cash in hand as on 01-10-2016 is shown at Rs. 14,43,037. The appellant has shown to have deposited Rs. 1,00,000 in the bank account on 03-10-2016 and Rs. 6,00,000 on 21-10-2016, and Rs. 6,00,000 on 24-10-2016. This shows that the appellant was not habitually maintaining very large sum of cash in hand. However the situation has suddenly reversed in the period very close to the demonetisation. The appellant is claimed to have made large cash sales on 27, 28 and 29 of Oct. 2016, however such cash was not deposited in the bank. The opening cash in hand as on 01-11-2016 is shown at Rs. 1,02,61,457 (The appellant has shown to have deposited Rs. 5,00,000 in the bank account on 01-11-2016 and Rs. 7,00,000 on 03-11-2016. Rs. 2,50,000 on 04-11-2016. These relatively very small deposits of November 2016 (in comparison to the claimed cash in hand) along with the business practices regularly employed by the appellant in the month of October 2016 regarding the deposit of cash in the bank account and regarding the maintenance of cash in

hand, makes it further clear that the appellant was in reality having much smaller cash in hand which was regularly been deposited by him in the bank account and the abnormally high cash in hand shown on 01-11-2016 is merely an artificial creation after the announcement of demonetisation to accommodate the unaccounted cash already available for depositing in the bank account by backdated sales invoices. The appellant has deposited cash of Rs. 1,55,00,000 in bank on 15-11-2016 and further Rs. 1,54,00,000 on 21-11-2016. The appellant has not furnished explanation and the explanation furnished by the appellant fails in terms of ratio of judgement of Hon'ble Supreme Court in the case of Sreelekha Banerjee v. CIT [1963] 49 ITR 112. This time taken by the appellant in depositing the cash in the bank account further fortifies the view that the accounted and bonafide cash was not actually available as on the date of announcement of demonetisation. The appellant did not produce the complete books of accounts during assessment proceedings and the same were also not been produced during the appeal proceedings and also considering the above detailed analysis into the facts of the case and in to the law the books of accounts of the appellant do not represent the correct view and the correct income cannot be deduced from the same. The books have rightly been un-relied upon and disregarded in the assessment order. The books of accounts are rightly rejected u/s 145(3) of the Act in the assessment order.

Opening cash in hand as on 01-10-2016 is shown at Rs. 14.43.037 as a regular practice of the appellant. The closing cash in hand as on 31-03-2017 shown little over Rs. 5 lakhs. Going by the business practices regularly employed by the appellant, the cash in hand before the announcement of the demonetisation is not likely to have exceeded in any scenario than Rs. 15 lakhs. It may not be out of place to mention that the average daily cash sales of the appellant is even less than rupees one lakhs during the normal scenario i.e. during FY 2015-16, during 01-04-2016 to 30-09-2016, during FY 2017-18 etc. Even if benefit of doubt is given to the appellant regarding the increase in sales on 08-11-2016 during the late hours (taking 10 times of daily average cash sales), after the announcement of demonetization, total cash in hand would not have exceeded Rs. 25 lakhs as at end of 08-11-2016. Accordingly, the appellant gets relief to this extent only out of the total addition made in the assessment order in this regard of Rs. 3,15,92,000. The addition to the extent of Rs. 2,90,92,000 is hereby confirmed accordingly. The amount of addition confirmed is to be reduced from the sales and is to be added in the closing stock for the sake of completeness of the double entry.

Where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the department to locate its exact source (CIT v. M.Ganapathi Mudalliar [1964] 53 ITR 623 (SC)/A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC))

In the case of Roshan Di Hatti v. Commissioner of Income-tax [1977] 107 ITR 938 (SC)[08-03-1977] it is held by the Hon'ble Supreme Court as under-

"Now, the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. If he disputes the liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the revenue is entitled to treat it as taxable income. This was laid down as far back as 1958 when this court pointed out in *A Govindarajulu Mudaliar v. Commissioner of Income-tax* [1958] 34 ITR 807 810 (SC) that

"There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature."

In the case of *Kale Khan Mohammad Hanif v. Commissioner of Income-tax* [1963] 50 ITR 1 (SC)/(08-02-1963) it is held by the Hon'ble Supreme Court as under-

"It seems to us that the answer to this question must be in the affirmative and that is how it was answered by the High Court it is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act in the absence of such proof, the Income-tax Officer is entitled to treat it as taxable income see *A Govindarajulu Mudaliar v. Commissioner of Income-tax* (1958) 34 ITR 807 (SCY)

Referring to the above judgements of Hon'ble Supreme Court, it is held by the Hon'ble ITAT in the case of *Navin Shantilal Mehta v. Income-tax Officer, Ward-32* (2) (4), Mumbai (2018) 90 taxmann.com 16 (Mumbai-Trib) as under

3.2 As per section 68 of the Act, onus is upon the assessee to discharge the burden so cast upon. First burden is upon the assessee to satisfactorily explain the credit entry contained in his books of accounts. The burden has to be discharged with positive material (*Oceanic Products Exporting Co. v CIT* [2000] 241 ITR 497 (Ker). The legislature had laid down that in the absence of satisfactory explanation, the unexplained cash credit may be charged u/s 68 of the Act. Our view is fortified by the ratio laid down in Hon'ble Apex Court in *CIT v. P. Mohankala* [2007] 291 ITR 278/161 Taxman 169. A close reading of section 68 and 69 of the Act makes it clear that in the case of section 58, there should be credit entry in the books of account whereas in the case of 69 there may not be an entry in such books of account. The law is wellsettled, the onus of proving the source of a sum, found to be received/transacted by the assessee, is on him and where it is not satisfactorily explained, it is open to the Revenue to hold that it is income of the assessee and no further burden lies on the Revenue to show that income is from any other particular source. Where the assessee failed to prove satisfactorily the source and nature of such credit, the Revenue is free to make the addition. The principle laid down in *CIT v. M. Ganpati Mudaliar* [1964] 53 ITR 623 (SC)A. *Govinda Rajulu Mudaliar v. CIT* [1958] 34 ITR 807 (SC) and also *CIT v. Durga Prasad More* [1969]

72 ITR 807 (SC) are the landmark decisions. The ratio laid down therein is that if the explanation of the assessee is unsatisfactory, the amount can be treated as income of the assessee. The ratio laid down in CIT Daulat Ram Rawatmal [1973] 87 ITR 349 (SC) further throws light on the issue. In the case of a cash entry, it is necessary for the assessee to prove not only the identity of the creditor but also the capacity of the creditor and genuineness of the transactions. The onus lies on the assessee. Under the facts available on record. A harmonious construction of section 106 of the Evidence Act and section 68 of the Income Tax Act will be that apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of the creditors. In CIT v. Korlay Trading Co. Ltd. [1998] 232 ITR 820 (Cal.), it was held that mere mention of file number of creditor will not suffice and each entry has to be explained separately by the assessee. CIT v. R.S. Rathaore [1995] 212 ITR 300/86 Taxman 20 (Raj). The Hon'ble Guwahati High Court in Nemi Chandra Kothari v. CIT [2003] 264 ITR 254/2004) 136 Taxman 213 held that transaction by cheques may not be always sacrosanct.

(Emphasis Supplied)

In view of the above discussion, the addition is sustained to the extent of Rs. 2,90,92,000 and the appellant gets partial relief in this regard.

Further the appellant has also challenged the applicability of amended section 115BBE of the Act to the cash deposit during the demonetisation period and has claimed that the amendment prescribing rate of tax of 60% of tax is not applicable to him.

The above issue of applicability year has been adjudicated in the following judgements.

Maruthi Babu Rao Jadav v. Asstt. CIT [2021] 430 ITR 504 (Ker.) (WA.No.984 OF 2019]

"The writ petition sought for a declaration that the amendments made by the Taxation Laws (Second Amendment) Act, 2016, to Section 115BE of the Income Tax Act, 1961 enhancing the rate of income tax, for specified incomes which are unexplained, to 60% and the surcharge provided in the Finance Act, 2016 to 25% for income covered under Section 69A, to be prospective. The above referred enactments are herein after referred to as the 2nd Amendment Act. IT Act and the Finance Act. The 2nd Amendment Act was dated 15.12.2016 and the amendment to Section 115BE was specified to be effective from 01.04.2017. The amendment enhancing the rate of tax was incorporated in the IT Act and that of surcharge in the Finance Act. On declaration, consequential relief is sought against Ext.P2 assessment order levying tax at the enhanced rate of 60% and surcharge 25% on the advance tax. The learned Single Judge rejected the writ petition by a cryptic judgment relying on Commissioner of Income Tax v. S.A Wahab ((1990) 182 ITR 464 (KER)).

2. The learned Counsel Sri Vishnu S Arikattil appearing for the appellant would contend that even going by the decision in Karimtharuvi Tea Estate Ltd. v. State of Kerala (AIR (1966) SC 1385) an amendment made on the 1st day of April of any financial year would apply to the assessments of that year. That is, if an amendment is brought into force on 01.04.2017, as is the case here, it can only apply to the assessment made in 2018-2019 (Assessment Year) of the income accrued for the previous financial year, which is 2017-2018. The learned Counsel would seek to draw a distinction insofar as a modification of the rate as brought out in the Finance Act and a substantive provision altering accrued rights or creating new liabilities, on the 1st of April of an year. In the former, it could apply to the assessments of the previous year, made in that financial year, but a substantive amendment not relating to the rates, could only be applied to the assessments of that financial year and not of the previous year. Reliance is placed on the Constitution Bench decision of the Hon'ble Supreme Court in CIT Vs. Vatika Township Private Ltd. (2015) 1 SCC 1. The learned Counsel would also place before us a number of decisions of the Hon'ble Supreme Court in Kesoram Industries v. Commissioner of Wealth Tax. (AIR 1966 SC 1385), Guffic Chem P. Ltd V. C.I.T (2011(4) SCC 245], C.IT v. Sarkar Builders [(2015) 375 ITR 392 (SC)], Shiv Raj Gupta v. C.LT [(2020) 425 ITR 420(SC)] and State of Kerala v. Alex George [(2004) 271 ITR 290(SC)], to further buttress his arguments. Reliance is also placed on the Full Bench decision of the Patna High Court in Loknath Goenka v. C.1. T[2019 417 ITR 521(Patna)]

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12. The assessee contends that the seizures were made prior to the amendment. The affidavits admitting the ownership of amounts seized were also submitted prior to the amendment. The assessee was not aware of the enhanced tax liability when the admissions were made before the authorities. The assessee has also made an attempt to relate the amendments to the demonetization of the specified currencies announced on 08.11.2016 which contention we reject at the outset. The subject amendments which are relevant for our consideration have no direct link with the demonetization introduced or the taxation and investment regime of Pradhan Mantri Garib Kalyan Yojana 2016 brought in under Chapter IX A of the 2nd amendment Act. The 2nd amendment Act as is clear from the Statements of Objects and Reasons, was to curb, evasion of tax and black money as also plug loopholes in the IT Act and to ensure that defaulting assesseees are subjected to higher tax and stringent penalty provision. Both the measures spoken of herein were to further the said objects and there cannot be any nexus assumed nor is it discernible

13. Section 115 BBE was inserted by Finance Act 2012 wef 01.04.2013. As on 01.04.2016 the financial year in which the subject seizures occurred Section 1558BE provided for 30% tax on income referred to in Sections 68, 69, 69A 69B, 69C and 69D. The same was amended by the 2nd Amendment Act wef 01.04.2017, enhancing the rate to 60%. Hence there was no new liability created

and the rate of tax merely stood enhanced which is applicable to the assessments carried on in that year. The enhanced rate applies from the commencement of the assessment year which relates to the previous financial year.

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15. In the financial year 2016-17 itself the tax as provided under section 115BBE and the surcharge on advance tax was available as discernible from the IT Act and Finance Act, 2016 as it stood on 1.4.2016 itself. A major misdemeanor leading to assessment of income as accrued under Section 69A invites the consequences of Section 1158BE and surcharge provided under Section 2(9) of the Finance Act, 2016. When it stands enhanced from 01.04.2017, for every assessment carried out in that year, related to the previous year, the rates as applicable on 01.04.2017 has to be applied. There being no new liability created or obligation imposed, the arguments raised by the appellant's counsel fails. The appellant cannot have a contention that he committed the misconduct on the expectation that if he were caught he would have to shell out only lesser amounts as tax and surcharge. There is no right accrued on the assessee to commit an offence on the expectation of a lesser penalty.

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17. In the instant case surcharge was imposed by Finance Act, 2016 and the rate stood enhanced by Finance Act, 2017. The Income Tax even as per the Finance Act was to be at the rate specified in Part I of the 1st Schedule which shall be increased by surcharge for purposes of the Union Surcharge hence partakes the character of Income tax and Article 271 itself empowers the Parliament, at any time to increase any of the duties or taxes by a surcharge for the purpose of the Union and it forms part of the Consolidated fund. So when a surcharge is imposed it is in effect an enhancement of the tax or duty. The provision in the Finance Act also employs the words the income tax computed shall be increased by a surcharge. Section 4 of the IT Act squarely applies to the surcharge imposed.

The judgment of the learned Single Judge is affirmed for the for the reasoning herein above and the Writ Appeal would stand dismissed without any order as to costs.”

Karthick Natarajan v. Deputy Commissioner of Income-tax, International Taxation [2023] 154 taxmann.com 136 (Chennai Trib.)/[2023] 202 ITD 552 (Chennai-Trib.)[11-07-2023]

10.2 We noted from the taxation law Second Amendment Act, 2016 that the Income-tax payable shall be the aggregate of the amount of income-tax calculated on the income referred to clause (a) and clause (4) of section 11588E(1) of the Act at the rate of 60% wef 1-4-2017 that means from assessment year 2017-18 relevant to financial year 2016-17 rate of tax will be at sixty percent. In our view

and as held by Hon'ble Kerala High Court, there was no new liability created and the rate of tax merely stood enhanced which is applicable to the assessment year 2017-18. The enhanced rate applies from the commencement of the assessment year 2017-18, which relates to previous financial year 2016-17 as the case in the present assessee and not on the date of commencement of the amendment. The reasoning for the same is that the date of amendment on which an amendment comes into force is the date of the commencement of the amendment it is read as amended from that date. Under the ordinary circumstances, an Act does not have retrospective operation on substantial rights which have become fixed before the date of the commencement of the Act. But, this rule is not unalterable. The legislature may affect substantial rights by enacting laws which are expressly retrospective or by using language which has that necessary result. And this language may give an enactment more retrospectivity than what the commencement clause gives to any of its provisions. When this happens the provisions thus made retrospective, expressly or by necessary intendment, operates from a date earlier than the date of commencement and affect rights which, but for such operation, would have continued undisturbed. This view has been held by Hon'ble Supreme court in the case of Ahmedabad Mfg. and Calico Printing Co. Ltd. v. SG. Mehta, ITO (1963) 48 ITR 154

10.3 Even Hon'ble Kerala High Court in the case of Bhagavathy Tea Estates Ltd. v State of Kerala 1990) 50 Taxman 180[1989] 179 ITR 508 (Ker) held that the rate or rates prescribed by a Finance Act is or subsequently, changed by passing a finance (amendment) Act having retrospective effect from the date from which the original Finance Act was passed or enforced. In such circumstances, the changed rate or rates of tax is or to be applied for the relevant Assessment Year

10.4 As regard to another argument made by Ld Counsel for the assessee by referring to the provisions of Section 294 of the Act, we after going through the provision noted that it provided that if on the first date of April in any assessment year provision has not been made by a Central Act for the charging of income tax for that assessment year, this act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding assessment year or the provision proposed in the bill then before the Parliament, whichever is more favourable to the assessee, were actually in force. The scope of provision of Section 294 is that the tax is factually imposed not under the Income-tax Act but by the annual Finance Act, each year. The Income-tax Act provides a vehicle to give effect to the provisions of the Finance Act and Section 294 provides that

-if, in any assessment year

-the Finance Act charging income-tax is not enacted by 1st April of that year, then this Income-tax Act shall nevertheless have effect until the Finance Act is passed

-As if the Finance Act of the immediately preceding year was in force for that assessment year

or

-as if the provision in the Finance Bill for that year was duly passed into an Act.

Whichever of these two provisions is more advantageous to the assessee.

10.5 It means that the provisions of Section 294 of the Act are valid only upto the time of finance bill proposed for the assessment year is duly enacted into law Hence the argument of Ld. Counsel invoking the provisions of Section 294 of the Act in the present case is without any logic

11. Accordingly, we are of the view that in the instant case before us the provisions of Section 115BBE of the Act as amended by second amendment Act by the Taxation Laws (second amendment) Act, 2016 will apply w.e.f. 1-4-2017 on enhanced rate of tax @60% instead of 30%. The enhanced rates applies from the commencement of the assessment year relevant to previous financial year In this case, this applies to Financial Year 2016-17 relevant to Assessment Year 2017-18. Hence, we find no force in the arguments of the Ld. Counsel and hence same are rejected. This issue is decided in favour of Revenue and against assessee

In view of the above, the provisions of Section 115BBE of the Act as amended by second amendment Act by the Taxation Laws (second amendment) Act, 2016 will apply w.e.f 1-4-2017 (01-04-2017 of the assessment year) and onwards (A.Y 2017- 18 and onwards) (full previous year 2016-17 and onwards) i.e. the rate of tax of 60% is applicable w.e.f. 1-4-2017 (AY) of the assessment year 2017-18 and onwards”

In view of the above discussion, this ground of appeal of the appellant is partly allowed.”

2.2 During the course of hearing, the Id.AR of the assessee repeated the same arguments as made before the Id. CIT(A) and submitted that the Id.CIT(A) had grossly erred in confirming the addition and thereby the demand vide its order u/s 250 dated 15-04-2024 on account of cash deposited in the bank account by wrongly invoking Section 68 r.w.s. 115BBE of the Act. The Id. AR of the assessee vehemently argued that how can the lower authority considered the cash before demonetization for Rs. 90,60,000/- as genuine as explained and that of Rs. 3,15,92,000/- as

not. The Id. AR for the assessee further submitted that the said order has been passed without considering the submissions made and documents available on record, without appreciating the factual substratum of the case, statutory provisions of law and as such addition so made is misconceived, based on assumption and presumption and the same is invalid and unsustainable and thus the same is required to be quashed. The Id. AR relying on the provision of section 68 submitted that considering the facts of the case of the assessee the same cannot be invoked. The assessee submitted all the details. The books of account of the assessee are audited and maintained in accordance with the rules prescribed. No defects whatsoever has been observed by the lower authority. Referring to clause 25 of the Form no. 3CD Id. AR of the assessee submitted that the assessee maintained all the quantitative details and in that records also no defects were found. Once the assessee has maintained sales records supported by bills and vouchers there is no justification to reject the proceeds of the sales. Merely the assessee has furnished some records for the part of the demonetization it does not draw an inference that for the other part records is not correct. In support of the sales the assessee submitted sales, purchase ledger and VAT returns filed by the assessee. The Id. AO has not rejected but merely stated that the books of accounts

are deserves to be rejected. Even if that is to be considered even then the assessment is to be made by following the steps given in 145(3) and the order is required to be passed u/s. 144 of the Act but the same has been passed u/s. 143(3) of the Act. Thus, the addition of Rs. 3,15,92,000/- made u/s. 68 r.w.s. 115BBE is based on the assumption and presumption and not based on any defects or following the procedure as laid down in law. When the matter carried to CIT(A) he also merely considered the some part of sales as made by the assessee and that too considered in part the sale on assumption and presumption and sustained the addition for S. 2,90,92,000/-. There are no adverse comments that the assessee is not having the sufficient stock on hand to make the sales. The assessee is engaged in the line of business for more than 25 years and the sales made by the assessee is not abnormal looking to the circumstances of panic and marriage seasons going on in those days. Ld. AR of the assessee also justified that since March 2016 the jewelers were facing the legal compliance fixed which were relaxed and thereby the excise duty proposal was dropped and thereby the sales also increased when the decision came. The Id. AR of the assessee submitted that the assessee has sold the goods of Rs. 1.01 cr only on the day of Deepawali. The contention that the assessee made sale to the people of rural customer is not correct but it is

retail sales. It is the regular feature in the line of business of the assessee to have cash sales. Even though the whole amount of sale cannot be considered as unexplained. The lower authority has not given any show cause notice as required u/s. 145(3) before proposing to reject the book results and the 3 situation and 3 conditions as attached has not been fulfilled. To drive home to these contentions Id. AR of the assessee relied upon the various judgment cited the legal precedent. Based on these arguments Id. AR of the assessee challenged the finding of the lower authority.

2.3 On the other hand, the Id. DR supported the order of the Id. CIT(A) stating that the considering the submission of the assessee Id. CIT(A) has also given relief to the assessee. The assessee has not submitted all the details to justify the cash sales and therefore, the same has been considered as unexplained credit. The assessee has not submitted complete books of accounts and based on the three months details Id. AO cannot be expected to justify the sales which remained doubted. Ld. AO has to assessee the income of the whole year and not for the part of the year. The sales pattern observed by the AO is very much abnormal in the period under consideration which is the period of demonetization. The purpose that with the cash sales does not justify the sales and therefore, he

supported the findings recorded in the orders of the lower authority and that too when the complete details were not furnished to the wing as well as to the AO. As regards the excise duty proposal and increase of sales has not been supported by evidence. The previous year turnover do not justify the sales recorded. It is the very much clear finding of the lower authority that there is abnormal pattern of sales in the period of demonetization and therefore, that sale has not considered as explained. The assessee recorded sale on 8/11 for an amount of Rs. 2.5 and that too rural customer how it can happen. The holding of cash on hand by the assessee also does not justify the deposit of cash by the assessee. The assessee did not justify what prevented them to file the complete records than only for 3 months.

2.4 We have heard both the parties and perused the materials available on record. Brief facts of the case are that the assessee had e-filed its return of income for the FY 2016-17 on 31.10.2017 declaring an amount of Rs. 20,92,213/- as profit and gain from business and profession from which brought forward business loss and unabsorbed depreciation was set-off to arrive at the net income of Rs. 95,370/-. It is noticed from the records that the Investigation Wing, of the Income Tax Department issued a summon dated 17-3-2017 to the assessee firm calling for various details of the transactions undertaken by the assessee firm from 1st October, 2016 to

31st December, 2016. In compliance to the said summon the assessee had submitted all requisite details (Sales register, Purchase register, Stock register, Cash Book, Ledger account with Kotak Mahindra Bank and Indusind Bank) to Ld DDIT (Inv), Jaipur vide letter dated 21-3-2017 (**page No. 14 to 17 of Paper Book**). The case of the assessee was taken up for scrutiny u/s 143(3) of the Income Tax Act 1961 based on computer-assisted selection for scrutiny (CASS) and accordingly notice U/s 143(2) dated 13.08.2018 was issued through ITBA to the appellant. In compliance with the said notice the assessee submitted all the required details/Information through e-proceeding. Thereafter, notice u/s 142 (1) was issued on 03.04.2019 wherein specified information was called from the appellant and again show cause notice was issued on 23.04.2019 on the same matter wherein the assessee-appellant had sought adjournment. It is noticed that again a notice u/s 142 (1) was issued on 05.12.2019 wherein fresh information was sought from the assessee. The information sought by all the above notices issued u/s 142(1) was duly submitted by the assessee vide its letter dated 09.12.2019 (**Refer page No. 1 to 4 of Paper Book**) whereby the assessee had submitted the copy of ITR with computation, Audited Balance Sheet and Profit and Loss Account along with Form-3CD, details of unsecured loans and cash deposit

during the demonetization period. Further again fresh show cause notice was issued on 24.12.2019 seeking reasons for the sudden increase in cash sales and to explain why the amount of cash deposited during the period of demonetization should not be added to the income. The assessee submitted his detailed reply vide its letter dated 24.12.2019 (**Refer page No. 5 to 6 of Paper Book**) and 26.12.2019 (**Refer page No. 7 to 13 of Paper Book**) explaining the reasons for the increase in cash sales during the period of demonetization and enclosed the following documents along with the said letters in support of its contention:-

- a. Copy of sales register for the period 01.10.2016 to 31.12.2016 (**Refer page No. 56 to 71 of Paper Book**)
- b. Copy of purchase register for the period 01.10.2016 to 31.12.2016 (**Refer page No. 72 to 73 of Paper Book**)
- c. Copy of stock register for the period 01.10.2016 to 31.12.2016 (**Refer page No. 74 to 84 of Paper Book**)
- d. Copy of ledger of account maintained with Kotak Mahindra Bank and Indusind Bank for the period 01.10.2016 to 31.12.2016 (**Refer page No. 102 to 105 and 106 to 107 of Paper Book**)
- e. Copy of VAT-10A form for the FY 2016-17 (**Refer Page No. 51 to 55 of Paper Book**).

It is noticed that the AO without considering the submission of the assessee had made an addition of Rs. 3,15,92,000/- in the total income of the appellant for the AY 2017-18 vide its Order u/s 143(3) dated 31.12.2019 on account of cash deposition during the demonetization period by stating that it is an undisclosed income of the assessee and to evade

the tax liability on this unexplained cash deposit and tried to explain it under the garb of cash sales. Thus cash deposited during demonetization was considered liable to be added to the total income of the assessee-appellant, u/s 68 r.w.s 115BBE and taxable at the rate of 60% as per the provisions of the Act. When the matter carried to Id. CIT(A) who upheld the order of the AO and confirmed the addition of Rs. 2,90,92,000/- in the total income of the appellant for the AY 17-18 by giving the benefit of doubt of Rs. 25,00,000/- (i.e. 10 times of daily average cash sales) to the assessee vide its order dated 15.04.2024 passed under section 250 of the Income Tax Act, 1961. We note from the records that the assessee firm is engaged in the trading of gold jewellery and bullion items for more than 25 years and the place of business (Showroom) of the assessee is situated at Johari Bazar, Jaipur, which is considered a hub for bullion and jewellery trading. The assessee firm caters to a large number of urban and rural customers who wish to purchase jewellery and bullion. As part of the business practice, appellant firm does both cash sales and sale through account payee cheque/online transfer. However, dealing in cheque is done only with customers known to the appellant as with unknown customers risk of non-realisation of money is usually high. Further, on account of large rural base customers, the bulk of sales is made in cash. Thus, considering

the nature of trade and the inherent risk involved the appellant inevitably has to indulge in transactions of cash sale. It is noticed that the assessee had submitted a copy of its Income Tax Return (**Refer page No. 47 to 50 of Paper Book**), Tax Audit Report with Balance Sheet and Profit and Loss Account and schedules (**Refer page No. 18 to 46 of Paper Book**) with its reply dated 09.12.2019. The assessee had already submitted the details of cash deposited and the cash book (**Refer page No. 85 to 101 of Paper Book**) to the office of the ADIT (Inv)-1 vide its letter dated 21.03.2017 (**Refer page No. 14 to 17 of Paper Book**). The assessee on AO's request had again submitted copy of sales register, purchase register, stock register, bank book and cash book for the period 01.10.2016 to 31.12.2016 on 24.12.2019. Again on 26.12.2019, the assessee submitted the balance confirmation and copy of the bank account of Indusind Bank and Kotak Mahindra Bank. Hence, the assessee had submitted all the documents and evidence asked for by the department to justify the issue under consideration. From the perusal of the documents and records submitted, it is evident that the assessee had sufficient inventory which is not in question and against that stock cash sales were carried out during the festive period of Diwali from 27.10.2016 to 30.10.2016 of Rs. 1.01 crore was the sale of Deepawali and then on the eve of 08.11.2016 of Rs. 2.31

crore sales for which two occasion one is of the marriage seasons sales and the other the announcement of demonetization against this two days major sales cash of Rs. 3.15 crore was sourced and was ultimately deposited in the bank accounts of the assessee. It is further noted that during the festive season of Deepawali from 27-10-2016 to 30-10-2016 the assessee had made significant cash sales of Rs. 1,01,47,305/-. Moreover, the assessee has regularly made cash sales during the preceding years also which is sufficient to prove that the accounts of the assessee are not fabricated. Merely because there is significant cash deposition during the demonetization period cannot be the ground for rejecting such cash sales. From the stock records, purchase register, and sales register it is beyond doubt that the assessee-appellant had sufficient stock to conduct such cash sales. There is no reason for drawing such presumption that the appellant under the garb of such cash sales had attempted to convert its undisclosed income to disclosed income when the same is supported by delivery of goods and availability of stock. The fact that the appellant had made cash sales on the day of demonetization cannot be discarded unless there is evidence contrary to such allegation. The assessee has history of cash sales in the preceding years as well as in subsequent years as evidenced from the table mentioned below as filed

in the written submission and there is no rebuttal of the revenue on the same :-

F.Y.	A.Y.	Total Turnover	Cash Sale	Cash Sales %	Gross Profit %	Net Profit %
2014-15	2015-16	42,808,352	18,310,427	43%	16.51%	1.39%
2015-16	2016-17	34,227,320	7,278,692	21%	19.16%	2.37%
2016-17	2017-18	66,901,559	48,021,259	72%	19.30%	3.13%
2017-18	2018-19	45,014,870	22,334,502	50%	23.73%	1.95%
2018-19	2019-20	42,790,657	15,239,611	36%	24.88%	1.78%

The addition under section 68 on account of cash deposits could not be made simply on the reason that during the demonetization period, cash deposits vis-à-vis cash sales ratio was higher. If customers during the period of demonetization purchased jewellery in cash which has been duly recorded in the books of account of the Appellant and also tallying with the quantity of stock, then simply because there were huge cash sales in that particular period cannot be the reason for treating it as undisclosed income from undisclosed sources. To this effect we get support from the decision of our own Jurisdictional Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordia v. ITO [2008] 298 ITR 349 (Raj) wherein it has been held that "Addition u/s 68 could not be made in respect of the amount which was

found to be cash receipts from the customers against which delivery of goods was made to them". The bench also noticed that Id. CIT (A) contentions are only based on conjectures and surmises and are devoid of any merit of the case of the assessee-appellant. Further, the income of the assessee has to be computed by the AO based on available material on record and it is very important to have direct evidence to make an addition rather than circumstantial evidence. It is duty of the AO to examine the same in the light of the available evidence. In the instant case, the AO and the Id. CIT(A) concluded the findings based on conjectures and surmises. The AO has to establish the link between the evidence collected by him and the addition to be made. The entire case has to be dependent on the rule of evidence, the assessee in this case explained the source of bank deposits is from cash sales and the same cannot be added u/s. 68 as held in the case of Smt. Harshila Chordia v. ITO (Supra). The allegation made by Ld. CIT (A) and Ld. AO regarding the fabrication of cash sales transactions on the assessee is without any basis, documents or any supporting evidence. The finding of A.O. that assessee could not substantiate an increase in cash sales with documentary evidence is based only on suspicion, guesswork and surmises which cannot be sustained in law. Merely because there was a variation in the cash sales during the

alleged period compared to the previous year would not mean that the Assessee has inflated its cash sales during demonetization to cover up its undisclosed income. The another contention of the department is that the total turnover of the assessee has increased more than twice as compared to the previous year and the majority of the turnover is from cash sales during the year and that too during the period of demonetization and that the assessee has not submitted any details like the name, address PAN No. of the buyer to establish the genuineness of high cash sales during the year under consideration and cash sales shown by the assessee during the year is unrealistic as corresponding amounts of cash deposits were not found in earlier years is not tenable. It is noteworthy to mention that 8th November 2016 was a historic day because demonetization was announced on that day. The assessee is one of the reputed shops having long time presence; middle-class customers have stepped into their showroom in large numbers and the assessee could make such a significant cash sale of Rs. 2,31,12,813/- as hundreds of customers were queuing at the shop even till late night. This contention of the assessee-appellant is supported by the news article of **“The Economic Times” dated 08-12-2016, wherein the secretary of the India Bullion & Jewellers Association mentioned** that the jewellers had sold 15 tonnes of

Gold ornaments and bars worth around Rs. 5000 crores on the intervening night of November 8 and 9, 2016 after the government demonetized the Rs. 500 and Rs. 1000 currency notes. The appellant did not collect the details of the customers such as PAN No., name and address in respect of the cash sales below Rs. 2 lakhs as it was not required as per law. The contention of the department that how come the appellant had made every sale on 8th of November 2016 below Rs. 2 lacs is an illogical inference as the appellant is running a jewellery shop and most of its customers are middle or lower-class people who cannot be expected to have cash in their possession of more than 2 lacs ideally on the eve of demonetization as if they were aware about such an unprecedented move of the Government of India. A normal middle class family does not have huge surplus cash of more than 2 lacs lying at home. Thus, this contention of the department is not tenable. It is noted that the assessee had explained during assessment proceedings that excise duty was levied for the first time in March 2016 on the jewellery which was widely protested by Jewellers across India. The protest went on for more than 6 months and various representations were made by jewellers across India at various forums. Even all associations and forums of jewellers and bullion dealers across India including Rajasthan's Sarafa Traders Committee, of which the

assessee firm is a member, had instructed all the dealers associated with them to shut down their operations for almost 3-4 months, as a mark of protest, which largely affected the business of the appellant firm for the first half of relevant Previous Year. Thereafter, when the protest was called off, the appellant firm tried its level best to increase sales for the remaining part of the year and changed its business strategy and started focusing on more rural customers, who buy in cash only as it results in a fast turnaround of inventory and accordingly started manufacturing jewellery of lower value. The appellant firm, during the festive season of Diwali from 27.10.2016 to 30.10.2016, had made significant cash sales of Rs. 1,01,47,305/-. It is also noted that another contention of the department that the assessee has also not produced any evidence regarding the specific marketing actions taken in rural areas to boost its sales from rural customers and in which rural areas such marketing was carried out is not tenable. The assessee-appellant submitted that it is not required to conduct any marketing campaign in rural areas. The assessee had only changed its business strategy to the extent that it started keeping low-value items at the shop so that the rural customers are attracted as they do not have PAN and other details which is required if the sale value is more than 2 lacs. The assessee got the immediate benefit of such a changed strategy as it resulted in an

immediate boost in the sales during Diwali Period 27.10.2016 to 30.10.2016 and the assessee could make a sale of 1.01 crores during these 4 four days. The sale of Deepawali which is not day demonetization cannot be doubted. Further, the appellant had never claimed that it had sold the jewellery to 163 rural customers on the eve of demonetization as incorrectly stated in the impugned order. The Ld. CIT(A) had wrongly interpreted the contention of the assessee to hold that 163 rural customers cannot be expected to travel 100 hundred kilometers and reach the shop of the appellant to buy jewellery. What the assessee had stated in its submissions is that the assessee had changed its business strategy to boost sales by targeting rural customers along-with the urban clientele and not that it had made cash sales only to rural customers on 08.11.2016. The another contention of the Ld. CIT (A) and Ld. AO that the assessee deposited below Rs. 2 lakh in every transaction to avoid the application of the provision of section 285BA read with rule 114E is completely baseless. The said observation was made by the AO without any material in his hand. There is no prohibition under the law to make sale transactions below Rs. 2 lakhs as such the assessee had at liberty to manage his own affairs. Law nowhere prohibits cash sales to the extent limit prescribed. The assessee by selling the goods in cash did not violate any of the provisions of the

Income-tax Act, 1961 and Ld. CIT (A) has not mentioned any provisions of the Act/Rules having been violated by the assessee while undertaking such cash sales. Moreover, cash sales made by the Appellant were duly supported by valid invoices, and stock records and the books of accounts were duly audited by the Chartered Accountant. The another contention of the department is that in the absence of the stock records for the entire year it appears that the assessee did not having sufficient inventory to make such cash sales as the opening stock as on 01.10.2016 could not be verified. This conclusion of the Ld. AO and the Appellate Authority is only on assumption and presumption without any basis. When the assessee had produced stock records including purchase and sales register and ledgers and the books of accounts are duly audited and the stock details for the complete year were disclosed in Form 3CD (**Refer page no. 39 of Paper Book**) then this contention of the department is not tenable. Further it is noted that the Ld. CIT(A) has considered that the assessee would have made a cash sale of 25 lacs on 08.11.2016 by taking 10 times the average daily cash sales and thus has allowed the relief of only Rs. 25 lacs out of total addition of Rs. 3,15,92,000/- made by Ld. AO and thereby uphold the balance addition Rs. 2,90,92,000/-. This conclusion of the Ld. CIT(A) is not tenable as it is based on assumption and presumption without

considering the factual evidence on record in the form of stock records and duly audited books of accounts supported by sales invoice. It is important to mention that the Investigation Wing, of the Income Tax Department, also issued a summon dated 17-3-2017 to the assessee firm calling for various details of the transactions undertaken by the appellant firm from 1st October, 2016 to 31st December, 2016. Requisite details (Sales register, Purchase register, Stock register, Cash Book, Ledger account with Kotak Mahindra Bank and Indusind Bank) in this regard were also submitted to Id DDIT (Inv), Jaipur vide letter dated 21-3-2017 and were found to be in order and no further action was taken which further substantiates the claim of the appellant that all his sales are genuine. The Ld. CIT(A) had not agreed with the submission of the assessee stating that such information was called by the investigation wing of the department for their investigation for limited purpose and not for assessment of tax demand. This contention is devoid of any merit. If the investigation wing of the department had any doubt about the cash deposited then it would have called for more information and could not have remained dormant for more than 2 years. When the AO had no faith in the investigation wing of its department then the assessee cannot be made to suffer on such account. Such an argument at the instance of the Id. CIT(A) is unreasonable . It is

noted that when the department had not disputed the cash sales for the preceding years and when the books of accounts were duly audited by the chartered accountant such cash deposition in the bank in demonetized currency is in line with the trend of cash deposits in past years which was accepted by the department in assessments framed in past and no material was brought on record by revenue authorities to draw any adverse inference, addition on such account deserves to be set aside. It is further noted that the assessee had already offered cash sales as income then the same could not be taxed in the garb of inflated sales to cover up demonetized currency under section 68 read with section 115BBE. We place reliance on the following case laws that addition on account of cash deposition in bank account during demonetisation on account of cash sale is not tenable:-

(i) Mahesh Kumar Gupta Vs. ACIT [2023] 151taxmann.com339 (Jaipur - Trib.)

Held: Where assessee-jeweller claimed that substantial amount of cash deposited in bank account was with respect to cash sales made during demonetization period, since sales made by assessee were supported by commercial invoice reported in VAT return and accepted by VAT authority, and moreover AO did not reject assessee's books of account by invoking section 145, AO erred in not accepting declared cash sales as not verifiable merely on ground that purchases detail could not be verified and, thus, addition made under section 68 could not be sustained.

(ii) Income-tax Officer Vs. Raj Kumar Nowal [2023] 146 taxmann.com 581 (Jaipur - Trib.)

Held: Para 5.....The higher cash sales on festival season Karva Chouth, Dhanteras and Diwali is general feature in the trade of the assessee and

such sales is also apparent from the cash book submitted during the course of assessment proceedings. Looking to the above facts and circumstances of the case the sale made by the assessee is genuine which is executed after giving the goods to the customer, duly reflected in the invoice issued, assessee having sufficient stock in the books, sales is duly reflected in the books of accounts supported by payment of VAT and the revenue has not brought any positive material to prove it as bogus sales. It is not the case of the A.O. that the assessee did not have the sufficient stock for making the sales. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details. As regard to not providing the name, address and PAN of the customers to whom cash sales was made the assessee explained that the sales were below the prescribed limit so it is not compulsory or mandatory under the I. Tax Act, 1961 to collect the information related to full name, address and PAN of the customer to whom goods were sold in cash during the course of business below to the prescribed limit. The assessee further explained that in the preceding financial years, subsequent financial years and other periods of this same financial year, the same practice was being followed by the assessee where no details of name, address and PAN of customer was available with the assessee. We find the explanation of the assessee is genuine and the sales cannot be doubted on surmises and conjectures merely due to non-furnishing of address and PAN of the customer. The AO did not make any enquiry on the material submitted by the appellant. She merely proceeded on statistical analysis to make the addition on account of cash deposits. We agree with the findings of Id. CIT(A) that the AO has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus and merely having some doubt by twisting the data and giving some findings which are not alone sufficient to justify the addition the income so assessed in not tenable in the eye of law. In fact the AO neither found any concrete and conclusive evidence of back dating of the entries of sale, evidence of bogus sales, evidence of bogus purchases, and non-existing cash balance in the books of account.

(iii) ACIT Vs. Chandra Surana [2023] 149 taxmann.com379 (Jaipur - Trib.)
Held: Where assessee-jeweller claimed that cash deposited in bank account during demonetization period pertained to cash sale transaction of gold jewellery, since assessee had maintained regular books of account, bills, vouchers and day-to-day stock register having complete quantitative details of cash sale transaction of jewellery, addition under section 68 could not be made.

(iv) Income-tax Officer Vs. Sahana Jewellery Exports (P.) Ltd. [2023] 157 taxmann.com 680 (Chennai - Trib.)

Para 15..... Therefore, in absence of any contrary findings to the effect that the sales declared by the assessee is not backed by any corresponding purchase or supported by stock in hand, in our considered view, simply sales cannot be rejected on the ground that sale for the particular month or period is higher when compared to corresponding previous period. In our considered view, there cannot

be any reason for uniform sales in all days or month or year. There may be various reasons for increase or decrease in sales which depends upon various factors, including festival sales, clearing sales, yearend sales, etc. Therefore, in our considered view, the explanation of the assessee that it has received cash from various customers towards sale of jewellery and subsequently the advances have been converted into sales, appears to be bona fide and reasonable.

(v) *Fine Gujuranwala Jewellers Vs. Income-tax Officer [(2023) 151 taxmann.com 340 (Delhi - Trib.)]*

Para 18. We should keep in mind that the fact for Assessment Year 2016-17 cannot be comparable with the fact of Financial Year 2017-18 or any other year because the extraordinary incident of demonization was unique to Financial Year 2016-17, the abnormal increase in the cash sale and their deposit in the bank account consequent to demonization could not be basis for the rejection of account and addition u/s 68 of the Act.

(vi) *Harisons Diamonds (P.) Ltd. vs. ACIT [2024] 161 taxmann.com 669 (Delhi - Trib.)*

Held: Para 22. Merely because there was a minor variation in the cash sales during the alleged period compared to previous year would not mean that the assessee has inflated its sales to cover up demonetized currency.

Para 23. During the year under consideration, diwali was on 31.10.2016 and it is common knowledge that in our society, festival runs 15 days after diwali and it is also a common fact that once the demonization was declared by the Hon'ble Prime Minister, there was frenzy in the market and people were purchasing goods they never intended to purchase just to get rid of demonetized currency.

Para 24. For the sake of repetition, the assessee had furnished monthwise purchases, month-wise details, stock register, valuation of closing stock, month wise details of cash sales, copies of VAT returns and not a single defect has been pointed out by the Assessing Officer in these clinching evidences.

Para 25. The most important fact is that since the cash sales have already been offered as income, the same cannot be taxed in the garb of inflation sales to cover up demonetization currency.

It may be noted that the Id. AR of the assessee had submitted that Id. AO noted Books of accounts were liable to be rejected under section 145(3) of the Act [but in fact the same has not been so] on the ground

that the total turnover of the assessee had increased by more than twice as compared to the previous year and the majority of the turnover was from cash sales during the year that too during the period of demonetization. This ground for rejection of books of accounts is prima facie incorrect and is against the statutory provisions and settled legal position and is thus not legally sustainable when the assessee has made available the sales register (**Refer page no. 56 to 71 of Paper Book**), purchase register (**Refer page no. 72 to 73 of Paper Book**), stock register (**Refer page no. 74-84 of Paper Book**), bank book (**Refer page no. 102 to 107 of Paper Book**) and cash book (**Refer page no. 85 to 101 of Paper Book**), audited balances sheet and profit and loss account (**Refer page no. 18 to 46 of Paper Book**), balance confirmation of unsecured loans, vat returns (**Refer page no.51 to 55 of Paper Book**) and the books of accounts are duly audited by the chartered accountant and inventory records are maintained and duly reflected in the Form 3CD (**Refer page no. 39 of Paper Book**). A relevant extract of Clause 35 of Form 3CD is reproduced below:-

MOHANLAL ASHOK KUMAR SARAF

ANNEXURE TO FORM NO. 3CD

(F.Y. 2016-17)

Annexure E

Clause 35 (b)(A)
Quantitative details of the principal items of
raw materials

A	Raw material	Gold Bar	Diamond	Colour Stone
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	Cts.	Cts.	Cts.
(i) Opening stock;	1,153.180	698.210	-
(ii) Purchases during the previous year;	20,662.650	801.420	1,551.300
(iii) Consumption during the previous year;	13,365.326	1,411.130	1,091.700
(iv) Sales during the previous year;	5,067.557	40.120	-
(v) Closing stock;	3,382.947	48.380	459.600

Annexure F**Clause 35(b)(B)****Quantitative details of the principal items of finished products and by-products**

B	Finished products - Manufacturing	Gold Jewellery	Gold Studded Jewellery	Silver Coin	Silver Utensil
		Gms.	Gms.	Gms.	Gms.
	(i) Opening stock;	1,348.85	2,228.95	2,403.00	10.50
	(ii) Purchase during the previous year;	684.95	882.461	-	-
	(iii) Quantity manufactured during the previous year	6,828.43	10,716.29	-	-
	(iv) Sales during the previous year;	3,062.45	6,044.09	-	-
	(v) Closing stock;	5,799.77	7,783.61	2,403.00	10.50
		-	-		

From the perusal of the aforesaid extract, it is evident that books of accounts were rejected merely on assumption and presumption without pointing out any discrepancy in the records so produced by just citing that turnover has doubled and cash sales have increased significantly. The AO before rejecting the books of accounts of the assessee should have pointed out discrepancies if any existed in the books of accounts and stock records maintained by the appellant. The books of accounts cannot be rejected

merely for the reason increase in cash sales and a doubling of turnover.

The assessee firm since inception has been maintaining proper books of accounts and stock records which have been subjected to Tax Audit, under section 44AB, of the Income Tax Act, 1961 and no discrepancies/qualifications of any nature have been reported in such Audits. The sales of the assessee firm are also duly reported in VAT Returns for the relevant year copies of which had already been submitted to the department. It may be noted that when the opening cash balance as on 01.10.2016 was Rs. 14,43,037/- as evident from the records and also admitted in the impugned order by the Ld. CIT(A) and the assessee had produced all the records for the period 01.10.2016 to 31.12.2016 such as sales register, purchase register, cash book, bank book, stock register, Form 3CD, Audited Financial Statements and the fact that the entire addition of Rs. 2,90,92,000/- is on account of cash deposition during the period 08.11.2016 to 31.12.2016, then rejection of books of accounts on the ground that the appellant had failed to produce the books of accounts for the entire year does not hold good as the appellant had discharged its burden of explaining the source of cash deposited during this period from the records submitted of the said period in which the department did not find any discrepancy. Moreover, no show cause notice for rejection of the

books of accounts was issued to the assessee which is against the principles of natural justice. Thus rejection of books of accounts is arbitrary and not tenable. We also place following case laws:

PCIT VS Bahwani Silicate Industries [2016] 65 taxmann.com 106 (Rajasthan)]

Held: Section 145 only provides the basis on which computation of income is to be made for the purpose of determining the amount of tax payable by an assessee. The provision by itself does not deal with the addition or deletion in the income. Best judgment is also based on the material available on record and therefore, while making an addition something more is to be collected by the AO who makes assessment of an assessee. As pointed out above, merely because there is some deficiency of qualitywise record in the books of account, or merely because of rejection of the books of account, it does not mean that it must necessarily lead to addition in the return of income of the assessee. As noticed earlier, even the AO estimated the income by making estimated addition by applying a particular GP Rate so also the CIT(A) reduced it further. Therefore, these two authorities even while resorting to best judgment had no basis for coming to the conclusion reached and even in a case of estimated/ad hoc addition, prima-facie, some material is required to be brought on record. The revenue has ample powers under the Act, if an assessee avoids or evades to unearth of tax evasion, this observation is on the contention of counsel for the Revenue that except resorting to rejection of books of account, Revenue possibly has no other alternative and come to make estimated addition after resorting to provisions of Sec. 145(3).

Suwalka And Suwalka Properties And Builders Pvt. Ltd. Versus Acit, Central Circle, Kota, Appeal No.- ITA No. 302/JP/2024- ITAT Jaipur

Held: We note that out of the sales of worth Rs. 3,24,44,415/- sales worth Rs. 2,64,00,000/- was not considered as genuine because the assessee out of those sales deposited the amount in the specified bank notes. Thus, on the same set of records revenue was satisfied for sales of Rs. 60,44,415/- [Rs. 3,24,44,415 less Rs. 2,64,00,000/-] and for Rs. 2,64,00,000/- hold a view that the assessee has not maintained proper sales records and therefore invoked the provision of section 145(3) of the Act is not correct. Ld. AO or that of Id. CIT(A) has not considered it fit to make the verification of the contention at the place of business / site to verify the contention and thereby tried to collect the corroborative evidence and without doing so part sales is accepted and part not is not correct reasons to reject the books of accounts. Based on these observations ground no. 1 raised by the assessee is allowed.

Ground no. 2 relates to action of the lower authority treating the part of the sales attributable to cash sales as unexplained money (under section 69A) or

that of the unexplained cash credits (under section 68) of the Act. As we hold a view that the revenue cannot be accept the part of the sales as explained and part of the sales not explained on the same set of evidence. Therefore, the cash deposited in the demonetized currency added as income of the assessee by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in statement of profit & loss account. Therefore, there is no occasion to consider the same as unexplained credit entry of the assessee by applying the provisions of section 68 of the Act. We get support of our view from the decision of our High Court of Rajasthan in the case of Smt. Harshila Chordia vs Income-tax Officer [2008] 298 ITR 349 (Rajasthan) "wherein it was held that no addition could be made in respect of the amount standing in the books of the assessee, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them." As the fact of this cash being similar that part of the sales is considered by the revenue has explained and part of it not is not correct and therefore, we hold that cash deposited by the assessee out of sales proceeds of stone cannot be considered attributable to the provision of section 68 or that of 69A of the Act.

CIT VS Kohinoor Foods Ltd. [(2015) 373 ITR 362 (Del)]

Section 145 of the Income-tax Act, 1961 - Method of accounting - Rejection of accounts (Qualitative records) - Assessment years 2008-09 and 2009-10 - Assessee-firm was carrying on business of manufacturing of edible oil and oil cake from mustard seeds and sale thereof - It maintained complete books of account supported by supporting materials and also maintained complete details of production of edible oil and stock register/production register in quantitative details of trading account - Assessing Officer rejected books of account inter alia on ground that stock register/production register were not maintained qualitywise and in absence of quality of seeds, proper/actual analysis of yield of edible oil and oil cake from mustard oil could not be ascertained - He also made certain trading addition by applying GP rate - Tribunal had found that except quality, quantitywise stock details had been maintained and no other defect was noticed by Assessing Officer in quantitative details - Whether merely because qualitative record was not maintained, books of account could have been rejected - Held, no - Whether further merely because there was some deficiency of qualitywise record in books of account, it would necessarily lead to addition in income of assessee - Held, no [Para 9] [In favour of assessee]

Thus, when we hold that Provisions of section 68 are not applicable on cash sales recorded and not disputes, hence section 115BBE is not

invokable as there is no is no evidence or ground for justification for confirming the demand u/s 68 read with section 11BBE of the Income Tax Act. The relevant extract of provisions of section 68 and 115BBE are reproduced below for ready reference:-

Section 68 – Cash Credits

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.

.....
.....

Section 115BBE - Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D

(1) *Where the total income of an assessee,-*

(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the income-tax payable shall be the aggregate of-

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent.; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

(2) *Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1).*

From the bare perusal of the aforesaid sections it is evident that the provisions of section 68 are only attracted where any sum is found credited in the books of a person maintained for any previous year, and the said person offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory and provisions of section 115BBE can be subjected to only when section 68 is attracted. In the case of the assessee there is no unexplained cash credit in the form of unsecured loan, share capital or share application money which has been recorded in the books and the source of which remained unexplained. The basic genesis of invoking provisions of section 68 is to catch-hold of un-explained cash credit which has been recorded in the books of accounts and has not been offered for tax. In other words if there is any entry of unsecured loan, share capital or share application money recorded in the books of accounts and the assessee fails to offer an explanation of the source of such entry then the provisions of section 68 are invocable. As already explained; in the case of the appellant there is no such amount and thus the provisions of section 68 are wrongly invoked. On the contrary in the case of the assessee-appellant the department has raised the demand on the amount of cash sales which the assessee had suo-moto recorded in the books of accounts in its trading profit and loss

account and income from which has already been offered for tax purposes.

The assessee had repeatedly submitted and explained in its various replies along with data and documents submitted that the cash deposited is on account of receipts from cash sales made and that the same already stands accounted in the books of accounts of the appellant and has already been considered while calculating the total income of the appellant and correlates with the stock records. Hence, when the transaction of cash sale has been recorded in the books of accounts and the appellant had already explained that during the period 01.04.2016 to 07.11.2016 it had made the total cash sales of Rs. 2.17 crores out of which cash sale of Rs. 1.01 crore were made during the period of 27.10.2016 to 30.10.2016 and thereafter, on 08.11.2016 total cash sales of Rs. 2.31 crore was made and it had deposited cash in its bank account of Rs. 76.10 lacs during the period 01.04.2016 to 26.10.2016, Rs. 14.50 lacs from 27.10.2016 to 07.11.2016 and Rs. 3.15 crores during the period 08.11.2016 to 31.12.2016 then there is no reason for invoking the provisions of section 68. This clearly shows that the assessee was doing regular cash sales even before demonetization and depositing cash in the bank accounts. The assessee had already stated that it had submitted copies of stock register, sale and purchase register, cash and bank book, audited balance sheet, vat return

and various other documents which proves that all the cash sales executed by it are genuine; then merely because of the suspicion, assumption and presumption the provisions of section 68 cannot be invoked unless the AO proves its allegation by some tangible corroborative evidence to prove that the assessee in the garb of such cash sales has evaded its tax liability by depositing cash in its bank account. Neither the AO has been able to prove the source of cash deposited in the bank account by the appellant if the same has not been received from cash sales made during such period nor been able to show any discrepancy in the records submitted by the appellant. Therefore, allegation that the assessee had deposited its undisclosed income in the bank account during demonetization to evade tax liability is untenable and baseless as making cash sales and depositing it in the bank account is a normal feature considering the nature of the assessee's business and when the assessee has supported cash sales with the delivery of goods *Smt. Harshila Chordia v. ITO (Supra)*. The assessee by producing its books of account, stock register, purchase register, sales register and other relevant records has discharged its obligation to provide the source of cash deposited in the bank account and now the onus will be on the Department to prove that amount deposited was undisclosed income of the assessee which the AO has failed to

discharge. The opinion of the AO is required to be formed objectively with reference to the material available on record. Application of mind is the *sine qua non* for forming the opinion. The AO has failed to point out any discrepancy in the books of accounts and stock records of the appellant and thus addition u/s 68 is not sustainable. We get support of our view from the following binding precedent cited by the Id. AR of the assessee in his written submission:

(i) Harshila Chordia VS ITO [(2008) 298 ITR 349 (Raj)]

Para 23. 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.

(ii) CIT VS Kailash Jewellery House [ITA No. 613/2020- Delhi High Court]

Para 4..... 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.

(iii) JMK Exports Vs. ACIT [2024] 161 taxmann.com 481 (Delhi - Trib.)

Held: Once sales made by assessee were supported by stock register, sale bills, payments through banking channel and sales had not only been disclosed in VAT returns but stood duly verified and accepted by VAT Department, such sales could not be treated as bogus, so as to enable Assessing Officer to invoke provisions of section 68.

(iv) DCIT VS Veena Awasthi ITA No.215/LKW/2016 (ITAT-Lucknow) order dated 30.11.2018 --- Para 8.Assessing Officer nowhere in his order has brought out any material on record to show that assessee is having any additional source of income other than that disclosed in the return

*nor Assessing Officer could spell out in his order that cash deposits made by the assessee was from some undisclosed source. All throughout Assessing Officer has raised suspicion on the behavioral pattern of frequent withdrawal and deposits by the assessee. There is no law in the country which prevents citizens to frequently withdraw and deposit his own money. Documentary evidences furnished before the Revenue clearly clarifies that on each occasion at the time of deposit in her bank account, assessee had sufficient availability of cash which is also not disputed by the Revenue. **Entire transaction of withdrawals and deposits are duly reflected in the bank account of the assessee and are verifiable from relevant records. Assessing Officer himself admitted that assessee had sufficient cash balance on each occasion at the time of deposit in her bank account on different dates during the assessment year under consideration. We have also examined the order of Id. CIT(A) and we find that his decision is based on facts on record and is supported by adequate reasoning and, therefore, we do not want to interfere with the order of Id. CIT(A) and accordingly we uphold the findings of the Id. CIT(A) sustaining relief granted to the assessee.***

(v) Kanpur Organics VS DCIT ITA No.675/LKW/2018 (ITAT-Lucknow) order dated 10.01.2020 --Para 7.5.....Therefore, in view of the judicial precedents and in view of the facts and circumstances of the present case, we hold that the addition sustained by the learned Commissioner of Income-tax (Appeals) under section 115BBE is not in accordance with law and the surrendered income has rightly been included in the sales of the assessee and all the expenses have been rightly set-off against the surrendered income and therefore, being business income, the assessee is also eligible for deduction under section 80JJA of the Act.

(vi) Agson Global Pvt Ltd VS ACIT [Appeal No.3741 to 3746/Del/2019]
Mere addition on the ground that there is deviation in the ratio is not proper. When the assessee had regular cash sale and deposit of ash in the bank accounts and if nothing incriminating is found contrary then the addition u/s 68 of such cash sale would tantamount to double taxation.

(vii) Surana Traders VS ITO [(2005) 93 TTJ 875]

Held: No mistake was pointed out by the AO in the stock register and quantitative tally furnished by the assessee and genuineness of the transactions was verified from the books of account, i.e., bank books and ledger and when, in such cases, quantitative tally was furnished, even if purchasers were not available, no addition was called for. Merely because purchase parties were not traceable, the assessee could not be penalized.

Further we also take note of the fact that Taxing the income u/s 115BBE when it had already been reflected in Profit and Loss A/c amounts to double taxation as t when income has already been shown in the Profit & Loss Account by way of sale in the year ended 31.03.2017 and same has duly been declared in the return(s) of income then there is no question of considering the deemed income in terms of Section 68 of the Act. It will result in double addition. The assessee already shown the amount of cash sale as part of the turnover in its profit and loss account and had paid the tax on the profit chargeable to tax under the head Profits & Gains from Business and Profession, then charging the entire amount to tax again under section 115BBE is unjustified and unlawful. Reliance is placed on the following decisions:-

(i) CIT vs. Jaora Flour & Foods (P.) Ltd. (29.01.2010 - MPHC: [(2012) 344 ITR 294 (MP)]

Held: Cash found during survey was on account of realisation of sales which was duly entered in the books of account and did not remain unaccounted. Addition of the same amount again during the assessment proceedings amounted to double addition, since it was already shown in the books of account. Therefore, the Tribunal was justified in deleting the addition.

(ii) Dewas Soya Ltd. VS ITO[Appeal No. 336/Ind/2012]

Held: The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act. 6.21 This view has been held by the Hon 'ble Supreme Court in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 72 ITR 194 (SC) that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already

offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again.

(iii) CIT v. Vishal Exports Overseas Ltd., Tax Appeal No. 2471 of 2009 decided by Gujarat High Court on 03.07.2012

The Hon'ble High Court has upheld the Tribunal Order affirming the deletion by CIT (Appeals) of Rs.70 lakhs under section 68 of the Act observing that when the assessee had already offered sales realisation and such income is accepted by the Assessing Officer to be the income of the assessee, addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income.

It is important to mention here that the cash deposits made in banks have been utilized in business and used for purchase of goods only and no withdrawal has been made against these deposits. The assessee had shown all the transactions in its books of accounts and therefore, the allegation that the amount deposited in the bank account during the demonetization period is the undisclosed income of the assessee as the assessee had tried to explain its undisclosed income to evade the tax liability under the garb of cash sales is incorrect and inadmissible. The Ld. CIT (A) has ignored the detailed written submission along with the other evidences as furnished in the form of Paper Book and the judgments relied upon and, therefore, the confirmation of the addition of Rs. 2,90,92,000 in total income of assessee is not justified. It may be noted that the judgments relied upon by the Ld. Commissioner Appeals in the impugned order are clearly distinguishable and not applicable considering the facts of

the present case. The same are distinguished in the table below which we

have gone through :-

Case Name	Contention of department in the impugned order	Counter of the Appellant
CIT v. RS. Rathore [1995] 212 ITR 390 (Raj.).	The Assessing Officer has to apply his mind in each and every individual entry when an explanation is offered by the assessee	Appellant had submitted all the documents sales register, purchase register, cash book, bank book, stock register, Form 3CD containing stock details, Audited Financial Statements thereby discharging its burden to prove the source of cash deposited during the period 08.11.2016 to 31.12.2016.
CIT v. M. Ganapathi Mudaliar [1964] 53 ITR 623 (SC)	Where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, it is not necessary for the department to locate its exact source.	
A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC)		
Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC)[08-02-1963]		
Navin Shantilal Mehta v. Income-tax Officer, Ward-32 (2) (4), Mumbai [2018] 90 taxmann.com 16 (Mumbai - Trib.)		
Renu T Tharani vs Dy. Commissioner of Income Tax in ITA No. 2333/Mum/2018		
Roshan Di Hatti v. Commissioner of Income-tax [1977] 107 ITR 938 (SC)[08-03-1977]	The onus of proving the source of a sum of money found to have been received by an assessee is on him. If he disputes the liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the revenue is entitled	Appellant in the present case had submitted all the documents sales register, purchase register, cash book, bank book, stock register, Form 3CD containing stock details, Audited Financial Statements thereby discharging its burden to prove the source of cash deposited during the period 08.11.2016 to 31.12.2016. This case was decided in favour of the

	to treat it as taxable income.	assessee as there was no material on basis of which it could be said that assets bought by assessee were not of value shown by assessee but of lesser value, Tribunal was not justified in treating part of said assets as undisclosed income of assessee.
Sreelekha Banerjee v. CIT [1963] 49 ITR 112	The explanation furnished by the appellant fails as time taken by the appellant in depositing the cash in the bank account further fortifies the view that the accounted and bonafide cash was not actually available as on the date of announcement of demonetisation. The appellant did not produce the complete books of accounts during assessment proceedings and the same were also not been produced during the appeal proceedings and also considering the above detailed analysis into the facts of the case and in to the law, the books of accounts of the appellant do not represent the correct view and the correct income cannot be deduced from the same. The books have rightly been un-relied upon and disregarded in the assessment order. The books of accounts are rightly rejected u/s 145(3) of the Act in the assessment order.	Appellant has submitted all the documents including stock records for the period 01.10.2016 to 31.12.2016 as the entire addition was pertaining to the cash deposition during the period of demonetization. The same were not produced for the entire year as there was no requirement to produce it as the Tax Audit Report and the Financial Statements duly audited had the complete details of the stock items and there is no reason to doubt the authenticity of such audited accounts and records. Moreover, when the opening cash balance as on 01.10.2016 was Rs. 14,43,037/- and the appellant had produced all the records for the period 01.10.2016 to 31.12.2016 and the fact that the entire addition of Rs. 2,90,92,000/- is on account of cash deposition during the period 08.11.2016 to 31.12.2016, then rejection of books of accounts on the ground that the appellant had failed to produce the books of accounts for the entire year does not hold good as the appellant had discharged its burdern of explaining the source of cash deposited during this period from the records submitted of the said period in

		which the department did not find any discrepancy.
Durai Murugan Kathir Anand v. ACIT [2022] 136 taxmann.com 70(Madras)/ [2022] 443 ITR 423 (Madras) [25-02-2022]	Where pursuant to cash seized at premises of an employee of a trust where assessee was a trustee, the preponderance of probabilities was that amount belonged to assessee and not to his employee from whose residence it was seized nor to party worker who claimed it but was a man of insufficient means, additions to assessee's returned income under section 69A were justified.	This case is not applicable to present matter as the facts and law point involved is completely different.
Vivek N. Jajodia v. Income-tax Officer, 16(2)(2),Mumbai [2011] 10 ITR(T) 581(Mumbai)/ [2010] 123 ITD 136 (Mumbai)/[2010] 134 TTJ 806 (Mumbai) [23-01-2009]	To ascertain the genuineness of the transaction of gift one has to look not only at the documents produced but also at the surrounding circumstances.	When the Appellant has given every explanation regarding the source of cash deposited and submitted all the requisite documents and information, it is duty of the Assessing Officer to examine the same. Addition merely on the basis of assumption and presumption is not sustainable unless supported by evidence collected by AO.
Konathala Nooku Naidu v. Income-tax Officer, Ward-1 [2024] 160 taxmann.com 758 (Visakhapatnam - Trib.)[18-03-2024] [I.T.A. No.269/Viz/2023],	ITAT upheld the addition and found the explanation as unacceptable when the source of cash deposited in the bank on 13-11-2016 was stated to be the loan which was further withdrawn in cash on 29-09-2016 in view of the fact that the assessee has not properly explained as to why the loan was availed by the assessee and for what purpose he has withdrawn the amount on 29-09-2016 and deposited the same after one and half months.	This case is nowhere applicable to the dispute as in the present case the appellant had submitted all requisite documents and explanation with respect to cash deposition during demonetization.

<p>Maruthi Babu Rao Jadav v. Asstt. CIT [2021] 430 ITR 504 (Ker.) [WA.No.984 OF 2019]</p>	<p>The provisions of Section 115BBE of the Act as amended by second amendment Act by the Taxation Laws (second amendment) Act, 2016 will apply w.e.f 1-4-2017 (01-04-2017 of the assessment year) and onwards (A.Y. 2017-18 and onwards) (full previous year 2016-17 and onwards) i.e. the rate of tax of 60% is applicable w.e.f. 1-4-2017 (A.Y.) of the assessment year 2017-18 and onwards.</p>	<p>The amendment to Section 115BBE is penal in nature, which aims to penalize the assessee, if additions referred to in Section 68 to 69A are made. Penal statutes which have the effect of increasing penalties for existing offenses will only be prospective by reason of the constitutional restriction imposed by Article 20 of the Constitution of India. Therefore, if an Act creates a new offense, it will bring into its fold only those offenders who commit all ingredients of the offense after the Act comes into operation. This rule of construction against retroactivity of penal laws is not restricted to criminal offenses punishable with imprisonment but also applies to laws that provide for other penal consequences, such as fines and penalties.</p> <p>Reliance has been placed on the decision of Hon'ble Supreme Court in the case of Vatika Township (P) Ltd. [2014] 367 ITR 466 (SC) observed that of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation.</p>
<p>Karthick Natarajan v. DCIT International Taxation [2023] 154 taxmann.com 136 (Chennai - Trib.)/ [2023] 202 ITD 552 (Chennai - Trib.) [11- 07-2023]</p>		

In the light of these discussion so recorded herein above and taking into consideration the facts, circumstances and the case laws cited (supra) and also the elaborate discussion on the issue raised by the assessee does not

concur with the findings of the Id. CIT(A). Hence, in this view of the matter

the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed as indicated hereinabove.

Order pronounced in the open court on 28/11/2024.

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalashmi)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANT BHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28 /11/2024

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Mohan Lal Ashok Kumar Sarraf, Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle-1, Jaipur
3. आयकरआयुक्त / The Id CIT
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 879/JP/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar