

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री एस एस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI S.S. VISWANETHRA RAVI, HON'BLE JUDICIAL MEMBER
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.: 1674/Chny/2024

& CO No.: 51/Chny/2024

निर्धारणवर्ष / Assessment Year: 2017-18

Assistant Commissioner of
Income Tax,
Circle -1,
Cuddalore – 607 002.

v. Cholaji Kanniyalal,
No. 191, Kamaraj Street,
Villupuram,
Tamil nadu – 605 602.

[PAN: AAEPK-4555-E]

(अपीलार्थी/Appellant)

(Respondent/Cross Objector)

Assessee by : Ms. Gouthami Manivasagam, JCIT

Department by : Ms. Nidhi D. Jain, CA

सुनवाई की तारीख/Date of Hearing : 02.09.2024

घोषणा की तारीख/Date of Pronouncement : 28.11.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the revenue and cross objection filed by the assessee are directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 08.04.2024 and pertains to assessment year 2017-18.

2. The revenue has raised the following grounds of appeal:

"1. The order of the CIT(A) is contrary to the facts and circumstances of the case.

2. The Id. CIT (A) erred in deleting the addition of Rs.97,63,365/- made by the AO under section 68 of the Income-tax Act 1961.

2.1. The Id. CIT(A) failed to appreciate that even the sales were made out of the available stock on hand, the closing cash balance as on 08.11.2016 was Rs.2,24,39,163/- and the assessee has nor deposited the entire amount immediately after the ban on specified notes was imposed but Choose to make deposits in his bank accounts on various dates from 08.11.2016 to 28.11.2016.

2.2. The Id. CIT(A) failed to verify/ examine the cash deposits made by the assessee in different dates and has not discussed about the explanation of the assessee for such large cash in hand over a long period of time and the inability to deposit the same at once.

2.3. The Id. CIT(A) erred in stating that the cash sales were sourced from the sufficient stock available on hand and there is no doubt on genuineness of cash sales, as the total cash sales amounting to Rs.97,63,365/- as claimed by the assessee could not be possible to have happened only on 08.11.2016 out of the total cash sales during the month of November 2016 amounting to Rs.1,60,87,098/-.

2.4. The Id. CIT (A) failed to appreciate that improbable that huge sales of Rs.97,63,365/- happened within a span of 4 hours after the announcement of demonetization, in a business premise where in the highest per day average cash sales recorded during the year amounts only to Rs.5,47,570/-.

2.5. The Id. CIT(A) erred in stating that the sales made are genuine since the bills/invoices were raised in accordance with TN VAT Act, also filed VAT returns duly reflecting the sales made, as the mere filing of VAT returns not mean that the entire sales are genuine and such transactions are not sham or afterthought.

2.6. The Id. CIT(A) foiled to appreciate the fact that the average month cash sales during the FY 2016-17 was found to be in the range of 3-14%. However, during the period between 01.11.2016 and 08.11.2016 the assessee has made 14% of the cash sales made during the year i.e, the highest average sales made during the year.

2.7. The Id.CIT(A) erred in not considering the Human Probability Test' which is one of the important tests laid down by the highest Court of India in order to check the genuineness of the transactions entered

into the books of account of the assessee. The "Human Probability Test" were laid down in the case of CIT Vs Durga Prasad More (1972) 82 ITR 540 (SC) and followed by in the case of Surati Dayal Vs CCIT(1995) 214 ITR 801 (SC).

For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the Assessing Officer be restored."

3. The brief facts of the case are that the assessee is an individual running a jewellery business in the name of Kanya Ramesh 916 Nagai Maligai. The assessee had filed return of income for the AY 2017-18 on 06.10.2017 u/s.139(1) reporting total income of Rs.67,94,690/-. Tax audit report u/s.44AB was also filed on 06.10.2017. The case was selected for scrutiny under CASS for the reasons "Large Value Cash deposit during demonetization period". During the assessment proceedings the assessee submitted that on 08.11.2016, when demonetisation was announced, there was huge volatile public rush to the jewellery shops throughout India. Respondents shop was not an exception to it. Considering investment in gold as the best option, and in order to save oneself from moratorium on bank withdrawal, public rushed to our shop. Respondent would like to mention that many jewellery shops in Respondents area were forced to be open till 12AM midnight. Hence, the assessee had to accept such Rs.500 and Rs.1,000 notes for cash sales made on 08.11.2016. The sale proceeds received on

08.11.2016 were well before the deadline set by the Government of India and Reserve bank of India in respect of demonetisation of Rs.500 and Rs.1,000 notes. Further, the assessee also submitted that he had sold the jewellery from the stock available on hand. Sales made on 08.11.2016, were duly reported in the VAT returns and due taxes were paid. However, the Assessing Officer was not convinced with the explanation given by the assessee for the source of cash deposit, passed an order u/s.143(3) on 31.12.2019 treating total cash sales made on 08.11.2016 amounting to Rs.97,63,365/- as unexplained cash credit u/s.68 r.w.s. 115BBE of the Act, assessing a total income at Rs.1,65,58,055/-. Aggrieved, the assessee filed an appeal before the CIT(A) vide Form 35 on 22.01.2020.

4. During the course of the appellate proceedings the assessee has filed details of the stock which available on 8th November 2016, copy of VAT returns for November and December 2016 and also copy of Cash Book showing details of cash available with the assessee. The assessing officer has not brought anything on record to show that the sales made were forged or actually not made. The assessee has submitted that post demonetization it was an extraordinary day when huge sales were recorded by all the jewellers.

Hence to doubt that the sales were not actually made would be wrong. Furthermore, the assessee was having sufficient stock and he had also filed VAT returns then to reject his contention some other proof should be on record to show that the sales were not actually made which the assessing officer and has failed to bring on record.

5. In view of the above submissions of the assessee, the Id.CIT(A), NFAC has deleted the addition made by the AO of Rs.97,63,365/- by passing an order dated 08.04.2024. Aggrieved by the order of the Id.CIT(A), NFAC, the revenue has filed an appeal before the us.

6. The Id.DR submitted the Id. CIT(A) failed to appreciate that even the sales were made out of the available stock on hand, the closing cash balance as on 08.11.2016 was Rs.2,24,39,163/- and the assessee has not deposited the entire amount immediately after the ban on specified notes was imposed but Choose to make deposits in his bank accounts on various dates from 08.11.2016 to 28.11.2016. Further, the Id.DR argued that the cash sales amounting to Rs.97,63,365/- as claimed by the assessee could not be possible to have happened only on

08.11.2016 out of the total cash sales during the month of November 2016 amounting to Rs.1,60,87,098/-. The huge sales of Rs.97,63,365/- happened within a span of 4 hours after the announcement of demonetization, in a business premise where in the highest per day average cash sales recorded during the year amounts only to Rs.5,47,570/-. Further, the Id.DR stated the Id.CIT(A) erred in not considering the Human Probability Test which is one of the important tests laid down by the highest Court of India in order to check the genuineness of the transactions entered into the books of account of the assessee. The "Human Probability Test" were laid down in the case of CIT Vs Durga Prasad More (1972) 82 ITR 540 (SC) and followed by in the case of Surati Dayal Vs CCIT(1995) 214 ITR 801 (SC).

7. Per contra the Id.AR for the assessee asserting the action of the Id.CIT(A) submitted that the assessee has been in this business from past 40 years regularly filing its income tax return and getting its books of accounts audited. The assessee has been regularly filing its VAT/ GST returns and discharging its tax liability. Further, the Id.AR submitted that on 08.11.2016, when demonetisation was announced, there was huge volatile public rush to the jewellery shops throughout India. The assessee's shop was not an exception

to it. Considering investment in gold as the best option, and in order to save oneself from moratorium on bank withdrawal, public rushed to our shop. The Id.AR mentioned that many jewellery shops in assessee's area were forced to be open till 12AM midnight and hence assessee was also forced to accommodate public between 8pm to 12am, as assessee's shop and life were at risk.

8. The Id.AR stated that the assessee had to accept such Rs.500 and Rs.1,000 notes for cash sales made on 08.11.2016. The sale proceeds received on 08.11.2016 were well before the deadline set by the Government of India and Reserve bank of India in respect of demonetisation of Rs.500 and Rs.1,000 notes. The Id.AR also argued that the assessee had sold the jewellery from the stock available on hand and has submitted the details of monthly sale and purchase of gold jewellery both before the AO as well as the Id.CIT(A), NFAC. The Sales made on 08.11.2016, were duly reported in the VAT returns and due taxes were paid and explained the proper source of cash deposited. In spite of that the Assessing officer has treated the same again as unexplained cash credit thereby taxing the same item twice leading to double taxation, therefore this is against the principle of natural justice.

9. In support of the claim of the assessee, the Id.AR submitted the following paper book:

S No.	Contents	Pg.No.
1.	Background of the case	3-4
2.	Contention of the Assessing Officer	4
3.	Observation of the CIT(A)	5
4.	Contention of the Respondent	5-14
5.	Prayer	14
6.	Documents relied upon	
	Month wise summary of purchase, sales, closing stock (Quantity and Value wise)	15-17
	Stock group summary as on 01.04.2016, 08.11.2016, 31.03.2017 and for period 01.04.2016 to 31.03.2017	18
	Day wise cash summary for the full year	19-27
	VAT returns for the month of November and December 2016	28-39
	Monthwise comparison of (i) Sales as per books vs. VAT returns and (ii) Purchases as per Books vs. VAT returns.	40
	Party wise purchases made during the year (Quantity and value wise)	41-79
7.	Case Law Relied upon	
	Lalchand Bhagat Ambica Ram vs. Commissioner of Income-Tax [1959] 37 ITR 288 (SC)	80-93
	ACIT vs. Chandra Surana [2023] 149 Taxmann.com 379 (Jaipur ITAT)	94-104
	DCIT vs. Mangal Bullion P. Ltd ITA No.1407/Mum/2021 & ITA No.331/Mum/2022 (Mumbai ITAT) (2023)	105-111
	DCIT vs. M.C. Hospital, [2022] 142 Taxmann.com 122 (Chennai ITAT)	112 - 123
	R.S. Diamonds India (P.) Ltd., vs. ACIT, [2022] 145 Taxmann.com 545 (Mumbai-ITAT)	124-125
	ACIT vs. Hirapanna Jewellers, [2021] 129 Taxmann.com 291 (Visakhapatnam ITAT)	126-143
	CIT vs. Daulat Ram Rawatmull, [1973] 87 ITR 349	144-153

10. The Id.AR submitted that the cash balance available as on 08.11.2016 was Rs.2,24,39,163/-, same was deposited into the

bank account during the demonetisation period to state that on an average approximately Rs.1,00,00,000/- to Rs.1,50,00,000/- is always available as closing cash balance. The same is evident from the cash book provided in PB page Nos.19-27. In the grounds of appeal, the revenue has raised an issue over deposit of specified notes over a period till 28.11.2016 and not deposited at once upon demonetization being declared, the Id.AR stated that the assessee Deposit of specified notes were on following days:

Date	Amount (in INR)
11.11.2016	40,00,000
12.11.2016	51,00,000
13.11.2016	46,00,000
18.11.2016	20,00,000
28.11.2016	68,00,000
Total	2,25,00,000

11. The Id.AR submitted that on the first day while depositing amount into bank account, the assessee was informed by bank manager that being initial days and huge public rush in banks, it is advisable to deposit sum in tranches, as lot of time is being consumed in depositing /counting process further, also informed that there is ample time to deposit specified notes till 30.12.2016, the assessee can deposit the sum in tranches and there is no rule to deposit specified notes on one day itself. Therefore, considering the advise of bank manager, the assessee had deposited sum in

tranches However, it may be noted that Respondent had deposited cash within 28.11.2016, well ahead of the deadline of 30.12.2016, which does not mean that the assessee did not have opening cash balance as on 09.11.2016.

12. The Id.AR submitted that the percentage of cash sales were high in the month of October and March being 14%. Further, as stated above, due to declaration of demonetization on 08.11.2016, there were cash sales of Rs.97,63,365/- between 8pm and 12am. Hence, comparison of cash sales percentage wise during November and other months would give absurd results as cash sales on 08.11.2016 itself were Rs.97,63,365/-.

Further, the Id.AR relied on the following judicial pronouncements in support of his argument:

- Lalchand Bhagat Ambica Ram Vs. Commissioner of Income-tax [1959] 37 ITR 288 (SC), *it was held that it was clear on the record that the assessee maintained the books of accounts according to the mercantile system and there was sufficient cash balance in its cash books and the books of account of the assessee were not challenged by the Assessing officer. If the entries in the books of accounts are genuine and the balance in cash is matching with the books, it can be said that the assessee has explained the nature and source of such deposit"*

ii. **ACIT Vs. Chandra Surana [2023] 149 taxmann.com 379 (Jaipur ITAT)**, *it was observed as follows, "The cash sales and receipts are duly supported by relevant bills which were produced in the course of assessment proceedings before the AO and it is not the case of the*

AO that the assessee did not have sufficient stock for making the sales. Hence, it cannot be said that the figures of sales and purchases are not supported by the quantitative details and the AO did not make any enquiry on the material supplied by the assessee. Thus the AO neither brought any material on record to establish that the sale bills are bogus nor provided any evidence that such sales are bogus. It is also an open fact that the demonetization of Rs. 500/- and Rs. 1000/- note was declared by the Hon'ble Prime Minister at 8 PM on 8-11-2016 and after this announcement the persons reached the jewellery shop to buy jewellery in exchange of notes. Thus all such scenario indicates that the assessee had duly substantiated its claim from the documentary evidences and also with the facts. It is also observed from the assessment order that the AO had not rejected the books of account of the assessee as no contrary material was available with him to reject the books of account of the assessee. As regards the addition of Rs.2,90,93,500/- made by the AO by applying the provisions of Section 68 of the Act, it is noted that provisions of Section 68 are not applicable on the sale transactions recorded in the books of account as sales are already part of the income which is already credited in P&L account. Hence, there is no occasion to consider the same as income of the assessee by invoking the provisions of Section 68 of the Act"

iii. DCIT Vs. Mangal Bullion P. Ltd ITA No. 1407/MUM/2021 & ITA No. 331/MUM/2022 (Mumbai ITAT) (2023), *it was observed as follows, "here assessee has shown source of cash by sales bills and permanent account no. of buyers and the consequent reduction in the stock is also shown. Therefore, the nature and source of credit in the books of account have been explained by the assessee. Therefore, respectfully following the decisions of the coordinate benches cited above, we direct the Id AO to delete the addition of € 33,29,886/".*

iv. DCIT Vs. M.C. Hospital, [2022] 142 taxmann.com 122 (Chennai ITAT), *it was observed as follows, "Before the Ld. CIT(A), assessee made elaborate submissions along with corroborative documents to demonstrate that deposit of cash in the bank accounts during demonetization period was out of its business gross receipt which has been duly accounted and reported in its financial statement. During the course of hearing before us, Id. Counsel took us through sample discharge cards placed on record in the paper book at pages 184 to 189, to demonstrate that complete details of patients and treatments were furnished. On the query by the bench to the Ld. Counsel for the assessee in respect of its VAT returns and any*

revision thereon, reference Was made to the VAT audit report placed on record in the paper book, to corroborate the sales and purchase as reflected in the trading account. A reference was also made to the certificate issued by the Sales Tax Authorities which certified the total taxable turnover and the output tax as well as input tax credit available to the assessee. Thus, we find that cash balance being part of sale of medicines and hospital receipts, cannot be brought to tax at the hands of the assessee again which will otherwise lead to taxing the same amount twice".

v. R. S. Diamonds India (P.) Ltd Vs. ACIT, [2022] 145 taxmann. Com 545 (Mumbai - ITAT), *it was observed as follows, "The facts that the deposit made into the bank account is from out of the books of accounts and the said deposits have been duly recorded in the books of account are not disputed. It is the submission of the assessee that it had received advance money from walk in Customers for sale of jewellery over the counter and the amount so received was duly recorded in the books of account. The said amount alongwith other cash balance available with the assessee was deposited into the bank account after announcement of demonetization by the Government of India. He also submitted that the assessee has raised sale bills against the said advances in the name of respective customers. Since the transaction was less than Rs. 2.00 lakhs, it was stated that the assessee did not collect complete details of the customers. Thus, it is seen that the advance amount collected from customers, the sales bill raised against them etc., have been duly recorded in the books of account. When cash deposits have been made from the cash balance available in the books of account, in my view, thereis no question of treating the said deposits as unexplained cash deposit as opined by the Assessing Officer"*

vi. ACIT Vs. Hirapanna Jewellers, [2021] 128 taxmann.com 291 (Visakhapatnam ITAT), *it was observed as follows, "The assessee has furnished the trading account, P& L account in page No. 7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared the exorbitant profits. Though certain suspicious features were noticed by the AO as well as the DDIT (Inu.), both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the assessee. Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence."*

13. The Id.AR summed up his argument and stated that the assessee had already placed all possible records to prove genuineness of cash sale made, these evidences cannot be brushed aside lightly and preponderance of human probability cannot get precedence over these evidences galore and prayed for confirming the order of the Ld.CIT(A), NFAC by dismissing the appeal of the revenue.

14. We have heard the rival contentions, perused the material available on record and gone through the orders of lower authorities. Admittedly, the assessee is running a jewellery business in the name of Kanya Ramesh 916 Nagai Maligai and had filed return of income along with Tax audit report. In response to notice u/s. 142(1) of the Act, the assessee had furnished cash book, sales register, purchase register for the relevant period. The stock moved out of the books on account of sales made by the assessee has established from stock registers. The VAT returns under TNVAT Act for the relevant period reflected such sales which have been accepted by the VAT authorities. The assessee has maintained proper books of accounts and furnished before the lower authorities, which have not been rejected. The books of accounts of the

assessee have been accepted by the lower authorities while framing the assessment and not rejected by pointing out any defects.

15. On perusal of the records and facts and circumstances of the case, we are of the considered opinion that when the sale has been reflected in the books of accounts and offered to tax, adding the same again would amount to double taxation, which is impermissible in law. The cash sales made by the assessee have been credited in the books of accounts and the same form part of the assessee's cash book. On these facts, it could be very well said that the assessee claim was backed up by relevant evidences. Thus, the assessee has discharged the burden of proving the source of the cash/SBN deposited in the bank and the Assessing Officer failed to rebut the same. The allegations/statistics relied upon by Assessing Officer to take an adverse view is not backed up by relevant evidence/material and therefore the action of AO, which has been rightly set aside by the Id.CIT(A) and hence cannot be interfered. Moreover, since cash generated out of sales has been credited in the books of accounts, the provisions of section 69A could not be invoked in the present case.

16. The assessee's reliance on the decision in the following cases which are taken into consideration:

- Lalchand Bhagat Ambica Ram Vs. Commissioner of Income-tax [1959] 37 ITR 288 (SC),
- ACIT Vs. Chandra Surana [2023] 149 taxmann.com 379 (Jaipur ITAT),
- DCIT Vs. Mangal Bullion P. Ltd ITA No. 1407/MUM/2021 & ITA No. 331/MUM/2022 (Mumbai ITAT) (2023),
- DCIT Vs. M.C. Hospital, [2022] [142](#) taxmann.com [122](#) (Chennai ITAT),
- R. S. Diamonds India (P.) Ltd Vs. ACIT, [2022] 145 taxmann. Com 545 (Mumbai - ITAT),
- ACIT Vs. Hirapanna Jewellers, [2021] 128 taxmann.com 291 (Visakhapatnam ITAT),

17. Further, the coordinate bench decision in the case of Smt. Durga Devi Mundhra vs ITO in ITA No. 1228/Chny/2023, dated 25.04.2024 is applicable to the present case on hand, wherein the Tribunal held as under:

"6. We are of the considered opinion that when the sale has been reflected in the books of accounts and offered to tax, adding the same again would amount to double taxation which is impermissible in law. The cash sales proceeds have been credited in the books of accounts and the same form part of assessee's cash book. On these facts, it could very well be said that the assessee's claim was backed up by sufficient documentary evidences. The allegation of Ld. AO is that such abnormal sales could not be achieved by the assessee immediately upon announcement of demonetization by the Government. However, such allegations are bereft of any concrete evidence on record. It is trite law that no addition could be made merely on the basis of suspicion, conjectures and surmises. In the present case, the assessee has duly discharged the burden of establishing the source of cash deposit and the onus was on Ld. AO to disprove the same. However, except for mere allegation and few statistics, there is nothing on record to support the conclusions drawn by Ld. AO that the cash deposited by the assessee was her unaccounted money. There is no finding by Ld. AO that any particular sales affected by the assessee exceeded threshold limit which cast an additional obligation on the assessee to obtain requisite

particulars from the customers. Since cash generated out of sales has been credited in the books of accounts, the provisions of Sec.69A could not be invoked in the present case. Therefore, on the given facts, the impugned additions are not sustainable. By deleting the same, we allow corresponding grounds raised by the assessee."

18. Therefore, on the given facts, the impugned additions are not sustainable in the eyes of law and hence, we are of the considered view that the action of the Id.CIT(A) in deleting the addition need not be interfered and hence we dismiss the grounds raised by the Revenue.

CO No: 51/Chny/2024:

19. Since, the Appeal of the revenue is dismissed by confirming the order of the Ld.CIT(A), the CO filed by the assessee is dismissed as infructuous.

20. In the result, appeal filed by the revenue is dismissed and cross objection filed by the assessee is dismissed.

Order pronounced in the court on 28th November, 2024 at Chennai.

Sd/-
(एस एस विश्वनेत्र रवि)
(S.S. VISWANETHRA RAVI)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 28th November, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF