

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.420/KOL/2024
(Assessment Year:2017-18)**

Income Tax officer
3, Govt. Place (West), Ground
Floor, Kolkata-700069, West
Bengal

(Appellant)

Vs.

JKJ Jewellers (HCM)
1st Floor, 18, Hanspukur First
Lane, Burrabazar,
Kolkata-700007,
West Bengal

(Respondent)

PAN No. AAKFJ7956Q

CO No. 26/KOL/2024

(Arising in ITA No. 420/KOL/2024 for A.Y. 2017-18)

JKJ Jewellers (HCM)
1st Floor, 18, Hanspukur First
Lane, Burrabazar,
Kolkata-700007,
West Bengal

(Appellant)

Vs.

Income Tax officer
3, Govt. Place (West), Ground
Floor, Kolkata-700069,
West Bengal

(Respondent)

Assessee by : Shri S. Jhajharia, AR

Revenue by : Shri Pradip Kumar Biswas, DR

Date of hearing: 28.11.2024

Date of pronouncement : 16.12.2024

ORDER

Per Rajesh Kumar, AM:

This is the appeal preferred by the Revenue and Cross-Objection by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)"] dated 29/12/2023 for the AY 2017-18.

02. The only issue raised in the appeal of the Revenue is against the deletion of addition of ₹3,79,37,000/- as unexplained cash credit for on account of cash deposited in the bank account of the assessee during demonetization period.
03. The facts in brief are that the assessee filed the original return of income on 28.10.2017, declaring total income as Nil. The case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS). The statutory notices were duly issued and served upon the assessee along with questionnaire. The assessee is manufacturer and dealer in jewellery and precious stones. The AO on the basis of details/ evidences furnished during the course of assessment proceedings observed that the assessee has several bank accounts in which assessee has deposited huge cash . Accordingly, the assessee was issued show cause notice which was replied by the assessee submitting the details of month wise cash sales and also details of deposits into the bank accounts of current year vis a vis of preceding year. The assessee submitted before the Id. AO that cash sales between 1st November to 8th November, 2015, were ₹22,000/-, whereas total cash sales for the period of 1st November ,2016 to 8th November,2016 were ₹3,60,50,926/-. It was also mentioned that the cash sales between 9th November,2016 to 13th November,2016, were ₹15,000/-. Finally, the Id. AO rejected the reply of the assessee and treated the same as unexplained cash credit and added to the total income of the assessee u/s 68 of the Act by making an addition of ₹3,79,37,000/- in the assessment framed u/s 143 of the Act dated 13.12.2019.

04. In the appellate proceedings, the Id. CIT (A) deleted the addition after taking into consideration the reply of the assessee. The operative part of the decision is extracted below:-

"Observation and Decision:

Grounds No. 1 to 4: Relates to the addition of Rs.3,79,37,000/- made by the AO in the assessment order. The appellant has submitted that the AO has disregarded its submissions and overlooking the facts and evidence submitted by them. It is also contended that the addition made merely on presumption ignoring the said evidences.

In support of its claim the appellant has submitted the evidences in the form of VAT Return, Sales Bills, Copy of Stock Register, Copy of Bank Statement and also Certificate from Bank to justify its case.

I have carefully considered the submission of the appellant (supra) and the aforesaid grounds are adjudicated as under.

- 1. AO has made such addition primarily on the grounds that:-*
- 2. Cash sales during such period are abnormally high in comparison to earlier period.*
- 3. Cash sales were made at Delhi whereas such deposit has happened in Jaipur.*
- 4. Around 17% of sales are in cash and the same is irrational.*
- 5. Whereas the appellant's submission is mainly that :-*

Cash so deposited was required to be deposited in Home Branch of the concerned Bank i.e. HDFC Bank whereas in Delhi it had only margin a/c, with HDFC Bank and Bank as per its internal requirement asked it to deposit at Jaipur Branch which customers' Home Branch a/c. Appellant submitted relevant bank certificate as well.

- 1. Such sales were already part of sales credited in the Profit & Loss account and the addition thereof u/s 68 without reducing it from the same and without rejecting books of account would amount to double taxation which is not permissible.*
- 2. The Ld.AO has disputed the genuineness of sales related to the period from 01.11.2016 to 08.11.2016 i.e. just prior to demonetization, but never rejected the stock register and to disbelieve the sales. The Ld. AO should've proved that appellant did not sufficient stock since sales and stock are inseparable. Hence sales cannot be doubted only because it is abnormally high during a particular period.*
- 3. Ld. AO merely made statistical comparison with previous period without bringing any evidence as to back dating of entries or evidence of bogus purchase etc.*

4. Appellant has duly submitted copy of VAT return as filed with sales tax department and the same remains genuine and hence sales so made cannot be doubtful.
5. Quantum of cash balance to remain with an assessee cannot be decided by AO, since it is the prerogative of assessee to keep it in form as suitable to it

The aforesaid addition of Rs 3, 79 ,37,000/- has been made by the Ld. AO u / s 68 and at the outset the relevant provision of the sec. 68 is reproduced hereunder;-

"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 AO, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

From the above definition of the provisions of sec. 68 of the Act, it is very much clear that the said provisions are not at all applicable in the case of the assessee for reasons as follows:

1. It is not a case wherein any money is found outside the books of accounts.
2. Further the provisions are applicable only when the appellant has offered no explanation regarding the nature and source of the same. Appellant during assessment proceedings had discharged "onus of proof and such onus shifted to Ld. AO who in tum failed to discharge its onus.
3. In the case of the appellant, the complete details regarding the nature which was mainly out of sales made duly corroborated by the tock register and source of the cash deposited in the bank account has duly been filed with AO.
4. The appellant has duly explained that the cash deposited in the regular bank account is out of Cash in hand as reflected in the books of accounts. So, it is not a case where the appellant has any Unrecorded money outside the books of accounts. But the AO has made the addition by applying The provisions of sec. 68 of the Act on account of cash deposited in the bank account of assessee out of the regular cash in hand from the books of accounts.
5. So, it is clear that the entire base for making the addition in the case of the appellant is not correct.

1. The appellant has also relied upon a number of judgments , some of which are relevant in the matter and on similar facts a number of Tribunals and other Courts have considered the matter and have adjudicated similar issues of cash deposits during demonetization period and some of which I have gone through such judgment and also reproduce relevant part of such judgments as follows:-
M/s Hirapanna Jeweller v. ACIT, Central Circle – 1, Vishakhapatnam in ITA No. 253 / Viz / 2020 : In this case it was found that the cash sales are Rs.4.72 crores during 7.00 P.M. to 12.00 P.M. on 8.11.2016, consisting of 270 bills and the cash was received in high demonization notes and there were no details of the

customers phone numbers, addresses, etc. The Hon'ble Bench after discussing in detail, the order of the Ld. CIT(A) who had granted the relief held as under:

We have heard both the parties and perused the material placed on record in the instant case, the assessee has admitted the receipts as sales and offered for taxation. The AO made the addition u/s 68 as unexplained cash credit of the same amount which was accounted in the books as sales. In this regard, it is worthwhile to look into sec. 68 which reads as under:

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

From the perusal of sec. 68, the sum found credited in the books of accounts for which the assessee offers no explanation, the said sum is deemed to be income of the assessee. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. The assessee is engaged in the jewellery business and maintaining the regular stock registers. Both the DDIT (Inv.) and the AO have conducted the surveys on different dates, independently and no difference was found in the stock register or the stocks of the assessee. Purchases, sales and the stock are interlinked and inseparable. Every purchase increases the stock and every sales decrease the stock. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/ stocks. Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reasons to disbelieve the sales. The AO accepted the sales and the stocks. He has not disturbed the closing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales. Audit report u/s 44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. The assessee has furnished the trading account, P & L Account in page No.7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared the exorbitant profits. Though certain suspicious features were noticed by the AO as well as 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. "

Agsons Global Pvt. Ltd. V. ACIT (Appeal No. 3741 to 3746/ Del/ 2019) Order dt.

31.10.2019-(Relevant paras are reproduced):

"119. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly assessee has deposited INR 180.53 crores during the post- demonetization between 9.11.2016 to 30.12 2016. The assessee has disclosed INR 30 crores under Pradhan Mantri Garib Kalyan Yojna (PMGKY). Therefore, Ld. AO made an addition of INR 150.83 crores as income of the assessee u/s 68 of the Income Tax Act. The main reason for such addition was that during the course of search proceedings the stock position of the assessee was verified and it was found that the

stock as per books of account was found short. Further it was noted that on 8.11.2018, assessee was holding cash amounting to INR 113.03 crores whereas on the date of demonetization the assessee has deposited in bank cash of INR 13.99 crore only and therefore the Ld. AO held that assessee had actual legitimate cash of INR 13.99 cores only. The AO further noted that average monthly cash deposit pre demonetization period is INR 423,500,000 whereas in the month of November and December post demonetization assessee has deposited INR 180.53 crores which is disproportionate and not commensurate with the regular pattern of cash deposits pre- demonetization period. Such addition was challenged before the Ld. CIT(A). However, prior to that during the course of assessment proceeding there was a deviation proceeding based on the appraisal report guidance given by the investigation wing. The Ld.AO in his deviation report stated as under:

"1. Cash deposit in bank during the period 9.11.2016 to 31/12.2016.

During the course of assessment proceedings, the assessee company was asked to explain the sources of cash deposited in its bank account during the period 9.11.2016 to 31 / 12.2016 In reply, assessee furnishes various details and documents.

On examination of details and documents and materials available in this office, revealed that bank wise details of cash deposits between the periods 9.11.2016 to 31/12.2016 works out the total of INR 175.57 crores, whereas the addition on account of cash deposits has been proposed of INR 180.53 crores on the basis of total cash deposits made during the November and December month.

With respect to the deposit of the cash on hand with the various bank, the explanation of the assessee that no such bank was accepting such a huge cash at one go and therefore assessee had to deposit the cash in various banks. The assessee also submitted that in the same bank assessee has deposited cash in its 2 different branches which itself proves that the banks were not accepting such a huge deposit. Even otherwise, it was submitted correctly that merely because the cash holding as on 8/11/2016 was not deposited immediately cannot lead to conclusion that assessee did not have that cash. It can merely lead to a suspicion but based on this addition cannot be made without making further enquiry and conclusively proving that assessee did not have that kind of cash available with it. Even otherwise, if the assessee had to introduce his unaccounted money he would have deposited it at the first instance.

1. Assessee also filed its VAT returns which are not found to be in variance with the accounting and tax records. Therefore, it cannot be substantiated that the assessee has backdated the transactions of the sale. Even otherwise as per retraction letter dt. 24.3.2017 of the managing director of the Company which was submitted on 31.3.2017 where assessee has revised its disclosure From INR 50 cr. Under PMGKY. There is no whisper of further recording the statement Of the managing director to show how the original disclosure was incorrect. In fact, Revenue accepted the revised disclosure made by the managing director. **127. In view of above facts the additions sustained by the Ld. CIT(A) of INR 73.13 crores are deleted this ground No.5 of the appeal of the assessee for A.Y 2017-18 is allowed.** Consequently, ground No. 1 of the appeal of the Ld. AO for the same A.Y 2017- 189 is dismissed. Now the cardinal issue that requires to be discussed is that the assessee is maintaining its books of account in Tally software. It also maintains its stock register in that software. The

various pages of the appraisal report and the printouts found during the course of search shows that assessee maintains the books of account of the large number of companies of its group or associates in the tally software. At page number 123 of 198 of part a of appraisal report at the time of the search the gross profit margin of the assessee was 4-6% only. It was also stated that since the figures reported in the audited balance sheet and ITR are not matching with the tally records, the authenticity of the books of accounts of the assessee company is doubtful. It also recorded that the debt or in respect of transaction's voluminous, there are large number of bank accounts, use cases thereby making it complex. Thus the appraisal report suggested the assessing officer to consider getting the books of accounts of the assessee company audited under section 142 (2A) of the Act. The issue also arose during the course of assessment that whether the sales of dry fruits by the assessee are backdated or not. To identify such backdating of the transaction the AO should have got the accounts of the assessee audited u/s 142(2A) of the Act as well as the forensic audit. In absence of these actions, it is impossible for the AO to note that whether the assessee has backdated the transaction in the tally software or not. The tally software runs on ODBC and rarely one finds the audit Trail of the transactions, which are altered. If the assessee maintains its books of accounts on tally software and back dates the transactions in that particular software. It is impossible to trace them and find out whether they are backdated or not. The only option left with the revenue is to get the accounts of such assessee is subject to forensic audit to know that whether there is a back dating of such accounts or manipulation of the accounts or not. In absence of this, it is impossible to catch hold of an assessee who can manipulate his accounts to suit his requirement. In many of the accounting, software there is an absence of any audit Trail And they can be easily erased, altered, backdated without any evidence or trace. The time has come to also look into usability of such accounting software by the regulator for filing the tax and financial results. Either this software's should be compliant of the audit trail or they may be regulated to provide such audit trails. The another claim of the learned assessing officer is that assessee has huge cash in hand but a large amount of bank loans are outstanding and therefore, the claim of the assessee that it was having a huge cash is unacceptable. On careful analysis of the balance sheet of the assessee company for the year ended on 31 of March 2017 it is apparent that assessee has long-term borrowing in the form of secured loans, which are Term loan. These loans are payable at regular installments and have the commitment charges. Therefore, it could not have been paid by the assessee. The assessee further referred to note number 6 where short-term borrowings are explained. It is submitted that the most of the outstanding is bills payable under letter of undertaking and cash credit, which are backed by the closing stock of the assessee. Naturally, these funds are available to the assessee at a lesser rate of interest. Certain funds are also backed by hundred percent margins of fixed deposit receipts, which has very small amount of interest payout. The other advances received from banks in the form of packing credit are with respect to the export of garments. Therefore it was submitted that the funds available to the assessee are either repayable on a predefined term and or are having very small rate of interest. Therefore it cannot have any relationship with the holding of cash in hand. From the proper appreciation of the facts and judicial precedents, I find that the AO has made the addition u/s

68 which is not at all applicable when the appellant has duly furnished all the details in respect of the source of cash deposited in the bank account at HDFC Bank at Jaipur. Merely because the sales have taken place at Delhi and cash deposit is Jaipur especially when the bank itself only required appellant to deposit at Home Branch of such bank account i.e. at Jaipur only during such period. Ld. AO has also neither rejected the books of account and in particular the stock register and the corresponding sales which remain unchallenged. Hence it can be held that AO has accepted the sales so reflected in the books of account of the assessee. AO has not disputed the stock; the corresponding sales cannot be denied in any manner when such sales are duly reflected in the stock register. Even the sales are duly corroborated by VAT return so filed with sales tax department. Since sales remain sacrosanct the AO cannot add it merely because it was deposited at one go at a particular place/bank account. Hence the addition so made by the Ld. AO in such respect cannot be sustained. I find this view is endorsed by the aforesaid judgments considered by me as well. Hence the addition of Rs.3,79,37,000/- is hereby deleted and such grounds (No. 1 to 4) is allowed. As regards the Additional Grounds No 1 & 2 raised by the appellant do not require any adjudication since the addition so made by the Ld. AO has already been deleted by me. Such grounds are disposed accordingly treating them as for statistical purpose only. Other grounds i.e. Ground No. 5 raised by the assessee for wrong computation of interest u/s 234A, 234B & 234C are consequential in nature and treated as allowed for statistical purpose Only."

05. The Id. DR vehemently submitted before us that the Id. CIT (A) has wrongly allowed the appeal of the assessee by directing the Id. AO to delete the addition by overlooking the facts on records. In this regard the Id. DR by referring to page no. 4 para 2 of the assessment order submitted that there is a jump of 1600% in sales during the period of 01.11.2016 to 08.11.2016 vis-à-vis 01.11.2015 to 08.11.2015. The Id. AR submitted the sales during the periods were ₹3,60,50,926/- and ₹22,00,700/- during the above periods respectively. The Id. DR thereafter by referring to para no.4 of page no.3 of the assessment order submitted that after 09.11.2016 to 30.11.2016, there was hardly any sales and the amount was only ₹15,100/-. The Id. CIT (A) has simply allowed the appeal of the assessee on the ground that the sales were shown in the return of income filed by the assessee. The Id. DR also tried controverting the reasons given by Id CIT(A) for deletion that such sales were part of the profit and loss account which

were accepted by the Id. AO and therefore, same could not be added u/s 68 of the Act without rejecting the books of account as it amounts to double taxation on the same amount. The Id. DR therefore, prayed that the order of Id. CIT (A) may be reversed and that of Id. AO may be restored by allowing the appeal of the Revenue.

06. The Id. AR on the other hand, submitted that the assessee has in fact made the sales during the aforesaid period, which were duly recorded in the books of account and the sale bills along with PANs, addresses of the buyers were also available and placed before the authorities below. Similarly, the purchases and sales register were also duly maintained which also evidenced the said sales by the assessee during the demonetization period. The Id. AR submitted that the Id. AO has accepted the stock register, purchase register, sales register and has not rejected the books of accounts. The AR even submitted that the VAT returns filed by the assessee were also accepted by the excise department meaning thereby that the sales made during the above said period were accepted. The Id. AR finally prayed that since the assessee has genuinely made these cash sales which were banked into HDFC Bank, Jaipur and reflected in the books of account which were duly audited and accepted by the Id. AO, then it is not open to the Id. AO to pick a figure of cash sales and made the addition u/s 68 of the Act without rejecting the books of accounts as it would amount to double taxation of the same amount. In defense of his arguments the Id. AR relied on the decisions of co-ordinate Benches in the case of ACIT vs. M/s Ramlal Jewellers Pvt. Ltd. in ITA No. 1600/MUM/2023 vide order dated 26.07.2023 and ITO Vs. Zee Bangles Pvt. Ltd. in ITA No. 815/Mum/2022 vide order dated 18.07.2023. The Id. AR therefore, prayed that the appeal of the Revenue may kindly be dismissed by upholding the order of Id. CIT (A).

07. After hearing the rival contentions and perusing the materials available on record, we find that the assessee has deposited cash into HDFC Bank account no.(A/c No. 50200010727478) on 15.11.2016 of ₹3,79,37,000 which is admittedly during demonetization. According to the Id. Counsel for the assessee the said cash was deposited out of the cash sales made by the assessee. We have also examined the sale bills on sample basis ,cash book, purchase register, sale register and stock register and found that the sales were duly recorded in these books of account of the assessee. The books of account of the assessee were audited and even the VAT returns filed by the assessee which contained the said sales were also accepted by the VAT Department. We note that the Id. AO has accepted the books of accounts comprising the sale register, stock register and purchase register other records etc. and has only disallowed the particular cash sales deposited in the bank account on 15.01.2016 and added this the same u/s 68 of the Act which in our opinion amounts to double taxation as the said sales was already included in the sales shown in the profit and loss account and thus has been offered to tax. The case of the assessee find support from the decision of Shri Ramlal Jewellers Pvt. Ltd. (*supra*), wherein on similar facts the appeal is decided in favour of the assessee. The operative part is extracted as under:-

"10. We have heard both the parties at length and also perused the relevant finding given in the impugned orders as well as the documents submitted in the paper book. The case of the Id. DR is that, here in this case it is clearly evident that immediately after the demonetization assessee had shown inflated cash sales and also made deposits in the bank account which is completely abnormal compared to the earlier year and also subsequent year. Apart from that, assessee could not substantiate cash sales made to different parties and some of them could not be identified. Even those persons who responded to notice u/s. 133(6) could not substantiate the source of funds. Therefore, the cash sales made during the demonetization period cannot be accepted and Id. AO has rightly taxed the cash deposits u/s.68.

11. On the other hand, Id. Counsel for the assessee submitted that, firstly, nowhere the Id. AO has rejected the sales or the quantity of purchase stock and the quantity of sales. Once the purchase and sales are verifiable, then such cash sales deposited in the bank account cannot be treated as undisclosed income. He thus, completely relied upon the order of the Id. CIT (A).

12. We find that the only reason given by the Id. AO for treating the entire cash deposited in the bank account is that, there was abnormal growth on the cash sales in the month of November 2016 and corresponding cash deposits from the month of November to December, which alone cannot be the ground when deposits are directly linked with sale duly disclosed in the books. Another point raised by him was that, some of the cash sales made to different parties cannot be identified and the parties who responded were unable to explain the source of their funds. From the perusal of the material placed on record and also the explanation given by the assessee before the Id. AO, it is seen that assessee has maintained regular books of accounts which was subject to audit and has produced the entire sale bills, stock register and purchases and also quantitative tally of sales and corresponding stock. The assessee has also demonstrated that there was a direct correlation of cash outflow from the books of accounts with cash deposit in the bank accounts and also produced day wise stock report, wherein the outflow of stock against sales has been clearly reflected. Apart from that, sales declared under the Maharashtra VAT Act and the VAT return books of accounts. Even the Id. AO before whom all these documents were furnished has not pointed out any discrepancy in the sales bills, sales register, purchases and stock. Neither has he admitted the quantity of purchases at the stock with assessee and the corresponding quantity of sales made by the assessee during the year.

13. Another important fact is that assessee has duly filed cash compliance report with respect to cash sales in Form 61A giving all the details with respect to cash sales. Nowhere, the Id. AO has pointed out that assessee did not have sufficient stocks in its possession or otherwise found any defect in the stock register. If that finding has not been given and no discrepancy has been pointed out, then how the corresponding sales of same stock and quantity can be treated as 'undisclosed income' of the assessee. Once, AO has accepted the sales and there is direct nexus with the closing stock and the sales along with movement of stock linked to purchases then such credit on account of sales cannot be added u/s.68. If the cash sales have been accepted, then deposit of the same cash in the bank account which is tallying with the entries in regular cash book, cannot be treated as deposits made out of any undisclosed income.

14. Addition u/s.68 on account of cash deposits cannot be made simply on the reason that during the demonetization period, cash deposits vis-a-vis cash sales ratio is higher. If the parties during the period of demonetization has purchased huge quantity of jewellery on cash which has been duly recorded in the books of accounts of the assessee and also tallying with the quantity of stock, then simply because there was a huge cash sales in that particular month cannot be the reason for treating it as undisclosed income from undisclosed sources. Here in this case the parties to whom notices u/s. 133(6) were issued have confirmed the purchases but also filed the purchase bills. The Id. AO cannot disbelieve the purchases made from the assessee simply on the ground that those parties could not submit the source of their funds which is not the requirement of the assessee to prove specifically when assessee is a

retail seller of jewellery and even law does not prohibit any cash sales or there is any requirement to seek any further detail. For this compliance assessee has also filed Form 61A before the Id. AO. Once, it has been established that sales representing outflow of stocks is duly accounted in the books of accounts and there are no abnormal profits during the year, then there is no justification why AO should treat the deposits made in the bank account out of cash sales to be income from undisclosed sources. Thus, aforesaid finding recorded by the Id. CIT(A) which is based on correct appreciation of facts on record and there is no adverse finding by the Id. AO with regard to the availability of stock and quantity of items shown in the stock register and the corresponding sales, no addition can be made. Accordingly, order of the Id. CIT (A) is confirmed and the grounds raised by the Revenue is dismissed.

15. Once, the entire addition u/s.68 is deleted then the issue of invoking provisions to Section 115BBE is purely infructuous and we agree with the finding given by the Id. CIT (A) in this regard as incorporated above."

08. Similarly, the co-ordinate Bench in the case of M/s Zee Bangles Pvt. Ltd. (*supra*) has decided the issue in favour of the assessee by observing and holding as under:-

"6. Heard both the sides and perused the material on record. The assessee is engaged in the business of gold bullion and gold jewellery on wholesale and retail basis. During the year under consideration the assessee has made total sale less VAT at Rs.241,79,75,146/-. Out of total sale of more than Rs.241 crores, the assessee has reported cash sale to the amount of Rs.832,34,729/- which was about 3.44% of the total sale effected during the year under consideration. The AO has treated the cash sale amount deposited in the bank account as undisclosed amount deposited during demonetization period and added to its total income u/s 69A of the Act. The assessee has filed sale and purchase bill like sale register, purchase register, sales and purchase invoices, stock register etc. The assessee has maintained the books of account in the form of computerized ledger, cash book, bank book, sale register, purchase register and stock book. The assessee also explained that the cash deposited was out of sales/counter sales of less than of Rs.2,00,000/- from one person/party wherein in detail of address supported with documentary evidences and PAN were not required to be maintained by the assessee company. The assessee has maintained the complete detail along with PAN of the transaction exceeding Rs.2,00,000/- as per the detail placed on the paper book at page no. 73 to 76 of the paper book. The assessee has also placed before the authority below the month wise purchase details along with the purchase register from April 2016 to March 2017 out of which the assessee has made month wise sale from April 2016 to March 2017. The assessee has also placed on record as per page 63 of the paper book monthly stock statement showing month wise opening stock, in word because of purchases and outward because of sale along with closing stock. The assessee has substantiated by giving evidences on the basis of its books of accounts, stock register, and other relevant record that amount deposited by assessee was out of the sale proceeds. We have also noticed as mentioned in the finding of Id. CIT(A) that during the immediately preceding assessment year 2016-17 assessee has made total sales of Rs.169.29 crores out of which Rs.6.95 crores was made in cash and during the assessment year 2017-18 out of total sale of Rs.241.79

crores cash sale of Rs.8.32 crores was made which showed in assessment year 2016-17 the percentage of cash sale to the total sale was 4.11% whereas during the assessment year 2017-18 it had come down to 3.44% which showed that during the year under consideration compared to earlier year there was no abnormally high cash sale made by the assessee. In the paper book the assessee has placed copies of document filed during the course of assessment proceedings. The assessee has filed the details along with explanation i.e. copy of stock statement for the A.Y. 2016-17 to A.Y. 2018-19, copies of stock statement for the A.Y. 2016-17 to A.Y. 2018-19, copies of cash statement for AY. 2016-17 to AY. 2018-19, copies of monthly purchase and sales for the year under consideration and the previous year, copies of month wise purchase register, copy of month wise sale register, copy of name, address and PAN of purchase above Rs.2,00,000/- copy of name address and PAN of sales above Rs.2,00,000/- copies of sale bills etc. The assessee has also placed at pages 126 to 135 of the paper book, copies of replies filed before the AO dated 20.06.2019, 29.11.2019, 3.12.2019 and 18.12.2019 respectively. The assessee has given the detail of cash deposited in the A.Y. 2016-17 A.Y. 2017-18 and cash deposited in A.Y.2018-19 as placed at page no. 64 to 69 of the paper book filed before the A.O during the course of assessment proceedings. The assessee has also reconciled such cash deposit with the purchases and stock positions as referred supra in this order. The assessee had explained with relevant supporting evidences that the source of cash deposit was out of sales made during the financial year relevant to the assessment year under consideration. The AO has not disproved the genuineness of the purchase and stock position submitted by the assessee in support of its claim that sale was made out of sufficient stock of goods available with the assessee. The assessee has demonstrated from the material placed in the paper book that the stock position was matched with the sale and purchase of the goods made during the year under consideration. It is also noticed that assessee had not declared exorbitant profits during the year since gross profit rate of 0.90% pertaining to A.Y. 2017-18 was less than the gross profit rate of 1.05% declared in the previous year.

7. Looking to the facts and circumstances as elaborated supra the AO has neither disproved the genuineness of purchase/availability of stock of jewellery corresponding to the sales nor the claim of the assessee that source of cash deposit was made out of the cash sale effected during the year under consideration. We have also perused the judicial pronouncements relied upon by the assessee in the case of ACIT Vs. Hirapanna Jewellers, ITA No. 253(Viz) of 2020 dated 12.05.2021 wherein held as under:

"[2021] 128 taxmann.com 291 (Visakhapatnam - Trib. [2022] 96... INCOME TAX: Where AO made addition under section 68 on account of huge cash amount deposited by assessee-jeweller in its bank account post demonetization, since assessee had explained source of said cash deposits as sales of jewellery, produced sale bills and admitted same as revenue receipt as well as offered it to tax and assessee also represented outgo of stocks which was matching with sales, impugned addition was to be deleted."

We have perused the decision in the case of Essay Pay Pvt. Ltd. vs. ACIT, High Court of Gujarat similarly Gujarat High Court has held that reopening of the assessment u/s 147 of the Act was not valid when the assessee as fully explained the source of cash deposit in the bank account during the demonetization.

8. We have perused the decision of Hon'ble High Court in the case of Agson Global Pvt. Ltd. Vs. Pr.CIT wherein held as under:

"INCOME TAX: Where AO made addition under section 68 on account of cash deposit made by assessee post-demonetization, since assessee placed material on record to prove that cash deposits made with banks were in correspondence with cash sales and growth in sales compared to earlier two years showed similar trend, it could only be concluded that there was growth in assessee's business and impugned addition was to be deleted."

After considering the facts and circumstances and finding of various courts we find absolutely no prima facie material to take contrary view and the Id. CIT(A) has rightly considered the material placed before him. The A.O has not brought on record any clinching evidences to prove that cash sale made by the assessee was not genuine as the same was supported with corresponding purchases relevant bills and invoices and stock position as discussed supra in this order.

9. We also find that Id. CIT(A) has rightly held that Sec. 69 provides that in case the assessee is found to be owner of any money, bullion, jewellery or any other valuable article and same is not recorded in the books of account, it may be considered to be deemed income of the assessee in case he is not able to provide explanation or his explanation is not satisfactory in the opinion of the assessing officer. The same cannot be applied to the case of the assessee since the assessee has himself declared the amount of cash deposited in the return of income after duly entering the same in the books of account. Regarding applicability of the provision of section 69A of the Act we have perused the provisions of Section 69A of the Act which is reproduced as under:-

"[69A Power to issue directions for blocking for public access of any information through any computer resource. –

(1) Where the Central Government or any of its officer specially authorized by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section

(2) for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource. (2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.

(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine.]

It is clear that Sec. 69A of the Act is applied when the assessee is found to be owner of any money which is not recorded in the books of account. However, in the case of the assessee, it has maintained books of accounts duly audited in

accordance with section 44AB of the Income Tax Act which was also furnished with the return of income filed by the assessee. The assessee has demonstrated from the purchase books, sale books cash book supported with relevant invoices that source of cash deposited was out of the cash sales made during the A.Y. relevant to the assessment year under consideration. The Id. Counsel has also placed reliance on a number of judicial pronouncements on the proposition that addition u/s 69A of the Act cannot be made i.e.: Lalchand Bhagat Ambica Ram Vs. CIT (1959) 37 ITR 288 (SC); Lakshmi Rice Mills Vs. CIT (1974) 97 ITR 258 (PAT); DCIT Vs. M/s Karthik Construction Co. ITA No. 2292/Mum/2016.

10. After considering the facts as discussed above, we find the AO has failed to justify in applying section 69A to the case of the assessee when the assessee itself declared the cash sales in its return of income duly recorded in the audited books of accounts maintained by the assessee. Therefore, the CIT(A) has correctly held that provision of Sec. 69A of the Act cannot be applied in respect of cash deposited which have been duly recorded in the books of account and had already been declared income in the return of income filed by the assessee. Therefore, the grounds of appeal of the revenue is dismissed."

09. Since the facts of the case before us are materially similar as decided by the co-ordinate Benches in the above decisions as discussed above. We therefore, following the same uphold the order passed by the Id. CIT (A) by dismissing the appeal of the Revenue.

010. Coming to CO of the assessee, as we have already dismissed the appeal of Revenue, hence, the CO of the assessee becomes infructuous and is accordingly dismissed.

011. In the result, the appeal of the Revenue as well as CO of the assessee are dismissed.

Order pronounced in the open court on 16.12.2024.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 16.12.2024
Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata