

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.1596/Del/2024

[Assessment Year : 2021-22]

DCIT Central Circle-II Noida.	vs	Nagpal Fabrics Pvt.Ltd. 697 Katra Neel Chandni Chowk, New Delhi-110006. PAN-AABCN9620F
APPELLANT		RESPONDENT
Appellant by		Shri Amit Shukla, Sr. DR
Respondent by		Shri Akhilesh Kumar, Adv. & Shri Govind Agarwal, CA
Date of Hearing		21.10.2024
Date of Pronouncement		18.12.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed at the instance of the Revenue seeking to assail the First Appellate order dated 05.01.2024 passed by Ld. Commissioner of Income Tax (A)-3, Noida [“Ld.CIT(A)”] under s. 250(6) of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 18.12.2022 passed under s. 143(3) of the Act pertaining to assessment year (“AY”) 2021-22.

2. The Revenue has raised following grounds of appeal:-

1. *“Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the addition of Rs. 1,46,84,779/- without appreciating the fact that the assessee has not been able to furnish any satisfactory and substantiated explanation for the cash deposits in the bank accounts of the assessee.*
2. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred by admitting additional evidence in contravention to Rule 46A of the Income-tax Rules, 1962 despite being apprised of the inadmissibility of the same vide the remand report dated 26.12.2023.*
3. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in ignoring the critical finding mentioned by the AO in the assessment order that no modes of payment,*

delivery address, delivery mode or terms of delivery details were mentioned on the invoices. Complete address of the buyer was also missing on substantial number of invoices. The vouchers submitted by the assessee were merely hand written and no caption of cash voucher was written on the same.

4. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred while accepting the explanation given by the assessee despite the fact that the assessee had failed to adduce sufficient evidence to substantiate its explanation. During the appellate stage, no documents to establish the creditworthiness of the debtors has been submitted by the assessee before the Ld.CIT(A).*
5. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in allowing the appeal of the assessee despite the fact that the assessee has failed to establish any nexus between the seized cash and the sales made by the assessee in cash.”*

3. As per grounds of appeal Revenue has essentially challenged the reversal of additions of INR 1,46,84,779/- towards cash deposits.

4. Briefly stated, the assessee filed return of income declaring total income of INR 68,23,670/- for AY 2021-22 in question. The return filed by the assessee was subjected to scrutiny assessment under s. 143(3) of the Act. In the course of assessment proceedings, the Assessing Officer (“AO”) observed that the assessee has deposited cash of INR 1,46,84,779/- in aggregate in its HDFC Bank Account. Accordingly, the assessee was asked to furnish source of all cash deposits. The assessee furnished chart of cash deposits and explained that cash deposits have been sourced out of cash received from various debtors against sale of clothes to such customers. However, the explanation offered by the assessee towards source of cash deposit was not found satisfactory by the AO. The AO accordingly made an addition of INR 1,46,84,779/- to the income returned and assessed the total income at INR 1,46,84,779/-.

5. Aggrieved, the assessee preferred appeal before the Ld.CIT(A).

6. It was pointed out before the Ld.CIT(A) that the cash deposits arose out of cash sales in its cloth business where as per prevalent practice and usage of trade that the clients pay debts arising from cloth sales in cash. It was also submitted that the cash collected from such small time customers towards sale

proceeds is less than 10% of the total turnover. Similar cash collected got deposited into bank account year after year and this is not the first time in this year where the cash deposits have been made. The sales are made to the regular customers holding GST registration and sales to small time customers not holding GST registration is less than INR 20,00,000/- in aggregate. Thus major part of the cash is collected from regular customers having GST registration. The sales made to such customers through tax invoices are debited in their respective ledger accounts and cash received from them are credited into respective ledger accounts of the customers. The books of accounts of the assessee are subjected to various audits such as statutory audits, tax audits & GST audits. The corresponding sales made during the whole year is duly accounted for in the books of accounts and is also included in GST returns. The assessee also provided the information regarding cash sales including GST and the cash deposits in two AYs preceding to 2020-21 as well as succeeding AYs to demonstrate the pattern and the nature of business. It was pointed out that during AY 2021-22 in question, the total cash sales and corresponding cash received is less than 10% i.e. 9.91% to be precise. Various judgements were referred as delivered in the similar context to support the claim. In the course of appellate proceedings, the Ld. CIT(A) communicated the version of the assessee to the AO and the AO was directed to verify the confirmations obtained from parties to whom cash sales were made. In response the AO filed remand report and objected to the admission of the additional evidences by way of confirmatory ledger accounts.

7. Based on the factual matrix merging from records and documentary evidences, the Ld.CIT(A) dealt with the issue in favour of the assessee as under:-

Observation & Decision

5. *“In the light of the above submissions and documents filed by the AR during the course of appellate proceedings and findings of the AO in the assessment order and remand reports sent by the AO, the various grounds of appeal are adjudicated as below:*

5.1 *Grounds of Appeal Nos. 1 to 5: In these grounds, the AR has contested that the AO made an addition of Rs. 1,46,84,779/- on account of cash deposits in the bank account of the assessee by treating the same as unexplained money u/s 68 of the Income Tax Act, 1961.*

The assessee is into the business of wholesale trading of clothes. The AO made the addition on account of cash deposits on the following basis:

- 1. The genuineness of ledger account transactions is doubtful.*
- 2. The assessee could not furnish the confirmation from customers from whom the cash payments were received.*
- 3. The tax invoices are self-generated and hence lack evidentiary value.*
- 4. In some cases, hand written vouchers have been furnished.*

The AR in his reply during the course of appellate proceedings contended as under:

- 1. The assessee company sells clothes to several hundred customers spread across many states in the country.*
- 2. The cash collected from various customers is deposited in the bank accounts of the assessee.*
- 3. The AO asked for the documentary evidence in respect of cash sales on 15.12.2022 which were submitted by the assessee on 17.12.2022 and the assessment order was passed on 18.12.2022.*
- 4. The assessee submitted copies of ledger accounts, sale invoices and receipts in respect of various customers in support of cash received.*
- 5. The assessee company is registered with GST Department and the sales are shown in the GST returns.*
- 6. The addition made by the AO on account of cash deposits has already been reflected in the books of accounts by the assessee, therefore, the cash deposits cannot be treated as income of the assessee because the same amount has been taxed twice.*
- 7. The books of accounts have been accepted by the AO and the AO has not tinkered with the purchase, sale & trading results shown by the assessee.*
- 8. The cash receipts as a ratio of turnover during the year is only 9.91% and receipt of cash is a normal feature in the trade of the assessee as can be seen from the returns filed for earlier and consequent years.*
- 9. That the GST returns, sale & purchase bills all show the genuineness of the transactions of the assessee.*
- 10. That the AO has accepted the purchases & creditors, then how can sales be questioned.*
- 11. That the AO has not brought on record any evidence to show that the sales are not genuine.*

Analysis

In this case, the AO has questioned the genuineness of sales made by the assessee concern by considering the cash sales to be unexplained money

of the assessee. The AO has treated the whole of cash deposit of Rs. 1,46,84,779/- as unexplained income of the assessee u/s 68.

Cash Sales vs Turnover

A comparison of the percentage of cash sales viz a viz total turnover is Highlighted in table below:

Assessment Year	Total Sales	Cash Sales including GST	Cash Received from debtors	Cash Deposited in Bank	% of total cash sales & cash received to turnover
2022-23	27,78,50,164	13,96,989	1,63,78,924	1,39,14,666	6.40%
2021-22	16,95,04,795	19,37,648	1,48,56,355	1,46,84,779	9.91%
2020-21	29,42,98,806	21,79,994	2,03,76,366	1,87,65,170	7.66%
2019-20	27,42,49,345	21,05,488	2,46,97,887	2,33,21,120	9.77%

It is apparent from the above table that the cash sales are a regular feature of the trade of the assessee. During the year under consideration, the percentage of cash sales was 9.91% whereas in the AY 2019-20, the same was at 9.77%. The AR has contended that the AO has not questioned the genuineness of purchases and other expenses, then how can the sales be questioned. A perusal of the assessment order reveals that the AO has not given any finding to the effect that the purchases, the opening stock and the closing stock of the assessee firm is questionable. The AO has reached the conclusion that the cash sales of the assessee concern are bogus and the assessee has introduced his own cash into the bank accounts. In case, the AO had any doubts regarding the cash sales being bogus, then genuine efforts should have been made to prove the purchases to be bogus as well. In the present case, no such enquiries have been done.

Natural Justice

It is further observed that show cause for making the said addition was issued on 15.12.2022 and the assessee filed submissions on 17.12.2022 and the assessment order was passed on 18.12.2022. It appears from above that the order was passed in a hurry and adequate opportunity of hearing was not provided to the appellant. To provide adequate natural justice to the appellant, during the appellate proceedings, the AR was directed to provide confirmations from the parties to whom the cash sales exceeding Rs. 1 lac was made. The AR in response submitted the requisite confirmations along with the copy of bills. The said information was forwarded to the AO in the interest of natural justice vide email dated 19.12.2023. Reminder was issued to the AO vide email dated 26.12.2023. The AO in response has submitted that additional evidence in the case should not be admitted. It needs to be pointed out here that the information submitted by the AR which was forwarded to the AO for comments was called for in the enquiry done during the appellate proceedings by this office, The said documents are not in the nature of additional evidence as they were called for during the appellate proceedings. The said fact is also clear from the e-mail sent to the AO dated 19.12.2023 where it has been

clearly mentioned that the AR was directed during the appellate proceedings to furnish confirmed copy of accounts of debtors to whom sales above Rs. 1 Lac were made in cash.

Powers of CIT(A)

The Hon'ble Supreme Court in the case of CIT vs Kanpur Coal Syndicate [1964] 53 ITR 225 (SC) has held as under:-

"The AAC has plenary powers in disposing of an appeal. The scope of his power is co-terminus with that of the ITO. He can do what the ITO can do and also direct him to do what he has failed to do. If the ITO has the option to assess one or other of the entities in the alternative, the AAC can direct him to do what the ITO would have done in the circumstances of a case"

Further the Hon'ble High Court of Karnataka in the case of CIT vs K.S. Dattatreya [2011]197 Taxman 151/9 taxmann.com 106 (Kar.) has held as under:-

"As a revisional authority, Commissioner (Appeals) can revise not only ultimate computation arrived at by ITO but can revise every process which led to ultimate computation or assessment"

Further the Hon'ble High Court of Kerala in the case of V. Subramonia Iyer vs CIT[1978]113 ITR 685 (Ker.) has held as under:-

"The power conferred on the appellate authority by section 246 and which is exercised in accordance with the procedure in section 250 indicates an amplitude and width which is no less wider than that of the ITO, and the appellate authority could substitute the order of the ITO by one of his own"

Analysis

The AO has not rebutted the evidence forwarded during the appellate proceedings on merits but has only submitted that the same should not be considered. From the above discussion, it is seen that confirmations have been filed by the appellant from more than 40 parties to whom cash sales were made. In above circumstances, it is observed that the cash sales of the assessee concern have been verified by the major debtors of the assessee. Also, the AO has accepted the purchases, expenditure and trading results of the assessee as the books of accounts have not been rejected. Once the cash sales of the assessee have been confirmed, the purchases have not been questioned by the AO, the GST returns have been filed, the AO having brought no evidence on record to prove that the cash sales are bogus, the book result have been accepted and on the contrary, the assessee has filed confirmations from the parties with whom cash transactions have been made; then considering the cash sales as bogus shall not stand the test of law.

Addition u/s 68

As regards, the addition of Rs. 1,46,84,779/- u/s 68 and invoking the provision of section 115BBE is concerned, the order of the AO and the detailed sections of the assessee along with the case laws have been thoroughly perused and various case laws as relied upon by the assessee have also been gone through. The contentions of the assessee had been

that it is not a case of 'unexplained money having been deposited in the bank account of the assessee and it is sales of the clothes etc. which have been deposited in the bank account and such entries have duly recorded in the audited books of accounts. The submissions of the assessee about the filing of the GST returns have also been considered. No defects have been pointed by the AO in respect of the purchases made by the assessee, the trading results of the assessee, then the cash realized on account of sales of the stock cannot be held to be 'unexplained money' and, as such, the addition of Rs. 1,46,84,779/- is devoid of any valid reason".

The Hon'ble High Court of Delhi in the case of Principal CIT vs. Agson Global Pvt. Ltd. reported at [2022] 441 ITR 550 has held as under:

"Assessee-company was engaged in business of selling dry fruits post- demonetization, assessee deposited cash amounting to Rs. 180.53 crore in its bank accounts - Assessing Officer held that cash deposits made by assessee represented unaccounted Income and accordingly, made additions Tribunal analyzed data pertaining to cash sales and cash deposits made in relevant assessment year as against two earlier assessment years and noted that in year of demonetization percentage increase in sales was less than earlier year He, thus, held that growth in sales compared to earller two years showed similar trend, and it could not be said that assessee had booked non-existing sales in its books post-demonetization Furthermore, revenue made no allegation that assessee had backdated its entries Whether since assessee placed material on record that cash deposits made with banks more or less corresponded with cash sales, it could only be concluded that there was growth in assessee's business and impugned addition was to be deleted - Held, yes [Paras 16.9 and 17.6] [In favour of assessee]"

On a similar issue the Ld. ITAT Chandigarh Third Member Bench in the case of Bansal Rice Mills vs. ITO reported at [2002] 120 Taxman 155 (Chd Trib.) (TM) has held as under:

"Since the sales proceeds have already been accounted for in the trading account no addition could be sustained even if the said deposits could be treated as bogus sales as complete stock tally was there".

The judgment of Hon'ble Delhi High Court in the case of Pr. CIT Vs Akshit Kumar in ITA No. 348 of 2019 as reported in 197 DTR 121, decided on 17th of November, 2020 and judgment of Ld. Tribunal Bench of Delhi in the case of Agsons Global P Ltd. vs. ACIT (Appeal No 3741 to 3746/Del/2019) order dated 31.10.2019 are applicable to the facts & circumstances of the case and these two judgments have been relied upon by the Hon'ble Chandigarh Bench of ITAT in a detailed judgment of Ld. Tribunal Bench of ITAT in the case of "Kalaneedhi Jewellers" reported in (2022) 96 ITR Trib. 66 (Chd) and the following relevant paragraph from the Judgment is being reproduced as under:

10.11 In the present case also the opening stock, purchases 1200 closing stock, declared by & sales and the assessee has not been doubted, the sales were made by the assessee out of the opening stock and purchases and the resultant closing stock has been accepted, the sales had not been disturbed either by the AO or by the sales tax/VAT Department and even there was no difference in the quantum figures of the stock at the time of search on 12/04/2017, therefore, the sales made by the assessee out of the existing stock were sufficient to explain the deposit of cash (obtained from realization of the sales) in the bank account and cannot be treated as undisclosed Income of the assessee.

10.12 On an identical issue the Coordinate Bench of the ITAT Visakhapatnam Bench in the case of ACIT, Central Circle-1, Visakhapatnam Vs. Hirapanna Jewellers [2021] 128 taxmann.com 291 (supra)held as under:

"7. 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 assessing officer 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 section 68 which reads as under:

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and he 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:

From the perusal of section 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 sale decreases 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 reason to disbelieve the sales. The assessing officer 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 the DDIT (Inv.), 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.

7.2 In the instant case the assessee has established the sales with the bills and representing outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. In spite of conducting the survey the AO did not find any defects in sales and the stock. Therefore, we do not find any reason to suspect the sales merely because of some routine observation of suspicious nature such as making sales of 270 bills in the span of 4 hours, non-availability of KYC documents for sales, non-writing of tag of the jewellery to the sale bills, non-availability of CCTV footage for huge rush of public etc. The contention of the assessee that due to demonetization, the public became panic and the cash available with them in old denomination notes becomes illegal from 9-11-2016 and made the investment in jewellery, thereby thronged the jewellery shops appear to be reasonable and supported by the newspaper clippings such as The Tribune, The Hindu etc. It is observed from the newspaper clippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through the country.

10.13 In the present case also the cash deposited post demonetization by the assessee was out of the cash sales which had been accepted by the Sales Tax VAT Department and not doubted by the AO, there was sufficient stock available with the assessee to make cash sales and there was festive season in the month of October 2016 prior to the making of the cash deposit in the bank account out of the sales. So, respectfully following the aforesaid referred to orders by the various Hon'ble High Courts and the Coordinate Benches of the ITAT, we are of the view that the impugned addition made by the AO and sustained by the Ld. CIT(A) was not justified, accordingly the same is deleted."

Also, the Ld. ITAT Bench Vishakhapatnam in the case of ACIT Central Circle-1, Vishakhapatnam vs. Hirapanna Jewellers in ITA No. 253/Viz/2020 in para 9 of its order, held as under:

"9. In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone

through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House (Supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra), Hence, we do not see any reason to interfere with the order of the Ld. CIT(A) and the same is upheld."

The judgment of Ld. Tribunal Bench 'B' of Chandigarh in the case of DCIT, Central Circle-1, Ludhiana vs. M/s. Roop Fashion, Ludhiana in ITA No. 136/Chd/2021, it has been held by the Bench, as under:

9. We have considered the submissions of both the parties and material available on the record, In the present case it is not in dispute that the books of accounts maintained by the assessee in the regular course of its business were audited and accepted by the AO while framing the assessment through deep scrutiny under section 143(3) of the Act. The AO did not point out any specific defect in the books of account maintained by the assessee, no inflated purchases or suppressed sales were found, In the instant case, even the Investigation Wing asked the assessee to furnish the details which were submitted, copy of which is placed at page no. 75 to 123 of the assessee's compilation, on those details, no adverse comment was made by the Investigation Wing. It is also noticed that the assessee is having cash sales in all the years which is evident from page no. 4 of the impugned order passed by the Ld. CIT(A). For the year under consideration the assessee was having cash sales of Rs. 4,12,59,227/- out of total sale of Rs. 13,82,27,373/-, the cash sale was about 1/3rd of the total sales, similar was the position there in the preceding year. The assessee was also having cash realized from the debtors and it was not the case of the AO that the debtors of the assessee were bogus or those were not related to the business of the assessee. The cash deposited in the bank by the assessee during the demonetization period was out of the cash sales and the realization from the trade debtors duly shown in the book of accounts which were accepted by the A.O. The assessee had deposited Rs. 2,47,50,000/- during the demonetization period in the bank account, the AO accepted Rs. 1,50,00,000/- as cash sale on estimated basis but no basis or method was adopted for that estimation, in other words the AO considered the aforesaid estimated sales only on the basis of surmises & conjectures which is not tenable in the eyes of law. In the present case, in the month of October 2016 and November 2016 the assessee was having cash sales of Rs. 1,04,97,098/- and Rs. 62,00,849/- which had not been doubted by the AO who had also not commented on the claim of the assessee that the balance of the amount which was deposited in the bank account was out of the realization of cash from the debtors

which for the year under consideration was at Rs. 3,09,78,586/-. In the present case the AO accepted the trading results and had not doubted opening stock purchase sales and closing stock as well as GP rate shown by the assessee. Therefore, the addition of Rs. 97,50,000/- made by the AO on the basis of surmises and conjectures was rightly deleted by the Ld. CIT(A). We do not see any valid ground to interfere with the detailed and logical findings given by the Ld. CIT(A) in the impugned order."

This view is also supported by the decision of Hon'ble Delhi High Court in the case of CIT vs. Kailash Jewellery House (Del HC) in ITA 613/2010 dated 09.04.2010 in which it has been held as under:

4. The Tribunal also noted that the departmental representative could not challenge the factual finding recorded by the Commissioner of Income-tax (Appeals). Nor could he advance any substantive argument in support of his appeal. The Tribunal also observed that it is not in dispute that the sum of Rs. 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.

5. The findings of the Commissioner of Income-tax (Appeals) and the Tribunal, which are purely in the nature of the factual findings, do not require any interference and, in any event, no substantial question of law arises for our consideration. The appeal is dismissed."

Further, in the judgment of Hon'ble HIGH COURT OF GUJARAT in the case of Hemant Manaharlal Shah (HUF) vs. Income Tax Officer, Ward-8 reported at [2018] 94 taxmann.com 463 (Gujarat) it has been held as under:

Section 69A, read with section 147, of the Income-tax Act, 1961 - Unexplained money etc. (Agricultural income) - Assessment year 2010-11 During relevant year, assessee earned agricultural income which was exempt from tax Assessee filed its return declaring certain other taxable income Assessment was completed without taking assessee's return in scrutiny Subsequently, Assessing Officer issued notice seeking to reopen assessment on ground that there was a big mismatch between returned income and cash transactions in assessee's bank accounts which remained unexplained It was noted that in response to notice issued, assessee pointed out that he had received amount in cash for sale of his Mango crop which was deposited in bank account - Assessee had also furnished a copy of agreement between assessee and purchaser of Mango crop - Bank statement was also produced - Whether on facts, if Assessing Officer was not still satisfied, it was always open for him to call for further details or even for valid reason to discard assessee's reply and reopen assessment recording

reasons Held, yes Whether, however, under no circumstances, Assessing Officer could have simply Ignored assessee's reply and proceeded to form a belief that income chargeable to tax had escaped assessment on premise that his queries had remained unreplied Held, yes Whether in view of aforesaid, it could be concluded that reasons recorded by Assessing Officer proceeded on wrong facts and, thus, impugned reassessment proceedings deserved to be quashed Held, yes [Para 10] [In favour of assessee]

Further, in the judgment of Ld. ITAT Mumbai Bench D in the case of ACIT vs, Ramlal Jewellers (P.) Ltd. reported at [2023] 154 taxmann.com 584 (Mumbai - Trib.), has held as under:

Section 68 of the Income-tax Act, 1961 Cash credit (Cash deposit in bank) Assessment year 2016-17 Assessee-company was engaged in jewellery business During assessment proceedings, Assessing Officer noted that immediately after demonetization assessee had shown inflated cash sales and also made deposits in bank account which was completely abnormal as compared to earlier year and also subsequent year He, therefore, taxed cash deposits under section 68 It was seen that assessee had maintained regular books of account which was subject to audit and had produced entire sale bills, stock register and purchases and also quantitative tally of sales and corresponding stock Addition under section 68 on account of cash deposits could not be made simply on reason that during demonetization period, cash deposits vis-a-vis cash sales ratio was higher Whether once, it had been established that sales representing outflow of stocks was duly accounted in books of account and there was no abnormal profit during year, then there was no justification to treat deposits made in bank account out of cash sales to be income from undisclosed sources - Held, yes - Whether, therefore addition made under section 68 was to be deleted - Held, yes [Para 14] [In favour of assessee]

Further, in the judgment of Ld. IN THE ITAT AMRITSAR BENCH in the case of Balwinder Kumar vs. Income-tax Officer reported at [2023] 151 taxmann.com 338 (Amritsar - Trib.) has held as under:

Section 69A, read with section 115BBE, of the Income-tax Act, 1961 Unexplained moneys (Cash sales) - Assessment year 2017-18 - During scrutiny proceedings, assessee explained before Assessing Officer that cash deposits made in Its bank account pertained to cash sales made during demonetization period Assessing Officer being not satisfied with said explanation treated deposits as bogus deposits Commissioner (Appeals) upheld additions made by Assessing Officer without appreciating facts It was noted that revenue authorities had accepted opening stock, closing stock, purchases, direct expenses, sundry debtors, sundry creditors, all VAT 15 returns and annual VAT 20 of assessee, without pointing any defect Further, gross profit (GP) ratio of assessee was also accepted however same was suo-motu reduced out of disputed deposits Whether Assessing Officer could not blow hot and cold at

same time by partly rejecting books of account and partly accepting same, which was bad-in-law - Held, yes Whether, further, since trading account of assessee had sufficient stock to affect sales in question and he had already admitted sales as revenue receipts, there was no case for making addition under section 89A against alleged cash deposits in bank Held, yes [Para 12] [In favour of assessee]

Further, in the judgment of Ld. IN THE ITAT JAIPUR BENCH 'B' in the case of Mahesh Kumar Gupta s. ACIT reported at [2023] 151 taxmann.com 339 (Jaipur - Trib.) has held as under:

Section 68, read with sections 115BBE and 145, of the Income-tax Act, 1961- Cash credit (Demonetization deposits) - Assessment year 2017-18 - Assessee was engaged in business of wholesale and retail business of gold and silver ornaments Assessee's case was selected for scrutiny to examine issue of abnormal increase in cash deposits during demonetization period as compared to average rate of cash deposited during pre-demonetization period - Assessee claimed that deposits made in bank account was with respect to cash sales made during period of 1-1-2016 to 8-11-2016-Assessing Officer verified bills submitted by assessee and observed that all bills were of value less than Rs. 2 lakhs wherein details of purchasers was not provided He, thus, invoked section 68 on ground that genuineness of sale bills could not be verified and held that huge cash deposited in bank was from undisclosed sources - It was noted that all sales made by assessee were supported by commercial invoice duly complied with VAT provision on which VAT was paid Also said invoices issued were reported in VAT return and sales had been accepted by VAT authority - Whether since Assessing Officer did not reject books of account of assessee by invoking section 145, Assessing Officer erred in not accepting declared cash sales as not verifiable which were recorded in books of account and were found to be correct and complete Held, yes Whether since accounts were regularly maintained and cash deposits were duly supported by entries passed in books of account, additions made under section 68 could not be sustained Held, yes [Paras 9.5 and 9.8] [In favour of assessee]

In view of the above discussion and judicial pronouncements, the source of the deposit in the bank accounts is adequately explained being sale of the clothes and the same having been recorded in the regular books of accounts and thus, Section 68 is not applicable at all and no case has been made out that the assessee is found to be owner of money, which is not recorded in the books of accounts and rather the assessee has valid explanation that there was available cash in hand, out of the sale of clothes and in view of the various judgments discussed above invoking of Section 68 r.w.s. 115BBE by the AO is not correct.

In view of the foregoing discussion and taking into consideration all the facts and the circumstances of the case, It appears that cash deposits in bank account represent the sales which the assessee has rightly offered for taxation. No defect in the trading account and the stocks of the assessee has been pinpointed by the AO. Also, confirmations for the major cash sale transactions of the assessee concern were called for and submitted by the AR during the appellate proceedings, which were shared with the AO for any comments. The AO has not commented on the said submission on merits. The AO during the assessment proceedings has also not spotted any specific defect in the books of account, sales, purchase and stock. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. Hence, the action of the Assessing Officer in making an addition of Rs. 1,46,84,779/- is not justified and same is therefore deleted.

Accordingly, these grounds of appeal are allowed.”

8. Aggrieved by the relief granted by the Ld. CIT(A) and consequent reversal the additions towards cash deposits, the Revenue preferred appeal before the Tribunal.

9. The Ld. Sr. DR for the Revenue mainly relied upon the assessment order and also pointed out that the Ld.CIT(A) was not justified in admitting the additional evidences in contravention of Rule 46A of the Income Tax Rules, 1962. The Ld. Sr. DR also pointed out that modes of payment, delivery address, delivery mode for terms of delivery details were not made available to the Revenue. Besides, the creditworthiness of the debtors have not been submitted at any stage. The Ld. Sr. DR also pointed out that pattern of cash collection appears unusual and the quantitative details of items traded by the assessee are also not available. The Ld. Sr. DR accordingly urged for setting aside the first appellate order and restoration of the assessment order.

10. The Ld. Counsel for the assessee on the other hand, strongly relied upon the submissions made before the Ld.CIT(A) and the documentary evidences referred to and relied upon in the course of hearing. Ld. Counsel for the assessee pointed out that sales includes small retail shopkeepers which make payment in cash only. The cash collected from such customers against the sale made are regularly deposited in its bank account by the assessee. The copy of cash book showing transactions of cash deposits during the year under consideration were also placed before the AO. It was also pointed out that the

assessee is engaged in trading of clothes and sales clothes to retail cloth traders against which the recovery is mainly made in cash. The accounts of the assessee are audited under Companies Act as well as under s. 44AB of the Income Tax Act. It is customary in the wholesale trade of the assessee to periodically collect cash from small shopkeepers to maintain liquidity as well as to avoid bad debts. The assessee also pointed out that most of the sales are made to the regular customers registered with GST Department and the cash sales to non-regular customers are hardly INR 19.38 lakhs. The remaining cash has been collected from GST registered regular shopkeepers. It was further pointed out that the total turnover made by the assessee during the year under consideration is INR 16.95 crores out of which cash sales made to non-regular customers is barely INR 19.38 lakhs which works out @ 1.14% of the total turnover. The cash received from regular customers stand at INR 148.56 lakhs and the cash sales to non-regular customers is INR 19.38 lakhs aggregating to INR 167.94 lakhs has been utilized towards deposits in the bank. The assessee further pointed out that cash realization against the sales comes to 9.90% only.

11. The Ld. Counsel for the assessee also pointed out that while AO has assessed cash sales made out of purchases declared, the AO has separately assessed the cash deposits resulting in double taxation of the same transaction. The Ld. Counsel for the assessee vehemently contested the action of the AO and submitted that the AO has miserably failed to appreciate the facts placed before him in correct perspective. The cash deposits were made out of cash sales and the cash sales are quite meager and stands at 9.98% of the total turnover. As pointed out, the case sales have been made to GST registered customers only. The case deposits are fully explainable from the books of accounts such as cash book, ledger accounts of the parties etc. and such deposits are not one year phenomena. Having regard to the nature of business, the cash deposits are regularly made year after year as demonstrated before the Revenue authorities. Besides, the action of the AO tantamounts to double taxation of the same cash *firstly*, by way of cash sales and *secondly*, by way of cash deposits resulting in double jeopardy. The confirmatory letters from the customers before the Ld.CIT(A) have been filed as a measure of

abundant caution and without such confirmation also, the conclusion can be no different. The Revenue authorities have not rejected the books and therefore when the sales have been accepted, a part of which is by way of cash sales, the corresponding cash deposits cannot be seen in isolation as wrongly done by the AO. The Ld. Counsel for the assessee contended that despite cogent evidences to support the source of cash deposits, the Revenue has indulged in protracted litigation in mechanical manner. The Ld. Counsel for the assessee submitted that the reasons and findings of the Ld.CIT(A) cannot be displaced in the facts of the present case and hence no inference is called for.

12. We have carefully considered the rival submissions and perused the first appellate order and the assessment order and the material referred to and relied upon in the course of hearing by the respective sides in terms of Rule 18(6) of the Income Tax (Appellate Tribunal) Rules, 1963. The source of cash deposits amounting to INR 1,47,84,779/- is in controversy. The issue is essentially factual in nature.

13. As emerges from the first appellate order, it is the case of the assessee that source of cash deposits in question bears direct nexus to the cash sales made prior to the deposits. The cash sales are stated to be out of purchase made. The cash sales, when seen in the context, appears quite negligible hovering at less than 10% of the total sales. The assessee is engaged in trading of cloth. It is common knowledge that such trading do involve cash sales. The assessee in the instant case also contends that the cash sales have been made to the retail shopkeepers who are holding GST registration. The accounts of the assessee are subjected to statutory audit and other audits. The book results declared by the assessee include cash sales which has given rise to the cash deposits. Significantly, the books of accounts have not been rejected. Thus, cash sales (less than 10% of the total turnover) stands accepted for the purposes of determination of taxable income. The source of cash deposits thus are clearly attributable to cash sales. Besides, the assessee has also furnished ledger accounts of its main customers where the sales and the payment of cash to the assessee has been confirmed by the corresponding customers. The

Ld.CIT(A), on analysis of facts, noticed that the assessee has furnished confirmation of more than 40 parties to whom cash sales have been made. Similar cash sales and corresponding cash deposits have been demonstrated in preceding two AYs as well as subsequent AYs. Thus, the cash deposits made are in the ordinary course of carrying of business and cannot be seen with any kind of suspicion as rightly held by the Ld.CIT(A). Clearly, the factual matrix, when seen in totality, holds the sway in favour of the assessee and against the Revenue.

14. Without reiterating the nuanced analysis carried out by the Ld.CIT(A), we fully subscribe to the view obtained by the Ld.CIT(A) in the factual matrix. The action of the Revenue, to our mind, is driven by suspicion and conjectures. Neither has the books have been rejected nor the cash sales have been discredited. The cash deposits thus cannot be seen by applying a different yardstick. Not only sales have been made to GST registered customer, the confirmatory letters also vouches for bonafides of transactions. The AO on the one hand, assessed cash sales and on the other hand also made additions towards cash deposits resulting in double jeopardy and double taxation of the same transaction. The rudimentary accounts principles do not permit such treatment. The additions towards cash deposits has been rightly cancelled and set aside by the Ld. CIT(A).

15. The objection of Revenue for admission of evidences under Rule 46A of the Income Tax Rules, 1962 do not hold water. The provisions of Rule 46A enabling the assessee to seek admission of additional evidences is founded on principles of natural justice. Besides, the Ld.CIT(A) is also empowered to call for evidences and make enquiry under s. 250(4) of the Act. We, thus, see little merits in such ground.

16. Other objections seeking to challenge creditworthiness of debtors etc. are farfetched. The assessee having supplied material is not concerned with aspects of creditworthiness of debtors. Furthermore, when sales have been accepted by the AO, the proof of delivery etc. are irrelevant consideration to test the proprietary of source of cash deposits.

17. We thus see no justifiable reasons to interfere with the well reasoned order of the Ld.CIT(A) on any score.

18. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 18th December, 2024.

Sd/-

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI