

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1295/PUN/2024  
Assessment year : 2020-21**

ACIT, Kolhapur	<b>Vs.</b>	Nathmal Rupchand Jain Pooja Jewellers, 172, C Ward, Bhausingji Road, Kolhapur – 416002
		<b>PAN: ABBPJ2022R</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Suhas P Bora,  
Sampada S Ingale CAs &  
Saukhya D Lakade Adv.

Department by : Shri Amol Khairnar CIT-DR

Date of hearing : 08-01-2025

Date of pronouncement : 27-01-2025

**ORDER**

**PER R. K. PANDA, VP :**

This appeal filed by the Revenue is directed against the order dated 10.04.2024 of the Ld. CIT(A) / NFAC, Delhi relating to assessment year 2020-21.

2. Facts of the case, in brief, are that the assessee is an individual and the proprietor of Pooja Jewellers engaged in trading of jewellery and ornaments of gold and silver. It filed its return of income on 15.01.2021 declaring total income of Rs.19,28,040/-. The case of the assessee was selected for scrutiny through CASS to examine "Information in verification cases uploaded through CRIU".

During the course of assessment proceedings the Assessing Officer noted that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was conducted at the business premises of M/s. Rishabh Trading Company, proprietorship of Sri Ankit Jain on 07.11.2019. During the course of search operation conducted, the statement of Sri Ankit Jain was recorded on oath wherein he has confessed that he had made fictitious purchases with many parties and he has given the details and names of the parties. One such party is Sri Nathmal Roopchand Jain, Proprietor of M/s. Pooja Jewellers with whom a transaction of Rs.2,24,40,000/- has been done in the said year under consideration. The Assessing Officer accordingly issued statutory notices u/s 143(2) and 142(1) of the Act along with a questionnaire which were duly served on the assessee. The AR of the assessee, in response to the same, appeared before the Assessing Officer from time to time and filed the requisite details.

3. The Assessing Officer further obtained information u/s 133(6) of the Act from the various banks with whom the assessee has maintained accounts. From the details so submitted by the banks in response to the notices u/s 133(6) of the Act, the Assessing Officer observed that the assessee has made cash deposits during the financial year 2019-2020 relevant to the assessment year 2020-21 to the tune of Rs.4,43,90,000/-. He, therefore, asked the assessee to explain as to why the purchases made by the assessee under the proprietorship concern of Pooja Jewellers from M/s. Rishabh Trading Company of Rs.2,24,40,000/- should not be treated as bogus and cash so deposited should not be treated as unexplained cash

deposit u/s 69A of the IT Act, 1961. According to the Assessing Officer, since the assessee neither produced cash book nor furnished the source of the cash deposit made in the bank accounts and since Sri Ankit Jain, Proprietor of Rishabh Trading Company in his statement has categorically stated that the purchases made by the assessee to the tune of Rs.2,24,40,000/- are bogus, the Assessing Officer rejected the books of account by applying the provisions of section 145(3) of the Act. He estimated the profit @ 1.33% on estimated turnover of Rs.14,50,26,693/- and worked out the additional profit of Rs.1,30,478/- by recording as under:

*“In view of the categorical statement of Sri Ankit Jain Prop. Rishabh Trading Company that the assessee has shown bogus purchases and considering the fact that the assessee has not furnished the cash book, invoices of sales, and other details the correctness of the accounts of the assessee has not been satisfactorily explained. The books of the accounts of the assessee are therefore rejected as per provisions of section 145(3) of the Income Tax Act, 1961. The income of the assessee from the business is therefore estimated based on the information available on record. Since the cash sales have not been substantiated and on the basis of information of bogus purchases made from M/s Rishabh Trading Company the sales of the assessee from proprietary concern M/s Pooja Jewellers is estimated at Rs.14,50,26,693/- (Sales shown less cash sales shown). By applying a net profit percentage @ 1.33% (Average of 1.46% shown last year and 1.2% shown this year) to the sales estimated the income from business is worked out at Rs. 1,30,478 (Rs. 19,28,855-17,98,377).”*

4. The Assessing Officer similarly rejecting the various explanations given by the assessee made addition of Rs.4,43,90,000/- being the entire cash deposited in bank account as unexplained cash deposit u/s 69A of the Act by recording as under:

*“The above fact also clearly establishes the correctness of the modus operandi mentioned by Shri Ankit Jain in the statement given during the course of search proceedings.*

*It also clearly establishes that the cash deposited by Shri Nathmal Jain in the bank account (from alleged cash sales) was transferred by RTCG to show bogus purchase but was actually being used to provide cash by hawala means to various persons at Delhi with the help of Shri Ankit Jain, proprietor of M/s Rishabh*

*Trading Co. Therefore the entire cash deposited in the bank account of the assessee to the tune of Rs. 4,43,90,000/- is treated as unexplained cash deposit and brought to tax u/s 69A of the Income Tax Act, 1961.”*

5. The Assessing Officer accordingly determined the total income of the assessee at Rs.4,64,48,518/- as against the returned income at Rs.19,28,040/-.

6. Before the Ld. CIT(A) / NFAC the assessee made elaborate submissions, based on which the Ld. CIT(A) / NFAC deleted the addition of Rs.4,43,90,000/- made by the Assessing Officer u/s 69A of the Act and directed the Assessing Officer to adopt the net profit rate at 1.33% to the total sales including the cash sales of Rs.4,43,90,000/-.

7. So far as the deletion of Rs.4,43,90,000/- is concerned, the Ld. CIT(A) / NFAC deleted the same by observing as under:

*“6.2.5 I have perused the order of the AO, the submissions of the appellant and the judgments cited by the appellant. It is seen that the appellant had submitted all the sales bills and also its purchase register to the AO during the assessment proceedings but the AO has not considered the same. The AO has neither been able to prove that the sales made by the appellant were not genuine nor the AO has been able to show that the corresponding purchases made by the appellant were not genuine. The reasoning of the AO that the appellant had deposited cash in his bank account and then shown bogus purchase while transferring the money through hawala to persons in Delhi also does not seem plausible. The cash was deposited in months of April and May while the purchase from M/s Rishabh Trading Company was done in October and moreover why would an assessee first show bogus sales and then to offset the same undertake bogus purchases and generate cash for making payments to certain parties. The appellant could have simply done the payments in cash to whomsoever it wanted without undertaking such an elaborate exercise which carries the risk of being detected by the Income Tax Department. Moreover the sales of the appellant have been accepted by the GST department. Therefore in view of the submission of the appellant, the case laws relied upon by the appellant and the fact that the AO could not find any defect with the stock register, cash sales bills submitted by the appellant and cash book of the appellant and also the AO could not prove that the sales made by the appellant were not genuine the addition of Rs.4,43,90,000/- made by the AO is deleted. The grounds of appeal 5 and 7 are allowed.”*

8. So far as rejection of the books of account is concerned, the Ld. CIT(A) / NFAC while upholding the action of the Assessing Officer in rejecting the books of account, however, directed the Assessing Officer to adopt the net profit rate at 1.33% i.e. average of 1.46% shown during last year and 1.2% shown during this year to the sales including the cash sales of Rs.4,43,90,000/- by observing as under:

*“6.5.2 I have perused the assessment order of the AO and the reply submitted by the appellant and after the perusal of the same it has been observed that the AO has rejected the books of account on account of reasons that the cash sales cannot be verified in the absence of sales invoices and assessee has made bogus purchases from M/S Rishab Trading Company.*

*But the appellant has proved that the sale invoices were submitted before the AO during the course of assessment proceedings on 23.09.2022 and no defect has been pointed out in the sale invoices submitted by the appellant. However the contention of the appellant regarding the bogus purchases has been found to be incorrect.*

*The appellant has further stated that in order to invoke the provisions of Section 145(3) of the Act for rejection of books of account the AO has to prove that there are specific defects in the books of account and the profits cannot be deduced for the method of consistently employed by the assessee. However as mentioned above the AO has brought about the specific defect that the appellant has recorded bogus purchases in his books of accounts. Considering the fact that the appellant has indulged in making bogus purchases from M/s Rishabh Trading Co. the action of AO in rejecting the books of accounts of the appellant is sustained.*

*The AO is also directed to recompute the business income of the appellant by applying a net profit percentage @ 1.33% (Average of 1.46% shown last year and 1.2% shown this year) to the sales (including the cash sales of Rs. 4,43,90,000/-). In view of the same the grounds of appeal 6 and 14 are dismissed.”*

9. Aggrieved with such order of the Ld. CIT(A) / NFAC, the Revenue is in appeal before the Tribunal by raising the following grounds:

- i. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the addition of Rs. 4,43,90,000/- u/s 69A of the Act on account of unexplained cash deposits.*
- ii. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in not appreciating the fact that, Mr. Ankit Jain has in*

*his sworn statement u/s 132(4) has given the modus operandi of the entire transaction which clearly established that the cash deposited by the assessee was to show bogus purchase.*

- iii. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in ignoring the fact that bogus purchase was actually used to provide cash by hawala means to various persons at Delhi with the help of Shri Ankit Jain, proprietor of M/s Rishab Trading Co.*
- iv. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the addition made by the AO whereas on the other hand accepted that the assessee had indulged in claiming bogus purchase entry from M/s Rishab Trading Co.*
- v. The appellant craves leave to add, alter, amend and modify any of the above or all grounds raised at time of proceedings before the Hon'ble Tribunal which may please be granted.*

10. The Ld. DR strongly challenged the order of the Ld. CIT(A) / NFAC in deleting the addition of Rs.4,43,90,000/- made by the Assessing Officer u/s 69A on account of unexplained cash deposits. He submitted that once Mr. Ankit Jain in his sworn statement recorded u/s 132(4) has given the modus operandi of the entire transactions which clearly established that the cash deposited by the assessee was to show bogus purchases, the Ld. CIT(A) / NFAC was not justified in deleting the addition. He submitted that the said bogus purchases were actually used to provide cash by hawala means to various persons at Delhi with the help of Mr. Ankit Jain, proprietor of M/s. Rishabh Trading Company. Since the assessee had indulged in claiming the bogus purchase entries from M/s. Rishabh Trading Company, which the Ld. CIT(A) / NFAC had admitted therefore, without appreciating the facts properly the Ld. CIT(A) / NFAC was not justified in deleting the addition made by the Assessing Officer u/s 69A. He accordingly submitted that the order of the Ld. CIT(A) / NFAC be reversed and that of the Assessing Officer be restored.

11. The Ld. Counsel for the assessee on the other hand strongly supported the order of the Ld. CIT(A) / NFAC. He submitted that the accounts of the assessee are regularly audited as per the provisions of section 44AB of the Income Tax Act, 1961 and the assessee during the course of assessment proceedings has submitted the details of items traded giving the quantitative analysis of opening stock, purchases, sales and closing stock and the same matches with the stock register. He submitted that the assessee is maintaining the day-to-day stock registers for each category of goods they deal with i.e. stock register is separately maintained for Bullion, Copper and ornaments. He submitted that during the impugned assessment year the assessee has completed 25 years of its business and had offered silver bars at discounted price for the period between 15.04.2019 to 30.05.2019. Referring to the copy of the advertisement published in newspapers and placed in the paper book, he submitted that due to heavy discount given by the assessee on completion of 25 years, there were huge cash sales which were duly deposited in the bank account and the assessee has offered to tax the profit on such sales. He submitted that since all the sales transactions are below Rs.2 lakh, the assessee is not required to collect PAN number and other details from the customers. He submitted that the total sales of Rs.18,89,44,295/- are supported by proper bills & vouchers, sales register, cash book and GST returns for the respective periods.

12. Referring to the provisions of section 69A, he submitted that the said provisions are applicable if in any financial year the assessee is found to be the

owner of any money and such money is not recorded in the books of account, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of acquisition of such money or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer. However, in the instant case the said provisions are not applicable since the assessee has explained the nature and source of cash deposited of Rs.4,43,90,000/- which is out of cash sales and which are duly recorded in the books of account. The assessee has clearly explained the nature and source by way of necessary evidences on record.

13. Referring to pages 55 to 372 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the copies of sales invoices. Referring to pages 411 to 430 of the paper book, he drew the attention of the Bench to the cash book for the period 01.04.2019 to 31.03.2020 and submitted that each and every cash deposited, has corresponding cash sale as its source and there are no negative cash balances on any single day. Referring to pages 431 to 472 of the paper book-2, he submitted that the sales shown by the assessee have been accepted by the GST department.

14. So far as the allegation of the Assessing Officer that the assessee has not furnished the copies of sales invoices and it is not possible to verify the genuineness of these cash sales is concerned, he submitted that the assessee has

duly submitted the copies of sales invoices by 23.09.2022 and the acknowledgment of online submission is available at pages 49 to 52 of the paper book-1.

15. So far as the allegation of the Assessing Officer that the cash sales have been shown only during the month of April and May, 2019 is concerned, he submitted that due to the attractive discount offered during the period between 15.04.2019 to 30.05.2019 on completion of 25 years, the cash sales of the assessee have gone up.

16. So far as the allegation of the Assessing Officer that the assessee has not been able to substantiate with documentary evidence of sales and purchases is concerned, he submitted that the assessee has duly submitted the copies of sales invoices, GST returns, copies of ledger of purchases, etc., therefore, the allegation of the Assessing Officer is not correct.

17. So far as the allegation of the Assessing Officer that the assessee has not produced the cash book nor furnished the source of cash deposited is concerned, he submitted that the allegation of the Assessing Officer is incorrect since the assessee has duly submitted the copies of cash book on 23.09.2022 which clearly gives the source of cash deposited and the acknowledgement of online submission is available at pages 46 to 47 of the paper book.

18. So far as the reliance of the Assessing Officer on the statement of Mr. Ankit Jain is concerned, he submitted that Mr. Ankit Jain has retracted his statement vide letter dated 18.12.2019 submitted with the office of the Director of Income Tax

(Inv). Further, the cash was deposited in the months of April and May while purchases from M/s. Rishabh Trading Company were done in the month of October. Further, M/s. Rishabh Trading Company has also given its confirmation of selling goods to the assessee, assessee has paid GST on the said purchases and the details were given to the Assessing Officer vide letter dated 24.03.2022, copy of which is placed at pages 40 and 41 of the paper book-1.

19. Referring to the following decisions he submitted that when the assessee has recorded the cash sales in its books of account and also clearly explained its nature and source of income then, no addition can be made u/s 69A of the Act:

- i) *ACIT vs. Hirapanna Jewellers 96 ITR (T) 24*
- ii) *CIT vs. Kailash Jewellery House vide ITA No.613/2010, order dated 09.04.2010*
- iii) *Anantpur Kalpana vs. ITO 914 ITD 702*
- iv) *Smt. Charu Aggarwal vs. DCIT 96 ITR 66*
- v) *DCIT vs. M.C. Hospital 142 taxmann.com 122*
- vi) *DCIT vs. Roop Fashin 98 ITR 419*
- vii) *Smt. Tripta Rani vs. ACIT 97 ITR 389*
- viii) *J.M. Wire Industries vs. CIT 205 Taxman 134*
- ix) *Lalchand Bhagat Ambica Ram vs. CIT 37 ITR 288 (SC)*
- x) *Lakshmi Rice Mills vs. CIT 97 ITR 258*
- xi) *Daulat Ram Rawatmull vs. CIT 87 ITR 349 (SC)*
- xii) *PCIT vs. Hitesh Gandhi vide ITA No.18/2017, order dt 16.02.2017*

20. Referring to the following decisions he submitted that the addition u/s 69A is unjustified where the cash deposit is treated as cash sales reflected in regular books of account as it amounts to double taxation:

- i) *Nitin Kumar Bohra vs. ITO vide ITA No.340/Bang/2024, order dated 24.09.2024*
- ii) *Dipak Balubhai Patel vs. ITO vide ITA No.942/Ahd/2023, order dated 22.08.2024*
- iii) *Ashok Ravsaheb Tambe vs. ITO vide ITA No.999/PUN/2024, order dated 01.08.2024*

21. He submitted that since the Ld. CIT(A) / NFAC after considering the various details furnished by the assessee has deleted the addition of Rs.4,43,90,000/- and directed the Assessing Officer to estimate the GP rate at 1.33% on the total sales including cash sales of Rs.4,43,90,000/-, the order of the Ld. CIT(A) / NFAC is justified and the grounds raised by the Revenue should be dismissed.

22. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case on the basis of search conducted at the business premises of M/s. Rishabh Trading Company, proprietorship of Sri Ankit Jain on 07.11.2019, during which, Mr. Ankit Jain has confessed that he had made fictitious purchases with many parties and one such party is Sri Nathmal Roopchand Jain, Proprietor of M/s. Pooja Jewellers with whom a transaction of Rs.2,24,40,000/- has been done, made addition of Rs.4,43,90,000/- u/s 69A treating the cash deposited by the assessee in the bank account as unexplained cash. The Assessing Officer also rejected the books of account and determined the net profit of the assessee at 1.33% of the total sales excluding the cash sales of Rs.4,43,90,000/- and made separate addition of Rs.1,30,478/- being the difference between the profit declared by the assessee and profit determined by estimating the income. We find the Ld. CIT(A) / NFAC while upholding the rejection of books of account, however, deleted the addition of Rs.4,43,90,000/- made by the Assessing Officer u/s 69A and directed the

Assessing Officer to determine the profit @ 1.33% on the total sales including the cash sales of Rs.4,43,90,000/-. The reasoning given by the Ld. CIT(A) / NFAC deleting the addition u/s 69A has already been reproduced in the preceding paragraphs. We do not find any infirmity in the order of the Ld. CIT(A) / NFAC on this issue. Admittedly, the books of account of the assessee are audited and the assessee in his submission before the Assessing Officer has given the details of items traded giving the quantitative analysis of opening stock, purchases, sales and closing stock which matches with the stock register. Further, there is no dispute to the fact that the assessee has given advertisement in newspapers on completion of its 25<sup>th</sup> year of business for which it had offered silver bars at discounted price during the period from 15.04.2019 to 30.05.2019 and copy of such advertisement is placed in the paper book. Further, Mr Ankit Jain, whose statement was the basis for making the addition in the hands of the assessee by treating the cash sales as bogus and used for hawala transactions, has retracted his statement before the DDIT (Inv). This fact was also brought to the notice of the Assessing Officer during the course of assessment proceedings. Further, the allegation of the Assessing Officer that the assessee has neither produced cash book nor furnished the source of cash deposits in the bank account is also incorrect since the assessee has uploaded the submission along with cash book in the portal, the details of which are filed in the paper book. Since the assessee in the instant case has submitted all the sale bills and also produced registers before the Assessing Officer during the course of assessment proceedings and since the sales of the assessee

have been accepted by the GST department, therefore, such explanation of the assessee cannot be brushed aside.

23. We find provisions of section 69A read as under:

*“69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.”*

24. A perusal of the above provisions shows that the same are applicable if in any financial year the assessee is found to be the owner of any money and such money is not recorded in the books of account, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of such income or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer. However, in the instant case, the assessee has admittedly explained the nature and source of cash deposit of Rs.4,43,90,000/- which is out of cash sales and which has already been recorded in the books of account and the assessee has clearly explained the nature and source of such cash deposited in the bank account by producing the relevant details. Further, since each and every cash sale is less than Rs.2 lakh, the assessee is not required to obtain the PAN number and other details of the customers. Since the assessee in the instant case has given all the details including the details of purchases, sales and quantitative details of stock, etc. and the deposits in the bank accounts are out

of cash sales in the month of April and May, 2019, therefore, the provisions of section 69A of the Act in our opinion are not applicable to the facts of the present case. In this view of the matter and in view of the detailed reasoning given by the Ld. CIT(A) / NFAC on this issue, we do not find any infirmity in his order. Accordingly, the same is upheld and the grounds raised by the Revenue are dismissed.

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

Order pronounced in the open Court on 27<sup>th</sup> January, 2025.

**Sd/-**  
(ASTHA CHANDRA)  
JUDICIAL MEMBER

**Sd/-**  
(R. K. PANDA)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 27<sup>th</sup> January, 2025  
GCVSR

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे  
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	10.01.2025		Sr. PS/PS
2	Draft placed before author	13.01.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			