

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT
MEMBER & SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 132/CHD/2024

निर्धारण वर्ष / Assessment Year: 2017-18

Gaurav Goel, H. No. 1676, Sector 33-D, Chandigarh	Vs. बनाम	The ITO, Ward 4(3), Chandigarh
स्थायी लेखा सं./PAN No: AHGPG3162Q		
अपीलार्थी/ ASSESSEE		प्रत्यर्थी/ RESPONDENT

(Physical Hearing)

निर्धारिती की ओर से/Assessee by : Shri Jaspal Sharma, Advocate

राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 17.12.2024

उदघोषणा की तारीख/Date of Pronouncement : 24.02.2025

आदेश/Order

Per Paresh M. Joshi, JM :

This is an appeal filed by the Assessee u/s 253 of the Income Tax Act, 1961 (herein referred to as 'the Act' for the sake of convenience and ease] before this Tribunal. The Assessee is aggrieved by the order bearing No. ITBA/NFAC/S/250/2023-24/1059091450(1) dated 27.12.2023 of CIT(A) passed u/s 250 of

the Act. The relevant A.Y. is 2017-18 and the corresponding previous period is from 1.4.2016 to 31.03.2017.

2. **Factual Matrix**

2.1 That the Assessee had e-filed its return of income for assessment year 2017-18 on 25.10.2017 declaring total income at Rs. 10,59,210/-. This return was processed u/s 143(1) of the Act.

2.2. The case of Assessee was selected for Complete Scrutiny through CASS.

2.3 Statutory Notice u/s 143(2) was issued on 09.08.2018 which was duly served upon the Assessee. The case was however, transferred to Id. Assessing Officer from ITO Ward 5(2), Chandigarh on 28.8.2018. Thereafter statutory noticed u/s 143(2) was issued on 24.9.2018 which was duly served upon the Assessee.

2.4 That Notice u/s 142(1) along with the questionnaire was issued on 27.08.2019 to file reply electronically in 'e-proceedings' facility by 25.09.2019. Partial reply was submitted on 13.09.2019. Subsequently, notices under section 142(1) of the Act were issued to the assessee on 23.09.2019, 16.12.2019, 17.12.2019,

20.12.2019 and 21.12.2019. In response, the assessee filed submissions in e-portal from time to time, which have been examined and placed on record.

2.5 During the period under consideration the Assessee was engaged in the business of trading of jewellery. After due examination of submissions filed by the Assessee and inquires the ld. A.O. made the following assessment which are detailed as under:-

2.6 Unexplained money post demonetization:

That during the post demonetization period i.e. from 9.11.2016 to 30.12.2016 from the bank account statement of the Assessee it has been found that the Assessee had made huge cash deposits amounting to Rs. 56,00,000/- in the demonetized Rs. 500 and Rs. 1000 notes in his bank account No.65194808148 during this period whose details are as below:

Sr. No.	Dated	Amount
1	10.11.2016	56,00,000/-

2.7 During the course of the proceedings, the assessee submitted that the source of cash deposits amounting Rs. 56,00,000/- was

sales that were made in cash. On perusal of the reply filed by the assessee, the following pattern of cash sales and cash deposits was observed:-

Sr No.	Period	Cash sales (in INR as per cash book)	Cash deposits in bank accounts (in INR) as submitted by the Assessee
1.	01.04.2016-30.04.2016	13,45,870/-	7,17,000/-
2.	01.05.2016-31.05.2016	11,46,020/-	15,00,000/-
3.	01.06.2016-30.06.2016	11,64,860/-	8,40,000/-
4.	01.07.2016-31.07.2016	9,74,743/-	12,09,000/-
5.	01.08.2016-31.08.2016	12,37,810/-	12,55,000/-
6.	01.09.2016-30.09.2016	13,31,660/-	11,00,000/-
7.	01.10.2016-31.10.2016	28,41,780/-*	13,20,000/-
8.	01.11.2016-08.11.2016	44,14,823/-*	4,70,000/-
	Total	1,44,57,566/-	84,11,000/-

*(Rs. 28,41,780 + Rs. 44,14,823 = 72,56,603)

2.8 From the above it is evident that the Assessee has claimed to book sales majority (Rs. 72,56,603/- out of total cash sales amounting Rs. 1,98,59,539/- in the entire year under consideration) in October and in November before demonetization i.e. till 08.11.2016. Assessee filed copies of sale bills from 01.10.2016 to 08.11.2016 as proof of sale and has further submitted that the bills also show the name and addresses of the

purchasers. On perusal of the copies of cash sale bills filed, it was observed that in majority of sale bills complete address of the purchaser was not mentioned and all the sale bills were below Rs. 2 lakhs. Further, notice u/s 142(1) of the Income Tax Act, 1961 dated 20.12.2019 was issued to provide complete names & addresses (PAN also where cash sale was above Rs. 2 lacs) of persons to whom cash sale were made during the month of October, 2016 & November, 2016. However, the assessee did not provide the requisite information. Finally following show cause notice was issued to the assessee on 21.12.2019:

"(1) An analysis of cash sale during F.Y. 2016-17 (specially during the months of October & November) reveals that during F.Y. 2016-17, the monthly average of cash sale from April, 2016 to September, 2016 comes to Rs. 12,00,160/- where as the cash sales during October, 2016 & November, 2016 stood at Rs. 28,41,780/- & Rs. 46,45,413 respectively. If October's cash sale spike may be attributed to the festival season, the abnormal cash sale of November, 2016 presents no credible explanation.

(2) Further, if comparison of cash sale made from < 1.10.2015 to 08.11.2015 and cash sale made from 01.10.2016 to 08.11.2016 is made then it is seen that the cash sale made during the same period in 2016 registered a growth of 337% (it increased from Rs. 16,60,710/- to Rs. 72,56,603/-) which is abnormal

given the fact that total cash sale during F.Y 2016-17 registered an increase of only 44.8% (the cash sale during F.Y. 2016-17 registered a growth of only 4.5% during the period from 01.10.2015 to 8.11.2016.

(3) The above analysis clearly shows that the cash sales made from 01.10.2016 to 08.11.2016 have been inflated only to justify the cash deposit of Rs. 57,20,000/- made during demonetization period.

(4) In view of above, you are requested to show cause as to why, after giving benefit of an increase of 4.5%, the rest of the cash sales made from 01.10.2016 to 08.11.2016 may not be assessed to tax as per provisions of section 69A r.w.s 115BBE of the Income Tax Act, 1961."*

The assessee was asked to file his reply on or before 22.12.2019. No reply has however been received till date.

2.9 The Id. Assessing Officer in his assessment order dated 23.12.2019 has stated that it is fair and reasonable to give benefit to the Assessee to the extent of regular business quantum i.e. sales made in cash. It is further stated that since the Assessee has manipulated cash sales and cash book they cannot be accepted, thus previous trend of sale is being adopted as the basis to calculate and allow benefit of genuine cash sales made by the

Assessee to the extent of regular business quantum which is worked as under:-

“5.1 However, without prejudice to above, it is fair and reasonable to give benefit to the assessee to the extent of regular business quantum i.e. sales made in cash. Since the assessee has manipulated cash sales and cash book they cannot be accepted, thus, previous trend of sale is being adopted as the basis to calculate and allow benefit of genuine cash sales made by the assessee to the extent of regular business quantum which is worked as under:-

i). As per details given by the assessee, cash in hand as on 01.10.2016 stood at 5,92,097/- and it is deemed fit to accept this as it has been established above that assessee had manipulated cash sales and cash book of month of October and November till 08.11.2016. Thus, it is reasonable enough to accept cash in hand as on 01.10.2016 as cash available with the assessee as genuine.

ii). Further, as stated above, the normal growth in cash sales during F.Y. 2016-17 over cash sales made during F.Y. 2015-16 has been worked out at 4.5%. The cash sales during October' 2015 stood at Rs. 12,23,300/-, thus, after giving benefit of 4.5% growth, cash sales of Rs. 12,78,348/- is considered as genuine and balance cash sale of Rs. 15,63,432/- is taken to be bogus (the assessee has shown cash sales of Rs. 28,41,780/- during the month of October, 2016). This fact is also strengthened by the fact that the cash deposited by the assessee in his bank account during the month of October, 2016 was Rs. 13,20,000/- as total sum of opening cash in hand as on 01.10.2016 and genuine

cash sales as worked out above comes to Rs. 18,70,445/-. Thus, the genuine cash in hand at the end of October'2016 comes at Rs. 5,50,445/- .

iii). By applying the same criterion, the acceptable cash sales for the period from 01.11.2016 to 08.11.2016 comes at Rs. 4,57,093/- (assessee showed cash sales of Rs. 4,37,410/- during the period from 01.11.2015 to 08.11.2015). Further, in order to give maximum benefit to the assessee considering the unprecedented demonetization circumstances and in order to be judicious and fair to the assessee and considering the nature of business of the assessee it is further accepted that on 08.11.2016 at night after the announcement of demonetization cash sales increased significantly, thus further cash sales booked on 08.11.2016 amounting to Rs.2,00,000/- are also accepted on lump sum basis. Thus, the unacceptable cash sales made from 01.11.2016 to 08.11.2016 comes at Rs. 37,57,730/- (assessee claimed cash sales of Rs. 44,14,823/- during this period). The cash deposited by the assessee during the period from 01.11.2016 to 08.11.2016 was Rs. 4,70,000/-.

2.10 In light of above discussion, total acceptable genuine cash in hand as on 08.11.2016 works out to be Rs. 7,37,538/- [(Rs. 5,50,445 + Rs. 4,57,093/- + Rs. 2,00,000) - (Rs. 4,70,000/-)] which is being accepted as source of cash deposits made during demonetization.

2.11 Thus, in view of above discussion an amount of Rs. 53,21,162/- [Rs. 60,58,700/- (cash in hand as on 08.11.2016 shown by the assessee) - Rs. 7,37,538/-(genuine cash in hand as on 08.11.2016 as worked out above)] remains unexplained and thus it is hereby added to the income of the assessee u/s 69A r.w.s. 115BBE of the Act.

2.12 Accordingly, the Income of the assessee is re-computed as under:

Returned income	Rs. 10,59,210/-
Add: As discussed in para 8 above tax @ 60% u/s 69A r.w.s. 115 BBE	Rs. 53,21,162/-
Assessed Income	Rs. 63,80,372/-
Rounded off	Rs. 63,80,370/-

**To be charged at special rate as outlined in Section 115BBE*

2.13 The aforesaid assessment order of ld. A.O. bears No. ITBA/AST/ S143(3)/ 2019-20 /1022901856 (1) and is dated 23.12.2019.

2.14 That the Assessee being aggrieved by the aforesaid assessment order dated 23.12.2019 prefers first appeal before CIT(A) in terms of section 246A of the Act who by the impugned

order has sustained the assessment order dated 23.11.2019 of ld. A.O.

2.15 The Assessee being aggrieved by the impugned order has filed the present appeal before his Tribunal and inter alia has raised following Grounds of appeal against the impugned order which are as under:-

1. *The impugned order is both against facts and erroneous in law.*
2. *On the facts and circumstances of the case the Ld. CIT (Appeals) NFAC has erred in having sustained an addition of Rs.53,21,162/- made by the Ld. AO u/s 69A of the Income Tax Act, treating the same as unexplained money.*
3. *On the facts and circumstances of the case the Ld. CIT(Appeals) NFAC has erred in having passed a very sketchy order without giving any reasoned finding on submissions made before the Ld.CIT(Appeals) and therefore the impugned order not sustainable under the law.*
4. *On the facts and circumstances of the case the Ld. CIT(Appeals) NFAC has erred in having confirmed the assessment order passed by the Ld. AO arbitrarily making addition of Rs. 53,21,162/- merely on presumptions.*

The assessee craves leave to add to alter or amend the above grounds of appeal before the same is heard or disposed of.

3.

Record of hearing

3.1 The hearing in the matter took place before this Tribunal on 17.1.22024 when ld. AR for and on behalf of the Assessee appeared before us and the ld. DR for and on behalf of Revenue. Both of them were heard at length in respect of their respective submissions. The ld. AR has placed on record of this Tribunal a paper book containing pages 1 to 250 and a set of judgement in the form of compilation from pages 1 to 99 and same were taken on record. The sheet anchor of the argument of ld. AR against addition of Rs. 53,21,162/- was that the Assessee's books of account have not been rejected by the ld. A.O., all bills were produced during the course of assessment proceedings, these bills are not held to be bogus or fictitious. Upon sales the sales Tax / VAT returns are filed. All these material documents have not been just considered and addition has been made erroneously. The addition has been made on the basis of assumption and presumption. It is well settled that no addition can be made on basis of assumption and presumption conjectures, surmise's etc.

In order to made addition, there must be some credible material. In the instant case, no such thing is available on record. The orders of the lower authorities are bad in law, illegal and not proper. It should, therefore, be set aside by this Tribunal.

Per contra the ld. DR has supported the impugned assessment order dated 23.12.2012 and impugned order of the CIT(A) . It is contended before us that there are no legal infirmities and that impugned order should be upheld.

4. **Observations, findings and conclusions:**

4.1 We now have to decide the legality, validity and propriety of the impugned order basis records of the case.

4.2 We notice that Assessee has offered sufficient explanations in form of cash (credits) in the books of account. All sales are recorded in the books. No manipulation is done in cash sales and cash book. There are bills on record in support of cash sales and cashbook. Basis sales bill /invoices which are from pages 80 to 245 of paper book. We notice that these are sales of gold and silver

jewellery items and names of customers are spelt out therein with address. There are sales on credit cards too. These documents were before lower authorities but for reasons best known to them its contents were not verified or any inquiries was done with persons named in sale bills / invoice to at least hold prima facie unexplainable nature of cash transactions under section 69A. In the absence of any evidence to the contrary it cannot be said in law that papers, books etc. were manipulated by the Assessee.

4.3 On page 7 of the paper book the Assessee has even given details of purchase and these purchases have not been disputed by the Department. No inquiry seems to have been done by the lower authorities on purchase. Consequently, purchases have remained undisputed. Entries made in sales register and cash book which are all filed in paper book from pages 36 to 79 stand uncontroverted by the Revenue.

4.4 We hold that it is not a case where no explanation is offered or given about nature and source of cash. Nature is sale of jewellery by a jeweller Assessee and consideration for same is cash

/ card payment given by their buyers / customers. Therefore, , the requirement of law i.e. nature and source of cash is explained along with necessary proof and /or supporting in form of sales invoices, VAT return, account statement evidencing deposit of cash balance sheet [paper book 12 -26] , computation of income, P & L account etc. This fact has remained undisputed. The money is recorded in books of account with in the meaning u/s 69A, the Assessee has offered an explanation hence addition is unjustified.

4.5 We hold that Department has failed to bring any material evidence prejudicial to the Assessee, therefore, findings u/s 69A r.w.s. 115BBE is not sustainable as initial burden of proof that cash amount is towards sale of jewellery which was duly accounted in books of account of the Assessee stands discharged. Further books of account has not been even tainted as not properly maintained in accordance with law. Needless to state the books of account in law means asper Section 2(12A)as books or book of account includes ledgers, daybook, cash books, account books and other books whether kept in the written form or in electronic form or in Digital form or in floppy disk, tape or any other form of

electro magnetic data storage devises. In the present case only on the basis of assumption and presumptions, Department has fastened the liability of tax u/s 69A r.w.s. 115BBE without pointing out any lacuna in the books of account of Assessee. The only lacuna they have pointed out is cash deposit. Be that as it may, cash deposit are regularly deposited by the Assessee in bank account. Extracts of statement of accounts has been produced coupled with other financial documents which Assessee is mandated by law to comply. No discrepancies whatsoever has been found or alleged expressly. There is no whisper on stock in both A.O.'s and CIT(A)'s orders. No reference is made about purchase made by the Assessee. In brief both purchases / stocks have remained undisputed. Opening and closing stock is accepted.

4.6 We hold that order of CIT(A) impugned in this appeal is bad in law as he has failed to examine the VAT details filed by the assessee in support of their contentions which is an approach wholly untenable in law. It was incumbent upon the Ld. CIT(A) to have verified the VAT details and ought to have dealt with in a

reasonable way before rejecting first appeal. VAT details supports the case of the assessee.

4.6 (i) We gainfully refer to Smt. Charu Aggarwal vs. DCIT reported in (2022) 140 taxmann.com 588 (Chandigarh- Tribunal) wherein this Tribunal has held that { however it was found that Assessee was maintaining complete stock tally, sales were recorded in regular books of account and amounts were deposited in bank account out of sale proceeds - Nothing was brought on record to substantiate that cash obtained by assessee from sales which reduced stock of assessee was utilized elsewhere - Cash sales made during month of October, 2016 were in line of cash sales in earlier years and equal to sales in month of July, 2016 - Opening stock, purchases and sales and closing stock, declared by assessee were not doubted - Cash deposited post-demonetization by assessee was out of cash sales which had been accepted by Sales Tax / VAT Department and not doubted by Assessing Officer - There was sufficient stock available with assessee to make cash sales - Whether therefore, sales made by assessee out of existing stock were sufficient to explain deposit of cash (obtained from

realization of sales) in bank account and could not have been treated as undisclosed income of the Assessee and accordingly, impugned addition made by the Assessing Officer was not justified.}

4.6 (ii) We also gainfully refer to (2023) 151 Taxmann.com 340 (Delhi – Tribunal) in the case of Fine Gujuranwala Jewellers vs. ITO, wherein it was held that where Assessee deposited substantial amount of cash in bank during demonetization period and claimed that same arose out of cash sales of jewellery, since other wing of government had already accepted sale transaction under VAT and books of account of the Assessee were accepted by A.O., the said deposits could not be unexplained cash. Even in 102 ITR (T) 228 (Amritsar Tribunal) in the case of Balwinder Kumar vs. ITO, it is held that where Assessee deposited cash sales made during demonization period in his bank account and admitted such sales as Revenue receipts, since books of account of Assessee clearly reflected sufficient stock to affect such sales and same were accepted by the Revenue authorities, there was no basis for

making additions under section 69A treating said deposit to be unexplained /bogus.

4.6 (iii) Basis above judicial pronouncements we are too of the considered view that in the instant case material documents were placed on record and no lacuna have been found in it by lower authorities basis which it can safely be concluded that cash stands unexplained. In order to treat cash stands as unexplained real time evidences should be available with the Revenue and in the absence of the same it cannot be said in law that cash stands unexplained u/s 69A.

4.7 We have noted the finding of our very Bench of ITAT in cases of Windlas Jewellers Ambala Vs. ITO Ward 2 Ambala Cantt in ITA No. 821/Chd/2023 dt. 01/04/2023 and so also in cases of Madan Lal Aggarwal HUF Vs. DCIT CC-2, Chandigarh in ITA No. 28/Chd/2023 dt. 08/12/2023 which are applicable to the facts of the present case wherein it has been held that:

{ “7. We have considered the rival contentions and gone through the record. The entire case of the revenue is on the basis of assumption that the assessee during the demonetization period had made sales accepting demonetized currency which was deposited in the bank account of the assessee. However, the case

of the assessee is that the assessee has made genuine sales and that the sales were duly recorded in the books of account and books of account were duly audited and that the deposits in the bank account were made out of cash sales. The assessee has duly furnished the relevant documents including stock register, cash book, bank account statements, quantity-wise trading accounts, VAT returns, month-wise sales and cash receipts and party-wise purchases summary etc. The books of account of the assessee in this case have not been rejected. The case of the revenue is based merely on suspicion. There is no evidence brought on record that the cash sales made by the assessee were not genuine. The burden is upon the Assessing Officer in this respect who alleges sales to be ingenuine. The additions cannot be confirmed in this case merely on the basis of suspicion when the assessee proved his case and has furnished sufficient documents. The issue is squarely covered by various decisions of the Coordinate Benches of the Tribunal . The ld. Counsel for the assessee in this respect has relied upon the following case laws:

i) ACIT vs. Goel Jewel lers Overseas Corp in ITA No.1597/Del/2022 (ITAT Delhi)

ii) DCIT Central Circle-1, Ludhiana vs. M/s Roop Fashion reported in [2022] 98 ITR (Trib) 419 [ITAT Chand)]

iii) Gulshan Kumar vs. DCIT in ITA No.488/Chd/2022 (ITAT Chandigarh)

iv) Smt. Tripta Rani vs. ACIT, Ludhiana in ITA No.135/Chd/2021 (ITAT Chandigarh)

v) Madan Lal Aggarwal HUF vs. DCIT in ITA No.28/CHANDI/2023 (ITAT Chandigarh) dated 18.12.23

7.1 We find that the issue involved in this case is squarely covered by the decision of the Coordinate Chandigarh Bench of the Tribunal in the case of 'Madan Lal Aggarwal HUF vs. DCIT' (supra) , the relevant part of the order is reproduced as under:

“11. It was further submitted that a complete set of books of accounts were maintained and audited by a Chartered Accountant and these books are not rejected by AO but at the same time, part of the sales were held to be bogus and cash received against such sales added as Income u/s 68 ignoring that sales has already been declared as income by assessee. It was submitted that post deposit of cash, a survey was conducted to verify the deposit on 21-3-2017 and following undisputed facts are as per records:

- a. no evidence of any back dating of Sales were found.*
- b. No difference in stock was found.*
- c. There was sufficient stock available with assessee to make the sales.*
- d. Assessee was regular in filing VAT returns and the same were never revised.*
- e. If cash sales of Rs. 18,41,619/- is bogus then such stock must have been found in excess on the date of survey at the business premises.*
- f. Further, VAT @ 12% is paid to Government on such sales. The regulatory authority i.e Sales Tax*

department had accepted the recorded sales for the year and copy of Assessment order is lying at page 83.

11.1 It was submitted that the basic principle is the same in the law relating to income-tax as well as in civil law, namely, that if there is no challenge to the transaction represented by the entries or to the genuineness of the entries, then it is not open to the other side -in this case the revenue to contend that that which is shown by the entries is not the real 'state of affairs.

11.2 Our attention was invited to decision of the Hon'ble Punjab and Haryana High Court in ITA No. 194 of 1999 dated February 21, 2014 in case of M/s S.V. Auto Industries, Phagwara v. Commissioner of Income Tax, Jalandhar and another wherein it was held that "Concededly, books of accounts including stock register maintained by the assessee in the course of manufacturing process and business operations, have neither been doubted in their correctness nor have been questioned much less rejected under Section 145 of the Act. Once the books of accounts have not been doubted in their correctness and much less are rejected, there is absolutely no explanation coming forth from the revenue as to why the Assessing Officer as also the appellate authorities including the Tribunal went on to substitute their own judgment for the actual figures of wastage emerging from stock register and from the books of accounts of the assessee? When the books of accounts including stock register etc. have neither been rejected nor are doubted, accounts could not be bye passed merely on the whims and fancies of the authorities."

11.3 Further, reference was drawn to the decision of the Hon'ble Supreme court in case of Mehta Parikh and Company vs. CIT (1956) 30 ITR 181 (SC) wherein it was held as under:

“It has to be noted, however, that beyond these calculations of figures, no further scrutiny was made by the Income-tax Officer or the Appellate Assistant Commissioner of the entries in the cash book of the appellants. The cash book of the appellants was accepted and the entries therein were not challenged. The Tribunal also fell into the same error. It could not negative the possibility of the appellant being in possession of a substantial number of these high denomination currency notes. It, however, considered that it was impossible for the appellants to have had 61 such notes in the cash balance in their hands on 12th January, 1946, and then it applied a rule of the thumb treating 31 out of such 61 notes as within the bounds of possibility, excluding 30 such notes as not covered by the explanation of the appellants. This was pure surmise and had no basis in the evidence, which was on the record of the proceedings.

To put the matter in a nut-shell, the accounts of the appellant have been accepted by the Tribunal as genuine, and it is impossible to say, having regard to the cash balance as shown therein, that the notes in question could not have been included therein. The Tribunal observes that it is unlikely that so many high denomination notes would have been held as part of the cash on hand for a such a large number of days. That, no doubt, is highly suspicious; but the decision of the

Tribunal must rest not on suspicion but on legal testimony.

11.4 Our attention was further invited to the following decision of Coordinate Bench Chandigarh & a few others where under similar circumstances cash deposited during demonetization out of cash sales without rejection of books of accounts was held not justified:

a. [2022] 98 ITR (Trib) 419 (ITAT [Chand]) THE DCIT CENTRAL CIRCLE-1, LUDHIANA VERSUS M/S ROOP FASHION AND (VICE-VERSA)

b. 2023 (3) TMI 755 - ITAT CHANDIGARH, SH. GULSHAN KUMAR VERSUS DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2, LUDHIANA ITA No. 488/Chd/2022, Dated: - 31-10-2022

c. ITAT CHANDIGARH [2022] 97 ITR (Trib) 389 (ITAT [Chand]) SMT. TRIPTA RANI VERSUS THE ASSISTANT. COMMISSIONER OF INCOME TAX LUDHIANA.

d. 2023 (4) TMI 529 - ITAT AMRITSAR RAJ KUMAR (M/S RADHIKA SALES CORP) DHAB WASTI RAM, AMRITSAR VERSUS ITO, WARD 3 (3) ,AMRITSAR. I.T.A. No.195/Asr/2022, Dated: - 11-4-2023

e. 2023 (3) TMI 1196 - ITAT DELHI M/S. FINE GUJARANWALA JEWELLERSVERSUS INCOME TAX OFFICER, DELHI, I.T.A. No. 1540/DEL/2022 Dated: - 27-3- 2023

f. 2022 ITAT Lucknow Subodh Chandra Seth ITA 352/Lkw/2020 dated 22/8/22

g. 2022 ITAT Lucknow SITA RAM RASTOGI ITA 23\LKW\2022 dated 8/9/2022

12. *The Ld. DR has relied on the order of the AO as well as that of the Ld. CIT(A). We have already taken note of the findings of the AO, hence the same are not reproduced for the sake of brevity. As far as the findings of the Ld. CIT(A) is concerned, the same are contained at para 5 of the impugned order and the same reads as under:*

“5. The appellant submitted during the appellate proceedings that it is part of CM jewellers group and therefore it is covered by the declaration of Rs.3,00,00,000/- made by the group under PMGKY. Further, it was submitted that the cash of Rs.21,00,000/- was deposited out of day to day cash sales. The appellant submitted that there was no justification to make addition u/s 68 of the Act on account of cash sales recorded in books of accounts. The Ld. AR also questioned retrospective applicability of section 115BBE of the Act. After taking into consideration the above facts, the opportunities vide letter dated 24.08.2021 and 17.09.2021 were granted to the appellant to produce complete sale bill books and complete books of accounts for the year under consideration in order to verify the grounds of appeal and to verify the above contention. In response, the appellant submitted only copy of sales account, however, failed to produce the

complete sale bill books for the period under consideration. Upon perusal of the submission of the appellant, it is noted that the cash sales shown by the appellant during the months of October and November, 2016 are considerably higher than the respective months of F.Y. 2015-16 and F.Y. 2014-15. The onus to substantiate the cash sales was on the appellant which it has failed to discharge both during the assessment and appellate proceedings. The appellant has failed to furnish documentary evidence sought during the appellate proceedings thereby failing to establish genuineness of the cash sales and therefore, has failed to explain source and nature of such cash deposits in the bank account/ books of accounts. In view of the fact that the cash sales made by the appellant could not be verified and the genuineness of the same could not be established during the assessment as well as appellate proceedings, the addition made by the AO is justified and the same is hereby sustained. After going through the facts of the case it has been observed that unexplained cash sales is deemed income u/s 68 of the Act as the appellant could not establish the genuineness of the same and the income assessed u/s 68 is liable to be taxed as per the provisions of section 115BBE of the Act. Therefore, this case falls squarely under the ambit of section 115BBE of the Act as applicable w.e.f. from 01.04.2017 i.e. for the year under consideration. Thus, it is not a case of retrospective application of section 115BBE of the Act. In this case, the AO has not considered the amount of Rs.17,00,000/- as genuine sales and

therefore, reduced the total sales by the same amount, therefore, no double addition on this account has been made. Thus, it is found that the case laws relied upon by the appellant have no bearing on the instant case. Regarding the submission of the appellant that its case is covered by declaration of Rs.3,00,00,000/- made by M/s CM Jewellers group under PMGKY, it is held that the declaration was made in the case of M/s CM Jewellers and not the appellant. Therefore, no credit out of the same can be allowed to the appellant.”

13. We have heard the rival contentions and pursued the material available on record. The assessee has deposited a sum of Rs 20 lacs on 10/11/2016, Rs 50,000/- on 6/12/2016 and Rs 50,000/- on 20/12/2016 in its bank account maintained with SBI, Ambala City. The source of such cash deposits has been explained by the assessee as out of its cash sales so undertaken from time to time and it has also been explained that such cash sales are subject to VAT where VAT has been collected and deposited with the government treasury. In support of its explanation, the assessee has furnished the cash book containing the entries towards the cash sales, cash deposits with bank, complete sale and purchase ledgers, sundry creditors, VAT returns, copy of trading and profit/loss account and balance sheet which are duly audited. No defect has been pointed out by the AO in terms of availability of stock or in any of the documentation so submitted by the assessee or in the books of accounts. Therefore, merely the fact that certain cash deposits have been made by the assessee during the period of

demonization and such deposits are on a higher side considering the past year figures cannot be basis to hold the explanation so made by the assessee as unsustainable and treat the cash sales as bogus and bringing the cash deposits to tax u/s 68 of the Act. The comparative figures for past years can no doubt provides a starting point for further examination and verification but basis such comparative analysis alone and without any further examination which points out any defect or manipulation in the documentation so submitted or in terms of availability of requisite stock in the books of accounts, the sales so undertaken by the assessee which is duly recorded in the books of accounts cannot be rejected and treated as bogus. In view of the same, we find the explanation of the assessee as genuine and reasonable duly supported by the documentation and books of accounts and the addition so made by the AO and confirmed by the ld. CIT(A) is directed to be deleted.”

8. *In view of the above observations, we do not find any justification on the part of the lower authorities in making the impugned additions and the same are accordingly ordered to be deleted.*

9. *In the result, the appeal of the assessee stands allowed.}*

We thus concur with the aforesaid.

5. We hold that Department has never held that in both the below orders of the lower authorities i.e; AO & CIT(A) that sales invoices were deliberately issued by the Assessee of amounts of

less than Rs. 2,00,000/- to avoid verification by tax authorities. We further hold that though the Tables (supra) are correctly drawn and even comparison is made correctly (which fact is not even seriously contested by assessee as far as Tables are concerned) but the sudden spurt in sales in 2016 for October, November, December 2016 is clearly attributed to demonetization of old Notes which cannot be denied.

6. In view of foregoing, we set aside the impugned order.
7. In the result, the appeal of the assessee is allowed.

Order pronounced on 24 02.2025

Sd/-

(VIKRAM SINGH YADAV)
Accountant Member

“rkk”

Sd/-

(PARESH M. JOSHI)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Assessee
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar