

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3168/Del/2023
(ASSESSMENT YEAR 2017-18)

M/s Shagun Jewellers (P) Ltd. A/3-179, Paschim Vihar, West Delhi-110 063. PAN-AAFCS4608A	Vs.	Dy. CIT, Circle-23(1), New Delhi.
(Appellant)		(Respondent)

Assessee by	Shri Ved Jain, Adv. & Shri Aayush Garg, Adv.
Department by	Shri Sahil Kumar Bansal, Sr. DR
Date of Hearing	12/02/2025
Date of Pronouncement	27/02/2025

ORDER

PER MANISH AGARWAL, AM:

This is appeal filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 27/10/2023 in Appeal No. CIT(A), Delhi -8/10655/2019-20 for Assessment Year 2017-18.

2. The assessee has challenged the order of the assessment order on the following grounds of appeal:-

“1. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred both in law and on facts in upholding the determination of total income of the appellant company at Rs. 5,09,36,954/- as against declared income of Rs. 1,01,47,804/- in an order of assessment 16.12.2019 under section 143(3) of the Act.

2. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has grossly erred both in law and on facts in disposing off the appeal ex-parte without granting any fair and proper opportunity of being heard to the appellant company.

2.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was reasonable cause for the appellant company for not causing appearance on the dates fixed for hearing and as such disposal of the appeal without granting fair, meaningful and proper opportunity is untenable

2.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that non appearance of the appellant on the date of hearing was neither intentional nor deliberate and is not a case where applicant is not interested in prosecuting its appeal.

3.1 That, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has erred both in law and on facts in upholding an addition made of Rs.4,07,89,150/- representing alleged unexplained cash deposits in the bank account of the appellant company during the period of demonetization and brought to tax under section 68 of the Act read with section 115BBE of the Act.

3.2 That, the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that the learned Assessing Officer having accepted the cash sales and taxed income thereon could not by any stretch of imagination either legally or logically hold that cash deposited is unexplained and taxable as income of the assessee u/s 68 of the Act.

3.3 That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the addition by failing to appreciate that once books of accounts are correct and complete and therefore, the sales as recorded in the books of accounts out of stock available with the appellant could to be regarded as cash sales merely on statements without appellant disregarding the factual matrix/evidence tendered by the appellant.

3.4 That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate that once the sales are duly recorded in the books of accounts and have been made out of stock available in the books of accounts then both logically and legally, such sales could not be separately assessed to tax as bogus sales and unexplained cash credit u/s 68 of the Act.

3.5 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in recording various adverse inferences which are contrary to the facts on record, material placed on record and, are otherwise unsustainable in law and therefore, addition so sustained is absolutely unwarranted.

4. That without prejudice to the above and in the alternative, even otherwise, the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in holding that amount deposited in the bank by the appellant is taxable as income under section 68 of the Act and thereafter computed the demand in accordance with the rates specified in section 115BBE of the Act as amended by Taxation Laws (Second Amendment) Act, 2016.

5. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest of Rs. 1,04,21,301/-u/s 234B of the Act, and interest of Rs. 57,476/- u/s 234C of the Act which are not leviable on the facts and circumstances of the case of the appellant company.

Prayer - It is therefore prayed that, it be held that order disposing of the appeal ex parte by the learned Commissioner of Income Tax (Appeals) be set-aside It is therefore, prayed that, that addition made and sustained by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant be allowed.”

2. The brief facts of the case are that the assessee is a company and filed its return of income electronically on 31/10/2017 declaring total income of Rs.1,01,47,804/-. The case was selected for scrutiny under CASS and notice u/s 143(2) of the Income Tax Act, 1961, were issued. The assessee is engaged in the business of gold, silver and diamond jewelry on wholesale and retail basis. During the year under consideration, the assessee has made cash deposit in the bank account during the period of demonetization of Rs.20,59,29,500/-. The Assessing Officer after considering the submissions of the

assessee after comparing the average cash sales and average cash deposits in the bank account during the year under appeal with immediately preceding year, was of the opinion that the cash deposit of Rs.15,06,14,350/- could be held as explained cash deposited during the demonetization period and made the addition of the balance amount of Rs.4,07,89,150/- u/s 68 as unexplained income in the hands of the assessee.

3. In first appeal, the Ld. CIT(A) confirmed the additions made, thus, the assessee is in appeal before Tribunal. Since, the grounds of appeal No.1 to 4 are taken against the addition of Rs.4,07,89,150/- thus, these are taken together and disposed off simultaneously.

4. Before us, the Ld. AR of the assessee submitted that during the year under appeal assessee has made trading of gold, silver and diamond jewelry on wholesale and retail basis. The assessee has maintained regular books of account which were duly audited and no defect whatsoever was pointed out by the auditor. During the course of hearing before the AO, assessee has filed every price details as asked from time to time and the AO has not pointed out any defect in the details so submitted nor has doubted the genuineness of books of account produced before him. The trading results declared by the assessee were accepted. The Ld. AR further submitted that the AO has failed to appreciate that the cash was deposited during demonetization out of the cash balance available as on the date of demonetization pronounced by the Hon'ble PM i.e. on 08/11/2013 which was the accumulation out of the cash sales made by the

assessee. The Ld. AR further submit that during the year assessee has made cash sales of Rs.38.58 Cr. out of which cash available on 08/11/2016 was deposited in the bank accounts. He further drew our attention to the table at pages 4 to 6 of the assessment order which contained monthly cash sales and cash deposited in the bank account in the year under appeal and in immediately preceding year. Ld. AR submitted that from the perusal of the said table it is clear that the assessee has made regular cash sales during the year which is in parity with the cash sales of earlier years and there was no substantial hike in cash sales or cash deposited into bank in the year under appeal. Ld. AR further submitted that when books of accounts have been accepted and the sales have not been doubted, the cash deposit out of the said sales could not be held as unexplained. For this, he relied upon the judgment of Hon'ble Delhi High Court in the case of *DCIT vs. Kailash Jewellery House in Appeal No. ITA 613/2010 reported in (2010) 4 TMI 1070* wherein the Hon'ble High Court has held that when stock of position as well as the cash position as per the books of accounts of the assessee had been duly accepted by the AO and no discrepancies had been pointed out by the AO books of accounts and cash books, no addition could be made on account of cash deposited made from the regular sales. Ld. AR argued that when sales have already been offered for tax, the cash generated out of such sales could not be doubted and if the such cash deposits out of such cash sales is taxed it would tantamount to double taxation. The Ld. AR further submitted that the AO has rejected the explanation of the assessee without bringing on record any contrary

material to hold that the assessee has made cash deposit out of unexplained sources. Once the explanation of the assessee could not be controverted by any corroborative material brought on record by making the inquiry solely on conjecture and surmises, based on estimation of average sales, addition cannot be made. Further the Ld. AR also filed the rebuttal on the allegations made by the AO page 6 of the assessment order which are as under:-

“Rebutting the AO allegation on Page 6 of the assessment order:

36. On pages 3 to 6 of the assessment order, the AO has reproduced tables comparing financial data with the previous year. Thereafter, the AO has analyzed the same which are factually incorrect, as highlighted below

1. The AO's allegation that "The total cash sales for FY 2016-17 increased to the tune of 99.5% as compared to F.Y. 2015-16" is factually incorrect As evident from the tables reproduced on pages 3 to 6 of the assessment order, the total cash sales for FY 2016-17 amounted to 38,58.44,411, whereas for FY 2015-16, it was ₹88,85,16,130 This clearly shows a decrease of 56.57%, not an increase. The AO's observation is therefore baseless and contrary to the facts on record

2. The AO's assertion that on page 6 of the assessment order, claiming a 616% increase in cash sales from 01.04.2016 to 08.11.2016 compared to the same period in the previous year, is factually incorrect. As evident from the tables on pages 3 to 6, the correct figures are ₹30,47,74,192 for FY 2017-18 and 160,95,14,510 for FY 2016-17, clearly showing a decrease of 81.06%. The AO's observation is therefore baseless and inconsistent with the facts on record.

3 The AO's claim on page 6 of the assessment order, stating that cash deposits in t the bank for FY 2016-17 increased by 243% over FY 2015-16, is factually incorrect. As evident from the tables on pages 3 to 6, the correct figures are ₹35,20,78,500 for FY 2017-18 and 286,86,59,100 for FY 2016-17, indicating a decrease of 59. 47%. The AO's observation is therefore erroneous and contrary to the facts on record.

4. The AO's claim on page 6 of the assessment order, stating that cash deposits in the bank from 09.11.2016 to 31.12.2016 increased by 501.7% compared to the same period in the previous year, is factually incorrect. As evident from the tables on pages 3 to 6, the correct figures are 20,29,28,500 for FY 2017-18 and ₹7,63,34,300 for FY 2016-17, indicating an increase of only 165.84%, The AO's observation is therefore grossly exaggerated and inconsistent with the actual data on record.

37. The above errors in the assessment order highlight a flawed analysis and misinterpretation of facts, leading to baseless observations that contradict the actual data on record.”

The Ld. AR further submitted that while confirming the additions, the Ld. CIT(A) has failed to appreciate the facts and merely no discussions have been made addition was confirmed on presumption. He thus prayed for the deletion of the addition so made.

5. On the other hand, the Ld. Sr. DR vehemently supported the orders of the lower authorities and stated that the AO has made analysis of the cash sales made by the assessee during the year under appeal and immediately preceding year and after considering the facts has concluded that out of the total cash of Rs.20,29,28,500/- deposited in SBN during the year, Rs.15,06,14,350/- is the average cash balance as on closing hours of 08/11/2016 which is worked out by AO on the basis of average cash sales made during the year and treated as it explained, therefore, the Assessing Officer was very much reasonable in making addition of only Rs.4,07,89,150/- which deserves to be upheld.

6. We have heard the rival submissions and perused the materials available on record. In the instant case, the books of accounts of the

assessee are subject to audit and from the perusal of the financial statement, we find that neither the auditor has pointed out any deficiency in the maintenance of the books of accounts nor the Assessing Officer has pointed out any defects in the same who has accepted the books of accounts and had not disturbed the trading results declared by the assessee. It is also seen that the assessee is having substantially amount of cash sales throughout the year under appeal as well in preceding year also. During the course of assessment proceedings, assessee had filed the copies of the stock register along with the details of sales and daily cash book according to which sufficient cash was available with the assessee as on the closing hours of 08.11.2016 when the demonetization was announced by the Hon'ble Prime Minister. We find that the AO has not pointed out any defects in the date to day stock records maintained by the assessee. Copies of the sales bills were also produced before AO for examination during the course of assessment proceedings who except stating that all the bills were issued below Rs.2 lacs and no PAN was available of the buyer was available which is not requirement of the Act, failed to point out any defect nor it is the allegation of AO that sales were made without stock. It is also seen that the assessee has filed regular returns under the VAT Act where the sales declared by the assessee were accepted. Once the Assessing Officer has accepted the books and not raised any doubts on the day to day stock register maintained and sales made thereon, it is not correct to say that the cash deposited out of such cash sales which duly reflected in the books of accounts is unexplained. The

Assessing Officer failed to find any error in the details and evidences filed by the assessee.

7. The realization of cash sales is duly recorded in the cash book maintained on day to day basis which is evident from the perusal of the cash book submitted during the course of assessment proceedings. Assessee has deposited cash during the demonetization on various dates out of the cash available as on date with assessee as on the closing hours of 08.11.2016 i.e. the date when the demonetization was announced by the hon'ble prime minister and was the last day upto which the SBN could be accepted as valid currency. The AO is required to take into consideration the record of the assessee such as stock register, bank statement, monthly sales summary, possibility of back-dating of cash sales or fictitious sales etc. before making any allegation about the genuineness of the cash deposited in SBN during the demonetization period. No such adverse observations were made by the AO or by the ld. CIT(A) that the assessee's records are not in conformity with the accepted accounting principles. Neither the AO nor the CIT(A) have doubted the availability of stock prior to sales. When the assessee has submitted complete details and thus discharges its onus, whereas no contrary material whatsoever was brought on record by the AO to disprove the details filed by the assessee. As observed above, assessee has already included the entire cash sales in the total sales and the profits have been derived which were offered for tax, thus taxing the same income twice once in the sales and other when the sale consideration was

realised and deposited in the bank account which is doubted on conjectures and surmises.

8. At this juncture provisions as contained in section 68 is reproduced as under:

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

9. From the perusal of the provisions of section 68 of the Act it is very clear that assessing officer can make addition u/s 68 only under two circumstances, i.e.

- (i) Appellant does not offer any explanation about nature and source of such credit; or
- (ii) Explanation offered by Appellant is not upto the satisfaction of Ld. AO.

10. In other words, whenever Appellant provides explanation, before rejecting the same ld. AO has to record dissatisfaction as to why the explanation furnished by Appellant is not acceptable. As is evident that assessee not only offered explanation regarding nature and source of such credits but also substantiated the same with documentary evidences in the shape of Audited Financial Statements, Sale Register, Purchase Register, Stock Register and Cash book. No specific defects whatsoever has been brought out on record by the ld. AO/ ld. CIT(A) in those evidences and books of

accounts so furnished. It is not understood as to how the addition has been made by the lower authorities when the source of such cash deposits, being cash sales, was duly accepted by him. Even no discrepancy was pointed out by the VAT department in respect of purchases and sales made by the assessee. Therefore, addition so made u/s 68 of the Act without finding out any specific defects in books of account and also without rebutting the evidences produced is unjustified and be deleted.

11. The Co-ordinate bench of Mumbai ITAT in the case of ACIT *v.* Ramlal Jewellers (P.) Ltd. Reported in [2023] 154 taxmann.com 584 (Mumbai - Trib.) under similar circumstances, deleted the addition made u/s 68 on account of cash deposit in SBN during the demonetization into bank by making following observations:

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 undersection 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]

12. The hon'ble Delhi High court in the case of CIT v. Kailash Jewellery House in ITA No. 613/2010 (Delhi High Court) has held as under:

In the facts of above case cash of Rs.24,58,400/- was deposited in bank account. The Assessing Officer made the addition on the ground that nexus of such deposit was not establish with any source of income. The assessee claimed that it was duly recorded in the books on account of cash sales and was considered in the Profit and Loss Account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book was submitted to the Assessing Officer and no discrepancy was pointed out. On this basis CIT(A) deleted the addition. Tribunal also observed that it is not in dispute that 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. Therefore, cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The Hon'ble High Court dismissed the appeal filed by the Department.

13. The Co-ordinate bench of ITAT Delhi in the case of S. Balaji Mech-Tech Private Ltd Vs. ITO in ITA No. 556/Del/2024 vide order dt. 25.09.2024 has observed as under:

18. Coming to the issue of stock movement and excess sales, we observed that the assessee has submitted relevant stock reconciliation and auditors report of stock movements and there is no negative stock movement which will indicate that the assessee has booked excess sales without there being proper purchases.

19. In our considered view, there are chances that during the demonetization period the regular customers may have choose to buy the spare parts and bearing by making payment by cash so that their excess SBN is transferred. We noticed that the credit sales has come down during this period and the sales of the assessee is more or less

maintained during this period. Therefore, it shows that the changes in the patterns recorded in the sales are not abnormal.

20. Whether the recording of cash sales which is already declared in the books of account will attract the deeming provisions of sec.68 or 69A of Act. We observed that the assessee has declared all the cash transactions in its books of account and merely because the cash deposits are more during the demonetization period, whether the CIT(A) can invoke the provisions of section 69A of the Act. As per provisions of the section, it is necessary that the assessee be found with the money, the same is not recorded in the books accounts maintained by it for any source and not offers any explanation or such explanations are not found to be satisfactory to the AO. In this case, the assessee has already declared the cash sales in its books of account and offers the explanation as cash sales, which the lower authorities has accepted it as regular business transactions because they have not rejected the book results and brought to tax the total sales declared by the assessee in its books. Since the cash were already recorded and explanation is already part of the book results, there is no avenue for the CIT(A) to reject such explanations. This expression "explanation is found not satisfactory to the AO" is purely relates to the money found with the assessee which are not recorded in the books of account. In this case, the above expression has no relevance since the assessee had already declared the cash sales in its books. In the similar situation, the coordinate bench has held in the case of J.R.Rice India (P) Ltd as under:

"At the cost of repetition, to the extent of sales made, the stock position is also correspondingly reduced by the assessee which goes to prove the genuineness of the claim of the assessee. On examination of the cash book of the assessee, it is found that the assessee had cash balance of Rs. 55.94 lakhs as on 8-11-2016, i.e., the date on which demonetization was announced, which sufficiently explains the source of deposit of Rs. 52.60 lakhs in specified bank notes. Apart from this, the assessee had duly furnished the month wise details of sales, month wise details of purchase, corresponding freight charges incurred month wise, month wise power and fuel expenses and month wise selling expenses in the form of rebate and discount. The assessee also

furnished the quantitative details of goods month wise for rice, sugar, chana dal and wheat flour before the Assessing Officer. All these facts clearly go to prove the genuineness claim made by the assessee that cash deposits of Rs.52.60 lakhs has been made out of cash balance available with the assessee and, hence, there is absolutely no case made out by the revenue for making addition under section 68."

14. Further, in the case of Fine Gujaranwala Jewellers Vs. ITO (ITA No. 1540/Del/2022 dated 27.03.2023, wherein it was held as under:

22. In the case in hand the reason for disbelieving the cash deposit is that the assessee has been deposited below Rs. 2 lakh in every transactions that lead to the conclusion of the Assessing Officer that the same has been done to avoid the application of provision of section 285BA read with Rule 114E of the Act. The said observation made by the Assessing Officer without any material in his hand.

There is no prohibition under law to make sale transaction below Rs. 2 lakhs as such the assessee had at liberty to manage his own affairs. From the action of the assessee in raising the sales bill below Rs. 2 lakhs the Assessing Officer cannot interpret as the sale are bogus only to give colour to non-genuine transaction as genuine transaction. The evidence brought on record by the Assessing Officer are not enough to hold that sales were not genuine. More so, the other wing of the Govt has already accepted the sale transaction under VAT, hence, the Assessing Officer is precluded from making contrary findings on the issue when the sales are not doubted. The other contention of the ld. DR is that the assessee has not maintaining stock register properly and date wise stock position are not given. The Assessing Officer made the said observation without rejecting the books of account form which true profit and loss accounts could be ascertained and there is no quarrel on this issue. The lower authorities cannot place reliance on the circumstantial evidence which is only conjectures and surmises and the said approach of the ld CIT(A) is devoid of merit it deserves to be rejected. Further, the income of the assessee has to be

computed by the Assessing Officer on the basis of available material on record and it is very important to have a direct evidence to make an addition rather than circumstantial evidence. When the assessee gives any reply or submission or any documents to the Assessing Officer, it is duty of the Assessing Officer to examine the same in the light of the available evidence. In the present case the Assessing Officer and the ld CIT(A) have concluded the findings on the basis of conjectures and surmises. The Assessing Officer has to establish the link between the evidence collected by him and the addition to be made. The entire case has to be dependent on the Rule of evidence, the assessee in this case explained the source of bank deposits are from cash sales. The Assessing Officer proceeded to disbelieve the explanation of the assessee on the presumption basis without bringing the corroborative material on record. The Assessing Officer is required to act fairly as reasonable person and not arbitrarily capriciously. The assessment should have been made based on the adequate material and it should stand on its own leg. The Assessing Officer without examining any parties to whom the goods are sold by the assessee, came to conclusion that the sales are not genuine, without even rejecting the books of account which is in our opinion is erroneous.

21. Respectfully, following the above decisions, we are inclined to allow the grounds raised by the assessee with the observation that the AO/CIT(A) cannot invoke the provisions of section 68 or 69A when the assessee is already declared the source for cash deposits in the books of accounts and the lower authorities without their being any material to support on their contrary view, the provisions of section 68 or 69A cannot be invoked.

22. In the result, appeal filed by the assessee is allowed.

15. Further Co-ordinate Bench of ITAT, in the following case laws has held as under:

- *ITAT Delhi in the case of M/S Godwin Tourism Pvt. Ltd. V. DCIT 2024 (8) TMI 1173, dated- August 21, 2024, held that-*

19. Considered the rival submissions and material placed on record, we observed that the assessee has submitted cash book in the Paper Book wherein assessee has received share application money on various dates and received the same by way of cash on verification of the cash book submitted before us. We observed that on various dates, the assessee has maintained sufficient cash which are out of share k withdrawals and it is substantiated that sufficient source application money and some bank of cash available with the assessee to make the bank deposit of Rs. 8 lacs. After considering the facts on record, we observed that assessee has sufficient cash in hands to make above said dash deposit. Accordingly, additions made by the Assessing Officer is deleted."
- *In the case of ITO V. Mis J.K. Wood India Pvt Ltd, 2024 (1) TMI 1262, dated 03.01.2024, Hon'ble ITAT Delhi held that-14. We have given thoughtful consideration to the factual matrix discussed hereinabove The undisputed fact is that there is not even a whisper of any defect, error or infirmity in the books of account maintained by the assessee which were audited both under the Companies Act and under the Income tax Act. The books of account have been maintained in the regular course of business and cash deposits in the books of account are duly reflected in the books of account 15. Sales made by the assessee and shown in the regular books of account have been accepted as such by VAT authorities while framing the VAT assessment. The assessee was having sufficient stock in hand for making the impugned sales during the demonetization period and it is not the case of the Assessing Officer that the assessee has shown bogus purchases to show bogus sales to cover up cash deposited during the demonetization period"*
- *In the case of JCIT V. M/s Pari Agencies Pvt Ltd. ITA No. 2006/DEL/2023, dated 14.12.2023, Hon'ble ITAT Delhi heid that-*

11. Nowhere in the assessment order the Assessing Officer has mentioned that after inflating the alleged cash sales the assessee has frequently revised its VAT returns. It is not the case of the Assessing Officer that the assessee has shown alleged cash sales without having sufficient stock in hand during that period. Not a single instance of defect is pointed out in the audited books of account. The entire assessment is based on assumptions/presumptions, surmises and conjectures de hors of the facts on record."

- Further reliance in this regard is being placed on the Judgment of ITAT Visakhapatnam in the case of ACIT, CC-1 Visakhapatnam V. M/S Hirapanna Jewellers And (Vice-Versa), 2021 (5) TMI 447, dated: 12-5-2021 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 the sales and we do not find any defect in ccount effect 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 Vishel 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."

- ITAT Delhi in the case of M/S. Fine Gujuranwala Jewellers V. ITO, 2023 (3) TMI 1196-ITAT Delhi, dated- March 27, 2023, where Hon'ble Tribunal observed that where assessee has filed its submissions and placed evidence on record, then it is the duty of AO to act fairly as a reasonable person and examine the fact of the case in the light evidence available and should not come to a conclusion on the basis of surmises and conjectures. Tribunal further held that AO without rejecting the books of accounts, cannot come to a conclusion that sales are not genuine, relevant finding are as under-

"When the assessee gives any reply or submission or any documents to the Assessing Officer, it is duty of the Assessing Officer to examine the same in the light of the available evidence. In the present case the Assessing Officer and the Id CIT(A) have concluded the findings on the basis s of conjectures and surmises. The Assessing Officer has to establish the link between the evidence collected by him and the addition to be made. The entire case has to be dependent on the Rule of evidence, the assessee in this case explained the source of bank deposits are from cash sales. The Assessing Officer proceeded to disbelieve the explanation of the assessee the presumption basis without bringing the corroborative material on record. The Assessing Officer is required to act fairly as reasonable person and not arbitrarily capriciously. The assessment should have been made based on the adequate material and it should stand on its own leg."

The Assessing Officer without examining any parties to whom the goods are sold by the assessee, came to conclusion that the sales are not genuine, without even rejecting the books of account which is in our opinion is erroneous"

16. Thus, by respectfully following the ratio laid down in above cases and also looking to the facts that Assessing Officer has tried to support his finding merely on the basis of incorrect comparison of daily cash sales and cash deposits in the bank accounts in the year before us as well as in preceding year and such observations have already been answered by the assessee and not controverted by Revenue. Under these circumstances, we are of the considered view that when the AO has accepted the entire sales no addition could be made on account of cash deposit in the banks which is part of such sales and is tantamount to double taxation of income which has already been offered to tax sales. In view of these facts, the addition of Rs.4,07,89,150/- made u/s 68 of the Act on account of unexplained income towards the cash deposit in the bank account during demonetization is hereby deleted.

17. In the result, all the appeals of the assessee are partly allowed.

Order pronounced on 27/2/2025.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 27/02/2025

PK/Sr. Ps

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant

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

ASSISTANT REGISTRAR
ITAT NEW, DELHI