



आयकर अपीलीय अधिकरण,राजकोट न्यायपीठ, राजकोट।

IN THE INCOMETAXAPPELLATE TRIBUNAL,RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

And

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 385 /RJT/2023

(निर्धारण वर्ष/Assessment Year: (2017-18)

<b>Manojbhai Arvindbhai Parekh</b> Shreeji Giriraj Trading, 19-Giriraj Chamber, Old Gadhiwas Soni Bazar, Rajkot – 360001	<b>Vs.</b>	<b>The ACIT of I. T. Circle – 2(1),</b> Rajkot – 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>ACYPP1471C</b>		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by

: Shri Chetan Agarwal, Ld. AR

प्रत्यर्थी ओर से/Respondent by

: Shri Abhimanyu Singh Yadav, Ld. Sr.DR

सुनवाईकीतारीख/ **Date of Hearing**

: **04/02/2025**

घोषणाकीतारीख/**Date of Pronouncement**

: **27/02/2025**

आदेश / ORDER

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to assessment year 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeal) [in short ‘Ld. CIT(A)’], dated 05.10.2023, which in turn arises out of an assessment order passed by the assessing officer, under section 143(3)of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 21.12.2019.



2. Grievance of raised by the assessee, are as follows:

1. *The assessment order u/s. 143(3) of the Act is bad in law.*
2. *The learned Assessing Officer has erred in law as well as on facts in making the addition of cash sales of Rs. 2,99,87,180/- u/s. 68 r.w.s. 115BBE alleging the same to be unexplained credits and the learned CIT(A) has also erred in law as well as on facts in confirming the same.*

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual and filed its return of income, on 29.10.2017, declaring therein total Income at Rs. 22,10,140/-. The return of income has been processed u/s 143(1) of the Income Tax Act, 1961. Later on, the assessee`s case was selected for complete scrutiny under CASS. The notice u/s. 143(2) of the Act was issued on 10.08.2018 and duly served upon the assessee. Further, various notice u/s 142(1) of the Act was issued to the assessee, calling for various details relevant to the e-assessment proceedings in his case. In response to the above notice, the assessee through e-filing portal uploaded necessary details online as called for and details were verified by the assessing officer. During the assessment proceedings, the assessing officer noticed that assessee deposited cash of Rs.3,00,00,000/- in the bank during demonetization. Vide notice u/s. 142(1) of the Act, the assessee was requested to furnish the details regarding the cash deposited during the demonetization. In this response, assessee submitted details along with cash book sales register, stock register, profit and loss account, balance sheet and cash flow statements etc. On perusal of the details furnished by assessee it was noticed by the assessing officer that assessee generated cash only through cash sales made on dated 07.11.2016 & 08.11.2016. Part of the cash book is reproduced by the assessing officer in the assessment order. Further, the assessee was requested to submit the details of total cash sales made during the F.Y.2015-16 and F.Y.2016-17. In response to that the assessee submitted its reply along with evidences, which is reproduced by the assessing officer in the assessment order.



4. On perusal of the cash book and total cash sales details furnished by the assessee it was observed by the assessing officer that during the F.Y.2015-16 and F.Y.2016-17, the assessee made no cash sales except 07.11.2016 and 08.11.2016 and it was also noticed that on 07.11.2016 only silver was sold by assessee and on 08.11.2016 only gold was sold which raised suspicion that the assessee has manipulated the cash book to generate high cash on hand on 08.11.2016.

5. During the assessment proceedings, the assessee, vide its reply dated 20.12.2019, stated before the assessing officer that he had enough stock on 07.11.2016. Also the assessee has submitted contra ledgers of parties from whom he has made purchases. The assessee has submitted cash sales bills.

6. However, the assessing officer, having examined the cash book, sales register, stock register, profit and loss account, balance sheet and cash flow statements etc, of the assessee, observe that assessee has failed to prove the genuineness of the cash sales with evidences. The pattern of cash sales shown in the books in the form of exclusive sales of silver on one day and gold on another day cannot be accepted relying on the concept of preponderance of probability. Therefore, assessing officer, made addition of Rs. 2,99,87,180/-, as unexplained cash credit u/s. 68 of the Act, read with the provisions of section 115BBE of the Act.

7. Feeling aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal, before the Ld. CIT(A), who has confirmed the action of the assessing officer. The ld CIT(A) observed that assessee has failed to prove the genuineness of the sale. The ld CIT(A) relied on the decision of Hon'ble Kolkata High Court in the case of CIT Vs. Precision Finance (P) Ltd. 208 ITR 465(Cal), on the issue of genuineness of transactions. The ld CIT(A) also relied on the judgement of Hon'ble Supreme Court in the case of PCIT VS NRA Iron and Steel Pvt. Ltd. 412 ITR 161 (SC), wherein it was observed that all the transactions of



conversion of unaccounted money should be subjected to careful scrutiny. Hence the assessee was required to prove the source of cash deposited during demonetization period with proper evidence but the assessee has failed to prove it as incomplete sale bills have been filed. Hence, relying upon various case laws as mentioned above, the addition of the Assessing Officer was confirmed by Id. CIT(A).

8. Aggrieved, by the order of the Id. CIT (A), the assessee is in further appeal before us.

9. Learned Counsel for the assessee, Shri Chetan Agarwal, pleaded that during the course of assessment proceedings, the assessee submitted various documents and evidences, such as, cash book, sales register, stock register, profit and loss account, balance sheet and cash flow statements etc. The assessee's books of accounts are audited by chartered accountant. The audited cash book of the assessee, has clearly shown the opening cash balance and closing balance. The assessee has also submitted the stock register, wherein the all entries are getting reflected in the stock register, and quantity details were tallied also getting reflected in the stock register. Such audited books of accounts were not rejected by the assessing officer, therefore, addition made by the assessing officer, is merely based on the guess work and suspicion, which should not be acceptable in tax jurisprudence.

10. The Ld. Counsel further submitted that during the assessment proceeding, the assessee submitted, name and address and PAN number of the persons to whom he sold gold and silver, in the demonetisation period. Therefore, if the assessing officer had any doubt, he could have issued the notice under section 131 or under section 133(6) of the Income Tax Act, 1961, to conduct further necessary inquiry, which the assessing officer has failed to do so.



11. The Ld. Counsel for the assessee, further stated that before the assessing officer, assessee has furnished, copy of the bills, and vouchers and audited financial statements, including the balance-sheet, cashbook, and other books of the account. The Ld. Counsel further submitted that the assessee`s sale is getting reflected in the VAT return, and VAT Department has accepted the assessee`s sales, the said, VAT return, were submitted before the assessing officer.

12. The Ld. Counsel for the assessee, also stated that in the assessee`s case under consideration, the purchase has been accepted, by the assessing officer. Since, the assessee has made the sale during the demonstration period, out of the earlier purchases, therefore, since the purchase has been accepted than sales should also be accepted by the assessing officer. Besides, the assessee has included the Sales made during the demonisation period in the profit and loss account and paid the tax thereon, therefore, the same sales should not be taxable, by the assessing officer, again in the hands of the assessee, as it would be double taxation. Therefore, ld. Counsel contended that addition made by the assessing officer should be deleted.

13. On the other hand, Ld. CIT(DR) for the revenue submitted that no cash sales were made by the assessee in subsequent years. Therefore, the plea of the assessee should not be accepted merely because the assessee has sold the goods during the demonstration period, as there is no corresponding Sales in the subsequent years. The Ld. CIT(DR) further stated that the assessee has filed during the assessment proceedings, the VAT return and cash book and other finance statements, which should not be relied on, because it is an exceptional case, which raises doubt. Hence, the addition made by the assessing officer should be confirmed. The Ld. CIT(DR) has also submitted written submission before the Bench, which are reproduced below:

***“1. Introduction of Turnover and Average Sales Calculation:***



- The person has a total sales turnover of ₹547 crore from selling gold and silver during the financial year 2016-17.
- Assuming the business operates for 300 days in the year (excluding holidays and non-working days), the average daily turnover is calculated as follows:

Average daily sales-2547 crore 300 days 1.82 crore per day text (Average daily sales) $\frac{(2547 \text{ text(crore)} | (300 \text{ text(days)}))}{21.82 \text{ text crore per day)}$  Average daily sales 300 days 547 crore 1.82 crore per day

## **2. Fact of Cash Sales Limited to Two Days Only:**

A key fact in this case is that, except for two specific days, namely 07/11/2016 and 08/11/2016, all sales throughout the year were made exclusively through banking channels such as cheques, NEFT, RTGS, and credit/debit cards.

For the remaining 298 days in the financial year, 100% of the sales were conducted through banking channels, with no reported cash transactions.

## **3. Sudden Surge in Cash Sales on 07/11/2016 and 08/11/2016 and its Improbability:**

On 07/11/2016 and 08/11/2016, there was a significant and unusual spike in cash sales of ₹1.5 crore per day. This sudden shift from zero cash sales throughout the year to 21.5 crore in cash sales per day on these two specific days alone raises significant concerns about the improbability of this occurrence.

Considering the average daily turnover of 21.82 crore, and assuming a normal industry practice of 25% cash sales and 75% banking channel sales, the daily cash sales should typically amount to ₹45.5 lakh.

A cash sale of ₹1.5 crore per day represents a threefold increase compared to the average daily cash sales of ₹45.5 lakh, making this sudden surge highly improbable, especially in the absence of any market triggers to justify such an increase.

## **4. Improbability of Such Cash Transactions:**

The improbability of shifting from zero cash sales throughout the year to 1.5 crore in cash sales on two consecutive days right before demonetization is striking. This sharp deviation from the usual pattern suggests an unnatural spike in cash transactions, especially given that the remaining 298 days of sales were entirely through banking channels.

To quantify the improbability:

Chance of this surge in cash sales 45.5 lakh 1.5 crore-45.5150-0.303  $\text{Chance of this surge in cash sales} = \frac{1.5 \text{ crore}}{45.5 \text{ lakh}} = \frac{150}{45.5} = 0.303$  Chance of this surge in cash sales 1.5 crore ₹45.5 lakh 15045.5-0.303

## **5. Relevance of the Demonetization Announcement:**



*\* The surge in cash sales occurred on 07/11/2016 and 08/11/2016, just before the demonetization announcement on the evening of 08/11/2016, when the government declared that ₹500 and 1000 currency notes would no longer be legal tender.*

*It is highly improbable that customers, who had consistently made all their purchases through banking channels, would suddenly switch to making high-value cash transactions, especially when the impending demonetization created significant uncertainty about the value of large currency denominations,*

#### **6. Support from Supreme Court Judgment-CIT vs. Sumati Dayal:**

*In CIT vs. Sumati Dayal (1995) [214 ITR 801 (SC)], the Supreme Court emphasized that claims contradicting common human behaviour and market probabilities should not be accepted without substantive evidence. In that case, the Court rejected Sumati Dayal's claim of frequent horse race winnings due to the improbability of such events occurring naturally.*

*Applying this principle here, the sudden and unnatural surge in high-value cash sales on two specific days-when all other sales throughout the year were processed through banking channels-defies normal business practices and market trends. The drastic spike in cash transactions just before demonetization is highly suspicious and unlikely to be coincidental.*

#### **7. Conclusion:**

*The sudden shift from zero cash sales for the entire financial year to Rs. 1.5 Cr. in cash sales on 07.11.2016 and 08.11.2016, just before the demonetization announcement, is highly improbable and suggests deliberate attempts to introduce unaccounted cash into the system.*

*Supported by the Supreme Court's decision in CIT vs. Sumati Dayal, these cash transactions should not be accepted as genuine. The pattern of sales, the improbability ratio, and the surrounding circumstances all point to manipulation, and the transactions should be treated with suspicion as they defy common human probabilities.”*

14. In rejoinder, Ld. Counsel for the assessee submitted that where the books of account of the assessee are audited, and assessee has offered the sale in demonstration period, which is included in audited balance sheet and profit and loss account and assessee paid taxes on such sales, therefore, the assessee should not be penalized to pay double tax and hence the addition should be deleted.



15. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that during the appellate proceedings, the assessee submitted before the Id. CIT( A), the details regarding the sale of gold bars and silver bars. The assessee has filed copy of sale bills of gold and silver bars issued on 07 & 08.11.2016. The assessee also submitted, cashbook, stock register, balance sheet, profit and loss account and complete financial statements, including schedules and return of income, and VAT return etc. The assessee has submitted also before the Bench, paper book, containing the following documents and evidences:

- (i) Copy of return of income, computation of income for A.Y. 2017-18. (Paper Book Pg. No. 10-13)
- (ii) Copy of audited cash book for the A.Y. 2017-18 (Paper Book Pg. No. 14-39)
- (iii) Copy of audited stock register (Paper Book Pg. No. 40-64).
- (iv). Copy of list showing name and address of persons to whom cash sales were made. (Paper Book Pg. No. 65-74)
- (v) Copy of cash sales bills (Paper Book Pg. No. 75-84)
- (vi) Copy of Audited Annual Accounts for the A.Y. 2017-18 (Paper Book Pg. No. 85-95)
- (v). Copy of VAT-return and VAT assessment order for the A.Y. 2017-18 (Paper Book Pg. No. 96-104).

We find that these documents and evidences were already on the file of the lower authorities. We note that assessee is engaged in the business of trading of gold and silver bullion for a decade. During the year under appeal, the total



turnover of the assessee was Rs. 542.72 crores. Out of the total sales of Rs. 542.72 crores, the assessee made the cash sales to the tune of Rs. 2,99,87,180/- only, which is not even 1% of the total sales. The assessing officer has not doubted sales of Rs. 542.72 crores, and only doubted sales of Rs. 2.99 crore, besides, assessing officer has not doubted purchase made by the assessee. The cash sales of Rs. 2.99 crore, is not a significant amount if we consider the total sales of the assessee to the tune of Rs. 542.72 crores. Having so much Sales of Rs. 542.72 crores, the cash sales of Rs. 2.99 crore is not a material item, especially when the audited books of accounts of the assessee were not rejected by the assessing officer and purchase were not doubted by the assessing officer. To prove the genuineness of the cash sales of Rs. 2.99 crore, the assessee submitted, cash-book, stock register, balance sheet, profit and loss account and complete financial statements, including schedules and return of income, and VAT return etc. The assessing officer, did not find any defect in these documents and evidences submitted by the assessee, except to say that explanations and documents of the assessee are not acceptable. We note that the whole exercise is to be based on facts and it is the duty of the assessing officer to marshal all the facts and come to a logical conclusion about the income of the assessee for the year under consideration. For that we rely on the Judgment of Hon'ble Supreme Court in case of **Sreelekha Bannerjee** (491 ITR 122), wherein it was held that “ ..... *before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence, which it has in possession ...*”

16. We find that the assessee has explained that the source of impugned cash deposits was cash sales made during the year. It is also undisputed fact that such cash sales were duly supported by the sales invoices and recorded in the books of accounts. Such cash sales were reported in the VAT Returns and the same were



reduced from the inventory of goods. The VAT Department also accepted the sale of the assessee. The impugned amount was already credited to the Profit & Loss Account and offered for tax, as income from business. Further, it was undisputed that the assessee had only one source of income which was business income duly recorded in the books of accounts and offered for tax. Hence, the addition of the same amount u/s 68 as alleged unexplained cash credit resulted in double taxation of the same income which is completely impermissible under the law. The identical situation has come up before the Courts and Tribunals on several occasions and the addition of sales proceeds made by the AO were deleted. We rely upon the following cases where the addition u/s. 68 of the Act on account of cash deposits (also during the demonetization period) out of the realization of sale proceeds of retail cash sales and the Courts and Tribunals deleted the addition holding that when the source of cash deposits was explained as sale proceeds which were admitted as revenue receipts and offered for tax, the addition is unjustified and unsustainable as it resulted in double taxation:

(i) Hon'ble Jurisdictional Gujarat High Court in case of CIT v. Vishal Exports Overseas Ltd. – Judgement dated 03.07.2012 in tax appeal No. 2471 of 2009

(ii) Hon'ble Delhi High Court in case of CIT vs. Kailash Jewellery House- Judgment dated 09.04.2010 in ITA No. 613/2010.

(iii) Hon'ble Delhi High Court in case of PCIT vs. Agson Global (P.) Ltd.-441 ITR 550.

17. We find that the cash sales were duly recorded in the books of accounts and there was a complete tally of quantitative details of purchase, sales and stock. Further, the books of account were duly audited. The cash sales were reported in the VAT Returns and the same were reduced from the inventory of goods. The VAT department also accepted the sale of the assessee. In this situation, before taking any adverse view, it was incumbent upon the assessing officer to reject the



books of accounts under section 145(3) of the Act, before disbelieving the sales. However, the assessing officer has not done the same and directly proceeded to disbelieve the sales. This action of the assessing officer is patently incorrect and untenable in law. It is a settled position under the law that the assessing officer cannot question the book result without rejecting the same by invoking the section 145(3) of the Act. In this regard, the reliance is placed on the following judicial pronouncements:

(i) Hon'ble Gujarat High Court in case of CIT vs. Jyoti Poly Vinyl Ltd. - judgment dated 09.03.2010 in Tax Appeal No. 452-453 of 2009.

(ii) Hon'ble Madras High Court in case of PCTT vs. Marg Ltd. 84 taxmann.com 52.

(iii) Hon'ble Karnataka High Court in case of CTT vs. Anil Kumar & Co. -67 taxmann.com 278.

18. We note that demonetization was made effective from the night of 08.11.2016. It is a well-known phenomenon that when the demonetization was declared, there was a huge rush in jewellery/bullion shops throughout the country, as the citizens intended to liquidate the old currency notes which became invalid due to the declaration of demonetization. The same is the situation in the case of the assessee. Therefore, a truth which is widely known and accepted should not be disbelieved merely on technical grounds and pedantic views. In this regard, the reliance is placed on following decisions of various Tribunals in the cases of jewellers (who made cash sales during the demonetization period and included in books of accounts) wherein the additions made by the assessing officer on similar grounds and were deleted by the Tribunals observing the ground realities of the demonetization:

(i) Hon'ble Visakhapatnam ITAT in the case of Hirapanna Jewellers (128 taxmann.com 291).



(ii).Hon'ble Jaipur ITAT in the case of Mahesh Kumar Gupta (151 taxmann.com 339).

(iii).Hon'ble Jaipur ITAT in the case of Raj Kumar Nowal (146 taxmann.com 581).

(iv).Hon'ble Chandigarh ITAT in the case of Smt. Charu Aggarwal (140 taxmann.com 588).

(v).Hon'ble Delhi ITAT in the case of Fine Gujranwala Jewellers (151 taxmann.com 340).

(vi).Hon'ble Chennai ITAT in the case of Sahana Jewellery Exports (P.) Ltd (157 taxmann.com 680).

19.Regarding the cash sales bills, it is submitted that the same were physically produced before the assessing officer. Hence, statement of the assessing officer, that the cash sales bills were not produced is not correct. Before the Id. CIT(A), the assessee submitted all the cash sales bills. However, Id. CIT(A) upheld the decision of AO on the ground that the cash sale bills did not contain the address, contact number and PAN of the buyers. In this regard, it is submitted by Id Counsel that as per rule 114B of the Income Tax Rules, 1962, the seller is required mandatorily to collect PAN, if the sale is in excess of Rs. 2 lakhs to a single person. However, in the assessee's case, cash sales were within such limit and therefore, the assessee was not required to collect PAN or any other contact details. Considering the nature of business and voluminous of sales, and in order to plug the leakage of revenue, we, therefore take into account all these facts and circumstances, as narrated above. We are of the view that impugned disallowance should be restricted to the extent Rs.3,00,000/-, in lump sum only, with a rider that the same shall not be treated as a precedent.



20. Since the cash sales of the assessee, were out of his core business activities, hence cash sales is assessable under the head business income, therefore we direct the assessing officer to tax the amount of Rs. 3,00,000/- under the normal rate of income tax (and not under section 115, BBE of the Act).

21. In the result, appeal filed by the assessee, is partly allowed in above terms.

**Order is pronounced on 27/02/2025 in the open court.**

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

Rajkot

दिनांक/ Date: 27/02/2025

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot