

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 3622/Mum/2024
(Assessment Year: 2017-18)**

Income Tax Officer- 23(2)(1), Mumbai-400050	Vs.	Jewel India, Shop No.1, Kashi Kunj Waterfield Road, Bandra (W), Mumbai – 400050.
PAN/GIR No. AALFJ4863D		
(Applicant)		(Respondent)

Assessee by	Sh. Poojan Mehta,
Revenue by	Ms. Nidhi Agarwal, Sr. DR

सुनवाई की तारीख/Date of Hearing	09.01.2025
घोषणा की तारीख/Date of Pronouncement	04.03.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the revenue challenging the impugned order u/s 250 of the Act 1961, dated 21.05.2024, by the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi ('Ld. CIT(A)'), for the assessment year 2017-18. The grounds of the appeal are as under:

“1. Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in appreciating the inference drawn by the AO that the assessee had

manipulated its cash sales in view of the fact that 80% of total sales were shown as cash sales during the period 1,11.2016 to 08.11.2016 being the period prefix to the demonetization wherein address of the parties remained unverifiable?

2. Whether on the facts and in the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the entire addition of Rs.3,64,50,000/- on account of unexplained cash u/s 68 without appreciating the fact that the assessee failed to produce confirmation of 10 identifiable persons with whom alleged concocted cash sales transactions were made during the demonetization period?

3. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in concluding that the details of enquiry made by Assessing Office?"

2. As per the facts of the present case, the assessee during the period of demonetization had deposited cash amount of Rs.3,64,50,000/- in his bank account maintained with ICICI Bank Ltd. During the assessment proceedings, after seeking reply from the assessee with regard to the source of cash

deposit, the Ld.AO made addition u/s 68 of the IT Act by holding that assessee has manipulated cash sales and accumulated that cash up to the date of declaration of demonetization and also held that the cash deposited by the assessee was out of his unaccounted money.

3. Aggrieved by the order of Ld.AO assessee preferred an appeal before Ld. CIT(A). However, after considering the facts and taking into consideration the documents placed on record by the assessee, the Ld. CIT(A) while allowing the appeal deleted the additions made by the AO.

4. Against the impugned order passed by the Ld. CIT(A) the department has preferred the present appeal before us on the grounds mentioned hereinabove.

5. All the grounds raised by the department are inter related and interconnected, and relates to challenging the order of Ld. CIT(A) in deleting the additions made by Ld.AO u/s 68 of the IT Act. Therefore we have decided to take up all the grounds together and adjudicate the same through the present consolidated order.

6. The Ld. DR appearing on behalf of the department relied upon the orders passed by the AO. It was submitted that

after verification of documents submitted by the assessee, the Ld.AO has rightly observed and concluded that:

“i. Confirmation filed on behalf of third party does not have credibility. These parties failed to confirm the transaction even their address did not get verified. Confirmation filed by the assessee on behalf of those parties cannot be relied upon.

ii. Stock register is not submitted. Therefore stock purchases and sales thereon remained unverified.

iii. Assessee has submitted details of purchase parties but no other supporting documents were submitted.

iv. Full details called for through notice u/s. 142(1) were not yet submitted.

v. During the year under consideration the assessee has shown total sales of Rs.5,63,33,1307- out of which sales other than cash were of Rs.95,96,781/- and cash sales were of Rs.4,67,36,349/-. Out of the full year cash sale of Rs.4,67,36,349/-, cash sale

between 01.11.2019 to 08.11.2019 is Rs.3,76,62,3997- which is 80.58%.

vi.The bills submitted by the assessee do not have full description of goods nor has complete address of the purchasers.”

7. It is further argued that the assessee has manipulated cash sales and accumulated that cash up to the date on which the declaration of the demonetization i.e on 08/11/2016. It was also submitted that assessee has failed to justify the cash deposits made just before the demonetization period, ie from 01/11/2019 to 08/11/2019, there was sudden increase in Cash sales and the whole financial year does not commensurate with the total activities of the assessee, which clearly established that the cash deposited by the assessee was out of his unaccounted money. It was further argued that the assessee had manipulated its sale in cash, in view of the fact that 80% of total sales shown as cash sales during the period 01/11/2016 to 08/11/2016, being the period prefix to the demonetization. It was further submitted that the addresses of the parties to whom the assessee had sold diamonds also remained unverifiable, as assessee failed to produce confirmation of identifiable persons with whom alleged concocted sale in cash was made during the demonetization period. The cases of **Sumati Dayal Vs. CIT 214 ITR 801**

(SC) and CIT Vs. Durga Prasad More 80 ITR 540 (SC) were also relied upon.

8. On the contrary, Ld.AR while relying upon the orders passed by Ld. CIT(A) also submitted that during the assessment proceedings, the assessee had placed on record all the documentary evidences to prove the source of cash deposited by the assessee. It was submitted that assessee had proved copy of ITR -V, computation of income, copy of financials, copy of form cash transaction, 2016, bank book, copies of sales bill and table showing the name and details of purchases.

9. We have heard the Counsels for both the parties and have also gone through the documents placed on record, judgements cited before us and also the orders passed by the revenue authorities.

9.1 From the records, we found that in order to prove the source of cash deposited by the assessee in his bank account, during the demonetization period, the assessee had submitted all the relevant documents in the shape of fee of ITR-V, computation of income, copy of financials and copy of form cash transaction 2016. Apart from this, assessee had

also submitted confirmation on behalf of those purchases made between the parties and also submitted bank account statements, cash books, copy of sales, bills and table, showing name and details of the purchasers.

10. The assessee had also disclosed that the total sales of diamonds from 01/11/2016 to 01/11/2016 was of Rs.3,76,62,399/-, and in order to prove that assessee had also submitted the complete details of the buyers for the sale made between 04/11/2016 to 08/11/2016, in three categories and the same is reproduced here in below:

“1. Cash received from identifiable persons with PAN: RS.3,01,83,200/-.

2. Cash received from 31 identifiable persons without PAN Rs.57,39,600/-.

3. Cash received from unidentifiable persons Rs. 43,700/-.”

11. From the above details and also appreciating the documents placed on record by the assessee we found that the major part of the cash sales amounting to Rs.3,01,83,200/- is from identifiable persons with PAN and the other sales of Rs.5,73,96,00/- is from 31 identifiable persons without PAN and the meagre amount of Rs.43,700/-, was from an identifiable persons and this way assessee has

proved on record. The total cash sales made of Rs.3,59,66,500/-. However, the Ld.AO merely compare the sale figures of immediately preceding year with the sale figures of other months of F.Y 2016-17 and concluded that explanation of the assessee is untenable, and this disallowed the entire deposit.

12. We cannot lost sight of the fact that the period of demonetization was an exceptional circumstances where in there was fear among most of the members of the public and therefore Public was out and out to make purchases in cash.

13. What is important at this stage is to see as to whether the assessee had discharged the burden cast upon him. From the records, we found that assessee had successfully discharged, the initial burden cast upon him by placing and proving on record all the relevant documentary evidences before the AO. Therefore, in our considered view, once assessee had discharged his initial onus then it was the onus of the Ld.AO to disprove the documents placed on record by the assessee, but the AO failed to do so and has rejected the documentary evidences placed on record by the assessee on the basis of 'assumptions and presumptions'. Since the onus was squarely upon the AO to disprove such sales, but he failed to do so.

14. It has also been categorically discharged by Ld. CIT(A) that the provisions of section **269ST** restricting receipt of cash against any sale of products, above the sum of Rs.2,00,000/- have been introduced only w.e.f 01.14.2017 and therefore the assessee is not hit by that provision as well.

15. No new facts or circumstances have been placed on record by the Ld. DR to rebut or to controvert the findings so recorded by the Ld. CIT(A). Therefore we find no reasons to interference in to or to deviate from the order passed by the Ld. CIT(A). After considering all the facts and material on record we dismissed the grounds raised by the Department and we uphold the order passed by the Ld. CIT(A).

16. In the result the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 04.03.2025.

Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 04/03/2025

AKV