

IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH (Virtual) JODHPUR

BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER  
AND DR. S. SEETHALAKSHMI, HON'BLE JUDICIAL MEMBER

ITA No. 763/Jodh/2024  
AssessmentYear 2017-18

Pukhraj Kundanmal Shah C-37, Shastri Nagar, Jodhpur. PAN No. AANFP5987C Appellant	Vs.	ACIT/DCIT, Circle-1, Jodhpur. Respondent
Assessee by	Shri Rajendra Jain, Advocate	
Revenue by	Shri Karni Dan, Addl. CIT (Sr. DR)	
Date of Hearing	05.02.2025.	
Date of Pronouncement	20.03.2025.	

**ORDER**

**DR. MITHA LAL MEENA, A.M.:**

This appeal by assessee is directed against the order of the Commissioner of Income Tax (Appeals), Jaipur-4 [hereinafter referred to as the "CIT Appeal"] dated 14.08.2024 in respect with Assessment Year 2017-18.

2. The has taken the following grounds of appeal:

1. That the order of learned Commissioner of Income Tax (Appeals) is bad in law as well as on the facts and in the circumstances of the case.
2. That the said deposits were out of sales of the stock made by the assessee and declared in the Income Tax Return filed by the assessee. That the stock purchase and sale transactions were examined by Income Tax Department in a survey conducted us 133A of the Act on the business premises of the assessee and the excess stock was surrendered during the survey proceedings and was also offered to tax under PMGKY scheme of the department.

3. That the addition is made on suspicion of tax evasion, which is totally unfounded and the assessee's explanation and evidences in the form of sales bills, sale register, stock register, purchase bills were disregarded and ignored blindly and nothing contrary was brought on record.
4. That the addition was made & confirmed by lower authorities without properly considering the submissions and evidences filed before them.
5. That the learned Commissioner of Income Tax (Appeals) has erred in applying the theory "Human Probability Test and Preponderance of Probability in the facts and circumstances of the case of the appellant.
6. That the learned Commissioner of Income Tax (Appeals), has erred in giving a finding that there has been backdating by the appellant in the sales bills to accommodate the demonetised/SBN currency notes cash to bring such cash in the books of accounts through the fictitious sales bills in the month of October and Nov. 2016 and that during the demonetization the appellant deposited his own unexplained money (cash-in-hand) in bank accounts and created the cushion for the unexplained cash which it wanted to cover under the garb of cash sale without bringing any contrary material on the record and ignoring the fact of outward movements of stock of gold & Jewellery.
7. That the learned Commissioner of Income Tax (Appeals), has erred in giving a finding that mere recording of entries in the books of accounts does not prove the existence of cash in bona fide and genuine manner.
8. That the learned Commissioner of Income Tax (Appeals), has erred in giving a finding that onus is on the appellant to prove that the funds deposited in his bank account are actually from the sources claimed and the same has not been discharged by the appellant.
9. That the learned Commissioner of Income Tax (Appeals), has erred in giving a finding that the sales were fictitious and bogus and there was backdating of the sales invoices to accommodate the demonetised/SBN currency notes cash with the appellant.
10. That the learned Commissioner of Income Tax (Appeals), has erred in upholding the rejection of books of the appellant u/s 145(3) without bringing



any contrary material on the record and also ignoring the fact that Ld A.O. has accepted trading results of the appellant.

11. That the learned Commissioner of Income Tax (Appeals), has erred in concluding that the survey team did not examine fictitious sales billing before the date of 08.11.2016 (i.e. during 01.10.2016 to 07.11.2016) and only surrender of fictitious sales billing on 08.11.2016 was made during the course of survey and the excess stock quantity as determined during survey itself is unverifiable and doubtful.
12. That the learned Commissioner of Income Tax (Appeals), has erred in upholding the taxing of the declared cash sales again in the garb of cash deposit into Bank account which amounts to double taxation and is thus bad in law.
13. That the learned Commissioner of Income Tax (Appeals), has erred in concluding that the legitimate cash in hand at the end of 08.11.2016 is upheld at Rs. 38,04,064/-.
14. On the facts and circumstances of the case and in law also Ld Lower authorities grossly erred in applying and confirming application of the provision of section 115BBE of the Act.
15. That the learned Commissioner of Income Tax (Appeals), has erred in upholding the view of the learned assessing officer in holding that where the nature and source of any receipt/investment, whether it be money or other property, cannot be satisfactorily explained by the assessee, it is open for the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that income is from any particular source.
16. That the learned Commissioner of Income Tax (Appeals), has erred in relying on various judicial pronouncements having different facts and circumstances when compared to the case of the appellant.
17. That the learned Commissioner of Income Tax (Appeals), has erred in upholding the invocation of the provisions of Section 69A which are not applicable in the facts and circumstances of the case of the appellant.
18. That the learned Commissioner of Income Tax (Appeals), has erred in upholding the addition of Rs. 1,80,91,436/-made by the Id. AO invoking



provisions of Section 69A of the Act representing bank deposits rejecting the explanations and evidences adduced by the appellant on the basis of presumptions and surmises.

19. The above grounds of appeal are without prejudice to each other.
20. The Appellant craves leave to add, alter, amend and/or modify the above grounds of appeal.

3. The crux of the issue challenged in the multiple grounds of appeal by the assessee is confirmation of finding of the Assessing Officer's (In short "the AO") based on human probability test when there was discrepancy pointed out in cash sales accounted for during demonetization period and rejection of books of the appellant u/s 145(3) without bringing any contrary material on the record although and on the contrary the Ld. A.O. has accepted trading results of the appellant.

4. Briefly the facts of the case as per record are that the appellant firm is a partnership firm and engaged in the business of trading in gold jewelry, bullion and precious stones etc. The case of assessee firm was selected for scrutiny based on parameter at Para I(ii) of the manual compulsory guidelines of CBDT issued vide instruction No. 4/2018 dated 20.08.2018 as the survey proceeding u/s 133A of Income Tax Act, 1961 was conducted on the business premises of assessee and accordingly notice u/s 143(2) was issued to the appellant. In the course of assessment proceeding, the Ld AO has raised the query

regarding deposit of SBN currency of Rs. 3,40,00,000/- in the bank account during the demonetization period. In response, the appellant firm had explained that the cash deposits in SBN currency was made out of sale proceeds during the demonetization period which was duly recorded in the books of accounts and also verifiable from the bills, vouchers and stock register etc.

4.1 The appellant submitted before the AO that during the course of survey the authorized officer had impounded the stock register, purchase register, sales register etc wherein details of cash sales are accounted for against various customers as evident from the bills and vouchers and further the books of accounts shows the appellant had disclosed opening cash in hand as on 31/10/2016 amounting to Rs. 94,54,027/- and the cash sales of Rs. 2,46,31,365/- from 01/11/2016 to 08/11/2016 which was deposited in the bank account. However, the AO being not satisfied with the submission of the assessee, held that *"This clearly means that the assessee has accepted that he had made bogus sale to inflate cash in hand This itself shows that the assessee's books are not reliable. As the assessee is depositing has also declared Rs. 12,10,45,000/- in PMGKY so considering all these facts the bank deposits out of Rs. 3,40,00,000/- Rs. 12,10,45,000/- and Rs. 38,04,064/- is treated as genuine and the remaining balance of Rs. 1,80,91,436/- is treated as unexplained money*

*u/s 69A and is being taxed at special rate u/s 115BBE Further penalty 271AAC are being initiated separately in view of the additions being made u/s 69A read with 115BBE”.*

5. Being aggrieved with the assessment order, the assessee has filed appeal before the Id CIT(A) who has granted part relief to the assessee and confirmed part addition without considering the submission and judicial decisions in right perspective. The Id CIT(A) observed firstly that the excess stock quantity as determined during survey itself is unverifiable and doubtful' but actuality there was no difference in stock quantity of stock found at the time of survey and as per books, but whatever the difference was in the stock as on the date of survey has been surrendered under scheme of PMGKY and paid taxes and secondly, even if that is treated correct, that means the unaccounted stock arising due to fictitious sales bills was sold by the appellant out of books later on. In such a scenario the excess stock pertaining to the fictitious and bogus sales universe says used to accommodate the demonetised case was sold before the survey answers sales would be out of books sales. Does leading to the back dating of the sales invoices. Best closing stock figure won't stand increased. Increase the sales were against the immunised currency as was happening in number of cases as commonly known and also the issue discussed in the judgments, such sales are unexplained sales and the case

received against such sales is also unexplained. The onus to identify the source is not on the assessing authority but to show and prove the source is on the appellant. The appellant has not accepted that. Natural corollary of the same is that out of books, sales money was taken away by partners.

6. The Ld. Counsel for the assessee submitted that Ld. CIT (A) has not appreciated facts of the case on merits and confirmed the addition based human preponderance of probability. The Ld. AR reiterated the explanation furnished before the Ld. CIT (A) that the cash deposits were made by the appellant out of sales of the stock which are duly declared in the Income Tax Return filed by the assessee and that the stock purchase and sale transactions were examined by Income Tax Department officers in the course of survey conducted under 133A of the Act on the business premises of the assessee and the excess stock was surrendered during the survey proceedings and was also offered to tax under PMGKY scheme of the department. The Ld. AR contended that the addition was made on suspicion of tax evasion, which is totally unfounded ignoring the assessee's explanation and evidences in the form of sales bills, sale register, stock register, purchase and nothing contrary was brought on record.

7. The AR argued that the learned CIT Appeals has erred in applying the theory "Human Probability Test and Preponderance of Probability in the given



facts and circumstances of the case of the appellant while giving the finding that there has been backdating by the appellant in the sales bills to accommodate the demonetised/SBN currency notes cash to bring such cash in the books of accounts through the fictitious sales bills in the month of October and Nov. 2016 and that the appellant deposited his own unexplained money (cash-in-hand) in bank accounts and created the cushion for the unexplained cash during the demonetization without bringing any contrary material on the record and disproving the fact of outward movements of stock of gold & Jewellery. The AR submitted that the learned CIT Appeal has given no basis or corroborated documentary evidence in giving a finding that the sales were fictitious and bogus and there was backdating of the sales invoices to accommodate the demonetised/SBN currency notes cash with the appellant and upholds the rejection of books of the appellant u/s 145(3) without bringing any contrary material on the record even ignoring the fact that Ld. A.O. has accepted trading results of the appellant.

8. The AR contended that Ld. CIT Appeals has over looked the finding of the survey team while concluding that the survey team did not examine fictitious sales billing before the date of 08.11.2016 (i.e. during 01.10.2016 to 07.11.2016) and only surrender of fictitious sales billing on 08.11.2016 was made during the course of survey and the excess stock quantity as determined



during survey itself is unverifiable and doubtful in concluding that the legitimate cash in hand at the end of 08.11.2016 was at Rs. 38,04,064/- and that application of the provision of section 115BBE of the Act was not justified. The counsel has demonstrated that the learned Commissioner of Income Tax (Appeals), has relied on various judicial pronouncements having different facts and circumstances as compared to the case of the appellant. Thus, the AR contended that the Ld. CIT Appeal has been not justified in upholding the addition of Rs. 1,80,91,436/- made by the Id. AO on the basis of presumptions and surmises, invoking provisions of Section 69A of the Act representing bank deposits rejecting the explanations and evidence adduced by the appellant with support of judgement of higher judicial forums and he prayed that same may be deleted.

9. The Ld. Addl CIT (DR) on the other hand supported the impugned order.

10. We have heard both the sides, perused the material on record, case law cited before us. It is undisputed fact that there is not even a whisper of any defect, error or infirmity pointed out either by the AO or the Ld. CIT (A), in the books of account maintained by the assessee which were audited under the Income tax Act and that the VAT authority had treated such purchases and sales as genuine. The books of account have been maintained in the regular course of business and cash deposits in the books of account are duly accounted for in



the books of account. The lower authorities allegation of non- maintenance of stock register is factually incorrect while making absurd computation of bogus sales on human probability test as regard to back dating of cash sales during demonetization period without disproving accounted purchases, sales and available cash in audited books of the assessee to substantiate the addition on account of SBC currency cash deposit in the bank account. The Ld. AR contended that at the time of survey the department had obtained surrender in respect of excess stock as worked out on the basis of valuation of stock found to the cost price as per books and the appellant had disclosed such additional income under the scheme PMGKY.

9. It is undisputed facts that the appellant had deposited the cash amounting to Rs3,40,00,000/- in the bank account during the demoralization period. The source of such cash deposited was out of cash sales made by appellant which was duly recorded in the books of account and supported with bills and vouchers. The books of account were found and impounded at the time of survey wherein complete details of quantity of gold, gold ornaments purchased, sold and stock available with the assessee firm was accounted for. The computerized bills and other supporting evidences are also being impounded at the time of survey and hence lying with department. Meaning thereby that, the transactions in respect of cash sales made by appellant firm



and the cash so received towards such sales were deposited in bank account are duly recorded in impounded books.

10. From the record, it is evident that the Sales made by the assessee as shown in the regular books of account have been accepted by the assessing Officer while framing assessment. The assessee was having opening cash and 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. Furthermore, AO/CIT (A) and the defendant Ld. DR for revenue failed to controvert the evidence produced by the Ld. AR and to rebut the availability of cash in the books, on the date of deposits in the corresponding bank account, during the demonetization period. The case laws relied by the Ld. CIT (A) are distinguishable on the peculiar facts of the case.

11. In the present case, the opening stock, purchases and sales, closing stock, the cash deposited pre and post-demonetization out of cash sales declared by assessee were not doubted by authorities below. It is noted that there was sufficient stock available with assessee to make cash sales as same was duly verifiable from stock register. Thus, the source of alleged cash deposit in the bank account stands explained out of existing stock qua the assessee

Firm. Therefore, the addition sustained by CIT(A) is illegal, unjustified and would be liable to be deleted.

12. Considering the factual matrix, we hold that the impugned order is infirm and perverse to the fact on record as the addition of Rs. 1,80,91,436/- made by the Id. AO based on presumptions and surmises and sustained by the CIT (A) on human preponderance of probability illegal and bad in law. Accordingly, the addition of Rs. 1,80,91,436/- is deleted.

13. In the result, the appeal of the assessee is allowed.

Order pronounced on...20.../...03.../2025 under Rule 34(4) of

Income Tax (Appellate Tribunal) Rules, 1963.

— Sd —

(DR. S.SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated 20./03./2025

Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

— Sd —

(DR. MITHA LAL MEENA)  
ACCOUNTANT MEMBER

By Oder  
Assistant Registrar,

Income Tax Appellate Tribunal,  
Jodhpur Bench,  
Jodhpur.