

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH MUMBAI  
BEFORE: SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No. 1386/MUM/2025(A.Y: 2017-18)

(Physical hearing)

Dhanaji Budhaji & Co. Shop No. 5, Dwarkadas Ratanshi Mansion, Station Road, Near collector office, Thane, Maharashtra -400601.	Vs.	Income Tax Officer Ward-1(5) 6 <sup>th</sup> Floor, Ashar IT park, 16-Z, Wagle Industrial Estate, Thane (West) – 400604.
<b>PAN: AABFD8125E</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. Bhupendra Shah CA
Revenue by	Shri. Vijay Kr. G. Subramanyam, Sr. DR
Date of Hearing	24/04/2025
Date of Pronouncement	27/05/2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of Learned Commissioner of Income Tax (Ld. CIT(A)) dated 26.12.2024 for A.Y. 2017-18.

The assessee has raised the following grounds of appeal:

**"1. *Unjustified Addition of Rs. 30,43,011/-under Section 68 r.w.s 115BBE***

*a) The learned Commissioner of Income-tax (Appeals) ["CIT(A)"] erred in partially upholding the addition made by the Assessing Officer ("AO") under Section 68 r.w.s 115BBE of the Income Tax Act, 1961 without proper consideration of the facts and evidence submitted*

*b) The authorities below failed to appreciate that the Appellant had maintained complete books of accounts, including a stock register, bills & vouchers, and GST returns, which were not rejected under Section 145(3) of the Act.*

*c) The action of the AO in considering only 15% of yearly cash sales as reasonable for October-November 2016 is arbitrary and contrary to normal business practices.*

*d) The AO failed to consider the pattern of sales during festive seasons and other business exigencies, which led to an increased volume of cash sales in the said period.*

*e) The CIT(A) erred in applying an ad-hoc reduction of 50% in the balance unexplained cash deposit instead of deleting the entire addition.*

*f) The addition of Rs. 20,00,000/- as unexplained cash credit is unjustified and deserves to be deleted.*

**2. Initiation of Penalty Proceedings under Section 271AAC**

*a) The CIT(A) erred in not quashing the penalty proceedings initiated under Section 271AAC, which are premature and based on an unsustainable addition*

*b) The initiation of penalty proceedings is mechanical and without proper application of mind, as the addition itself is unsubstantiated"*

2. Perusal of records shows that impugned order was passed by Ld. CIT(A) on 26.12.2024. However, present appeal is filed on 27.02.2025 thus, there is a delay of 3 days in filing. The assessee has filed his own affidavit. The Learned Authorized Representative (Ld. AR) of the assessee submits that due to some communication gap between the assessee and his accountant and in calculation of time period, the delay in filing the appeal of 2/3 days occurred, which is no intentional or deliberate. The delay may be condoned. On hearing the submission and going through the submissions of affidavit the learned Senior Departmental representative (Ld. DR) for the revenue submits that he has no objection in condoning delay in filing the appeal. On considering the submissions of both the parties, delay of two days in filing the appeal is condoned. Now, advertent to adjudication on merit.
3. Brief facts of the case are that the assessee is a firm and engaged in Jewellery business, filed its return of income for A.Y. 2017-18 on 29.03.2018 declaring income of Rs. 1,19,641/-. Case was selected for scrutiny as there was survey action u/s. 133A on assessee on 23.03.2017. During assessment the assessee was asked to furnish monthly sales for F.Y. 2015-16, 2016-17 and

2017-18. On filing such detail and perusal thereof, the AO was of the view that there was total cash sales in F.Y. of Rs. 4.75 Crore, and in the month of October/November 2016r there was cash sale of Rs. 71.08 Lakhs which is 14.95% of the total sales. Similarly, in F.Y.2017-18 there was total cash sale was 4.75 Crore and in October/November 2018 there was cash sales of Rs. 50.20 Lakhs which is 11.83%. However, in F.Y. 2016-17, relevant for A.Y. 2017-18 the cash sales was 33.32% of total cash sales of Rs. 3.84 Crore. All such alleged discrepancies as per AO is recorded in para 5 and 6 of assessment order. The AO was of the view that entire cash sales shown by the assessee cannot be considered out of business receipt. In earlier years sales were 15% in cash. The AO thereby allowed benefit of 15% of cash sale and remaining of cash sales of Rs. 70,43,011/- (1,28,06,170 – 57,63,159) was treated as unexplained. The AO further recorded that assessee has already disclosed Rs. 40 lakhs in Pradhan Mantri Garib Kalyan Yojana (PMGKY). Therefore, by allowing benefit of Rs. 40 lakhs, remaining of Rs. 30,43,011/- (70,43,011 - 40,00,000) was added to the income of the assessee and was taxed u/s. 115BBE.

4. Aggrieved by the additions in the assessment order, the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A) the assessee furnished various written submission. This written submissions of assessee are recorded/scanned on page 3 to 8 of impugned order. In the written submission, the assessee submitted that they are in Jewellery business and selling various items to customer. The assessee was maintaining books of account and filing a regular return under value added tax (VAT) and furnished all necessary details. During the period under consideration the assessee made cash deposit of Rs. 80.00 lakhs in his

bank account. The assessee has already declared cash amount of Rs. 40 lakhs in the Pradhan Mantri Garib Kalyan Yojana (PMGKY). The assessee furnished detail and year wise break up of sales and VAT return. The AO on the basis of such details noted that there was cash sales of Rs. 1.28 Crore in October and November 2016, whereas normal sale in cash is 15%. The AO allowing benefit of 15% considered/allowed cash sales of Rs. 57,63,159/- and out of total cash sales of Rs. 1,28,06,170/-, cash sale of Rs. 70,43,011/- was treated as unaccounted. The assessee already declared Rs. 40.00 lakhs under Pradhan Mantri Garib Kalyan Yojana (PMGKY) and remaining of Rs. 30,43,011/- was added. The AO has not pointed out any defect in the sale or purchase. There was no adverse material with the AO. The assessee has recorded all the transactions in the books of accounts. The assessee has proved authenticity of genuineness of cash sales. In the month of October the cash sale was 33%. After considering the submission of assessee allowed partly to the assessee. The assessee also relied on certain case laws in his submission.

5. The Ld. CIT(A) on considering the submission of assessee recorded that assessee relying upon regular books, stock register, bills and voucher, GST returns, which was not rejected by AO. The assessee made cash deposit of Rs. 80.00 lakhs, out of which the assessee has already disclosed Rs. 40.00 lakhs in Pradhan Mantri Garib Kalyan Yojana (PMGKY), so only 40 lakhs was left out of which, the AO made addition of Rs. 30,43,011/-. The Ld. CIT(A) was of the view that addition made by AO is on higher side. The Ld. CIT(A) further allowed 50% relief to the assessee to the extent of Rs. 20.00 lakhs. Thereby sustained Rs.

10,43,11/- . Further aggrieved, the assessee has filed present appeal before the Tribunal.

6. I have heard the submission of Ld. AR of the assessee and the Ld. DR of the revenue. The Ld. AR of the assessee submits that out of total cash deposited during demonetization period the assessee already disclosed 50% i.e Rs. 40.00 lakhs in Pradhan Mantri Garib Kalyan Yojana (PMGKY). Still the AO made addition of Rs. 33,04,3011/- on applying this own formula and by allowing only 15% of cash sale and remaining amount was treated as unaccounted. The assessee furnished complete details of sales, sales register, stock register. The books results of the assessee was not disputed. The sales was not disputed. Once the assessee is already disclosed 50% of the cash deposit no addition was made on account of cash sales. In the survey action no discrepancy was found except the cash deposit, out of which the assessee has already explained to the survey team and was declared in Pradhan Mantri Garib Kalyan Yojana (PMGKY) and all remaining amount was out of regular cash sales. The assessee is showing gross profit ratio @ 5 to 20% every year. Even for any doubt only sales of November 2006 has to be considered discrepancy if any. The Ld. AR filed various case laws but at the time of the submission mainly relied upon in ACIT-3(1)(1) V Ramlal Jewellers Pvt. Ltd. in ITA No. 1600/Mum/2023 (A.Y. 2017-18) and in PCIT (Central)-3 V M/s. Agson Global Pvt. Ltd. in ITA No. 68/2021 & CM No. 9319/2021.
7. On the other hand, the Ld. DR for the revenue submitted the order of Lower authorities. The Ld. DR for the revenue submits that Ld. CIT(A) has already allowed sufficient relief to the assessee.

8. I have considered the rival submission of both the parties and I have gone through the orders of lower authorities carefully. I have also deliberated various documentary evidence furnished by the assessee and case laws relied by assessee. I find that the Id CIT(A) sustained the addition to the extent of Rs. 10,43,011/- only, but the assessee in his grounds of appeal has challenged the addition of Rs.30,43,011/-. It emerges from the facts of the present case that assessee deposited Rs. 80.00 Lakhs during the demonetization period out of which the assessee declared 50% in the Pradhan Mantri Garib Kalyan Yojana (PMGKY). Such fact is not in dispute. The AO has not disputed the cash deposit rather disputed the ratio of cash sales by comparing the data of previous assessment years. On comparison of data in previous year the AO was of the view that there was standard 15% of cash sales. The AO allow benefit of only 15% of cash sale during the period of demonetization, without rejecting the sale of assessee. I find that assessee furnished stock register, sale and purchase register. None of the evidences filed by assessee was disputed by AO. The AO made addition on ad-hock basis by applying the formula to allow cash sales to the extent of 15% and allowing benefit of cash sales and in Pradhan Mantri Garib Kalyan Yojana (PMGKY). No doubt that Ld. CIT(A) granted further relief to the assessee of 20Lakhs, yet there is no sound reasoning as to why further 75% of declaration made in Pradhan Mantri Garib Kalyan Yojana (PMGKY) was allowed and sustained remaining the addition to the extent of 10,43,011/-, without giving any finding on the evidences furnished by the assessee. No investigation of fact was carried out on various evidences furnished by the assessee. Thus, I do find any justification of making ad-hock addition by

generating a formula of abnormal cash sales without bringing any adverse evidence on record. Hence, an entire addition made by AO is deleted. In the result, the grounds of appeal raised by the assessee are partly allowed.

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

Order pronounced in open court on 27.05.2025.

**Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER**

Mumbai; Dated 27/05/2025  
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**