

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: DR. BRR Kumar, Vice President
And Shri T. R. Senthil Kumar, Judicial Member**

**ITA No: 1618 & 1665/Ahd/2024
Assessment Year: 2017-18**

Income Tax Officer Ward-1(3)(1), Ahmedabad	Vs	Rameshkumar Melapchand Shah 7B, Abhishek Chambers, Above Girish Colddrinks, C.G. Road, Ahmedabad Gujarat-380009 PAN: AAKHR6490R
Rameshkumar Melapchand Shah 7B, Abhishek Chambers, Above Girish Colddrinks, C.G. Road, Ahmedabad Gujarat-380009 PAN: AAKHR6490R (Appellant)	Vs	Income Tax Officer Ward-5(2)(4), Ahmedabad (Respondent)

**Revenue Represented: Shri Rignesh Das, Sr.D.R.
Assessee Represented: Shri Deepak Shah, A.R.**

Date of hearing : 08-04-2025
Date of pronouncement : 29-05-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These cross appeals are filed by the Revenue and Assessee as against the appellate order dated 25.07.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal

Centre, Delhi, (in short referred to as “CIT(A)”), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) relating to the Assessment Year 2017-18.

2. Brief facts of the case is that the assessee is a Karta of Hindu Undivided Family (HUF) and Proprietor of M/s Kirtikumar Melapchand engaged in the business of Bullion & Ornaments trading on retail basis since 2006. For the Asst. Year 2017-18, assessee filed its Return of Income declaring total income of Rs.8,61,570/-. The return was taken for scrutiny assessment on account of abnormal increase in cash deposits during demonetization period. The assessee explained that it is engaged in retail trade business of bullion and ornaments. Cash deposited in the bank accounts, during the demonetization period were from Cash sales during pre-demonetization period. In support, the assessee submitted substantial evidences of sales, purchases, stock and cash deposits in the bank accounts. The assessee also demonstrated the cash sales during the year under consideration was substantially lower, compared with the earlier years. The assessing Officer issued notices u/s. 133(6) of the Act to the suppliers of goods to the assessee. All the parties had confirmed the purchases by the assessee and submitted contra accounts. The Assessing Officer however was not satisfied with the above reply and added the cash sales aggregating to Rs.3,39,72,416/- as unexplained cash credit u/s. 68 of the Act. The Assessing Officer also made disallowance of Salary expenses of Rs.10,80,000/- paid to three employees without making any TDS.

3. Aggrieved Against the assessment order, assessee filed an appeal before Ld. CIT(A) deleted the addition of Rs. 3.39 crores made u/s. 68 of the Act after considering the submission and the cash deposits are out of the business transaction. For the sake of clarity, the operative portion of the order is reproduced as follows:

“I have considered the facts and submissions available on record. During the course of assessment proceedings, the AO has made an addition of Rs.3,39,73,500/-cash deposited in various bank accounts as credits not satisfactorily explained. The AO during the course of assessment proceedings has inferred that claim of the appellant stating that the same was cash in hand as per cash book which was sourced by the sales was unacceptable and correspondingly the purchase were bogus, fabricated in order to create stock in the book of accounts and generate unaccounted cash in the books by recording the cash sales against such purchases.

During the entire course of assessment proceedings, various questionnaires were called for from the appellant by issuing notices u/s 142(1) of the Act and the notices served were duly obliged by the appellant. The Appellant is into the business of bullion and ornaments trading since 2006.

On-going through the facts in the assessment order as mentioned by the AO, and the AO has pointed out that most of the cash sales were made exactly during the month of October 2016 and November till 08.11.2016 amounting to Rs.3,39,68,416/- (Rs.3,02,76,768+ Rs.36,95,648/-). The AO has contended that value of all the sales made during the said period were between 1 lacs and 2 lacs and the assessee has Intentionally bifurcated the sales value below 2 lacs to avoid PAN of the cash purchaser.

The AO in his assessment order has mentioned that the major purchaser of Gold ornaments were from M/s Oasis Jewellers & M/s DJ Jewellers and specifically on 25.10.2016 exactly a month before the demonetization period. For the said issue, the AO has issued notices to said parties M/s Oasis Jewellers & M/s DJ Jewellers u/s 133(6) of the Act for which reply and confirmation has been received by the AO. The AO has accepted the confirmation given by the concerned parties along with their ledger accounts. Hence it is undisputed by the AO that the purchase has been made by the appellant for which the payments had been sent through the bank accounts maintained by the appellant. Hence it is crystal clear that

the identity, genuineness and credit worthiness of the said parties namely M/s Oasis Jewellers & M/s DJ Jewellers were proved beyond any doubt by the appellant. Hence, the onus is on the part of the AO to disprove the facts submitted by the appellant i.e. identity, genuineness and credit worthiness of the said parties namely M/s Oasis Jewellers & M/s DJ Jewellers were fake and bogus which the AO failed to do so though he alleges that those purchases were not genuine. It amounts to only assumption by the AO against the facts on records gathered based on his own enquiries during the assessment proceedings. So, it is evident that purchase has happened during the period as mentioned by the AO and it is beyond any doubt.

Now, coming to the cash sales recorded during the month of October and November 2016, The AO has pointed out that cash sales were made exactly during the month of October 2016 and November till 08.11.2016 amounting to Rs.3,39,68,416/- (Rs.3,02,76,768+ Rs.36,95,648/-). The contention of AO is that it is impossible to sell gold ornaments amounting to Rs.3,39,68,416/- i.e. Rs.3,02,76,768 on 28.10.2016 and Rs.36,95,648/- on 01.11.2016 in a single day and that too all the invoices were between 1 lacs to 2 lacs. Here it is to be noted as submitted by the appellant that it is a festival season of Deepavali and being on the occasion of Pushyanakshatra which is a highly auspicious time to buy gold in Hindu culture, the possibility of the appellant selling all the ornaments on the said date which may feel like very contradictory to the normal course of business but at this juncture the period during which the sale has happened has to be taken into consideration may not be ruled out. Further considering the assessment history and financials for the earlier years as submitted by the appellant the sizable portion of sale in the case of the appellant is in cash as evident from the tables as discussed above.

Also, The AO has rightly pointed that all the shopkeepers/retailers used to shut shop for 3/5 days after Diwali to celebrate Gujarati New Year, but assessee has sold Gold bars of 1120 grams worth Rs.36,95,648/- on 01.11.2016 to different customers at different weights. In this connection, I am of the view that the assumption of AO is baseless as the nature of business is completely different as the requirement of Gold may change from time to time and if the appellant is in a need to sell the ornaments, he is at his liberty to sell the ornaments no matter what the occasion is. All the findings of the AO is based on assumptions like it is not possible to sell such a huge quantity of ornaments on a single day and all shopkeepers/retailers used to shut shops for 3-5 days after Diwali, however with no evidences to prove his argument or disprove the claim

of the appellant. Instead, the AO should have disproved all the submissions of the appellant with solid documentary evidences.

The crux of the issue is that the credit in the books of the appellant as cash deposits are in verification with the AO for which the appellant submitted that the same are cash sales and are duly recorded in the cash book, sale register and bank accounts. The stock was available in the hands of the appellant as per stock register and the purchases as verified by the AO are not disproved. Notably the purchase payments gone through the bank account where the sales receipts in cash are also deposited. To that extent it is an irrefutable fact that the source for the cash deposit is the cash sales happened in the course of business that was duly entered in the books of accounts. Once the cash is admitted that it was part of the cash sale receipt and books of accounts are accepted and the income arrived at as per the ITR is accepted there is no question adding further on the count of unexplained credit u/s 68.

The entire addition is based in the assumptions of the AO based on certain abnormalities noticed by him during the assessment proceedings in the submissions made by the appellant. However those abnormalities cannot discredit the fact that the books of accounts are maintained by the appellant, audited by the appellant and all the necessary books / registers are maintained and entered with each and every entry regarding the purchase, stock, sale, etc and finally the cash deposits in question are from the cash sale done by the appellant in the routine course of business. Though filed belatedly the VAT returns confirms the purchase and sale are part of the business transaction which included the purchase transactions and the cash deposited by the sale transactions.

With the identical set of facts, the Honourable ITAT Vishakhapattanam in the case of Assistant Commissioner of Income Tax, Central Circle 1 Vs. M/s. Hirapanna Jewellers (189 ITD 0608), held that once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. It further stated that though certain suspicious features were noticed, no defects were detected in the books of accounts, trading account, P&L account and the financial statements and failed to disprove the condition of the assessee and mere on suspicion it should not be decided against the assessee without disproving the sales with tangible evidence.

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In this regard it is not out of place to mention that the Honourable High Court of Gujarat and ITAT, Ahmedabad, (jurisdictional High Court and ITAT) has held in

favour of the assessee in a cases where the facts are identical to the case of the appellant.

In the case of Jayesh N Barad C/o JHS & Associates LLP Chartered Accountants Vs. The Dy. Commissioner of Income Tax Circle-1(1)(1), Honourable ITAT, Ahmedabad held as under.

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In the case of Commissioner of Income-tax Vs. Pradeep Shantilal Patel, the Honourable Gujarat High Court held as under, 221 taxman 436:

4. However on the disallowances made by the A.O. on Salary expenses of Rs. 10,80,000/- to three employees, Ld. CIT(A) confirmed the addition by observing as follows:

“The submission of the appellant is considered. From the above submission, it is very clear that the payment of salary has been done by the appellant on 31.03.2017 through bank for all the employees which means that the employees were actually paid. Notably the total amount of salary paid is Rs. 3, 60,000 which is over and above the maximum exempted limit for the FY 2016-17 relevant to the AY 2017-18 (Rs.2,50,000). As a duty-bound citizen and employer, the appellant should have deducted TDS at the rate of 10% at the time of paying salary to the employees. However, the appellant has not furnished any evidence that TDS had been effected on those payments. Hence, I am of the considered view that the decision taken by the AO in disallowing the sum of Rs10,80,000/- on salary expenses for non-deduction of TDS on the same is the correct position of law. The ground appealed against is hereby dismissed.”

4.1. Thus Ld. CIT(A) partly allowed the appeal.

5. Aggrieved against the appellate order, both the Revenue and Assessee are in appeal before us raising the following Grounds of appeal:

5.1 Revenue's Grounds of Appeal in ITA No. 1618/Ahd/2024:

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of unexplained cash credit of Rs. 3,39,73,500/- u/s. 68 of the Act, without appreciating the facts of the case.

2. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.

3. It is therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.

5.2. Assessee's Grounds of Appeal in ITA No. 1665/Ahd/2024:

1. The Ld. CIT(A) erred in law and in the facts of the case in confirming the order of the A.O. in making disallowance of Rs.10,80,000/- being salary expenses u/s. 37 of the Act.

6. Heard rival submissions and perused the materials available on record including the Paper Book and case laws filed by the assessee. The assessee claims that the cash deposit is on account of demonetization and in fact cash sales was essentially generated on retail sales to various customers which is duly reflected in the cash book maintained by the assessee. The A.O. pointed out that the cash sales were made exactly during the month of October 2016 and November till 08-01-2016 amounting to Rs. 3,39,68,416/- (Rs.302,76,768/-+ Rs.36,95,648/). The A.O. further stated that the value of sales made during the said period is less than Rs. 2,00,000/- which is intentionally to avoid PAN of the customers/purchasers. However the A.O. in the assessment order issued notices u/s. 133(6) to the suppliers of the bullion namely M/s. Oasis Jewellers and D.J. Jewellers which were promptly

replied by them by furnishing the confirmation alongwith the ledger accounts. Thus the initial burden cast upon the assessee is fully discharged. Further the sales are found recorded in the sales register, stock register, cash book etc.

6.1. The Ld. D.R. appearing for the Revenue unable to controvert the fact that the A.O. had accepted the sales and the stocks in as much as he did not invoke the provisions of Section 145(3) of the Act and rejected the books of accounts. The Ld. D.R. although emphasized on the suspicious sales during the day of demonetization but the Assessing Officer did not reject the books of accounts, profit and loss account and financial statements. We therefore agree with the ld. Counsel for the assessee that once the book result and inter alia the sale proceeds has been accepted by the A.O. as assessee's business income, it is not justified on the part of A.O. again to assessee same as unexplained income u/s. 68 of the Act. Only on the issue of sales made to different customers before demonetization day.

7. Ld. Counsel drawn our attention to the decision of Vishakhapatnam Tribunal in the case of ACIT Vs Hirapanna Jewellers (128 taxmann.com 291) wherein sales made to 270 different customers was held to be plausible by observing as follows:

"7.2 In the instant case the assessee has established the sales with the bills and representing outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. In spite of conducting the survey the AO did not find any defects in sales and the stock. Therefore we do not find any reason to suspect the sales merely because of some routine observation of suspicious nature such as making

sales of 270 bills in the span of 4 hours, non availability of KYC documents for sales, non writing of tag of the jewellery to the sale bills, non-availability of CCTV footage for huge rush of public etc. The contention of the assessee that due to demonetization, the public became panic and the cash available with them in old denomination notes becomes illegal from 9-11-2016 and made the investment in jewellery, thereby thronged the jewellery shops appear to be reasonable and supported by the newspaper clippings such as The Tribune, The Hindu etc. It is observed from the newspaper clippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through the country.”

8. In view of the above facts, in our considered view, when the sale proceeds of Rs.3.39 crores had been supported with book results & primary evidences, which were not disproved by the AO, and that the same had already been assessed by the AO as revenue receipts from ‘Business’, then it was wholly improper for the AO to again tax these sale proceeds as unexplained income u/s 68 of the Act, as it would amount double taxation of the same sum. The reliance placed by the Ld. AR in support thereof on the following decisions are found to be relevant.

8.1. CIT Vs Vishal Export Overseas Ltd [TA No. 2471 of 2009] (Guj HC)

“5. The Tribunal however, upheld the deletion of Rs.70 lakhs under section 68 of the Act observing that when the assessee had already offered sales realisation and such income is accepted by the Assessing Officer to be the income of the assessee, addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income.

6. Having heard learned counsel for the parties and having perused the documents on record, we are in agreement with the above view of the Tribunal.”

8.2. CIT Vs Kailash Jewellery House [TA No. 613/2010] (Del HC)

“The Tribunal also observed that it is not in dispute that the 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. It is in these circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The findings of the Commissioner of Income-tax (Appeals) and the Tribunal, which are purely in the nature of the factual findings, do not require any interference and, in any event, no substantial question of law arises for our consideration.”

8.3. Following the above judicial precedents, it is noted that similar view has been expressed by the coordinate Bench of this Tribunal in the case of DCIT Vs Kundan Jewellers Pvt Ltd [ITA No. 1035/Mum/2022] dated 29.05.2023. The relevant findings are noted to be as under:-

“4. The CIT(A) has considered the details of sales, the stock register and the turnover is consistently maintained. The assessee has submitted the details of cash sales/receipts and party wise details of sales above Rs.2 lakhs and when a query was raised to Ld.AR on submissions of details were the cash sales are below Rs.2 Lakhs. The Ld.AR mentioned that the assessee has submitted details of sales below Rs2 lakhs and highlighted rule 114B of the I T Rules r.w.s139(a)(5)(c) of the Act and there was no KYC required. Further the Ld.AR demonstrated the sample Tax Invoice below Rs.2 lakhs in the demonetization period and the invoice contains, name and address etc. Further there is no significant increase in the cash sales out of total sales, whereas for F.Y.2016-17 it is @ 31.27% and in comparison to F.Y. 2015-16 @ 31.44%, the Ld.AR referred to the cash flow statement, cash book and demonstrated the details of deposits made out of the cash sales and the assessee has been consistently maintaining the stock of Rs.68.07 crs for the F.Y 2015-16 and for F.Y 2016-17 it was maintained at Rs.65.38crs and the cash sales are part of the stocks maintained which is not disputed. Further the addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the cash sales proceeds/receipts received from the customers are reflected in the Audited Profit & Loss account as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the

principles of taxation. The AO has not pointed out any specific adversity but made a generalize addition without considering the factual aspects and primary evidences. The A.O has failed to make further enquiries on the information filed and the assessee has discharged the initial burden placed by submitting the information and details. We find the CIT(A) has dealt on the facts, provisions of law, notes and judicial decisions. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information on the disputed issues to take different view. We considered the facts, circumstances, submissions and ratio of judicial decisions as discussed above are of the view that the CIT(A) has passed a reasoned and conclusive order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.”

8.4. Further very recently Co-ordinate Bench of this Tribunal in ITA No. 944/Ahd/2023 dated 30-10-2024 in the case of Jaykumar Nemichand Jain HUF Vs ITO wherein it was held as follows:

“8.1. The assessee relied on various judicial precedents, including Sobha Devi Dilipkumar vs. ITO, ACIT vs. Chandra Surana, ITO vs. J.K. Wood India (P.) Ltd., and ACIT vs. Hirapanna Jewellers. These decisions collectively emphasize that cash deposits during demonetization or otherwise, if duly recorded and substantiated, cannot be taxed under Section 69A unless the revenue demonstrates the unreliability of the books or evidence provided.

8.2. It is pertinent to note that mere cash deposits during the demonetization period do not automatically trigger the provisions of Section 69A of the Act, if the transactions are supported by proper documentation and the cash has been accounted for in the books. In cases where cash sales or deposits are accounted for and recorded in the regular course of business, the provisions of Section 69A of the Act are not attracted. The revenue must find defects in the assessee’s books of accounts to invoke Section 69A of the Act. The existence of stock records, sales invoices, and proper tax filings (VAT returns in this case) are sufficient to substantiate the cash deposits. Demonetization-related cash deposits should not be treated as unexplained merely because they occur during a sensitive period. Where all supporting documents are provided, the burden of proof shifts back to the department to demonstrate that the deposits are unexplained.

8.3. In light of the facts and the documentary evidence presented, it is evident that the assessee maintained regular books of account, recorded all sales, and provided sufficient evidence to substantiate the cash deposits during the demonetization period. The AO did not bring any concrete evidence to counter the claims of the assessee, nor did he reject the books of account. The sales were duly reflected in the VAT returns, and no discrepancies were found in stock records. Accordingly, the addition of Rs. 55,00,000 made by the AO under Section 69A is deleted, and the appeal of the assessee is allowed.”

9. Respectfully following the above judicial precedents, we have no hesitation in deleting the addition made by the Ld. CIT(A) and the ground of appeal raised by the Revenue is devoid of merits and hereby dismissed.

10. In the result, **the appeal filed by the Revenue in ITA No. 1618/Ahd/2024 is dismissed**

ITA No. 1665/Ahd/2024 (Assessee’s appeal)

11. Regarding assessee’s appeal, though the assessee claimed the salary expenses of Rs. 10,80,000/- paid to its three employees namely Lopa A Shah, Parth Rathod and Vikarm M. Shah which were said to be paid on 31-03-2017. The above said persons were working as Accountant, Sales Man and Accountant cum Compliance Manager. When it is a salary payment made, it could not have been paid on the end of the assessment year that too by lumpsum of Rs.3,60,000/- each by cheque payments without TDS. Further the assessee has not produced any records that the employees filed their respective Return of Income disclosing the above salary income. In the absence of any such details, the

grounds raised by the assessee is devoid of merits, therefore the findings arrived by Ld. CIT(A) does not require any inference.

12. In the result, **the appeal filed by the Assessee in ITA No. 1665/Ahd/2024 is hereby dismissed.**

Order pronounced in the open court on 29 -05-2025

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad : Dated 29/05/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद