

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री गगन गोयल, लेखा सदस्य, के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI GAGAN GOYAL, AM

आयकर अपील सं./ITA No. 488/JPR/2025
निर्धारण वर्ष / Assessment Year : 2017-18

Peeyush Agarwal 197, Johari Bazar, Jaipur.	बनाम Vs.	The ITO, Ward-1(5), Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AKZPA9803G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Vijay Goyal, C.A. &
Shri Gulshan Agarwal, C.A.
राजस्व की ओरसे / Revenue by : Mrs. Alka Gautam, CIT

सुनवाई की तारीख / Date of Hearing : 11/08/2025
उदघोषणा की तारीख / Date of Pronouncement: 19 /08/2025

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

By way of present appeal, the assessee challenges the finding of Ld. Commissioner of Income Tax, Jaipur-4, Jaipur [for short CIT(A)] in the order dated 28.02.2025 passed u/s 250 of Income Tax Act for Assessment Year 2017-18 which in turn arises from the assessment order dated 28.12.2019 passed u/s 143(3) of the Act, by the Income Tax Officer, Ward 1(5), Jaipur.

2. The assessee raised this appeal on the following grounds:-

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in rejecting the books of accounts u/s 145(3) of the Income Tax Act, 1961 whereas no specific finding in the assessment order by ld AO for invoking of provision section 145(3) of the Act.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding the sales of Rs. 6,76,59,000/- deposited in bank account in the demonetized currency as bogus sale and directed to reduce the same from total sales shown by the appellant and add the same under income from other sources by applying the provisions of section 68 and 69A of the Act and tax as per the provisions of section 115BBE of the Act.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in making the addition of Rs. 6,76,59,000/- on account of cash deposited in demonetized currency in bank by applying the provisions of section 68 and 69A of the Act more so when the books of account has been rejected and it is contended the entries of the rejected books of account cannot be considered for addition u/s 68 and 69A of the Act.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in applying Section 69A of the Income Tax Act, 1961.

5. The Appellate prays to leave, to add, to alter, amend, the aforesaid grounds of appeal at or before the time of hearing of appeal.”

3. The assessee in Ground No. 1 to 4 challenged the holding of Ld CIT(A) that the sales of Rs. 6,76,59,000/- deposited in bank account in the demonetized currency as bogus sale and directed to reduce the same from total sales shown by the appellant and add the same under income from other sources by applying the provisions of section 68/69A of the Act and tax as per the provisions of section 115BBE of the Act.

4. Brief facts of the case are that the assessee is an Individual and prop of M/s Kalakriti Jewellers situated at Shop No 197, Johari Bazar, Jaipur and carrying the business of trading of bullion, precious stones, diamond and jewellery. In the same premise the father of assessee Shri Mahendra Kumar Agarwal was also carrying the same business in the name of M/s Mohan Lal Mahendra Kumar. The assessee filed his Income Tax Return on 27.10.2017 declaring of total Income of Rs. 11,74,830/-. The assessee filed copy of acknowledgment of Income Tax return and Computation of Total Income at PB page 1 to 4. The books of account of business concern of the assessee are audited by Chartered Accountant. The assessee filed copy of audit report and audited Profit and Loss Account and Balance sheet at PB 5 to 34. The case of the assessee was taken up for complete scrutiny through CASS. The AO issued notices u/s 143(2) and 142(1) of the Act, from time to time which were served upon the assessee through e-mail. The assessee filed the copy of such notices at PB page 39 to 51. In compliance to notices and query letters issued, the assessee e-filed, the details/ information from time to time (Copy at PB page 52 to 64) along with copy of cash book, daily stock summary, copy of purchase register, copy of sales register, month-wise details of sales and purchases, copy of assessment order of VAT passed by Commercial Taxes Department and VAT returns at (Copy at PB page 65 to 302) . Further, the assessee filed before ld AO the copy of bank statement for the period 01-04-2016

to 31-03-2017 along with letter dated 18-10-2019 annexed as page no 38-119 with the letter. During the year under consideration, the assessee deposited the amount of Rs. 7,09,50,000/- in demonetized currency i.e. Specified Bank Notes (herein after referred as "SBNs") in his bank accounts which was part of sales declared in the Trading Account. In the wake of high cash deposited in demonetization currency (SBNs), the income tax department conducted survey u/s 133A of the Act at the business premises of the assessee on 06.10.2017 and statement of the assessee was recorded u/s 133A copy of which placed by the assessee at PB page 382-387. No any incriminating material/document was found as the result of survey u/s 133A of the Act and assessment for survey year AY 2018-19 was completed at Returned Income. The assessee placed the copy of assessment order passed u/s 143(3) of the Act for Survey Year AY 2018-19 at PB page 301-302. The assessee also placed before us the copy of replies/explanation filed before the ld AO during the assessment proceedings of Survey Year AY 2018-19 at PB page 388-396.

5. In order to verify the source of cash deposit, the ld AO asked the assessee to explain source along with documentary evidences, and furnish various details and comparison of cash sales and cash deposit with previous year. The assessee filed various details and documents from time to time. The details, documents and

explanation so furnished by the assessee were perused by the Ld. AO and the ld AO has observed that :-

- a) Assessee's cash sales increased abnormally and exceptionally in comparison to last year. Cash sales during F.Y. 2016-17 (A.Y. 2017-18) were of Rs 11,51,99,917/- as against Rs 6,65,75,471/- in F.Y. 2015-16 (A.Y.2016-17).
- b) The assessee deposited cash in bank Rs 11,67,95,000/- on various dates in F.Y. 2016-17 (A.Y. 2017-18) in comparison to Rs 6,50,08,400/- in F.Y. 2015-16 (A.Y. 2016-17).
- c) Assessee's cash sales from 01-04-2016 to 08-11-2016 were Rs 10,52,00,854/- in comparison to Rs 3,88,28,380/- from 01-04-2015 to 08-11-2015.
- d) The assessee's cash sales was increased abnormally and exceptionally in the month of October 2016 and from 01-11-2016 to 08-11-2016 which is not possible in normal course of business.
- e) In F.Y. 2015-16 (A.Y. 2016-17) the assessee was regularly depositing of cash sales in his bank accounts whereas, in F.Y. 2016-17 (A.Y. 2017-18) the assessee accumulated huge cash balance in hand and deposited the same in bank accounts after the demonetization of currency.

Based on these observations the Ld. AO held that the assessee manipulated his books of accounts to adjust unaccounted cash or had parallel unaccounted sales or have any other unaccounted business. The Ld. AO further held that bogus sales were credited in the books of accounts. The concluding findings of Ld. AO are at page 5 to 7 of Assessment Order as under:-

"Moreover, it is pertinent to mention here that the assessee could not explain the source of cash deposit being SBN's during the demonetization period. It is worthwhile to mention that in the ordinary course, it is human tendency that a person, who possesses a large amount of cash in hand, will deposit the same into the bank account immediately after

receiving the same and in the instant case, the assessee also have modus operandi, to deposit cash on the regular basis in the last year and upto September 2016 during this year. Looking to the view of principle of natural justice as well as " Human Probability Test", the assessee have average cash balance in the first six months at Rs 32,90,998/-(13,70,156 + 12,79,025 + 11,97,129 + 31,79,723 + 52,75,173 + 74,44,783 = 1,97,45,989/6). aggregate value of Rs 32,91,000/- are accepted as it is a human tendency that when the bank notes having denominational value of Rs 500- and Rs 1000/- were banned by the Government of India by invoking the Specified Bank Notes (Cessation of liabilities) Act, 2017 w.e.f. 09-11-2016, anyone deposited all bank notes, which kept under their ownership, in the bank accounts and no one deposits bank notes on several occasions. In the instant case, Rs 32,90,998/- is average cash balance during the first six months, in the year under consideration is normal and remaining cash deposits aggregating to Rs 6,76,59,000/- (7,09,50,000 - 32,91,000) are hereby treated as unexplained and proposed to be taxed u/s 68 of the Act as cash deposits amounting to Rs 7,09,50,000/- are accepted as explained looking to the view of principle of natural justice and human tendency.

In view of the discussion in the previous paras, it is established and concrete evidence that the assessee completely failed to explain the source of cash deposited in his account. The "Human Probability Test" is one of the important tests laid down the Highest court of India in order to check the genuineness of the transactions entered assessee. The "Human Probability Test" were laid down for the first time in the case of CIT vs. Durga Prasad More (1971) 82 ITR (SC) and followed in the case of Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC). The "Human Probability Test" can only be applied when the assessee makes the officer to believe his/her story as a valid event. The false claims of the Assessee cannot sustain before the test of "Human Probabilities ".

Moreover, it is worthwhile to mention here that as per Section 110 in the Indian Evidence Act, 1872 states that:

Burden of proof as to Ownership - When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner, is on the person who affirms that he is not owner.

In the instant case, the assessee is found the owner of money amounting Rs 1,63,20,000/- in its bank account and the assessee could not explain the source of part of the cash deposits in the bank account, therefore, it establishes that the assessee violates the provisions of section 110 of Indian Evidence Act, 1872.

In view of the above discussed facts as well as provisions of Section 110 of the Indian Evidence Act, 1872, it is concrete evidence and crystal clear that the assessee deposited cash being SBN's in Canara Bank, Jaipur and did not offer his unexplained cash being SBN's for taxation. Since, the assessee deposited huge cash being SBN's in his bank accounts and the assessee completely failed to discharge his primary onus which lies only over the assessee for proving genuineness and correctness of source of part of the cash deposits being SBN's and whether the assessee is the owner of the money or not. Thus, in view of the above discussed facts, looking to the view of principle of natural justice as well as "Human Probability Test" and the provisions of the aforesaid sections, the cash deposits being SBN's amounting to Rs 32,91,000/- are hereby accepted as explained and remaining amount of cash deposits being SBN's in his bank accounts of the assessee during demonetization period amounting to Rs 6,76,59,000/- is hereby treated as income of the assessee during the year from undisclosed sources and added to the declared income of assessee u/s 68 of the I.T. Act, 1961. As per section 115BBE of the I.T. Act, 1961 no deduction in respect of nay expenditure or allowance shall be allowed to the assessee under any provision of this Act."

Accordingly, the Ld AO completed the assessment of the assessee at Rs.6,88,33,830/- against the return income of Rs. 11,74,830/-. He had accepted sales declared in the Trading Account. However, the ld. AO made the addition of Rs. 6,76,59,000/- by applying the provisions of section 68 of the Act treating the part of the amount deposited in the bank in demonetized currency (SBNs) as income of assessee from undisclosed sources and accordingly the same was taxed as per the provisions of section 115BBE of the Act.

6. Aggrieved by the order of the Assessing Officer making the assessment based on the above stated facts, the assessee preferred an appeal at NFAC, which was transferred to CIT(A), Jaipur-4, Jaipur. The appeal filed by the assessee was

partly allowed by the Ld. CIT(A) by giving findings in para 4.2 at page 42 to 71 of his order and the findings of the Ld. CIT(A) is summarised herein below:-

- (a) Ld. CIT(A) at page 44 of his order observed that cash sales of the assessee was abnormally increased and cash deposit in bank account from 09-11-2016 to 31-12-2016 increased abnormally.
- (b) Ld. CIT(A) at page 46 of his order observed that the assessee has not given PAN no. and address of the buyers of the goods and identity of the buyers of goods was disclosed. The Ld. CIT(A) observed that the assessee was making such high cash sales during the year and there is no genuine reason as to why the assessee has not deposited the cash sales in bank account and why he accumulated such huge cash.
- (c) At page 47- 48 he observed that during assessment proceedings it has been established that the assessee intentionally manipulated his books of accounts so as to adjust his unaccounted cash in his regular books of accounts like an accommodation entry and the assessee maintained parallel unaccounted cash sales or any other business which is running out of books and regularly not offered the same for taxation. Assessee brought the cash in books of accounts under the garb of bogus cash sales. Thus, the books of accounts are to be unreliable. Ld. CIT(A) observed that the AO has not mentioned formal decision of rejection of the books of accounts but at the same time he nowhere mentioned that the books of accounts has been accepted. The Ld. CIT(A) rejected the books of accounts

in the appeal order on the ground unreliable and unexplained very high cash holdings immediately before demonetization, abrupt and abnormal cash sales, without PAN details, identity of purchaser not established more so when the assessee is bullion trader not a retail jewellery trader. He further observed that the assessee withdrawn cash Rs 3,00,000/- on 06-08-2016 and Rs 5,00,000/- on 08-09-2016 whereas, the assessee has enough cash balance in cash book. Further, the assessee has not submitted the cash book with daily balances. The Ld. CIT(A) observed that upto June 2016 the assessee was regularly depositing the cash in bank, however from July 2016 the pattern has been changed and the assessee started accumulation of cash without any genuine reason.

- (d) At page 49 of his order held that books of accounts of assessee are cooked up later on and back dating of the sales invoices were made.
- (e) The Ld. CIT(A) at page 50 of his order mentioned that the assessee has not given any evidence to support increase in cash sales on Dhanteras and Diwali from 28-10-2016 to 30-10-2016 and sales after Diwali from 01-11-2016 to 08-11-2016.
- (f) The Ld. CIT(A) at page 51 of his order mentioned that the stock register and VAT returns filed by the assessee is prepared by the assessee himself. The Ld. CIT (A) not considered the VAT return as admissible evidence for the reason that the same was filed after the demonetization. He mentioned that VAT return for the quarter 01-10-2016 to 31-12-2016 was filed after the demonetization and much late on 28-August-2017 and is after thought. VAT return for the

F.Y. 2016-17 has been filed with much delay on 27-03-2018 and VAT return for the first quarter has been filed in August 2017. He held that genuineness of the sales entry has not been examined by the VAT Department. All these facts shows that originally turnover of the assessee was below VAT limit thus, no VAT quarterly return was filed, and when the cash was deposited in demonetization and later on VAT returns were filed by showing increasing turnover in VAT return artificially to introduce the cash in books of account.

- (g) At page 52 of his order Ld. CIT(A) mentioned that the assessee has claimed that in the month of March 2016 and April 2016 there was strike of jewellers but the assessee has not filed any evidence to show how the strike affected the business of the assessee to increase the sales in subsequent months and also contradictory to the fact of the case as assessee himself has substantial sales during the period. The Ld. CIT(A) further mentioned that in Sales Register five entries Voucher No. 720 to 724 were found cancelled which shows tinkering in sales register.
- (h) The Ld. CIT(A) relied various case laws cited at page 52 to 70 of his order as under:-
- (i) CIT vs. RS Rathore (1995) 212 ITR 390 (Raj.)
 - (ii) CIT vs. P.Mohanakala (2007) 291 ITR 278 (SC)
 - (iii) Nemi Chand Kothari vs. CIT (2003) 264 ITR 254 (Gauhati)
 - (iv) CIT vs. Precision Finance (P) Ltd. (1994) 208 ITR 465 (Calcutta)

- (v) CIT vs. M.Ganapathi Mudaliar (1964) 53 ITR 623 (SC)
- (vi) A.Govindarajulu Mudaliar vs. CIT (1958) 34 ITR 807 (SC)
- (vii) Sreelekha Banerjee vs. CIT (1963) 49 ITR 112 (SC)
- (viii) Renu T. Tharani vs. DCIT ITA no. 2333/Mum/2018-ITAT-Mumbai.
- (ix) Durai Murugan Kathir Anand vs. Addl CIT (2022) 443 ITR 423 (Madras)
- (x) Vivek N. Jajodia vs. ITO (2010) 123 ITD 136 (Mumbai)
- (xi) Konathala Nooku Naidu v. Income-tax Officer, Ward-1 [2024] 160 taxmann.com 758 (Visakhapatnam - Trib.) [18-03-2024] [I.T.A. No.269/Viz/2023]
- (xii) Kailash Swaroop Agarwal vs Commissioner of Income Tax, Ajmer in D.B. Income Tax Appeal No. 175 / 2012 in order dated 03/10/2017 Hon'ble Rajasthan High Court
- (xiii) Commissioner of Income-tax v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC)
- (xiv) Roshan Di Hatti v. Commissioner of Income-tax [1977] 107 ITR 938 (SC)
- (xv) Commissioner of Income-tax v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC)

(xvi) Kale Khan Mohammad Hanif v. Commissioner of Income-tax
[1963] 50 ITR 1 (SC)

(xvii) Navin Shantilal Mehta v. Income-tax Officer, Ward-32
(2) (4), Mumbai [2018] 90 taxmann.com 16 (Mumbai - Trib.)

(xviii) Sumati Dayal v. Commissioner of Income-tax [1995] 214
ITR 801 (SC)

Based on above observations and relying on the above case laws, the ld
CIT(A) at page 70-71 of his order made concluding findings as below:-

"In view of the above discussion, the sales through which cash of Rs. 6,76,59,000 was introduced in the books of accounts are unexplained and there is back-dated sales billing. The cash credit in the books of accounts in the form of sales is unexplained and taxable u/s 68 of the Act. The cash deposits being SBNs in bank accounts of the assessee during demonetization period amounting to Rs. 6,76,59,000 are unexplained and alternatively taxable under section 69A of the Act. At the same time, since the sales are found to be bogus to that extent, Rs. 6,76,59,000 shall be reduced from the sales shown by the appellant for the year."

7. The Ld. AR of the assessee filed detailed written submissions and Paper Book containing Page 1-396 and Case Laws Paper containing Page 1-577 and disputed the findings of lower authorities. The bald allegation of ld. AO that the cash deposited in demonetized currency had arisen from some undisclosed source not reflected in the books of account as against the accounted cash sales in books of account and also which is regular feature of the trade of assessee. The conclusion of lower authorities is *dehors* of any credible evidence/material on record is unsustainable both in law and on facts. Addition so made by the lower authorities

by treating the impugned cash deposits (arising out of accounted cash sales) as unexplained cash credits/unexplained money merely on the basis surmises and conjectures. The cash so deposited was accumulated cash which was received against/for sales made by him over the period of the year prior to demonetization. As per audited books of account, the cash balance of Rs. 7,09,65,744/- was available with the assessee as on 08-11-2016 shown as under:-

Particulars	Amount (in Rs.)
Opening Balance as on 28.10.2016	1,54,45,945.73
Add:- Amount received against/for sales during the period from 28.10.2016 to 30.10.2016 (Dhanteras and Diwali Sales)	2,00,48,463.00
Add: - Amount received against/for sales from 31.10.2016 to 08.11.2016 (After Diwali Sales)	5,47,76,015.28
Less: - Cash Deposited in Bank during period from 28.10.2016 to 08.11.2016	1,92,20,000.00
Less: - Cash Expenses/payments during period from 28.10.2016 to 08.11.2016	84,680.00
Closing Balance as on 08.11.2016	7,09,65,744.01

During the course of assessment proceedings filed all the documents, books of account data and information whatever required by the Id AO. None of the notice of the AO remained as un-complied. The copy of replies submitted by the Assessee to Id AO are placed at PB page 52-64. During the assessment proceedings, the assessee submitted before the Id AO following documents in support of his replies and explanation.

S.No	Description	Copy placed at PB Page No

1.	Copy of following documents filed along with submission dated 19.11.2019: - A) Cash Book. 01-04-2016 to 31-03-2017 B) Daily Stock Summary 01-04-2016 to 31-03-2017 C) Purchase Register 01-04-2016 to 31-03-2017 D) Sales Register 01-04-2016 to 31-03-2017	65 to 122 123 to 242 243 to 245 246 to 265
2.	Copy of bank statement for the period 01-04-2016 to 31-03-2017 along with letter dated 18-10-2019 annexed as page no 38-119 with the letter	See PB Page 52-54
3.	Copy of Month wise detail of Sales and Purchases (In qty.) filed along with submission dated 10.12.2019.	266
4.	Copies of following documents of FY 2016-17, filed along with submission dated 27.12.2019: - A) Assessment order of VAT passed by Commercial Taxes Department B) Form VAT-10A (Annual return of VAT) C) Form VAT-10 (Quarterly return of VAT)	267 to 272 273 to 276 277 to 300

The Id AO has not pointed out any defect in the above documents. The Id CIT(A) mentioned that cash book was not filed showing daily balance. Such query was neither raised by Id AO during the Assessment Proceedings nor by CIT(A) during the appeal proceedings. The cash book showing daily cash balance was not filed as it would be very bulky but the fact remains that the assessee maintained books of account on computer and cash book showing daily cash balance could be filed easily if demanded by any lower authorities. The Id CIT(A) mentioned that 5 entries of Invoice No 720-724 found cancelled in sales register which shows tinkering in the sales register. In this regard we submit that the CIT(A) never asked the assessee to explain the reason of cancelled entries. This cancelled entries (PB page 260) are due to genuine human error but the fact remains that all the invoices are serially number and tinkering in sales register was not possible. Rather, the 5

cancelled entries show that the assessee is maintaining the books of account in regular course of the business. If the accounts were fabricated then no such cancelled entries would arise in sales register which were prepared on computer. As regard the stock register at PB page 123-242, these are maintained on daily basis and showing daily balance. All the inward entries in the stock register are supported by Invoices/bills and outward entries are supported by sales invoices. No any defect has been pointed out by lower authorities. The assessee has sufficient stock for sale the goods. Therefore, the sales cannot be bogus. If bogus sale is recorded then entry for outgoing of stock would be fictitious and on one hand, it would result the availability of physical stock and on other hand there would no book stock to the extent fictitious entries of outward stock in stock register resulting excess physical stock on physical verification.

In the wake of high cash deposited in demonetization currency, the department carried out survey u/s 133A of I.T.Act at business place of assessee just after 6 months from the close of this Financial Year i.e. on 06-10-2017, but no any excess stock was found. No any incriminating material/document was found as the result of survey u/s 133A of the Act to show discrepancy in stock, cash, sales, purchases, and expenses. The assessment of survey year i.e. AY 2018-19 was completed u/s 143(3) of the Act on 15-04-21 at returned income. (Copy of assessment order at PB page 301-302). The copy of replies/explanation filed before

the ld AO during the assessment proceedings of Survey Year AY 2018-19 is placed at PB page 388-396. During the survey proceedings the department did not find any positive material/evidence to show that the assessee was having any source of undisclosed income or sales of the assessee was not genuine. The department did not find any unaccounted qty. of stock or excess cash in hand which shows that the assessee was carrying any unaccounted business activities. Had the fictitious sales were recorded in stock register i.e. outgoing of stock recorded without actual outgoing of stock then the excess stock would be found in the survey but no excess stock was found as the result of survey, which proved that no bogus sales were recorded. In the assessment order of AY 2018-19 (i.e. survey year) no addition was made and on examination of the assessment order for Survey Year your honour will find that actually no excess or short qty. of stock and no excess cash from the business premises of the assessee was found to survey party and this shows that the assessee was not carrying out any unaccounted business activities. During the course of survey, no any positive material/evidence was found to prove that the cash deposited in demonetized currency was not from sales of goods but the same was from some other source. Had, the source of cash deposit in demonetized currency would be the undisclosed income of the assessee and not the sales made by assessee, then obviously during the course of survey the department must had found major discrepancies in to physical stock & cash but

which was not found. This also shows that the cash deposited in bank in demonetized currency is actually accumulated with assessee from the sales of previous period and the same was duly recorded in his books of accounts.

The allegation that that the assessee maintained parallel unaccounted cash sales or any other business, which is running out of the books and regularly not offered the same for taxation is without any basis and in hypothetical manner. In the assessee order/CIT(A) order the AO/CIT(A) could not adduced any single evidence or even a single instance to prove this allegation to be correct. It is worth to point out that the assessment proceeding was made after being carrying out the survey proceeding at the business premises of the assessee and despite of not finding any evidence this hypothetical allegation is posed. All the allegation such as unaccounted cash, bogus recording of sales, unaccounted sales from parallel business, back dating of sales, fabrication of books of account etc proved to be fallacious on physical verification of business place of the assessee by conducting survey u/s 133A of I.Tax Act, Surprisingly, the department conducted survey much before the completion of assessment. The assessment was completed on 28-12-2019 and whereas the survey u/s 133A was conducted on 06-10-2017 and despite of not finding any evidence these hypothetical allegations were posed without any basis -rather survey proved by evidence that the assessee is maintaining regular books of account.

The assessee submitted to the AO and CIT(A) the purchase register copy of which placed at PB page No 243-245. The purchases are from regular and established parties. There are no cash sales except for very minor amount that too also occasionally. No any defect has been pointed out in the purchase register by lower authorities. The assessee filed Copy of the Vat Returns and Assessment Order passed under VAT by Commercial Taxes Department, copy of which is placed at PB page 267 to 300. The Id AO has not pointed out any defect in the VAT returns. The sales declared by the assessee in VAT return was accepted by Commercial Taxes Department.

Cash sale is regular feature of the business of the assessee and also general trend of this kind of business and cannot be in same trend year to year or month to month basis. It is a fact that the sales of assessee cannot be same every year and each month and same is subject to various factors such as festival like Diwali, Marriage ceremonies, price of gold, demand of designs. Fashion, etc. of the product of the assessee. During the year the Diwali festival was in October Month and just after the Diwali marriage season/ceremonies took places. Therefore, the monthly sales of the business cannot be predicted and cannot be compared.

For justification of higher sales in Oct 2016 and November-2016 (till 07.11.2016) the assessee submitted explanation before the lower authorities that in the month of March-2016 and April-2016 there was strike of Jewellers for 42 days

and during that period all manufacturing and trading work was temporary shutdown. Thereafter when the strike opened the marriage season was almost passed over, therefore the sales during first six month of the year effectedbadly. Further also when the business operations started after the strike due to increase in the gold prices the sale was not at good figure. Thereafter in the month of October-2016 the gold price was at lower side in comparison to previous three months and due to Diwali festival and marriage occasions the sale again boosted in this month, therefore the sales of October-2016 was comparatively at higher side. Thus, this is the basic reason of sudden increase in the sales of this month in comparison to sales of same month in previous year. As in the month of October-2016 the price of gold decreased in comparison to previous few months and in the same month the sales of festive season and marriage occasions started, therefore this resulted the dual benefit to the assessee and resulted the huge increase in sale. Therefore, persons who want to purchase gold coins and Jewellery for their marriage ceremonies also purchased the Jewellery in the October month looking to the lower prices of gold.

The assessee maintains regular books of account, which are audited by independent and reputed Auditor. The cash sales and the corresponding cash deposits in banks are duly reflected in books of the assessee in the respective years. The assessee maintains the stock register and the sales of the assessee is duly

supported by sufficient quantity of stock in hands. All the purchases of the assessee are genuine and verifiable. The assessee has filed copy of the stock register before the Id AO and no any defect has been pointed out by the lower authorities in entries in the stock register. It is also relevant to mention here that each deposit in bank comprise the source and once the source has been duly shown in trading a/c, then there remains no reason to treat such deposit as undisclosed income of the assessee. It is not the case of the revenue that assessee was not having the source of cash before depositing in bank account or not having the sufficient stock for making the sales. The Id. AO/CIT(A) did not make any enquiry on the material submitted by the assessee. He merely proceeded on presumption and assumption and make the addition on account of cash deposits without any reason based on material or evidence. Further the allegation that the assessee has intentionally manipulated his books of accounts is not supported by any evidence and merely a blind allegation was made on presumption and assumption. The assessee during the course of assessment proceeding have produced complete audited books of accounts and in such books of accounts no specific defect was pointed out by the Id. AO/CIT(A)- purchases found genuine, expenses founded genuine, stock found genuine openings and closing stock found genuine. The lower authorities neither found any concrete and conclusive evidence of back dating of the entries of sale, evidence of bogus sales, evidence of bogus purchases, evidence of non-existing of

stock as on the date of sales and non-existing cash in the books of account. The sales of the assessee are supported by the sales bills issued to customers and such sales bills are serially numbered. Many bills were already issued to reputed party. If bogus sale is entered by raising fresh bill in back date, how the serial number of previously issued bill can be maintained. The assessee has already issued serially numbered sales invoices to the customers for the sales prior to announcement of demonetisation in regular course of business and the assessee cannot manipulate the sales without changing the sale bills of the previous dates. Therefore, it cannot be alleged that the assessee have manipulated his books of account considering the facts and circumstances of the case of the assessee. Therefore, suspicion on the source of corresponding cash in hand available with assessee, which deposited in bank in demonetize currency is merely on assumption, presumption and without any material and all the allegations were proved fallacious from physical verification of business of the assessee by department by conducting survey u/s 133A on 06-10-2017. Therefore, the suspicion however strong cannot take place of proof. The Ld. AO has no material against the contention of the assessee except presumption and assumption. The human probability cannot supersede the evidence found as the result of survey.

The Ld. CIT (A) rejected the books of accounts by ignoring the fact that there is no finding in the assessment order rejecting the books of accounts. The Ld.

CIT (A) held that the formal decision of rejecting the books of accounts has not been mentioned in the assessment order but it has also not been mentioned anywhere that books of account of appellant has been accepted. In case the books of account are rejected than the assessment order has to be passed u/s 144 of the Act but in the case of the assessee assessment order was passed u/s 143(3) of the Act. The CIT(A) rejected the books of accounts on the ground that unreliable and unexplained very high cash holdings immediately before demonetisation, abrupt and abnormal cash sales, all such cash sales without PAN details in small amounts. In this regard, at the very outset we would like to submit that it is a credential principal of law that if something not adversely mentioned in the assessment order the same always deemed to be accepted. Thus, once it is not specifically mentioned in the assessment order that the books of account have been rejected, the same stands and deemed as accepted. Thus, the Ld. CIT (A) wrong in holding the rejection of books of accounts, though the same were not rejected specifically by the AO.

Further provisions of section 145(3) cannot be applied as no finding of Ld. A.O. as well as of CIT(A) on the ingredients of section 145(3) of I. Tax Act and no specific defect was pointed out. To apply the provisions of section 145(3) of

Income Tax Act, there must be finding on the ingredients of section 145(3) of I.

Tax Act that : -

- a) books of account are not correct or incomplete or
- b) the assessee is not following the proper method of accounting regularly or
- c) not following the accounting standards notified by Central Government.

In the case of the assessee, there is no such finding of the Ld. A.O. as well of Ld. CIT(A). It is also pertinent to mention here that except to raising some suspicious and doubt on the correctness of the sales recorded in books of accounts no any specific defect was pointed out. The assessee submitted complete books of account with vouchers and stock register. The lower authorities have not pointed out any unverifiable purchases or unvouched expenses or unaccounted receipts. They have also not pointed out any defect in method of accounting/accounting standards followed by the assessee. There no plausible and cogent defects have been pointed out in the books of accounts, which may conclusively lead to doubt regarding the genuineness and correctness of books of accounts and all the findings is based merely on guess, probabilities or possibilities and on these grounds the books of account of assessee cannot be rejected.

Further show cause notice was neither issued by Id AO or CIT(A) demonstrating the defects in the books of account. The Id CIT(A) so far has not been able to give any reasons why the entries in the books of account should be disbelieved. This burden is on the AO/CIT(A) to discharge – not on the assessee. Books of account defined in section 2(12A) of I.Tax Act. According to Section 2(12A) of the Income Tax Act, 1961, books or books of account, include ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as electronic data. Section 145 does not specify any set of accounts to be maintained by an assessee. Also, Rule 6F of Income Tax Rules, 1962 prescribes certain set of books only for professionals and not for other assessee or businesses or traders.

The assessee maintains proper books of account on mercantile basis. The books of account are audited by Chartered Accountants under Income Tax Act. The copy of tax audit report is at PB page 5-21. The auditors have certified that proper books of account as required by law have been kept by the company and books of account give a true and fair view of profit. Therefore, the books of account regularly maintained by the assessee in ordinary course of business are acceptable evidence u/s 34 of Evidence Act (Bhartiya Saksya Adhinyam 2023).

The Ld. CIT(A) rejected the books of account by holding that the assessee has not produced credible evidence in support of cash sales. The lower authorities failed to appreciate the nature of cash sales. The assessee has submitted before the lower authorities copy of :-

- (i) Cash Book (PB page 65-122),
- (ii) Daily Stock Summary (PB page 123-242),
- (iii) Purchase Register (PB page 243-245),
- (iv) Sales Register (PB page 246-265) and
- (v) Month wise details of sales and purchase (In Qty) (PB Page No. 266)

It is admitted fact that each transaction should be analysed with the point of view of the businessman, generally prevailing practice in the trade and its acceptability in the eye of law. A transaction cannot be treated as non-genuine for wants of the details which are not required to obtain and keep as per the law. Regarding the finding of Ld. CIT (A), as given for rejecting the books of accounts, that cash sales are without PAN, this is to submit that as per law the assessee was not required to obtain the PAN in small sales not exceeding Rs. 2,00,000/-, therefore the same cannot be the ground of rejection of books of accounts.

Reliance is placed on following decisions: -

- i) Hon'ble High Court of Bombay in the case of R.B. Jessaram Fatehchand (Sugar Dept.) v/s Commissioner of Income Tax [1970] 75 ITR 33 (Bombay) held that (Copy at Case laws PB Page No 75-78)
- ii) Hon'ble ITAT Jaipur Bench in the case of ACIT Circle-1 Jaipur Vs M/s Uttam Chand Deshraj (ITAT Jaipur Bench ITA No 419/JP/2010 Order dated 25/03/2011) (Copy at Case laws PB Page No 117-120)
- iii) ITAT Delhi in Kishore Jeram Bhai Khaniya, Proprietor, M/s Poonam Enterprises v. ITO ITA No. 1220/Del/2011 ITAT Delhi Judgement dated 13.05.2014 (Copy at Case laws PB Page No 341-345)
- (iv) Suwalka and Suwalka Properties And Builders Pvt. Ltd. Versus Asst. Commissioner of Income Tax, Central Circle, Kota 2024 (10) TMI 425 - ITAT JAIPUR in ITA No. 302/JP/2024 Dated: October 3, 2024 (Copy at Case laws PB Page No 264-328)

Rejection of books of accounts u/s 145 - Addition u/s 68/69A with 115BBE - cash deposited during demonetization as unexplained credit - HELD THAT:- As is not disputed that ld. AO has not rejected the books and not passed order u/s. 144. Ld. CIT(A) has done so based on the mere surmise and conjecture as noted herein above. As is also evident from the orders of the lower authority that the assessee has produced all the details that has been required by the AO and they have not found the records defective.

Merely the AO and the ld. CIT(A) made suspicions on the records of sales of stone that too on account of rocky land excavated and thereby sold stone so excavated. Relevant receipt is reflected in the books of accounts. Out of the sum of received part of the amount considered as explained and part of the same as not genuine for the same set of records.

We note that the CIT(A) has not advanced single a reason or basis of rejection of the book results which are otherwise verified, and no defects were found by the ld. AO and ld. CIT(A) and that when ld. AO and CIT(A) has already considered the part of the amount deposited into the bank account as business receipt and the part of the same was not considered.

CIT(A) has not satisfied the condition as required as per provision of section 145(3) of the Act and that too without pointing out any defects in the books of accounts. The ld. CIT(A) merely rejected the book results because the assessee deposited cash in demonetized currency, and that was the reasons to reject the book results which is not a valid reason to invoke the provision of 145(3).

Section 145(3) can be invoked when the AO is not satisfied about the correctness or completeness of the accounts of the assessee, when the method of accounting provided in Section 145 (1) has not been regularly followed by the assessee and when the accounting standards notified u/s 145 (2) have not been regularly followed by the assessee.

From the observations recorded in the order of the lower authority none of the conditions are satisfied and thus same is not evident from the finding of the lower authority. Not only that the bench also observed that when the provision of section 145(3) is to be invoked the assessment is to be completed as per the manner provided in section 144 and the proper opportunity is required to be given by pointing out the defects in the books of account which we observe that the same is not followed and the order is passed u/s.143(3) of the Act which is also not correct. We get strength to support our view based on the provision of the Act and decision of the Hon'ble Jurisdiction Rajasthan high court in the case of CIT Vs. Pink City Developers [2017 (11) TMI 1082 - RAJASTHAN HIGH COURT]

Here we note that out of the sales of wort partial amount was not considered as genuine because the assessee out of those sales deposited the amount in the specified bank notes. Thus, on the same set of records revenue was satisfied for sales hold a view that the assessee has not maintained proper sales records and therefore invoked the provision of section 145(3) of the Act is not correct. Ld. AO or that of ld. CIT(A) has not considered it fit to make the verification of the contention at the place of business / site to verify the contention and thereby tried to collect the corroborative evidence and without doing so part sales is accepted and part not is not correct reasons to reject the books of accounts. Based on these observations ground no. 1 raised by the assessee is allowed.

(v) Motisons Jewellers Ltd Vs ACIT ITA No 178/JP/2022 order dated 29/09/2022. Hon'ble ITAT at page 123 of its order held that (Copy at Case laws PB Page No 121-173)

"Hence, looking into the entirety of the facts, circumstances of the case and the case laws cited by the AR of the assessee (supra), we allow the appeal of the assessee by holding that the rejection of books of account on the basis of insignificant defects in all respect, is not justified and books of account deserves to be accepted. Before invoking the provisions of Section 145(3) of the Act, the AO has to bring on record material on the

basis of which he has arrived at the conclusion with regard to correctness or completeness of the accounts of the assessee or the method of accounting employed by it. In the instant case, it was not the case that the assessee had not followed either cash or mercantile system of accounting. It was also not the case that the Central Government had notified any particular accounting standard not followed by assessee. Further the assessee maintains proper books of account audited by Chartered Accountant and the profit may be derived from the audited books of account therefore there is no justification in estimation of income by applying NP rate and accordingly the lower authorities are directed to delete the addition of Rs. 47,72,297/- sustained by Id CIT(A)."

(iii) M. DURAI RAJ vs. COMMISSIONER OF INCOME TAX HIGH COURT OF KERALA (1972) 83 ITR 484 (KER):— (Copy at Case laws PB Page No 81-87)

Held That What is relevant to consider in such cases is whether the assessee's accounts are maintained according to the method regularly employed by him, whether they are correct and complete, and whether the income can be properly computed from the accounts. There is no finding that the purchases have been exaggerated or the sales have been suppressed, or that any transaction has not come into the accounts. In these circumstances, the grounds stated by the Tribunal are neither valid nor relevant in rejecting the accounts of the assessee.

(iv) ST Teresa's Oil Mills Vs State of Kerala 76 ITR 365 (Ker) (Copy at Case laws PB Page No 88-90)

Accounts regularly maintained in the course of business have to be taken as correct unless there are strong and sufficient reason to indicate that they are unreliable.

Therefore, in view of submission, the Id CIT(A) has not justified in rejecting the books of account by invoking the section 145 and the action of Id CIT(A) deserves to be set aside

The Id CIT(A) held that the assessee has recorded bogus sales to the extent Rs. 6,76,59,000/- which shall be reduced from sales shown by the appellant for the year. At the same time, he has accepted all the other entries of books of account such as purchases, expenses stock etc. The effect of the findings of the Id CIT(A) give absurd financial results- heavy trading loss, which is not possible by any stretch of imagination. On the basis of this finding, the trading account of the assessee is recalculated as under:-

Particulars	As per audited accounts	As per CIT(A) findings	Remarks
Sales	21,69,83,176.56	14,93,24,176.56	CIT(A) held that the sales of Rs. 6,76,59,000 is bogus which shall be reduced from sales shown by the appellant for the year.
Closing Stock	5,25,60,282.42	5,25,60,282.42	CIT(A) made no findings for closing stock which means he has accepted stock .
Total Credit side Trading Account	26,95,43,458.98	20,18,84,458.98	
Debit side			
Opening stock	3,43,81,003.64	3,43,81,003.64	CIT(A) made no findings for Opening stock which means he has accepted stock .
Purchases	22,01,65,475.22	22,01,65,475.22	CIT(A) made no adverse findings for purchases which means he has accepted purchases

Manufacturing Expenses	12,43,220.00	12,43,220.00	CIT(A) made no adverse findings for manufacturing expenses which means he has accepted Expenses
Total Debit Side of Trading Account	25,57,89,698.86	25,57,89,698.86	
Gross Profit	1,37,53,760.12	-5,39,05,239.88	
GP Rate	6.34%	-36.10%	

As per findings of CIT(A), the trading results of the assessee shows GP rate of -36.10% which was not possible in the trade of the assessee.

The cash deposited in the demonetized currency added as income of the assessee by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in P&L account, therefore there is no occasion to again consider the same as income of the assessee by applying the provisions of section 68 of the Act. It is further relevant to mention here that if the intention of the legislature would be to apply the provisions of section 68 of the Act on the sale transactions also than it such case as per law it would be mandatory to have the identity, genuineness and creditworthiness of each buyer. But the law is not so and in case of sale below to certain limit the assessee was not required to prove all these ingredients of section 68 of the Act and even also in case of sale exceeding to certain limit the assessee is not required to prove the creditworthiness of buyer. Thus, this also strengthen the contention of the assessee that the provisions of section 68 are not applicable on the transaction which are already credited in the P&L and the same can only made applicable on the cash credits such as loans,

share application etc. It is an admitted fact that in the case of transactions of sales/purchases of goods/investments/assets the creditworthiness of the payee is not relevant for the receiver as the amount was received against the something sold to him, therefore such transactions cannot be examined with point of view of cash credits. Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordia vs Income-tax Officer APPEAL NO. 4 OF 2002 NOVEMBER 7, 2006 [2008] 298 ITR 349 (Rajasthan) (Copy at Case laws PB Page No 26-30) held that no addition could be made in respect of the amount standing in the books of the assessee, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.

As regarding to finding of the lower authorities that the identity of the customers such as name, address and PAN etc. to whom cash sales was made is not furnished, it is submitted that it is not compulsory or mandatory under the I. Tax Act, 1961 to collect the information related to full name, address and PAN of the customer to whom goods were sold in cash during the course of business below to the prescribed limit. It is voluntary to the customer to provide their personal information to the assessee while goods being sold. The assessee cannot enforce or compel to their customer to give their personal information and if the assessee do it without authority of law, this would ruin the business of the assessee. Further in the preceding financial years, subsequent financial years and other periods of this same financial year, the same practice was being followed by the assessee where no details of name, address and PAN of customer was available with the assessee. Therefore, due to non-furnishing of address and PAN of the customer, the sale made by the assessee cannot be doubted. The cash sales of the previous months, previous years and next month or years was also made on the same trend with

same set of particulars. Therefore, only the sales made and utilized for depositing the demonetized currency cannot be doubted for this reason.

Section 69A was not applied by AO, therefore, the CIT(A) cannot apply it even on alternative basis. It is relevant to mention here that as per section 251 (1)(a) of Income Tax Act, 1961 the CIT (A) shall have the power “*in an appeal against an order of assessment he may confirm, reduce, enhance or annul the assessment*”. As regard applicability of section 69A of I. Tax Act by CIT(A) we submit that the ld AO has made addition u/s 68 of the Income Tax Act, 1961. The assessee has also submitted his submission for Section 68 of the Act. The ld AO being not satisfied with the submission of assessee on section 68, has applied section 68 of Income Tax Act for the addition.

The provisions of section 69A specify the authority mentioned as “Assessing Officer”.

For the sake of clarity, we are reproducing the provisions of section 69A of I. Tax Act as stood for AY 2017-18 as under:-

“69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income 51, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income 51 of the assessee for such financial year.”

Therefore, addition under section 69A of Income Tax Act can be made only if the explanation of the assessee is not satisfactory in the opinion of “Assessing Officer”.

The Assessing Officer has been defined u/s 2(7A) of Income Tax act as under:-

“(7A) Assessing Officer” means the Assistant Commissioner³¹[or Deputy Commissioner]³²[or Assistant Director]³¹[or Deputy Director] or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the³³[Additional Commissioner or]³⁴[Additional Director or]³⁵[Joint Commissioner or Joint Director] who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act ;]”

Therefore, CIT(A) is not “Assessing Officer” so he cannot change the section 69A from 68 applied by the AO. Section 68 is prescribed for different set of circumstances and section 69A is prescribed for different circumstances of the case. The jurisdiction of CIT (A) is limited to deciding the matter whether the addition u/s 68 is correct or not. In the appellate proceeding the addition cannot be confirmed by applying altogether different section by invoking a section for which satisfaction is required to be by “Assessing Officer”. Reliance placed on the following decision:-

a) ITAT Jaipur in the case of Laxmikant Biyani Vs ACIT ITA No 1418 to 1423/JPR/2024 order dated 26/02/2025

“xxxxx The AO assessed the income as business income utilized in giving the loans after considering the admission of the assessee during post search proceedings, notings of seized records and facts & circumstances of the evidences gathered as a result of search and contra to the findings of the AO, ld CIT(A) held that loans are taxable u/s 69A of the Act and provisions of section 115BBE are applicable over the addition so made by the ld AO. However, the ld CIT(A) has not brought on record any inquiry made by him to support his findings. For the sake of clarity, we are reproducing the provisions of section 69A of I. Tax Act as under:-

“69A Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.”

As per the provisions of section 69A the addition under section 69A of I. Tax Act can be made only if the explanation of the assessee is not satisfactory in the opinion of “Assessing Officer”. The Assessing Officer has been defined u/s 2(7A) of Income Tax Act as under:-

“(7A) Assessing Officer” means the Assistant Commissioner³¹ [or Deputy Commissioner]³² [or Assistant Director]³¹ [or Deputy Director] or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the³³ [Additional Commissioner or]³⁴ [Additional Director or]³⁵ [Joint Commissioner or Joint Director] who is directed under clause (b) of subsection (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act ;]”

In view of the specific definition of assessing officer in section 2(7A) of I.T. Act, ld. CIT(A) is not assessing officer so he cannot invoke the provisions of section 69A for making the addition particularly when the Assessing Officer has satisfied about the

ingredients of section 69A of Income Tax Act. In the case of the assessee the AO has not framed an opinion that the explanation given by the assessee was not satisfactory but he framed an opinion after examining the facts, documents and explanation that the additions cannot be made u/s 69A but it should have been made as business income of the assessee. On the contrary, ld CIT(A) has not brought on record any inquiry made by him in the appellant proceedings to justify his findings in this regard. In the appellate proceeding the addition cannot be confirmed by applying altogether different section by invoking a section for which satisfaction is required to be by "Assessing Officer" and the assessing officer after considering the detailed reply and documents was satisfied about the ingredients of section 69A. The Income Tax Appellate Tribunal Delhi Bench 'D': New Delhi in ITA No. 2835/Del/2015 (Assessment Year: 2012-13) Smt. Tripat Kaur (Date of pronouncement 09/10/2018) held that:-

'...If authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorized under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to perform an action on any particular issue, then it is that authority alone who should do that action. We draw support from various decision of Honorable High courts in Ghanshyam K. Khabrani v. ACIT [2012] 346 ITR 443 (Bom), CIT v. SPL'S Siddhartha Ltd. [2012] 345 ITR 223 (delhi)and also of the Honourable supreme court Anirudhsinhji Karansinhji Jadeja v. State of Gujarat [1995] 5 SCC 302 where in hon. Supreme court held as under :—

--13. It has been stated by Wade and Forsyth in 'Administrative Law', 7th Edition at pages 358 and 359 under the heading 'SURRENDER, ABDICATION, DICTATION' and

subheading "Power in the wrong hands" as below:- "Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them ". "Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise....":'

Similar issue was dealt by ITAT Chennai Bench in the case of Smt. Sekar Jayalakshmi vs Income Tax Officer [2023] 150 taxmann.com 120 (Chennai - Trib.) held that CIT(A) is not empowered to change section under which AO made an addition during assessment. The relevant finding is reproduced as under:-

"In this case, the Assessing Officer made addition of Rs. 6,00,000/- as unexplained credit. However, the Assessing Officer has not mentioned the relevant section under which, the addition was made, but "unexplained credit" comes under section 68 of the Act. In the appellate order, in page No. 7, para (v), the ld. CIT(A) has noted that "However, I am also in agreement with the appellant that the provisions of section 68 are not applicable to the appellant". Therefore, the ld. CIT(A) treated the addition of Rs. 6,00,000/- as unexplained money under section 69A of the Act and confirmed the addition. Section 68 of the Act deals with "unexplained Credit" in the books of the assessee and section 69A of the Act deals with

"unexplained money, bullion, jewellery or other valuable article". Both are entirely different. Though the Assessing Officer has not mentioned the section 68 in his order, the very fact that he calls it "unexplained credit" and not "unexplained money" as done by the ld. CIT(A), while he invoked section 69A of the Act, it proves that the Assessing Officer invoked section 68 of the Act. I find merit into the contention of the ld. Counsel for the assessee that there is no power conferred upon the ld. CIT(A) to assess a particular item under different provision of the Act what the Assessing Officer had done without giving a specific notice to the assessee regarding such action. I am of the considered view that law does not permit for such change of provision of law. As per section 250 of the Act, the ld. CIT(A) is empowered to make further inquiry as he thinks fit or may direct the Assessing Officer to make further inquiry and report to the ld. CIT(A). As per section 251(1)(a) of the Act, in appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment, but there is no such power provided by the law that ld. CIT(A) could change the provision of law qua the item of which assessment was made. Therefore, in the absence of such power, learned CIT(Appeals) could not have treated the addition made under section 69A of the Act. Therefore, the addition made by the ld. CIT(A) under section 69A of the Act is liable to be deleted."

It is pertinent to mention here that the similar issue has been dealt with and decided by this Bench of ITAT in the case of Motisons Buildtech Pvt. Ltd vs ACIT, Central Circle-2, Jaipur vide its order dated 30-10-2017 in ITA No.385/JP/2017 (Assessee's appeal) for the Assessment Year 2012-13 by observing as under:-

'8.4 We have heard the rival contentions and perused the materials available on record. In this ground, it is noted that the AO made the addition of Rs.3,68,27,500/- out of which the

ld CIT(A) deleted the addition of Rs. 2,86,27,500/- and sustained the addition of Rs.82.00 lacs as mentioned at para 3.2.2. and 2.1.4.6 & 2.1.4.7 of the ld. CIT(A)'s order (supra). The question arises as to whether the ld CIT(A) can make the addition u/s 68 of the Act or not. For this purpose, the definition of Section 68 of the Act is as under:-

‘Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.’

From the above definition, it is noted that Section 68 of the Act does not empower the ld. CIT(A) to make addition under this Act. Thus the addition u/s 68 can only be made by the Assessing Officer. The definition of the Assessing Officer has been provided in Section 2(7A) of the Act which reads as under:-

[(7A) “Assessing Officer” means the Assistant Commissioner [or Deputy Commissioner] [or Assistant Director] [or Deputy Director] or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under subsection (1) or sub-section (2) of [section 120](#) or any other provision

of this Act, and the [Additional Commissioner or] [Additional Director or] [Joint Commissioner or Joint Director] who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act ;]

Thus the ld. CIT(A) is not the Assessing Officer as per Income-Tax Act. Therefore, the ld. CIT(A) does not have any legal sanction to make the addition u/s 68 of the Act. “

To attract deeming provision of sections 69A of the Act the foremost requirements that is to be followed is that the income should be from any other source rather than from its regular source of earning. Further, ld CIT(A) has not issued notice u/s 251(2) of I.Tax Act as this finding is amount to enhancement of assessment/tax liability. The provisions of section 251(2) as stood for the assessment years under consideration is as under:-

“2) The Commissioner (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.”

In view of the forgoing discussion, facts and circumstances of the case and respectfully following the decisions of coordinating benches of ITAT, we set aside the finding given by Ld. CIT (A) in this regard.

No show cause notice was given by AO/Ld. CIT(A) for applying provision of section 69A r.w.s 115BBE The applicability of section 115BBE is not automatic. It is also pertinent to mention here before applying the provisions of section 115BBE of the Act the specific show caused notice did not give to the assessee and in absence of specific show cause notice the provisions of this section cannot be applied mechanically. Reliance is placed on the decision of

- (i) Hon'ble Jodhpur bench of ITAT in the case of Suraj Kanwar Devra v/s ITO 2(2), Udaipur in ITA No. 50/Jodh/2021 dated 23.11.2021 and
- (ii) Hon'ble ITAT Jaipur Bench in the case of Kamal Dewan v/s ITO, Ward 2(3), Jaipur vide 22/04/2024 in ITA No 135/JP/2024. (Copy at Case laws PB Page No 329-340)

In view of the details and submission filed during assessment proceeding and also hereinabove it is well proved that the amount deposited in cash in demonetized currency was accumulated cash with assessee from the sales made up to 07.11.2016. The corresponding sales, from which the cash generated with assessee, which deposited in bank a/c in demonetized currency, was part of total sales credited in trading a/c. The ld. AO accepted the sales shown in trading a/c as genuine and did not disturbed the cash sales so declared by Assessee. On the other hands ld CIT(A) held that the impugned sales is bogus and it shall be reduced from the sales declared in trading account.

For the explanation for non depositing the cash in bank account prior to demonetisation, the assessee has explained that there is no bar in the law that the assessee cannot hold the cash and he was supposed to deposit the same in bank immediately. The decision to keep the cash in hand or to deposit on bank is decision of the person who is dealing to such affairs and the department cannot put its step into the decision of businessman.

In the case of the assessee there was a specific reason for non-depositing the cash immediately in his bank account, which is that the assessee had huge unsecured loans from several parties and some of them were pressurizing to the assessee for repayment of that loans prior to their agreed due date. The assessee is

under apprehension that if he deposits the cash in bank account and left the balance in bank account the loan creditors may lodge the cheque, which given to them as a security of loan, and may withdraw the funds from bank account. This would lead to disturb the entire liquidity of the business and planning of the assessee. Therefore, the assessee deposited the cash in bank account as and when he required amount in the bank account for getting clear the cheques issued or to be issued towards purchases of Gold, Gold Jewellery and expenses. This fact is well apparent from the books of accounts of the assessee on examination of which it reveals that mostly cash deposited in the bank account was utilized for making the payment towards purchases of Gold & Gold Jewellery and some minor towards payment of expenses etc. This was also a reason of cash withdrawal by the assessee from bank Rs 3,00,000/- on 06-08-2016 and Rs 5,00,000/- on 08-09-2016. The Id CIT(A) not provided even an opportunity to explain the reason of cash withdrawal on these two dates by the assessee and without providing an opportunity to explain the matter, he drawn an adverse inference against the assessee.

It is also relevant to mention here that the father of assessee Shri Mahendra Kumar Agarwal is also engaged in the same trade at same place of business 197, Johari Bazar, Jaipur. In the assessment of father of assessee, made for AY 2017-18, the cash deposited in bank account in demonetized currency, which accumulated with him from sales of goods, was added in his income by considering the same as earned from undisclosed source. The copy of assessment order is at PB Page 303 to 309. The CIT (A)-4, Jaipur, after considering the sales made by him as genuine, deleted the entire addition and on further appeal by department Hon'ble ITAT, Jaipur Bench, Jaipur confirmed the finding of Ld CIT (A) and sustained the

deletion of addition. The copy of order of CIT (A) (PB page 310-324) and ITAT are at PB Page 325 to 358.

The ld AR of the assessee relied several case laws in support of his contention. He filed case law paper book citing the cases relied upon by him, the index of which is as below:-

S. No.	Particulars	Page No.
Hon'ble Supreme Court		
1.	Dhakeswari Cotton Mills Ltd vs. Commissioner of Income-tax [1954] 26 ITR 775 (SC)	1-7
2.	Umacharan Shaw & Bros vs. Commissioner of Income-tax [1959] 37 ITR 271 (SC)	8-13
3.	CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC)	14-17
4.	Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC)	18-22
5.	Hon'ble Supreme Court in case of Karim Tharuvi Tea Estate Ltd. vs. State of Kerala [1966] 60 ITR 262 (SC).	23-25
Jurisdictional Hon'ble Rajasthan High Court		
6.	Smt. Harshila Chordia vs Income-tax Officer Appeal No. 4 of 2002 NOVEMBER 7, 2006 [2008] 298 ITR 349 (Rajasthan)	26-30
Other Hon'ble High Courts		
7.	CIT Vs. Kapil Nagpal, DBITA 609/2014 (Delhi HC)	31-37
8.	Goyal Gases (P.) Ltd Vs. Commissioner of Income-Tax [1997] 94 TAXMAN 57 (DELHI)	38-39
9.	PCIT Vs. Aditya Birla Telecom Ltd. [2019] 105 Taxmann.Com 206 (Bombay)	40-44
10.	Rustagi Engineering Udyog (P.) Ltd Vs. Deputy Commissioner of Income-Tax [2016] 382 ITR 443 (Delhi).	45-50
11.	Principal Commissioner of Income-Tax Vs. Meenakshi Overseas (P.) Ltd [2017] 82 Taxmann.Com 300 (Delhi)	51-59
12.	CIT Vs. Shri Jawahar Lal Oswal, DBITA 49/1999 (Punjab & Haryana HC)	60-71
13.	Commissioner Of Income-Tax Vs. Neel Giri Krishi Farms (P.) Ltd. [2013] 218 Taxman 95 (Allahabad)(MAG.)	72-74
14.	R.B. Jessaram Fatehchand (Sugar Dept.) V/S Commissioner of Income Tax [1970] 75 ITR 33 (Bombay)	75-78
15.	CIT V/S. Kailash Jewellery House ITA No. 613/2010 Delhi High Court Dated 09.04.2010	79-80
16.	M. Durai Raj Vs. Commissioner of Income Tax High Court of Kerala (1972) 83 Itr 484 (Ker)	81-87
17.	ST Teresa's Oil Mills Vs State of Kerala 76 ITR 365 (Ker)	88-90
18.	Pr. Cit (Central)-3, New Delhi Vs Ms. Agson Global Pvt. Ltd	91-116

Hon'ble ITAT Jaipur Bench		
19.	ACIT Circle-1 Jaipur Vs M/S Uttam Chand Deshraj (ITAT Jaipur Bench ITA No 419/JP/2010 Order Dated 25/03/2011)	117-120
20.	2022 (10) TMI 116 - ITAT Jaipur ACIT, Central Circle-2, Jaipur Vs M/S Motisons Jewellers Ltd. And (Vice-Versa).	121-173
21.	2022 (11) TMI 1333 - ITAT Jaipur Other Citation: [2023] 104 ITR (Trib) 455 (ITAT [Jai]) Asstt. Commissioner Of Income-Tax, Central Circle-1, Jaipur. Vs Shri Mahendra Kumar Agarwal.	174-230
22.	2022 (11) TMI 1334 - ITAT Jaipur Income Tax Officer, Ward 1 (2), Jaipur. Versus. Shri Raj Kumar Nowal.	231-263
23.	Suwalka And Suwalka Properties and Builders Pvt. Ltd. Versus Asst. Commissioner of Income Tax, Central Circle, Kota 2024 (10) TMI 425 - ITAT JAIPUR In ITA No. 302/JP/2024 Dated: October 3, 2024	264-328
24.	Hon'ble ITAT Jaipur Bench in The Case of Kamal Dewan V/S ITO, Ward 2(3), Jaipur Vide 22/04/2024 In ITA No 135/JP/2024.	329-340
Other Hon'ble ITAT Bench		
25.	Kishore Jeram Bhai Khaniya, Proprietor, M/S Poonam Enterprises V. ITO ITA No. 1220/Del/2011 ITAT Delhi Dated 13.05.2014	341-345
26.	2021 (5) TMI 447 - ITAT Visakhapatnam Asst. Commissioner of Income Tax, Central Circle-1 Visakhapatnam Versus M/S Hirapanna Jewellers And (Vice-Versa)	346-351
27.	2021 (1) TMI 837 - ITAT Gauhati Nurul Islam Versus Ito, Ward-2, Nagaon	352-354
28.	2021 (12) TMI 599 - ITAT Bangalore Anantpur Kalpana Versus Ito, Ward – 1, Koppal	355-360
29.	2021 (2) TMI 737 - ITAT Gauhati Nilkantha Saha Versus Ito, Ward-Morigaon	361-368
30.	2021 (9) TMI 1192 - ITAT Visakhapatnam Dy. Commissioner of Income Tax Circle-3 (1) Visakhapatnam Versus Sri Jaya Prakash Babu Valluri And (Vice-Versa)	369-375
31.	ITAT Delhi In Agson Global Pvt Ltd Vs ACIT CC-28, Delhi ITA No 3741-3746/Del/2019 Order Dated 31/10/2019.	376-504
32.	ITAT Chandigarh In the Case of Smt Charu Agarwal & M/S Kalanidhi Jewellers Vs DCIT ITA No 310 & 311/Chd /2021 Order Dated 25/03/2022	505-574
33.	Deepak Sharma V/S ACIT Circle 43(1) In ITA No. 2886/Del/2022	575-577

Some cases laws on similar facts are as under:-

(i) Suwalka and Suwalka Properties And Builders Pvt. Ltd. Versus Asst. Commissioner of Income Tax, Central Circle, Kota 2024 (10) TMI 425 - ITAT JAIPUR in ITA No. 302/JP/2024 Dated: October 3, 2024 (Copy at Case laws PB Page No 264-328)

“16. Ground no. 2 relates to action of the lower authority treating the part of the sales attributable to cash sales as unexplained money (under section 69A) or that of the unexplained cash credits (under section 68) of the Act. As we hold a view that the revenue cannot be accept the part of the sales as explained and part of the sales not explained on the same set of evidence. Therefore, the cash deposited in the demonetized currency added as income of the assessee by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in statement of profit & loss account. Therefore, there is no occasion to consider the same as unexplained credit entry of the assessee by applying the provisions of section 68 of the Act. We get support of our view from the decision of our High Court of Rajasthan in the case of Smt. Harshila Chordia vs Income-tax Officer [2008] 298 ITR 349 (Rajasthan) “wherein it was held that no addition could be made in respect of the amount standing in the books of the assessee, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.” As the fact of this cash being similar that part of the sales is considered by the revenue has explained and part of it not is not correct and therefore, we hold that cash deposited by the assessee out of sales proceeds of stone cannot be considered attributable to the provision of section 68 or that of 69A of the Act. Based on these observations ground no. 2 raised by the assessee is allowed.

(ii) 2022 (10) TMI 116 - ITAT JAIPUR ACIT, CENTRAL CIRCLE-2, JAIPUR VERSUS M/S MOTISONS JEWELLERS LTD. AND (VICE-VERSA) (Copy at Case laws PB Page No 121-173)

Estimation of income - Addition u/s 68 - bogus and false entries or undisclosed income of the assessee which was induced in the books under the garb of cash sales and advance from customer and receipt from debtors - addition considering the same as part of turnover and applying same rate of G.P. @ 2.59 % of cash sales which was added by AO u/s. 68 of the disbelieving the cash sales recorded by the assessee on the day of demonetization - CIT-A deleted the addition - HELD THAT:- As revenue not prove the sale made by the assessee which is executed after giving the goods to the customer, duly reflected in the invoice issued, assessee having sufficient stock in the books, sales is duly reflected in the books of accounts supported by payment of VAT. Therefore, the contention of the revenue based on the facts and circumstance of the case is not accepted and we see no reason to find any fault in the detailed reasoned finding in the order of the Id. CIT(A). Thus, we sustain the order of the Id. CIT(A) and based on these observations the appeal of the revenue stands dismissed.

Rejection of books of account on the basis of insignificant defects - estimation of income by applying NP rate - Whether Rejection of books of account u/s 145(3) was not given by the AO and the assessment completed in the manner provided u/s 144 - HELD THAT:- It is apparent from records that all the amounts realized from debtors and received as advance from customers during the period 03-11-2016 to 8-11-2016 was genuine and verifiable from the accounts then there is no cogent reason by the lower authorities to treat the same as nongenuine. Hence, looking into the entirety of the facts, circumstances of the case and the case laws cited by the AR of the assessee (supra), we allow the appeal of the assessee by holding that the rejection of books of account on the basis of insignificant defects in all respect, is not justified and books of account deserves to be accepted. Before

invoking the provisions of Section 145(3) of the Act, the AO has to bring on record material on the basis of which he has arrived at the conclusion with regard to correctness or completeness of the accounts of the assessee or the method of accounting employed by it. In the instant case, it was not the case that the assessee had not followed either cash or mercantile system of accounting. It was also not the case that the Central Government had notified any particular accounting standard not followed by assessee. Further the assessee maintains proper books of account audited by Chartered Accountant and the profit may be derived from the audited books of account therefore there is no justification in estimation of income by applying NP rate and accordingly the lower authorities are directed to delete the addition sustained by Id CIT(A).

(iii) Hon'ble ITAT Jaipur Bench Jaipur in the case of ITO V/s Raj Kumar Nowal (ITA No. 165/JP/2022) dated 22.11.2022 it is held that: - (Copy at Case laws PB Page No 231-263)

We also find that the Department has raised the solitary ground for deletion of addition of Rs.1,03,00,000/- made by the AO by applying the provisions of Section 68 and taxed as per provisions of Section 115BBE of the Act. We found that all the points or allegation noted by the AO is duly considered and discussed by the Id. CIT(A) while dealing with the appeal of the assessee. The revenue did not pin point which of the findings of the Id. CIT(A) is incorrect or against the facts placed on record by the assessee. We noticed that the AO has given details of cash deposited in bank at Page 3 of the assessment order. We found that the cash amounting to Rs, 91,00,000/- was only deposited in demonetization currency and cash Rs. 12,00,000/- was deposited in non-demonetized currency on 28.03.2017, and this amount Rs. 12,00,000/- was offered for Income under "Pradhanmantri Garib Kalyan Yojna-2016". The assessee has filed copy of Form 1 and Form 2 at APB Page 91 to 93 to support his contention. Therefore, the addition of Rs. 12,00,000/- is patently wrong, tantamount to double taxation and deserves to be deleted. We noticed that during the course of assessment proceedings, the AO examined the books of account and she has not rejected the books of account of the assessee and provisions of section 145(3) were not applied. During the year under consideration the assessee deposited Rs. 91,00,000/- in

demonetized currency. The cash so deposited was accumulated cash which was received against/for sales made in the proprietorship concerns of assessee M/s Dinanath Raj Kumar, Kanpur and M/s D. N. Diamonds, Jaipur by it over the period of the year prior to demonetization, majorly during the period from 28.10.16 and 29.10.16 and such sales was part of total sales credited in trading a/c and the assessee has already offered income on such sales in Trading Account by reducing the cost of sales from sales. The AO herself accepted the sales shown in trading a/c and has not disturbed the cash sales so declared by Assessee and the sales of assessee duly supported by the sale bill and invoice and duly verifiable form books of accounts including stock register and considering availability of stock on hand, it proved that the sales made by the assessee are genuine sales recorded in the books of account. All the details required to prove the sales made by the assessee were provided in the assessment proceedings. The assessee has filed sufficient evidence to substantiate his sales. He has filed (1) Copy Cash book (Copy at APB Page 39 to 45) and sales bills along with submission dated 10.12.2017 (2) Copy of stock register for the FY 2015-16 and 2016-17 (Copy of the same is at APB Page 50 to 72 which shows that before making the sale the sufficient stock was available with assessee (3) Copy of VAT Returns APB Page 80 to 85 and VAT assessment order of proprietorship concern M/s Dinannath Raj Kumar, Jaipur at APB Page 88 to 90. The VAT department accepted the sale of the assessee. Thus the assessee substantiated its claim from the documentary evidence and also with the facts. In letter dated 06.06.2019 Copy at APB Page 46 to 47 the assessee submitted to AO that "There was increase of cash sale in month of Oct. and Nov.-2016 was due to Karva Chouth, Dhanteras and Diwali sales (Festival Season). Further the assessee has explained the AO that, the firm Dinanath Raj Kumar has been started in the year 2015 itself and during the FY 2015-16 the mother of the assessee has expired and hence the assessee was not able to setup his business at Kanpur and hence the sale was low in the year FY 2015-16 as compared to sales in 2016-17. The assessee is engaged in the business of Jewellery and gold. The higher cash sales on festival season Karva Chouth, Dhanteras and Diwali is general feature in the trade of the assessee and such sales is also apparent from the cash book submitted during the course of assessment proceedings. Looking to the above facts and circumstances of the case the sale made by the assessee is genuine which is executed after giving the goods to the customer, duly reflected in the invoice issued, assessee having sufficient stock in the books, sales is duly reflected in the books of accounts supported by payment of VAT and the revenue has not brought any positive material to prove it as bogus sales. It is not the case of the A.O. that the assessee did not have the sufficient stock for making the sales. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details. As regard to not providing the name, address and PAN of the customers to whom cash sales was made the assessee explained that the sales were below the prescribed limit so it is not compulsory or mandatory under the I. Tax Act, 1961 to collect the information related to full name, address and PAN of the customer to whom goods were sold in cash during the course of

business below to the prescribed limit. The assessee further explained that in the preceding financial years, subsequent financial years and other periods of this same financial year, the same practice was being followed by the assessee where no details of name, address and PAN of customer was available with the assessee. We find the explanation of the assessee is genuine and the sales cannot be doubted on surmises and conjectures merely due to non-furnishing of address and PAN of the customer. The AO did not make any enquiry on the material submitted by the appellant. She merely proceeded on statistical analysis to make the addition on account of cash deposits. We agree with the findings of ld. CIT(A) that the AO has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus and merely having some doubt by twisting the data and giving some findings which are not alone sufficient to justify the addition the income so assessed is not tenable in the eye of law. In fact the AO neither found any concrete and conclusive evidence of back dating of the entries of sale, evidence of bogus sales, evidence of bogus purchases, and non-existing cash balance in the books of account. The AO did not even reject the books of accounts of the appellant under the provision of section 145(3) of the Act. Therefore, the contention of the revenue on the facts and circumstance of the case is not accepted and we see no reason to find any fault in the detailed reasoned finding in the order of the ld. CIT(A). Thus, we sustain the order of the ld. CIT(A) and based on these observations the appeal of the revenue in ITA NO. 165/JPR/2022 stands dismissed.

(iv) Hon'ble ITAT Jaipur Bench Jaipur in the case of ACIT V/s Mahendra Kumar Agarwal (ITA No. 172/JP/2022) dated 22.11.2022 it is held that: -
(Copy at Case laws PB Page No 174-230)

“it is apparent that the assessee had cash balance of Rs. 1,41,70,921.45 as on 08-11-2016 which was generated from cash sales and such sales was part of total sales credited in trading a/c and the assessee has already offered income on such sales in Trading Account by reducing the cost of sales from sales. The AO has not pointed out any defect in the cash books and other books of account produced before her. The AO herself accepted the sales shown in trading a/c and has not disturbed the cash sales so declared by assessee and the sales of assessee duly supported by the sale bills and invoices and duly verifiable from books of accounts including stock register and considering availability of stock in hand, it proved that the sales made by the assessee are genuine sales duly recorded in the books of account. All the details required to prove the sales made by the assessee were provided in the assessment proceedings. The assessee has filed sufficient evidence to substantiate his sales. He has filed (1) Copy Cash book (Copy at APB Page 93 to 107) and sales Register APB at page 47-69 comprising the date wise

transaction of sales and cash receipts (2) Monthly summary of stock register (Copy of the same is at APB Page 108 to 120 which shows that before making the sale the sufficient stock was available with assessee (3) Copy of Assessment Order of VAT APB Page 121 to 127. The VAT department accepted the sales of the assessee. Thus the assessee substantiated his cash receipts from sales from the documentary evidence and also with the facts. The assessee explained the AO that the assessee's contention of cash sales is duly supported with own previous history and trend that cash sales & corresponding cash in hand have been a regular feature of the assessee's business since the past several years. The cash receipts against sales in FY 2015-16 was of Rs. 2,45,73,510/- while in the FY 2016-17 the year under consideration the same was of Rs. 2,57,31,459/- which is more or less similar to the previous year cash sales. The month to month sales varies due to demand in market, festival seasons, fluctuation in gold prices and for several other factors. Further in previous year also during the period 09.11.2015 to 31.12.2015 the assessee deposited total cash of Rs. 1,23,00,000/- in his bank accounts and in comparison to that during the period 09.11.2016 to 31.12.2016 the assessee deposited total cash of Rs. 1,41,32,000/- which shows increase by 14.89% over the previous year which is quite reasonable looking to the fact that overall sales of the assessee in comparison to previous year have increased by Rs.6,63,12,037/- which is 59% as explained by the assessee to AO vide letter dated 26/12/2019 copy at APB page 40-44. The assessee has justified higher sales in Oct 2016 by submitting letter dated 28/12/2019 to AO copy place at APB page 45-46. The assessee submitted that on 06.10.2017 the income tax department conducted survey u/s 133A of the Act at the business premises of the assessee. During the survey proceedings the department did not find any positive material/evidence to show that the assessee was having any source of undisclosed income or sales of the assessee was not genuine. The assessee is engaged in the business of Jewellery and gold. The higher cash sale on festival season Karva Chouth, Dhanteras and Diwali and marriage season is general feature in the trade of the assessee and such sales is also apparent from the cash book submitted during the course of assessment proceedings wherein the AO has not found any defect. Looking to the above facts and circumstances of the case the sales made by the assessee is genuine which is executed after giving the goods to the customer, duly reflected in the invoice issued, assessee having sufficient stock in the books, sales is duly reflected in the books of accounts supported by payment of VAT and the revenue has not brought any positive material to prove it as bogus sales. It is not the case of the A.O. that the assessee did not have the sufficient stock for making the sales. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details. As regards not providing the name, address and PAN of the customers to whom cash sales was made, the assessee has explained that the sales were below the prescribed limit so it is not compulsory or mandatory under the Income Tax Act, 1961 to collect the information related to full name, address and PAN of the customer to whom goods were sold in cash during the course of business below to the prescribed limit. The assessee

further explained that in the preceding financial years, subsequent financial years and other periods of this same financial year, the same practice was being followed by the assessee where no details of name, address and PAN of customer was available with the assessee and such practice was accepted by the AO. We find the explanation of the assessee is genuine and the sales cannot be doubted merely on surmises and conjectures on the ground of non furnishing of address and PAN of the customer. The AO did not make any enquiry on the material submitted by the appellant. She merely proceeded on statistical analysis to make the addition on account of cash deposits. We agree with the findings of ld. CIT(A) that the AO has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus and merely having some doubt by twisting the data and giving some findings which are not alone sufficient to justify the addition the income so assessed in not tenable in the eye of law. In fact the AO neither found any concrete and conclusive evidence of back dating of the entries of sales, evidence of bogus sales, evidence of bogus purchases, and non-existing cash balance in the books of account. The AO did not even reject the books of accounts of the appellant under the provision of section 145(3) of the Act. Therefore, the contention of the revenue on the facts and circumstances of the case is not accepted and we see no reason to interfere in the order of the ld. CIT(A). Thus, we sustain the order of the ld. CIT (A) with the observations above. The appeal of the revenue stands dismissed.”

(v) 2021 (12) TMI 599 - ITAT BANGALORE ANANTPUR KALPANA VERSUS ITO, WARD – 1, KOPPAL. (Copy at Case laws PB Page No 355-360)

Unexplained cash deposits in two bank accounts - Legal tender money in demonetization of currency - AO culled out, the deposits that was made of bank notes that were declared as not legal tender owing to demonetization of currency - HELD THAT: - Both AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. Addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted 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.

Assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources.

As in the case of CIT Vs. Associated Transport Pvt. Ltd. [1994 (1) TMI 18 - CALCUTTA HIGH COURT] on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources.

When cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE - See M/S HIRAPANNA JEWELLERS AND (VICE-VERSA) [2021 (5) TMI 447 - ITAT VISAKHAPATNAM] - thus the addition made is not sustainable and the same is directed to be deleted. Appeal of the assessee is allowed.

(vi) 2021 (5) TMI 447 - ITAT Visakhapatnam Asst. Commissioner of Income Tax, Central Circle-1 Visakhapatnam Versus M/S Hirapanna Jewellers And (Vice-Versa) (Copy at Case laws PB Page No 346-351)

Addition u/s 68 r.w.s 115BBE - assessee had deposited the sum in high denominations of specified bank notes (SBNs) post demonetization - CIT-A deleted the addition - HELD THAT:- The assessee produced the newspaper clippings of The Hindu, The Tribune and demonstrated that there was huge rush of buying the jewellery in the cities consequent to declaration of demonetization of ₹ 1000 and ₹ 500 notes on 08.11.2016.

As cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House [[2010 \(4\) TMI 1070 - DELHI HIGH COURT](#)] and Vishal Exports Overseas Ltd. [[2012 \(7\) TMI 1110 - AHMEDABAD HIGH COURT](#)]

(vii) ITAT Delhi in Argon Global Pvt Ltd vs ACIT CC-28, Delhi ITA No 3741-3746/Del/2019 order dated 31/10/2019.

Finding of ITAT

1. Firstly, ITAT observed that both the Assessing Officer and Ld. CIT (A) erred in deeming the total cash deposits during the demonetization period (9th Nov 2016 to 30th Dec 2016) as Rs. 180.53 Cr instead of the actual deposits of Rs. 175.28 cr during the said period. While arriving at the said figure of Rs. 180.53 crores, the Revenue Authorities had erroneously considered the total cash deposits of Rs. 5.25 crores (made on 31st Dec 2016) instead of the actual cash deposited during the demonetization period of Rs. 175.28 Cr.

2. Further, even out of Rs. 175.28 Cr, deposits of Rs. 63.41 crores were in new currency notes and non-demonetized old currency notes (Rs. 10/20/50/100). Thus, ITAT held the said amount of Rs. 63.41 crores could not be construed as cash deposited into the banks as a result of demonetization also the amount disclosed by the assessee in PMGKY scheme needed to be deleted from the addition.

3. With respect to the deposit of the cash on hand with the various bank, the explanation of the assessee that no such bank was accepting such a huge cash at one go and therefore assessee had to deposit the cash in various banks.

The assessee also submitted that that in the same bank assessee has deposited cash in its 2 different branches which itself proves that the banks were not accepting such a huge deposit.

Even otherwise, it was submitted correctly that merely because the cash holding as on 8/11/2016 was not deposited immediately cannot lead to conclusion that assessee did not have that cash.

It can merely lead to a suspicion but based on this addition cannot be made without making further enquiry and conclusively proving that assessee did not have that kind of cash available with it.

Even otherwise, if the assessee had to introduce his unaccounted money he would have deposited it at the first instance.

4. ITAT observed that assessee also filed its VAT returns, which are not found to be in variance with the accounting and tax records. Therefore, it cannot be substantiated that the assessee has backdated the transactions of the sale.

5. ITAT further observed that CBDT had issued various standard operating procedures under 'Operation Clean money'. ITAT opined that "...it is very important to note that whether the case of the assessee falls into statistical

analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money.”

6. *In the result the addition of Rs. 73.13 crore sustained by Ld CIT(A) on account of deposit of demonized currency was deleted by Hon 'ble ITAT.*

In appeal by the Revenue, the Hon'ble High Court Pr. CIT (Central)-3 V/s M/s Agson Global Pvt. Ltd. In ITA No. 68-73/2021 order dated 19-01-22 [(Copy at Case laws PB Page No 376-504] dismissed the bunch of appeals filed by the Revenue by observing in para 17.6 as under:

“17.6. Having regard to the extensive material which has been examined by the Tribunal, in particular, the trend of cash sales and corresponding cash deposited by the assessee with earlier years, we are of the view that there was nothing placed on record-which could have persuaded the Tribunal to conclude that the assessee had, in fact, earned unaccounted income i.e., made cash deposits which were not represented by cash sales. Therefore, in our opinion, the Tribunal correctly found in favour of the assessee and deleted the addition made by CIT(A) of Rs.73.13 crores, under Section 68 of the Act.”

(viii) ITAT Chandigarh in the case of Smt Charu Agarwal (Copy at Case laws PB Page No 505-574)& M/s Kalanidhi Jewellers Vs DCIT ITA No 310 & 311/Chd /2021 order dated 25/03/2022

The findings of Hon'ble ITAT is in para 10 of the order. Hon'ble ITAT after considering the decision of the Hon'ble Delhi High Court in the case of Pr. CIT (Central)-3 V/s M/s Agson Global Pvt. Ltd. In ITA No. 68-73/2021 and various other High Courts and decision of Hon'ble ITAT Vishakhapatnam Bench on identical issue in the case of ACIT v/s Hirapanna Jewellers (2021) 128 Taxmann.com 29 held that the assessee was maintaining complete stock tally, the

sales were recorded in the regular books of accounts and the amount was deposited in the bank account out of the sale proceeds, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified.

Sales made by the assessee to cover the cash deposited in the bank post demonetization, was sufficient source of the cash deposited i.e.; the sales from the existing stock available with the assessee and was well explained, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified. - Decided in favour of assessee.

(ix) 2021 (1) TMI 837 - ITAT Gauhati Nurul Islam Versus Ito, Ward-2, Nagaon
(Copy at Case laws PB Page No 352-354)

Addition u/s 68 - Cash deposits of special Bank notes of ₹ 500/- and ₹ 1000/- made during the demonetization period - According to Ld. A.R, a perusal of bank statement would reveal that there were regular bank deposits of cash and payment to the creditors (tea vendors) - HELD THAT:- As explained, the deposit of ₹ 8,75,000/- [₹ 2,00,000/-accepted by AO] cannot be said to be as result of non-genuine business receipt or a case of black money and therefore, in the peculiar facts narrated above, including the past history taken note of and the pattern of money deposited pre-demonetization and post that event as discussed, addition was not warranted and it is directed to be deleted; and further, profit embedded in ₹ 8,75,500/- need to be taxed @ 8% and it is ordered accordingly. Appeal of the assessee is partly allowed.

(x) 2021 (2) TMI 737 - ITAT Gauhati Nilkantha Saha Versus ITO, Ward-Morigaon (Copy at Case laws PB Page No 361-368)

Unexplained cash credit u/s 68 - cash deposited during the demonetization period - AO acknowledges that the assessee has filed audited accounts and produced copy of the ledger of the sales and purchases along with copy of the books related to the purchase and sales made by the assessee without supporting bills and invoices - HELD THAT:-As brought to notice by the Ld. A.R that assessee is into dry fish business and his accounts are audited for the last seven (7) years. - the profit embedded in sales amount has been accepted by the AO, so, question is whether separate addition is justified and whether this action of AO amounts to double addition of the same trading receipt.

No doubt in such a factual scenario, it amounts to double addition. When the justifiability of separate addition is to be examined, it should be borne in mind that the AO is making a 'guess' about the source of demonetized currency. And the assessee is assailing the 'guess work' with an explanation which should be tested; and if the explanation given by the assessee is a plausible/probable from a traders/business man's/prudent man's angle/view, then that cannot be brushed aside by the AO, without disproving the explanation / facts or by giving cogent reasons.

Statement of bank accounts of assessee (3 bank accounts) it is noted that assessee has deposited in his three bank account (pre-demonetization) an amount to the tune of ₹ 2,38,94,037/- and during (Post-demonetization period) the assessee had deposited to the tune of ₹ 2,38,94,037/- and it is found that the total bank deposit tally with the figure shown in trading account i.e., ₹ 4,76,78,990/- (₹ 4.76 crores). So taking into account all these facts and circumstances and demonetization being declared on the night of 8/9th November, 2016, it is noted that AO has accepted the invalid currencies to the tune of ₹ 11,08,796/- because it was shown by the

assessee in his regular books maintained as on 08.11.2016. The assessee's explanation in respect of ₹ 12,41,704/- is that it is the amount which has been deposited by the sundry debtors as on 08.11.2016 which is found to be correct for the reason that the sundry debtors as on 08.11.2016 was to the tune of ₹ 14,93,120/- as is evident from the list of sundry debtors .

So on the same reasoning as adopted by the AO to have accepted ₹ 11,08,796/- (invalid currency notes) as genuine (trade receipt), I find no reason not to accept the explanation of assessee that ₹ 12,41,704/- was deposited by the sundry debtors reflected in the books as on 08.11.2016. And since the AO has accepted the sales/turnover of the assessee which were reflected in the audited books of accounts, as well as the explanation of assessee is supported by material on record, the AO/Ld. CIT(A)'s action of addition of ₹ 12,41,704/- cannot be countenanced. So on this factual finding the assessee's explanation regarding ₹ 12,41,704/- is plausible. And it is noted that the AO / Ld. CIT(A) / Ld. D.R could not disprove or controvert this fact and so it is accepted. In the aforesaid facts and circumstances, the assessee depositing invalid notes to the tune of ₹ 12,41,704/- cannot be disbelieved as from any tainted source or termed as black money. So taking into consideration the peculiar over all facts and circumstances discussed supra, it is directed that the addition of ₹ 12,41,704/- be deleted - Appeal of the assessee is allowed.

(xi) 2021 (9) TMI 1192 - ITAT VISAKHAPATNAM DY. Commissioner Of Income Tax Circle-3 (1) Visakhapatnam Versus Sri Jaya Prakash Babu Valluri And(Vice-Versa) (Copy at Case laws PB Page No 369-375)

Cash deposits made during demonetization period, which was added back to income u/s 69A - HELD THAT:- CIT(A) observed that the assessee is maintaining regular books of accounts and the deposits were made out of the book balances and therefore, following the decision of Karthik Constructions [[2018 \(3\) TMI 39 - ITAT MUMBAI](#)] the Ld. CIT(A) held that there is no case for making the addition, accordingly deleted the addition.

(xii) Deepak Sharma v/s ACIT Circle 43(1) in ITA No. 2886/Del/2022 held as under:-(Copy at Case laws PB Page No 575-577)

We have heard both the parties and perused the records. At the time of hearing, Ld. Counsel for the assessee submitted that once the purchases declared in the books of account were accepted, there is no basis to treat the sales made out of such purchases as unexplained cash credits taxable under section 68 of the Act. It was further submitted that the cash deposits which has already declared in the return of income as part of total sales and that it amounts to double taxation of the same amount. It was further submitted that even assuming that the additions were warranted under section 68 of the Act, the Ld. CIT(A) has erred both on facts and in law in confirming the demand computed in accordance with rate specified in section 115BBE of the Act as amended by Taxation Laws (Second Amendment) Act, 2016. Ld. DR relied upon the orders of the authorities below. We find that Ld. CIT(A) has not disputed the sales made which were duly disclosed in VAT return and also in books of accounts maintained by the assessee audited and also under section 44AB of the Act, no adverse inference could be drawn in respect of the declared sales by the assessee. We further note that once the purchases declared in the books of accounts were duly accepted then no subjective assumption and presumption could be made a basis to assume, allege and conclude that sales made out of such purchases were unexplained cash credits taxable under section 68 of the Act. It is settled law that once the books of accounts, sales have been accepted, the same could not be regarded as unexplained credits. It is also noted that aforesaid sales as made by the assessee were supported by the availability of stock in the books of accounts whose availability is not disputed and is otherwise too supported by

genuineness of creditors and also sales bills maintained. In view of the aforesaid peculiar facts and circumstances of the case, we are of the considered view that addition in dispute confirmed by the Ld. CIT(A) deserve to be deleted. We hold and direct accordingly. So far as assessee's assessment u/s. 115 BBE of the Act is concerned, Hon'ble Madras High Court in SMILE Microfinance Ltd. vs. ACIT in WP(MD) no. 2078 of 2020 & 1742 of 2020 dated 19.11.2024 (Mad.) has already settled the issue against the department that the law applies to the transaction on or after 01.04.2017 only. Ordered accordingly.

Ld. AO made addition u/s 68 just to levy huge tax by applying the provisions of section 115BBE. As stated in the forgoing paras the whole purpose of the lower authorities to tax the cash deposited in demonetized currency at higher tax rate 77.25% by applying the provisions of section 115BBE read with section 68/69A of the Act to the income already offered for tax by the assessee (as cash sales). Section 115BBE of the Act is a machinery provision to levy tax on income and it should not enlarge the ambit of section 68/69A of the Act to create a deeming fiction to tax any sum already credited/offered to tax as income. Such recourse is unwarranted keeping in mind the objective to introduce section 115BBE of the Act was only to curb the practice of laundering of unaccounted money by taking advantage of the basic exemption limit. The reason and purpose of the provision was explained by the explanatory memorandum to the Finance Bill 2012 as under:-

1) "Under the existing provisions of the Income-tax Act, certain unexplained amounts are deemed as income under section 68, section 69, section 69A, section 69B, section 69C and section 69D of the Act and are subject to tax as per the tax rate applicable to the assessee. In case of individuals, HUF, etc., no tax is levied up to the basic exemption limit. Therefore, in these cases, no tax can be levied on these deemed income if the amount of such

deemed income is less than the amount of basic exemption limit and even if it is higher, it is levied at the lower slab rate.

2) In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, it is proposed to tax the unexplained credits, money, investment, expenditure, etc., which has been deemed as income under section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of 30% (plus surcharge and cess as applicable). It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.”

Thus, the intention of the Legislature behind introduction of section 115BBE was not to bring to tax genuine receipts already offered to tax as income by the Assessee at higher tax rates. Such an interpretation would lead to recurring attempts on the part of the revenue authorities to reject genuine explanations offered by the assessee with respect to sums credited/offered as income in its books as unsatisfactory solely to extort higher rates of taxes thereon u/s 115BBE of the Act. The lower authorities in exercising his powers u/s 68/69A of the Act is not vested with unfettered powers to reject any explanation as being not to his satisfaction merely on the basis of surmises and conjecture. The tax authorities are bound under law to act reasonable and just while framing any satisfactory opinion surrounding the explanation offered by the taxpayer. From the facts of the case at hand, it is clear that the lower authorities have acted unreasonably and capriciously in rejecting the genuine explanations offered by the Assessee in respect of the impugned cash deposits as unsatisfactory solely with the aim of fastening exorbitant tax liability on the assessee under the garb of section 68/69A of the Act.

Such recourse primarily hedged on surmises, conjecture, assumptions, presumptions and whims of the lower authorities is clearly unwarranted and the additions so made is unsustainable in the eyes of law and thus deserves to be quashed. The humble submissions of the assessee highlighting the glaring internal inconsistencies in the orders of the Id. AO/CIT(A) the repeated violations of the provisions of law by them are as under:-

i) The AO has treated the cash deposited in the banks during the demonetization period in demonetized currency as unexplained cash credits u/s 68 of the Act although the nature and source of the cash deposits being proceeds arising out of cash sales etc. is patently evident from the entries in the audited books of account of the Assessee.

Even, in the assessment order the Id. AO himself alleged that the assessee *maintained parallel unaccounted cash sales or any other business* and once the cash received are held to be from business, then no matter it is unaccounted or unaccounted, the provision of section 115BBE cannot be applied on such business receipts.

ii) It is not the case of the Department that the cash deposited in the banks during the demonetization period was in excess of what was available in the cashbooks. The fact that the cash deposits in banks were sourced out of cash sales is evident from the entries in the cashbooks.

iii) The books of account of the Assessee have been audited by an independent reputed auditor. The cash sales & receipts are duly supported by relevant bills, which were produced before the AO in course of the assessment proceedings, and nothing adverse in connection therewith was noted by the A.O.

Section 115BBE of the Act is applicable from 15.12.2016 and are not retrospective in operation. Without prejudice to our forgoing submission we may further submit that amendment provisions of section 115BBE of the Act as amended by the Taxation (Second Amendment) Act, 2016 are applicable from 15.12.2016 and are not retrospective in operation and therefore not applicable to the cash deposited in the bank prior to 15.12.2016. The Tax laws as the Taxation (Second amendment) Act, 2016 was amended on 15.12.2016 and received the ascent of President of India on the said date. It was submitted that though the amendment was applicable for assessment year 2017-18 but only on income referred to in said section pertaining to the date after 15.12.2016. As in case of the assessee, the cash in demonetized currency was lastly deposited on 23.11.2016 and accordingly at the material time, old provisions of section 115BBE were applicable. The amendment provisions are not retrospective in operation and are not applicable in the present case and therefore the ld. AO has been wrongly taxed the addition made u/s 68 of the Act by applying the amended provisions. In support of this the reliance is place on decision of Hon'ble Supreme Court in case of Karimtharuvi Tea Estate Ltd. vs. State of Kerala [1966] 60 ITR 262 (SC). (Copy at Case laws PB Page No 23-25)

“10. Now, it is well-settled that the Income-tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into, force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.

18. The Surcharge Act having come into force on September 1, 1957, and the said Act not being retrospective in operation, it could not be regarded as law in force at the commencement of the year of assessment 1957-58. Since

the Surcharge Act was not the law in force on April 1, 1957, no surcharge could be levied under the said Act against the appellant in the assessment year 1957-58.

The case laws cited by Id CIT(A) are on different facts and ratio laid down in these cases are not applicable for the assessee. None of the case is in relation to the fact that the assessee deposited cash in demonetised currency out of cash in hand in audited books of account which arises from cash sales for which the assessee holds sufficient stock.

8. On the other hand, the Id. CIT- DR vehemently argued and supported the order of the Id. CIT(A). She submitted that the assessee has not submitted all the details and evidences to justify the genuineness of cash sales. The assessee has not revealed the identity of buyers, their PAN and address and therefore, the same has been considered as unexplained credit. The sales pattern as observed by the AO is very much abnormal in the year under consideration and more particular in the Month Oct 2016 and from 01-11-2016 to 08-11-2016. She submitted that the Id AO has pointed out that the cash deposit in bank account by the assessee from 01-04-2016 to 08-11-2016 was Rs. 3,64,95,000/- which was almost similar to cash deposited by the assessee in previous year from 01-04-2015 to 08-11-2016 Rs. 3,67,24,500/- but it suddenly abruptly increased in the period 09-11-2016 to 31-12-2016 in comparison to Cash deposit in bank in the same period in previous year. The cash deposit in bank by the assessee during the period 09-11-2016 to 31-12-2016 was Rs. 7,09,50,000 which is abnormally high in comparison cash deposit in bank by the assessee Rs. 1,46,66,800/- from 09-11-2015 to 31-12-2015. As regards the strike in the month of March and April 2016 by jewellers, how it affected the sales of subsequent months, this has not been explained by the assessee with

evidence. The contention of lowering of gold price in Oct 2016 is not supported by evidence. The turnover of the previous year also does not justify the huge cash sales recorded during this year. It is the very much clear finding of the lower authority that there is abnormal pattern of cash sales in the period immediately before the demonetization and therefore, that sale has not been considered as explained. The assessee has not given any plausible reason for accumulation of cash. The assessee did not justify what prevented him to deposit the cash in bank on regular basis. The ratio laid down in the cases cited by Id CIT(A) clearly applicable to the case of the assessee.

9. We have heard both the parties and perused the materials available on record. It is noticed from the records that the assessee is engaged in the trading of gold jewellery and bullion items in name of M/s Kalakriti Jewellers and the place of business (Showroom) of the assessee is situated at 197, Johari Bazar, Jaipur, which is considered a hub for bullion and jewellery trading. The assessee filed his Income Tax Return on 27.10.2017 declaring of total Income of Rs. 11,74,830/-. The books of account of business concern of the assessee M/s Kalakriti Jewellers are audited by Chartered Accountant. The assessee filed copy of audit report and audited Profit and Loss Account and Balance sheet at Paper Book page 5 to 34. It is noticed from the records that the case of the assessee was taken up for scrutiny u/s 143(3) of the Income Tax Act 1961 based on computer assisted selection for scrutiny (CASS) and accordingly notice U/s 143(2) dated 13.08.2018 was issued through ITBA to the appellant (Copy at PB page 35-38). Thereafter, the Notice u/s 142(1) dated 28-08-2019 with query letter was issued (Copy at PB page 39-43). In compliance with the said notice the assessee submitted all the required details/Information through e-proceeding vide letter dated 18-10-2019 (Copy at PB

page 52-54). A further notice u/s 142(1) dated was issued on 14-11-2019 with a letter seeking comparative chart of cash deposit, month wise chart of cash sales and cash deposits and other details prescribed in the letter (Copy at PB page 44-48). In compliance with the said notice the assessee submitted all the required details/Information through e-proceeding vide letter dated 18-10-2019 (Copy at PB page 55-59). A further notice dated 07-12-2019 u/s 142(1) was issued with an Annexure seeking month wise details of sales and purchases (Copy at PB page 49-51). In compliance with the said notice the assessee submitted details vide letter dated 10-12-2019. (Copy placed at PB page 60). The assessee made further submission to Id AO vide letter dated 27-12-2019 (Copy placed at PB page 61-62) giving justification of Cash sales and also bringing to the notice of the Id AO that the department has carried out survey u/s 133A over the business premise of the assessee and has not found any incriminating material or evidence. The relevant para of the letter of the assessee is reproduced as below:-

“In continuation of our previous submission we may further submit that the assessee is issuing the sales bills for each and every sale. The sales bills are serially numbered. Therefore the genuineness of the sale of the assessee cannot be doubted because of the reason that the assessee could not change the sale bills issued prior to the date when the demonetization announced as the same had already been issued to the customers in the regular course of business in relation to sale made and without changing the sale bills of the previous dates the manipulation in sale is not possible.

The entire sales of the assessee are supported by the bills and duly verifiable from books of accounts & records. The assessee submitted the best possible details/information's/documents which required by your honour in which no specific defects has been pointed out. The data of sales of the particular month or day always cannot be remain same. The sales are genuine and supported by the proper invoices and properly shown in the VAT return, therefore, the same cannot be considered as fabricated or manipulated transactions. Further the sales of the assessee accepted by the Vat department also. The copy of VAT assessment order alongwith copy of annual VAT return is enclosed herewith. The copy of VAT return of all four quarter is also enclosed herewith

for your kind verification. The trading result i.e. sales, purchase and stock etc. completely verifiable from audited books of accounts including stock register wherein no defect has been pointed out. There is no positive material to prove that the cash sales of the assessee is not genuine.

2. ***It is also relevant to mentioned here that on dated 06.10.2017 the income tax department initiated survey proceeding on the business premises of the assessee u/s 133A of the I.T. Act, 1961. During the survey proceedings the department did not find any material/evidence which proved that the assessee was having any undisclosed income. The department did not find any major discrepancy in the books of account of the assessee. Further during the course of survey no material/evidence was found to prove that the cash deposited in demonetized currency was not from sales of goods but the same was from some other source.***

In view of above submission this is to submit that the sales as well as trading results of the assessee are completely verifiable from the books of accounts. No specific defects have been pointed out by your honour in the books of accounts so maintained by the assessee or details so submitted by the assessee. The purchases and sales are complete verifiable from books of accounts and as on the date of sale the assessee was having sufficient stock which is also verifiable from stock register of the assessee. Such deposits are duly verifiable from books of accounts of the assessee and the source of the same is sales made by the assessee.”

The assessee further filed a letter before the ld AO dated 28-12-2019 (Copy placed at PB page 63-64) explaining the reasons of high sales. Thus, in compliance to notices and query letters issued by the ld AO, the assessee filed all the details/information from time to time (Copy at PB page 52 to 64) along with copy of cash book (01-04-2016 to 31-03-2017), daily stock summary (01-04-2016 to 31-03-2017), copy of purchase register (01-04-2016 to 31-03-2017), copy of sales register (01-04-2016 to 31-03-2017), month-wise details of sales and purchases, copy of assessment order of VAT passed by Commercial Taxes Department and VAT returns at (Copy at PB page 65 to 302) . Further, the assessee filed before ld AO the copy of bank statement for the period 01-04-2016 to 31-03-2017 alongwith letter dated 18-10-2019 annexed as page no 38-119 with this letter. During the

year under consideration, the assessee deposited the amount of Rs. 7,09,50,000/- in demonetized currency i.e Specified Bank Notes (herein after referred as "SBNs") in his bank accounts which was part of sales declared in the Trading Account. The ld AO held that the cash sales of the assessee has increased abnormally and exceptionally more particularly in the month of Oct 2016 and from 01-11-2016 to 08-11-2016 and cash deposit in bank accounts in SBNs after demonetization of currency has increased abnormally which is not possible in normal course of the business and the assessee was engaged in the parallel unaccounted cash sales or any other business and has deposited his unaccounted cash in bank accounts in the garb of bogus sales. On the basis of average cash sales, the ld AO treated Rs. 32,91,000/- as explained money and balance Rs. 6,76,59,000/- (7,09,50,000-32,91,000) were held as unexplained u/s 68 of the Act taxed as provisions of section 115BBE of I.Tax Act. We noticed that the ld AO at one hand held that balance Rs. 6,76,59,000/- (7,09,50,000-32,91,000) as unexplained u/s 68 and on other hand in same para he held cash deposit amounting to Rs. 7,09,50,000/- are accepted as explained looking to the view of principle of natural justice and human tendency. When Rs. 7,09,50,000/- is held as explained than how Rs. 6,76,59,000/- can be held as unexplained.

It is noticed that the AO without considering the submission of the assessee and without considering the outcomes of survey u/s 133A of I.T.Act (conducted over the business premises of the assessee on 06-10-2017) had made an addition of Rs. 6,76,59,000/- in the total income of the appellant for the AY 2017-18 vide his Order u/s 143(3) dated 28.12.2019 on account of cash deposition in banks during the demonetization period by stating that it is an undisclosed income of the assessee and to evade the tax liability on this unexplained cash deposit and tried to

explain it under the garb of cash sales. Thus, cash deposited during demonetization was considered liable to be added to the total income of the assessee appellant, u/s 68 r.w.s 115BBE and taxable at the rate of 60% as per the provisions of the Act. When the matter carried to Id. CIT(A) who held that the sales through which cash of Rs. 6,76,59,000 was introduced in the books of accounts are unexplained and there is back-dated sales billing. The cash credit in the books of accounts in the form of sales is unexplained and taxable u/s 68 of the Act. The cash deposits being SBNs in bank accounts of the assessee during demonetization period amounting to Rs. 6,76,59,000 are unexplained and alternatively taxable under section 69A of the Act. At the same time, since the sales are found to be bogus to that extent, Rs. 6,76,59,000 shall be reduced from the sales shown by the appellant for the year.

As part of the business practice, appellant does both cash sales and sale through account payee cheque/online transfer. However, dealing in cheque is done only with customers known to the appellant as with unknown customers risk of non-realisation of money is usually high. Thus, considering the nature of trade and the inherent risk involved the appellant inevitably has to indulge in transactions of cash sale. It is noticed that in support of the addition made by Id AO and sustained by Id CIT(A) allegations against the assessee were made by Id AO that the assessee has manipulated books of account to adjust unaccounted cash, the assessee has unaccounted sales or have any other business, bogus sales were credited in books of account. The Id CIT(A) sustained the addition by alleging that the sales through which cash of Rs. 6,76,59,000 was introduced in the books of accounts are unexplained and there is back-dated sales billing. We noticed that in the wake of high cash deposited in demonetization currency, the department carried out survey u/s 133A of I.T.Act at business place of assessee just after 6 months from the

close of this Financial Year i.e on 06-10-2017, but no any incriminating material/document was found as the result of survey u/s 133A of the Act to show discrepancy in stock, cash, sales, purchases, and expenses and books of account. The assessment of survey year i.e. AY 2018-19 was completed u/s 143(3) of the Act on 15-04-2021 at returned income. (Copy of assessment order at PB page 301-302). The copy of replies/explanation filed before the ld AO during the assessment proceedings of Survey Year AY 2018-19 is placed at PB page 388-396. The copy of the statements of the assessee recorded u/s 133A is placed at PB page 382-387. During the survey proceedings the department did not find any positive material/evidence to show that the assessee was having any source of undisclosed income or sales of the assessee was not genuine. The department did not find any unaccounted qty. of stock or excess cash in hand which shows that the assessee was carrying any unaccounted business activities. Had the fictitious sales were recorded in stock register i.e. outgoing of stock recorded without actual outgoing of stock then the excess stock would have been found in the survey but no excess stock was found as the result of survey, which proved that no bogus sales were recorded. For example if the assessee purchases 1kg gold and entered as inward in stock register. The stock register would show the balance of Gold in hand 1 kg. If fictitious sale of 1 kg is recorded in stock register by making entry of 1 kg in outward side of stock register, the stock register would show NIL Balance. Since the sales recorded is fictitious, the physical stock of 1 kg gold would be lying in the business place of the assessee against NIL stock in stock register, and if physical verification of the stock is made an excess stock by 1 kg would be found. In the assessment order of AY 2018-19 (i.e. survey year) no addition was made and returned income was accepted passed u/s 143(3) of the Act. Had the source of cash deposit in demonetized currency would be the undisclosed income of the assessee

and not the sales made by assessee, then obviously during the course of survey the department must have found major discrepancies in physical stock, cash and documents but the same was not found. This also shows that the cash deposited in bank in demonetized currency is actually accumulated Cash with assessee from the sales of previous period and the same was duly recorded in his books of accounts. The allegation that the assessee maintained parallel unaccounted cash sales or any other business, bogus sales, back-dating of sales is without any basis and in hypothetical manner, proved to be fallacious by the outcome of the Survey u/s 133A of the Act. In the assessment order/CIT(A) order the Id AO/ Ld CIT(A) could not adduce any single evidence or even a single instance to prove this allegation to be correct. It is worth to point out that the assessment proceeding was made after being carrying out the survey proceeding at the business premises of the assessee and despite of not finding any evidence in Survey u/s 133A this hypothetical allegation was posed. All the allegation such as unaccounted cash, bogus recording of sales, unaccounted sales from parallel business, back dating of sales, fabrication of books of account etc proved to be fallacious on physical verification of business place of the assessee by department by conducting survey u/s 133A of I.Tax Act. The department conducted survey much before the completion of assessment. The assessment was completed on 28-12-2019 and whereas the survey u/s 133A was conducted on 06-10-2017 and despite of not finding any evidence on physical verification of business premises, these hypothetical allegations were posed without any basis -rather survey proved by evidence that the assessee is maintaining regular books of account and does not have any source of generation of cash from undisclosed income.

Moreover, the assessee has regularly made cash sales during the preceding years also which is sufficient to prove that the accounts of the assessee are not

fabricated. Merely because there is significant cash deposition during the demonetization period cannot be the ground for rejecting such cash sales more than when the sufficient stock was available with the assessee and purchases of the assessee are not in doubt. From the stock records, purchase register, and sales register it is beyond doubt that the assessee-appellant had sufficient stock to conduct such cash sales. There is no reason for drawing such presumption that the appellant under the garb of such cash sales had attempted to convert his undisclosed income to disclosed income when the same is supported by delivery of goods, availability of stock, purchases is genuine and no discrepancy in stock, cash and documents was found as the result of survey u/s 133A of the Act. Further, the assessee's books of account are audited by Chartered Accountant, who has certified the correctness of the books of account. The cash balance of Rs. 7,09,65,744/- as on 08-11-2016 was available in the audited books of account. The assessee has produced Copy of the cash book before the AO and CIT(A) for the period 01-04-2016 to 31-03-2017. The lower authorities have not pointed out any defect in the cash book except observing by Id CIT(A) that cash book showing daily balance was not produced but the fact remains that lower authorities never demanded to furnish the copy of the cash book showing daily cash balance. We noted from the copy of the cash books produced before the lower authorities that it is computer generated and if asked to produce the cash book showing daily cash balance, the same could be easily submitted to Ld AO/Ld CIT(A). The assessee submitted the copy of sales register for the period 01-04-2016 to 31-03-2017. The CIT(A) on the basis of 5 cancelled entries on 08-11-2016 against Invoice No 720 to 724 concluded that the assessee was tinkering the sales register. The A/R of the assessee has explained that the Id CIT(A) drawn the adverse conclusion without providing opportunity to explain the matter. The Id CIT(A) never raised any query

to the assessee in this regard. We noticed that except these five cancelled entries on 08-11-2016, there is no any alternation/modification in the Sales Register. The sales invoices are serially numbered and properly entered in the sales register. We agree with the explanation of A/R of the assessee that the cancelled entries are due to genuine human error but the fact remains that all the invoices are serially numbered and tinkering in sales register was not possible without changing the serial number of sales invoices which have already issued to the various parties also. Rather, the 5 cancelled entries show that the assessee is maintaining the books of account in regular course of the business. If the accounts were fabricated then no such cancelled entries would found in sales register which were prepared on computer. The submitted the daily stock summary for the period 01-04-2016 to 31-03-2017 before the Id AO and CIT(A), both the lower authorities have not pointed out any specific defect in the stock summary submitted by the assessee. However, the Id CIT(A) held that the stock register was prepared by assessee himself and found to be incorrect and not reliable in view of the fact that bogus sales were recorded in the stock register. We held that this is not a valid ground to reject the stock register without pointing out any specific defect. The department has carried out physical verification of stock by conducting survey u/s 133A of the assessee on 06-10-2017 and on physical verification no discrepancy in stock was found. If the fictitious entries against the sales of the goods were made in the stock register, than excess stock (i.e physical stock more than the book stock) would be found as the result of survey u/s 133A of the Act but no such excess stock was found on physical verification of stock made by the department by entering into the business premises of the assessee. The allegation of Id CIT(A) as regard the recording of bogus sales is not based on material or evidence but on presumption and assumption. The daily stock summary clearly shows that the sales of the goods

were made out of the stock in hand available in stock register. The assessee has produced purchase register before the lower authorities. The Id AR submitted that all the purchases are from regular and established parties and supported by the bills and invoices and there is no cash purchase except in few cases that too for minor amount. We notice that the lower authorities have not pointed out any defect in the purchase register and has not doubted on the genuineness of the purchases recorded in the books of account. We further note that once the purchases declared in the books of account were duly accepted then no subjective assumption and presumption could be made a basis to assume, allege and conclude that sales made out of such purchases were unexplained cash credit under section 68 of the Act. We further notice that the assessee has filed copy of Vat Assessment Order (PB page 267-272), Annual Vat returns for the period 01-04-2016-31-03-2017 (PB page 273-276) and quarterly return from 01-04-2016 to 30-06-2016 (PB page 277-282), from 01-07-2016 to 30-09-2016 (PB page 283-288), from 01-10-2016 to 31-12-2016 (PB page 289-294) and 01-01-2017 to 31-03-2017 (PB page 295 to 300). Lower authorities have not disputed the turnover declared in the Quarterly and Annual Vat Returns. However, the Id CIT(A) held that Vat Return for Oct 2016 to Dec 2016 (3rd Quarter) was filed after demonetization and was filed on 28/08/2017, Vat Return of Ist Quarter 01-04-2016 to 30-06-2016 was filed in August 2017 and Annual Return for FY 2016-17 was filed on 27-03-18. On the basis of late filing of the Vat returns he held that originally the turnover of the appellant was below VAT limit and later on VAT return was filed showing increased turnover to artificially introduce the cash in the books of account. We noticed that the Ld CIT(A) has ignored the actual date of filing of Vat Returns as mentioned in Vat Assessment Order (PB 267). In the VAT assessment order, the date of filing of Vat Returns is mentioned as under:-

Quarter	Due Date	Date of Submission	Delays
1	31-03-2018	30/08/2016	0
2	31-03-2018	14/12/2016	0
3	31-03-2018	11/02/2017	0
4	31-03-2018	16/05/2017	0
VAT Form 10A	31-05-2018	27/03/2018	0

The date of filing mentioned in the Vat assessment order clearly demonstrate that the assessee has filed VAT returns before the due dates. The Vat return of the third quarter was filed on 11/02/2017 as against 28/08/2017, Vat Return for 1st Quarter was filed on 30/08/2016 as against Aug 2017 mentioned and alleged late by Id CIT(A) and Annual Vat Return was filed on 27-03-2018, which was within due time. Thus, the finding of Id CIT(A) is totally based on wrong facts and on presumption and assumption without examining the records placed before him.

The addition under section 68 on account of cash deposits could not be made simply on the reason that during the demonetization period, cash deposits vis-à-vis cash sales ratio was higher. If customers purchased jewellery in cash which has been duly recorded in the books of account of the Appellant and also tallying with the availability of stock, then simply because there were huge cash sales in that particular period cannot be the reason for treating it as undisclosed income from undisclosed sources. To this effect we get support from the decision of our own Jurisdictional Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordia v. ITO [2008] 298 ITR 349 (Raj) wherein it has been held that "Addition u/s 68 could not be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them". The bench also noticed that Id. CIT (A) contentions are only based on conjectures and surmises and are devoid of any merit of the case of the assessee-appellant. Further,

the income of the assessee has to be computed by the AO based on available material on record and it is very important to have direct evidence to make an addition rather than circumstantial evidence, probabilities or possibilities. It is duty of the AO to examine the same in the light of the available evidence. In the instant case, the AO and the Id. CIT(A) concluded the findings based on conjectures and surmises even ignored the outcome of survey conducted by the department u/s 133A on 06-10-2017. There cannot be better evidence more than the outcome/result of physical verification of business premises by the department. The AO has to establish the link between the evidence collected by him and the addition to be made. The entire case has to be depend on the rule of evidence, the assessee in this case explained the source of bank deposits is from cash sales and the same cannot be added u/s. 68 as held in the case of Smt. Harshila Chordia v. ITO (Supra). The allegation made by Ld. CIT (A) and Ld. AO regarding the fabrication of cash sales transactions on the assessee is without any basis, documents or any supporting evidence. The finding of A.O. that assessee could not substantiate an increase in cash sales with documentary evidence is based only on suspicion, guesswork and surmises which cannot be sustained in law. Merely because there was a variation in the cash sales during the alleged period compared to the previous year would not mean that the Assessee has inflated his cash sales to cover up his undisclosed income. The another contention of the department is that the total turnover of the assessee has increased substantially as compared to the previous year and the majority of the turnover is from cash sales during the year and that too during the Month Oct 2016 and 01-11-2016 to 08-11-2016 and that the assessee has not submitted any details like the name, address PAN No. of the buyer to establish the genuineness of high cash sales during the year under consideration and cash sales shown by the assessee during the year is unrealistic as

corresponding amounts of cash deposits were not found in earlier years is not tenable. The appellant did not collect the details of the customers such as PAN No., name and address in respect of the cash sales below Rs. 2 lakhs as it was not required as per law. The appellant assessee, during the festive season of Diwali from 28.10.2016 to 30.10.2016, had made significant cash sales of Rs.2,00,48,463/-and after Diwali (from 31-10-2016 to 08-11-2016) Rs. 5,47,76,015.28. The assessee explained that on 08-11-2016 i.e. on the day of demonetization there was no sales as his shop remained closed because of the ceiling of shop was fallen down in the night of 07-11-2016, and this fact is also evident from the sales register wherein no sale is recorded for the date 08-11-2016 to 15-11-2016 (PB page 260) and cash sales was also not recorded from 08-11-2016 to 03-01-2017 as the Sale Counter of the show room was not in operation. The sale of assessee from 28-10-2016 to 07-11-2016 were before demonetization and that too out of genuine stock available with the assessee so the same cannot be doubted on presumption and assumption without having any evidence. The another contention of the Ld. CIT (A) that the assessee has not given the PAN No , address and identity of the buyers were not disclosed to the ld AO. There is no prohibition under the law to make sale transactions not exceeding Rs. 2 lakhs without PAN, address and identity. The assessee by selling the goods in cash did not violate any of the provisions of the Income-tax Act, 1961 and Ld. CIT (A) has not mentioned any provisions of the Act/Rules which having been violated by the assessee while undertaking such cash sales without PAN and address. Moreover, cash sales made by the Appellant were duly supported by valid invoices, out of the genuine purchases and stock available and the books of accounts were duly audited by the Chartered Accountant. Therefore, due to non-furnishing of address and PAN of the customer, the sale made by the assessee cannot be doubted.

The cash sales of the previous months, previous years and next month or years was also made on the same set of particulars, documents and records. The lower authorities have doubted only the sales made and utilized for depositing the demonetized currency (SBNs). We noted that during the FY 2016-17, the total cash sales of the assessee were Rs. 11,51,99,917/- and total cash deposits in bank were Rs. 11,67,95,000/-. The lower authorities treated the cash deposit in bank account to the extent Rs. 4,91,36,000/- as explained and Rs. 6,76,59,000/- as unexplained. The assessee is maintaining same set of records on entire cash sales. On the same set of documents, on the same facts and circumstances sales of the previous year was accepted as genuine and part of the cash sales of during the FY 2016-17 of Rs. 4,91,36,000/- were also treated as genuine sales and taxed at normal rate of taxation as business receipts and part of the cash sales Rs. 6,76,59,000/- was treated as unexplained cash credit u/s 68 of Id AO and CIT(A) and alternatively unexplained money etc u/s 69A as held by the Id CIT(A) and taxed as special rate of taxation u/s 115BBE. The only basis of different treatment by lower authorities was nature of currency i.e. SBNs deposited in bank. Whatever deposit was made in bank accounts in legal tendered currency was treated as explained and whatever deposit was made in demonetized currency (SBNs) was treated as unexplained. Thus, the lower authorities are blowing hot and cold in same stream accepting and rejecting the explanations offered by the assessee with respect to the transactions of identical nature at their sheer convenience merely on the basis of surmises and conjecture without any evidence or material on record and also ignoring the outcome of survey u/s 133A conducted by the department. The Id CIT(A) noticed the cash withdrawal by the assessee from bank Rs 3,00,000/- on 06-08-2016 and Rs 5,00,000/- on 08-09-2016 and held that the cash withdrawal by the assessee inspite of cash in hand in cash book which shows that

the assessee actually did not have cash balance as shown by cash book. We agree with the contention of Id AR that the Id CIT(A) has not provided even an opportunity to explain the reason of cash withdrawal on these two dates by the assessee and without providing an opportunity to explain the matter, an adverse inference drawn against the assessee which is against the principle of natural justice. The AR of the assessee submitted that the assessee has specific reasons for non-depositing the cash immediately in his bank accounts, which was that the assessee had huge unsecured loans from several parties and some of them were pressurizing to the assessee for repayment of loans prior to their agreed due date. The assessee is under apprehension that if he deposits the cash in bank account and maintains the balance in bank account, the loan creditors may lodge the undated cheque, which given to them as a security of loan, and may withdraw the funds from bank account. This would lead to disturb the entire liquidity of the business and planning of the assessee. Therefore, the assessee deposited the cash in bank account as and when he required in the bank account for getting clear the cheques issued or to be issued towards purchases of Gold, Gold Jewellery and expenses. This fact is well apparent from the books of accounts of the assessee on examination of which it reveals that mostly cash deposited in the bank account was utilized for making the payment towards purchases of Gold & Gold Jewellery and some minor towards payment of expenses etc. This was also a reason of cash withdrawal by the assessee from bank Rs 3,00,000/- on 06-08-2016 and Rs 5,00,000/- on 08-09-2016 as he do not want to maintain balance in bank account. We find that the reasons advanced by the Id AR is a plausible explanation and decision to keep the cash in hand or to deposit on bank is decision of the person who is dealing to such affairs and the department cannot put its step into the decision of businessman and each transaction should be analysed with the point of

view of the businessman, generally prevailing practice in the trade and its acceptability in the eye of law. A transaction cannot be treated as non-genuine for wants of the details which are not required to obtain and keep as per the law.

We noticed that the Ld. AO mentioned that the assessee manipulated the books of account to adjust his unaccounted cash and he made such findings without having any material and evidence. However, he has not made any specific finding for rejection of books of account. However, the Id CIT(A) rejected the books of account of the assessee on the ground unreliable and unexplained very high cash holding immediately before demonetization, abrupt abnormal cash sales and all such cash sales without PAN details in small amounts. The books of account cannot be rejected on these grounds. Further provisions of section 145(3) cannot be applied as no finding of Ld. A.O. as well as of CIT(A) on the ingredients of section 145(3) of I. Tax Act and no specific defect was pointed out by lower authorities. To apply the provisions of section 145(3) of Income Tax Act, there must be finding on the ingredients of section 145(3) of I. Tax Act that : -

- a) books of account are not correct or incomplete or
- b) the assessee is not following the proper method of accounting regularly or
- c) not following the accounting standards notified by Central Government.

In the case of the assessee, there is no such finding of the Ld. A.O. as well of Ld. CIT(A). It is also pertinent to mention here that except to raising some suspicious and doubt on the correctness of the sales recorded in books of accounts

no any specific defect was pointed out. The assessee submitted complete audited books of account with vouchers and stock register. The lower authorities have not pointed out any unverifiable purchases or unvouched expenses or unaccounted receipts. They have also not pointed out any defect in method of accounting/accounting standards followed by the assessee. There no plausible and cogent defects have been pointed out in the books of accounts, which may conclusively lead to doubt regarding the genuineness and correctness of books of accounts and all the findings is based merely on guess, probabilities or possibilities and on these grounds the books of account of assessee cannot be rejected that too without considering the outcome of Survey u/s 133A of the Act. Further in case where the books of account are rejected than the assessment order has to be passed u/s 144 of the Act but in the case of the assessee assessment order was passed u/s 143(3) of the Act. The ld CIT(A) so far has not been able to give any reasons why the entries in the books of account should be disbelieved. The assessee maintains proper books of account on mercantile basis. The books of account are audited by Chartered Accountants under Income Tax Act. The auditors have certified that proper books of account as required by law have been kept by the assessee and books of account give a true and fair view of profit. Therefore, the rejection of the books of account by ld CIT(A) cannot be upheld. Verification of cash sale cannot be a valid ground to reject the books of account. We find supports from the following decisions:-

i) Hon'ble High Court of Bombay in the case of R.B. Jessaram Fatehchand (Sugar Dept.)v/s Commissioner of Income Tax [1970] 75 ITR 33 (Bombay) held that (Copy at Case laws PB Page No 75-78) :-

Section 145 of the Income-tax Act, 1961 [Corresponding to section 13 of the Indian Income-Tax Act, 1922] - Method of accounting - Rejection of accounts - On assessee's inability to supply addresses of purchasers who purchased goods on cash, ITO rejected assessee's books of account showing result in respect of cash sale transactions, and made addition - AAC deleted additions but Tribunal restored ITO's orders - Whether there was no necessity whatsoever for assessee to maintain addresses of cash customers - Held, yes - Whether, therefore, rejection of book results of assessee was unjustified - Held, yes - Whether, consequently, additions made to assessee's income were liable to be deleted - Held, yes

ii) Hon'ble ITAT Jaipur Bench in the case of ACIT Circle-1 Jaipur Vs M/s Uttam Chand Deshraj (ITAT Jaipur Bench ITA No 419/JP/2010 Order dated 25/03/2011) (Copy at Case laws PB Page No 117-120) has made following findings as regard cash sales.

“Making some sales in cash is also no ground for rejecting the books of account. There should be some material that cash sales made by assessee either on account of sale on a lower price or sale made out of the material which is not shown in the books of account. There is no instance that cash sales have been made on lower rate than prevailing market price. In view of these facts and circumstances, we hold that there was no justification in rejecting the books of account and disturbing the trading result.”

(iii) Suwalka and Suwalka Properties And Builders Pvt. Ltd. Versus Asst. Commissioner of Income Tax, Central Circle, Kota 2024 (10) TMI 425 - ITAT JAIPUR in ITA No. 302/JP/2024 Dated: October 3, 2024 (Copy at Case laws PB Page No 264-328)

Rejection of books of accounts u/s 145 - Addition u/s 68/69A with 115BBE - cash deposited during demonetization as unexplained credit - HELD THAT:- As is not disputed that ld. AO has not rejected the books and not

passed order u/s. 144. Ld. CIT(A) has done so based on the mere surmise and conjecture as noted herein above. As is also evident from the orders of the lower authority that the assessee has produced all the details that has been required by the AO and they have not found the records defective.

Merely the AO and the ld. CIT(A) made suspicions on the records of sales of stone that too on account of rocky land excavated and thereby sold stone so excavated. Relevant receipt is reflected in the books of accounts. Out of the sum of received part of the amount considered as explained and part of the same as not genuine for the same set of records.

We note that the CIT(A) has not advanced single a reason or basis of rejection of the book results which are otherwise verified, and no defects were found by the ld. AO and ld. CIT(A) and that when ld. AO and CIT(A) has already considered the part of the amount deposited into the bank account as business receipt and the part of the same was not considered.

CIT(A) has not satisfied the condition as required as per provision of section 145(3) of the Act and that too without pointing out any defects in the books of accounts. The ld. CIT(A) merely rejected the book results because the assessee deposited cash in demonetized currency, and that was the reasons to reject the book results which is not a valid reason to invoke the provision of 145(3).

Section 145(3) can be invoked when the AO is not satisfied about the correctness or completeness of the accounts of the assessee, when the method of accounting provided in Section 145 (1) has not been regularly

followed by the assessee and when the accounting standards notified u/s 145 (2) have not been regularly followed by the assessee.

From the observations recorded in the order of the lower authority none of the conditions are satisfied and thus same is not evident from the finding of the lower authority. Not only that the bench also observed that when the provision of section 145(3) is to be invoked the assessment is to be completed as per the manner provided in section 144 and the proper opportunity is required to be given by pointing out the defects in the books of account which we observe that the same is not followed and the order is passed u/s.143(3) of the Act which is also not correct. We get strength to support our view based on the provision of the Act and decision of the Hon'ble Jurisdiction Rajasthan high court in the case of CIT Vs. Pink City Developers [2017 (11) TMI 1082 - RAJASTHAN HIGH COURT]

Here we note that out of the sales of wort partial amount was not considered as genuine because the assessee out of those sales deposited the amount in the specified bank notes. Thus, on the same set of records revenue was satisfied for sales hold a view that the assessee has not maintained proper sales records and therefore invoked the provision of section 145(3) of the Act is not correct. Ld. AO or that of ld. CIT(A) has not considered it fit to make the verification of the contention at the place of business / site to verify the contention and thereby tried to collect the corroborative evidence and without doing so part sales is accepted and part not is not correct reasons to reject the books of accounts. Based on these observations ground no. 1 raised by the assessee is allowed.

(iv) Motisons Jewellers Ltd Vs ACIT ITA No 178/JP/2022 order dated 29/09/2022. Hon'ble ITAT at page 123 of its order held that (Copy at Case laws PB Page No 121-173)

“Hence, looking into the entirety of the facts, circumstances of the case and the case laws cited by the AR of the assessee (supra), we allow the appeal of the assessee by holding that the rejection of books of account on the basis of insignificant defects in all respect, is not justified and books of account deserves to be accepted. Before invoking the provisions of Section 145(3) of the Act, the AO has to bring on record material on the basis of which he has arrived at the conclusion with regard to correctness or completeness of the accounts of the assessee or the method of accounting employed by it. In the instant case, it was not the case that the assessee had not followed either cash or mercantile system of accounting. It was also not the case that the Central Government had notified any particular accounting standard not followed by assessee. Further the assessee maintains proper books of account audited by Chartered Accountant and the profit may be derived from the audited books of account therefore there is no justification in estimation of income by applying NP rate and accordingly the lower authorities are directed to delete the addition of Rs. 47,72,297/- sustained by Id CIT(A).”

We noticed that the Id CIT(A) has held that the assessee has recorded bogus sales to the extent Rs. 6,76,59,000/- which shall be reduced from sales shown by the appellant for the year. At the same time, he has accepted all the other entries of books of account such as purchases, expenses, stock etc. We agree with the contention of Id AR that if on the basis of this finding, the trading account of the assessee is re-casted, it will result trading loss of Rs. (-) 5,39,05,239.88 which will give GP rate of (-) 36.10%. Considering the facts and circumstances of the case and trade practice, we hold that the recalculated trading result on the basis of

findings of Id CIT(A) will give impractical, unreasonable and unfeasible trading result.

The genuineness of the sales was doubted by lower authorities merely on the basis of presumption, assumption, suspicious but it is a credential principal of law that such presumption, assumption and suspicious cannot supersede to valid documentary evidences more so when in the case of the appellant, the department has entered in the business premises of the assessee on 06-10-2017 by conducting survey u/s 133A of the Act just after the 6 months from close of the year and physical verification of cash, stock and documents were made and found nothing incriminating against the assessee. It may be noted that the judgements relied upon by the Id CIT(A) in the impugned order are clearly distinguishable and not applicable considering the facts of present case, The Id AR of the assessee distinguished the case laws cited by CIT(A) in the table below which we have gone through.

Detail of case law relied by CIT (A)	Facts of the case decided by CIT (A)	Differentiation of facts of the case of assessee
CIT v. P. Mohanakala [2007] 161 Taxman 169 (SC)/[2007] 291 ITR 278 (SC)/[2007] 210 CTR 20 (SC)[15- 05-2007]	<p>1. In this case the assessee received the Gift from several foreign donors. The Tribunal confirmed the addition after noticing that <i>the letters exchanged "by the person who had sent foreign exchange to the assessee only indicate that there is no love and affection between them and that he is clearly materialistic.</i></p> <p>2. Further, the addition was made in the light that the sum so received were not shown as income and thus such receipts were examined with the view point of section 68 of the Act.</p>	<p>1. In the case of the assessee there is no conclusive evidence and finding that sales made by the assessee is not real. No defects have been pointed in the documents submitted by the assessee and further from the record it is well proved that the assessee was in the capacity to made the sales.</p> <p>2. In the case of the assessee the sale was already declared by the assessee as income and the same was part of the sales declared in the trading A/c, therefore</p>

		provisions of section 68 are not applicable on sales transaction.
Nemi Chand Kothari v. CIT [2004] 136 Taxman 213 (Gauhati)/[2003] 264 ITR 254 (Gauhati)/[2003] 185 CTR 635 (Gauhati)[02-09-2003]	In this case the assessee took the unsecured loans and the additions has been made u/s 68 of the Act. Thus, the entire finding of the case it was given by keeping in mind the applicability of provisions of section 68 of the Act on the loan transaction.	In this case the impugned transaction is regarding the sale. Thus, the nature of transaction is all together, therefore finding given in the case dealing with the loan transaction cannot be made applicable in this case because the nature of both the transaction is entirely different. Further, the provisions of section 68 are not applicable on sales transaction.
CIT v. Precision Finance (P.) Ltd. [1995] 82 Taxman 31 (Calcutta)/[1994] 208 ITR 465 (Calcutta)/[1994] 121 CTR 20 (Calcutta)[14-06-1993]	In this case the assessee took the unsecured loans and the additions has been made u/s 68 of the Act. Thus, the entire finding of the case it was given by keeping in mind the applicability of provisions of section 68 of the Act on the loan transaction.	In this case the impugned transaction is regarding the sale. Thus, the nature of transaction is all together, therefore finding given in the case dealing with the loan transaction cannot be made applicable in this case because the nature of both the transaction is entirely different. Further, the provisions of section 68 are not applicable on sales transaction.
CIT v. M. Ganapathi Mudaliar [1964] 53 ITR 623 (SC),	In this cases, certain amounts were received by the assessee and in support of explanation of source of such receipts the assessee could not produce any accounts and evidence. Thus, the explanation given by the assessee was not subject to verification from the documents/evidence and on account of this failure on part of the assessee the addition was made.	The assessee submitted the ample documents as well audited books of accounts, which shows that cash received by the assessee was actually sale proceeds also supported by availability of stock at the time of sale. No defects were pointed out in such documents.
A. Govindarajulu	In this cases, certain amounts	The assessee submitted the

Mudaliar v. CIT [1958] 34 ITR 807 (SC).	were received by the assessee and in support of explanation of source of such receipts the assessee could not produce any documents and evidence. Thus, the explanation given by the assessee was not subject to verification from the documents/evidence and on account of this failure on part of the assessee the addition was made.	ample documents as well audited books of accounts, which shows that cash received by the assessee was actually sale proceeds. No defects were pointed out in such documents. Thus, the explanation of the assessee is well supported by the documents and books of accounts and further the assessee was in the capacity to made the sales.
Hon'ble Supreme Court in the case of Sreelekha Banerjee v. CIT [1963] 49 ITR 112	In this case the ITO pointed out that although the business of the assessee was large and the withdrawals from the various banks were large and frequent, he had not maintained a central account showing withdrawals from the banks and remittances made to his various businesses, and that none of the books maintained by the assessee, and produced by him, contained a bank account. The ITO found a discrepancy in the statements filed by the assessee.	In the case of assessee, the complete books of accounts and documents were produced before Ld. A.O., wherein no defect has been pointed out and solely on the basis of presumption and assumption, unreasonably the genuine sales of the assessee were treated as bogus.
Renu T Tharani vs Dy Commissioner of Income Tax in ITA No. 2333/Mum/2018	In this case the assessee was having an overseas bank a/c and she did not submit any explanation regarding the source of deposit in such bank a/c and the entire finding was given by the Tribunal on this background.	In the case of assessee, the complete books of accounts and documents were produced before Ld. A.O., wherein no defect has been pointed out and solely on the basis of presumption and assumption, unreasonably the genuine sales of the assessee were treated as bogus.
Durai Murugan Kathir Anand v. Additional Commissioner of Income-tax [2022] 136 taxmann.com 70	In this case, a third person made a sworn statement and owned up the cash found in the premises of petitioner. Such third person also filed an application before the	This is not the case of the assessee and the assessee own up the cash and explained the source of the same with documentary evidence, which has not been conclusively

(Madras)/[2022] 443 ITR 423 (Madras)[25-02-2022]	Settlement Commission. However, such sworn statement was rejected by the Hon'ble High Court as per Preponderance of Probability and for the reason that such person was not a person of sufficient mean and also produced any records to substantiate that cash belonged to him. Moreover, documents pertaining to college/trust of assessee found along with seized cash indicated that cash belonged to assessee which was not disclosed by assessee in his regular return.	disprove by the lower authorities. Thus, the explanation of the assesses is well supported by the documents and books of accounts and further the assessee was in the capacity to made the sales.
Vivek N. Jajodia v. Income-tax Officer, 16(2)(2), Mumbai [2011] 10 ITR(T) 581 (Mumbai)/[2010] 123 ITD 136 (Mumbai)/[2010] 134 TTJ 806 (Mumbai)[23-01-2009]	<p>1. In this case, the addition was made in the light that the sum so received were not shown as income and thus such receipts were examined with the view point of section 68 of the Act.</p> <p>2. The addition was made in the background fact that no documentary evidence was filed except confirmation letters from donors.</p>	<p>1. In the case of the assessee there is no conclusive evidence and finding that sales made by the assessee is not real. No defects have been pointed in the documents submitted by the assessee and further from the record it is well proved that the assessee was in the capacity to made the sales.</p> <p>2. In the case of the assessee the sale was already declared by the assessee as income and the same was part of the sales declared in the trading A/c, therefore provisions of section 68 are not applicable on sales transaction.</p>
Konathala Nooku Naidu v. Income-tax Officer, Ward-1 [2024] 160 taxmann.com 758 (Visakhapatnam - Trib.)[18-03-2024] [I.T.A.	In this case the source of cash deposited by the assessee is explained that he earlier withdrawn the same from his bank account out of the funds received by him as a loan. However, the assessee has not	In the case of assessee, the complete books of accounts and documents were produced before Ld. A.O., wherein no defect has been pointed out and solely on the basis of presumption and

No.269/Viz/2023]	properly explained as to why the loan was availed by the assessee and for what purpose he has withdrawn the same. Thus, in absence of this plausible explanation the addition was made in this case.	assumption, unreasonably the genuine sales of the assessee were treated as bogus.
Kailash Swaroop Agarwal vs Commissioner of Income Tax, Ajmer in D.B. Income Tax Appeal No. 175 / 2012 in order dated 03/10/2017	This case relates to acceptance of loan in cash and the entire finding has been given in such background.	The case of the assessee is related to cash sales from the stock in hand, which has not been proved as bogus and also such sale is declared in the trading a/c.
CIT v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC)[01-08-1968,	The case law was decided in the light of unexplained cash credit, which was not part of the trading results declared by the assessee.	The case of the assessee is related to cash sales from the stock in hand, which has not been proved as bogus and also such sale is declared in the trading a/c.
Roshan Di Hatti v. Commissioner of Income-tax [1977] 107 ITR 938 (SC)[08-03-1977]	In this case the question was with court to decide whether stock in trade etc. introduced in the books of account of its business, the assessee was still required to “to prove satisfactorily the nature and source of these assets” and in the event of failure to prove these, the revenue could legitimately hold that these assets represented the undisclosed income of the assessee	The case of the assessee is related to genuineness of the cash sales from the stock in hand, which has not been proved as bogus and also such sale is declared in the trading a/c.
Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC)[08-02-1963]	The case law was decided in the light of unexplained cash credit, which was not part of the trading results declared by the assessee.	The case of the assessee is related to cash sales from the stock in hand, which has not been proved as bogus and also such sale is declared in the trading a/c.
Navin Shantilal Mehta v. Income-tax Officer, Ward-32 (2) (4), Mumbai [2018] 90 taxmann.com	In the case pursuant to survey operation carried out at premises of assessee, it was found that assessee had made	This is not the case of the assessee and the assessee completely explained the source of cash with

16 (Mumbai - Trib.)	cash deposits in his bank account - On examination of cash summary provided by assessee negative cash balance was found, which was not explained by assessee and, thus, was added to income of assessee under section 68 - since assessee failed to prove satisfactorily source and nature of such credit.	documentary evidence, which has not been conclusively disprove by the lower authorities. Thus, the explanation of the assesses is well supported by the documents and books of accounts and further the assessee was in the capacity to made the sales.
Sumati Dayal v/s Commissioner of Income-tax [1995] 80 Taxman 89 (SC)/[1995] 214 ITR 801 (SC)/[1995] 125 CTR 124 (SC)[28-03- 1995]	In this case the addition was made and upheld because the appellant lacked any knowledge of race techniques and the theory of probabilities precluded any systematic and continuous winnings at races on as many as 16 occasions during a period of less than two years. In his report, the Commissioner also submitted that the books of account did not indicate the expenditure on travel and other incidental expenses which had been incurred by the appellant for attending the races at Bangalore and Hyderabad. So it was held that the winning tickets were purchased by the appellant after the event. Test of probabilities and possibilities was applied.	In the case of assessee, there is no finding that the business operations of the assessee were not genuine. The purchases and stock of the assessee was treated as genuine and only the sale of a particular period was held as bogus. The sales is supported by documents and the assessee was under the position to make such sales.

We also find support from the several case laws cited by Id AR of the assessee (supra) wherein it has been held that the addition on account of cash deposition in bank account in demonetized currency (SBNs) after the demonetarization of currency cannot be made where cash sales of goods are out of the genuine stock available with the assessee. The father of assessee Shri

Mahendra Kumar Agarwal is also engaged in the same trade from same place of business. In the assessment of father of assessee for AY 2017-18, the AO made addition on account of cash deposited in bank account in demonetized currency (SBNs), which accumulated with him from sales of goods by holding that the same as earned from undisclosed source. The CIT (A)-4, Jaipur, after considering the sales made by him as genuine, deleted the entire addition and on further appeal by department Hon'ble ITAT, Jaipur Bench, Jaipur confirmed the order of CIT (A) and sustained the deletion of addition. Jaipur Bench of ITAT **in the case of ACIT V/s Mahendra Kumar Agarwal (ITA No. 172/JP/2022) dated 22.11.2022 held that: -**

“4. We have heard the rival contentions and perused the material available on record and gone through the orders of the lower authorities. The assessee is an individual and deriving income from business of jewellery. The books of assessee's are audited by the independent Chartered Accountant and copy of audit report and statement of profit and loss account are filed by the assessee. It is noted from the record that the case of the assessee was taken up for scrutiny for assessment u/s 143(3) under CASS and desired information as sought by the AO were submitted by the assessee from time to time. The AO noticed that, assessee has deposited cash aggregating to Rs. 1,41,32,000/- during the demonetization period i.e. between 09.11.2016 to 30.12.2016 in the form of Specified Bank Notes (SBNs). The assessee justified the cash deposits during demonetization period by submitting that cash sales boosted during Diwali period and the cash generated from that time was deposited during demonetization. However, the AO did not accept the contention of assessee by mentioning that if the sales were high during Diwali then corresponding cash deposits must also be available in the bank account but the cash was deposited much after Diwali and there was no justification as to why the assessee was holding such high cash in hand after Diwali, only to deposit it in his bank account on demonetization. The AO further justified the addition by mentioning that the assessee has not submitted any details like the name, address, PAN No. of the buyer to establish the genuineness of high cash sales during the course of the year under consideration. The AO held that the cash deposited during the demonetization period is nothing but undisclosed income of the assessee which was deposited in his bank account during demonetization and in order to evade the tax liability on this unexplained cash deposit the assessee has tried to explain it under the grab of cash sales. The AO made the addition of Rs. 1,41,32,000/- under section 68

r.w.s. 115BBE of the Act. The ld. CIT(A) has deleted the addition on the basis of her findings in para 4.2 at page 22-28 of her order as under:-

“4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(i) Brief facts related to the issue are that the AO noticed that the appellant has deposited cash of Rs. 1,41,32,000/- in its bank account during demonetization period viz. between 09.11.2016 to 30.12.2016 whereas a cash of Rs. 87,29,000/- was deposited during the period 01.04.2016 to 07.11.2016 i.e. during predemonetized period. Further during the months of November and December 2016, the sales were 1.5 times more than the remaining part of the year. The appellant has explained it to be out of cash sales made by him. However, the AO tried to analyze the cash deposit in the previous year vis-à-vis the current year and has observed that the cash deposited during the demonetization period is high vis-à-vis cash deposited in the same period in the FY 2015-16, however the AO also observed that the total cash deposited for the entire year has decreased substantially in the current FY when compared with the previous year. Further, the AO observed that the sales were high during Diwali than corresponding cash deposit should have also been available in bank account which was on the contrary deposited much after Diwali. Accordingly, the AO observed that there is no justification for the sales made during the month of November and December 2016 being 1.5 times more than the remaining months of the year and therefore these cash sales are not real sales and the assessee has tried to introduce his own unaccounted money in the garb of cash sales and therefore made addition of aforesaid amount of Rs. 1,41,32,000/-.

(ii) The Ld. AR has furnished detailed explanation on this issue. The crux of the explanation is that complete regular books of accounts, bills, vouchers and day to day stock register having complete quantitative details have been maintained by the appellant which have been duly audited. It was submitted that the cash sale transactions are recorded in the regular books of accounts, sales are made out of stock-in-trade and the said Stock Register was produced before the AO alongwith sales invoices, bills, Bank statements & VAT Returns and also demonstrated correlation of such cash sales with purchase and stock of business in the course of assessment proceedings. It was further contended that the appellant has charged VAT on all bills and all such sales have been reflected in the VAT Returns of the appellant which has been accepted by the VAT Department.

(iii) I have considered the facts of the case and it is observed that the sales are made out of stock-in-trade and the said Stock Register was produced before the AO alongwith sales invoices, bills, Bank statements & VAT Returns and also demonstrated correlation of such cash sales with purchase and stock of business in the course of assessment proceedings. As regards the stock position the appellant has produced the monthwise details of stock and it is observed that the books of accounts of the appellant an audited and complete quantitative details have been submitted by the appellant before the AO. Further it is also observed that the appellant has charged VAT on all bills and all such sales have been reflected in the VAT Returns of the appellant. The appellant produced the VAT assessment order wherein the VAT Department has accepted the sales declared by the appellant and therefore the initial burden cast on the appellant is discharged and therefore it cannot be disputed that the appellant does not have all the necessary documents to prove the genuineness of sales.

(iv) Further it is observed that the cash receipts against sales in the previous F Yr. 2015-16 was at Rs. 2,45,73,510/- while in the year under consideration the same was at Rs. 2,57,31,459/- which is more or less similar to the previous year cash sales. I find that huge cash in hand was available with the appellant in the previous year at the end of October 2015 and November 2015. There was cash balance of Rs. 1.35 Crores and Rs. 1.08 Crores available respectively with the appellant. Also the fact remains that during the previous F Yr. 2015-16, the appellant has deposited a total cash of Rs. 1,23,00,000/- in his bank accounts during the period 09.11.2015 to 31.12.2015 whereas during the year under consideration, in the same period, the appellant has deposited a total cash of Rs. 1,41,32,000/- which is marginally more than the previous year. It is brought to my notice that the overall sales of the appellant in comparison to the previous year has increased by Rs. 6,63,12,037/- which is 59%.

(v) It is also brought to my notice that survey proceedings u/s 133A of the Act were also conducted on the business premises of the appellant on 06.10.2017 wherein nothing incriminating was found which could prove any source of undisclosed income or sales of the appellant. Further, in the assessment order of A Yr 2018-19 i.e. survey year, the addition of Rs. 1,13,941/- was made on account of excess stock , however the same was on account of weight difference in stock.

(vi) Further, on perusal of the details filed by the appellant before the A.O., it is observed that all the books of accounts were produced by the appellant before the A.O. It is not the case of the A.O. that the appellant did not have the sufficient

stock for making the sales. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details. The ld. AO did not make any enquiry on the material submitted by the appellant. He merely proceeded on statistical analysis to make the addition on account of cash deposits. He neither found any concrete and conclusive evidence of back dating of the entries of sale, evidence of bogus sales, evidence of bogus purchases, and non-existing cash in the books of account. Infact the AO did not even reject the books of accounts of the appellant under the provision of section 145(3) of the Act.

(vii) It is also observed that the AO has treated the cash deposited in the banks during the demonetization period in demonetized currency as unexplained cash credits u/s 68 of the Act although the nature and source of the cash deposits being proceeds arising out of cash sales etc. is patently evident from the entries in the audited books of account of the Assessee. It is not the case of the A.O. that the cash deposited in the bank during the demonetization period was in excess of what was available in the cashbooks. The fact that the cash deposits in banks were sourced out of cash sales is evident from the entries in the cashbooks. The books of account of the appellant have been audited by an independent reputed auditor. The cash sales & receipts are duly supported by relevant bills, which were produced before the AO in the course of assessment proceedings, and nothing adverse in connection therewith was noted by the AO.

(viii) Thus the AO has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus. Merely analysing the data by twisting the same and giving some findings which are not alone sufficient to justify the addition, the income so assessed is not tenable in the eyes of law. Therefore there cannot be any reason for disbelieving the genuineness of the sales of the appellant merely for the reasons that the same is of abnormal amount more so when the same is duly supported with sale bills and the appellant was having the sufficient stock for that much of sales and the sales have been duly incorporated in the VAT Returns.

(ix) The fact also remains that the demonetization of Rs. 500/- and 1000/- note was declared by the Hon'ble Prime Minister at 8:00 PM on 08.11.2016 and it is an open fact that immediately after the announcement, all the various persons having soon to be demonetized notes almost flocked to the jewellers to purchase the jewellery in exchange of these notes. There was an article in the Economics Times wherein the secretary of Indian Bullion and Jewellers Association mentioned that Jewellers had sold as much as 15 ton of gold ornaments and bars worth around Rs. 5000 crores on the intervening night of November 8 and 9, 2016

after the announcement of demonetization. Naturally after the spread of the news of demonetization, the general public had purchased the jewellery not only for the wedding in the immediate vicinity but also for wedding and functions in late November or December and also even otherwise for future use in functions. And due to this there was heavy cash purchase in November 2016 for the purpose of utilizing the demonetized notes whereas the purchases in the month of December, 2016 has been very low. However, the purchase for both the months taken together is not exceptionally high and the increase is mainly due to total increase in turnover and the specific reason of demonetization. It was further submitted that sales made by the appellant was fully vouched and verified and are duly recorded in the books of accounts, which were also audited. Further the sales are duly backed by purchases and opening stock available with the appellant and after these sales the stock of the appellant correspondingly got reduced.

(x) Moreover, the Ld. AR has rightly pointed out that on one hand the sales shown by the appellant are fully backed with vouchers and duly recorded in the books of accounts and also in the stock register while on other hand the AO has not brought any material on record to establish that these sales are bogus.

(xi) As regards the addition of an amount of Rs. 1,41,32,000/- deposited by the appellant in cash in the bank account, the AO has considered that these were Specified Bank Notes and added the same as income of the appellant by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in Profit & Loss Account, therefore there is no occasion to again consider the same as income of the appellant by applying the provisions of section 68 of the Act.

(xii) The Hon'ble Supreme Court in the case of [CIT vs Devi Prasad Vishwnath Prasad](#) (1969) 72ITR194 (SC) (Copy at Case Law PB Page No. 225- 228) held that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again.

(xiii) 2021 (5) TMI 447 – The Hon'ble ITAT Visakhapatnam in the case of Asst. Commissioner of Income Tax, Central Circle-I Visakhapatnam versus M/s Hirapanna Jewellers and (vice-versa)) (Copy at Case Law PB Page No. 181-184) held that-

Addition u/s 68 r.w.s 115BBE - Assessee had deposited the sum in high denominations of specified bank notes (SBNs) post demonetization - CIT-A deleted the addition - HELD THAT:- The assessee produced the newspaper clippings of The Hindu, The Tribune and demonstrated that there was huge rush of buying the jewellery in the cities consequent to declaration of demonetization of ₹ 1000 and ₹ 500 notes on 08.11.2016. As cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House [2010 (4) TMI 1070 - Delhi High Court] and Vishal Exports Overseas Ltd. [2012 (7) TMI 1110 - Ahmedabad High Court]

(xiv) The case of CIT v/s. Kailash Jewellery House ITA No. 613/2010 was decided by the Hon'ble Delhi High Court on 09.04.2010(Copy at Case Law PB Page No. 239) wherein it was held that "In the facts of above case, cash of Rs.24,58,400/- was deposited in bank account. The Assessing Officer made the addition on the ground that nexus of such deposit was not established with any source of income. The assessee claimed that it was duly recorded in the books on account of cash sales and was considered in the Profit and Loss Account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book was submitted to the Assessing Officer and no discrepancy was pointed out. On this basis CIT(A) deleted the addition. Tribunal also observed that it is not in dispute that 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. Therefore, cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The Hon'ble High Court dismissed the appeal filed by the Department".

(xv) The case of CIT v. Vishal Exports Overseas Ltd., Tax Appeal No. 2471 of 2009 was decided by the Hon'ble Gujarat High Court on 03.07.2012(Copy at Case Law PB Page No. 238) wherein it was held that "In the facts of above case the assessee was an exporter. The issue was regarding sale of Rs.70 lacs included in turn-over which was more than 500 crores. The assessee had claimed deduction u/s 80HHC of the Act. On the basis of information received by the Assessing Officer from investigation he considered the entry for export of 70 lacs as bogus. He denied benefit u/s 80HHC of the Act. Further, he made addition of Rs. 70 lacs in the income u/s 68 of the Act. It was held that once the assessee has

already included the amount of sale of Rs. 70 lacs in Profit and Loss Account and determined the income on that basis no further addition could be made u/s 68 of the Act as it would tantamount to double taxation of same income. The Assessing Officer could only reject claim u/s 80HHC of the Act”.

(xvi) In view of the facts of the case, it is evident that the appellant has duly substantiated its claim from the documentary evidences and also with the facts which duly supported with his own previous history and trend. Further the books of accounts have not been rejected as no discrepancy was found therein and the fact remains that the AO has accepted the cash sales as he accepted the declared sales, declared purchase, declared opening and closing stock and declared profits as well. The amount of cash sales is being reflected in its trading and profit and loss account. Thus the contention of the appellant that assessing the said cash sales as unexplained cash credit u/s 68 means that the impugned sales had been taxed twice, firstly the same was treated as sales and secondly the same was treated as unexplained cash credit/money u/s 68 of the Act appears to be correct and therefore this would tantamount to double taxation of income, which is impermissible in law. Accordingly, the action of the AO in holding that the appellant could not substantiate the increase in sales with documentary evidences is not based on correct appreciation of the facts. Therefore, I find that the AO was not justified in making an addition of Rs. 1,41,32,000/- under section 68 of the Act and consequently the aforesaid addition is directed to be deleted. As regards applying the provisions of section 115BBE of the Act on the additions made u/s 68, it is held that since the addition on account of alleged bogus cash sales has been deleted by me, therefore no separate adjudication is required on this issue raised by Ground of Appeal No. 2 as it will only be academic in nature. Accordingly, the Grounds of Appeal No. 1 to 3 are treated as allowed.”

We also find that the Department has raised the solitary ground for deletion of addition of Rs.1,41,32,000/- made by the AO by applying the provisions of Section 68 and taxed as per provisions of Section 115BBE of the Act. We found that all the points or allegation mentioned by the AO are duly considered and discussed by the ld. CIT(A) while dealing with the appeal of the assessee. The revenue did not pin point which of the findings of the ld. CIT(A) is incorrect or against the facts placed on record by the assessee. We noticed that during the course of assessment proceedings, the AO examined the books of account and she has not rejected the books of account of the assessee and provisions of section 145(3) were not applied. During the year under consideration the assessee deposited Rs. 1,41,32,000/- in demonetized currency. The cash so deposited was accumulated cash which was received against/for sales made in the proprietorship concern of assessee M/s

Mohan Lal Mahendra Kumar Jewellers. The assessee submitted the summary of cash book as under:-

“The summary of cash book of the assessee for the period from 03.11.2016 to 08.11.2016 is as under: -

<i>Particulars</i>	<i>Amount (In Rs.)</i>
<i>Opening Balance as on 01.09.2016</i>	<i>20,98,024.45</i>
<i>Add: - Amount received against/for sales during month of September-2016</i>	<i>17,22,424.00</i>
<i>Add: - Amount received against/for sales during month of October-2016</i>	<i>1,14,43,282.00</i>
<i>Add: - Amount received against/for sales during period 01.11.2016 to 08.11.2016</i>	<i>14,37,830.00</i>
<i>Less: - Cash Deposited in bank (Net) during month of September-2016, October-2016 and during period 01.11.2016 to 08.11.2016</i>	<i>20,79,000.00</i>
<i>Less: - Cash Expenses/payments during month of September-2016, October-2016 and during period 01.11.2016 to 08.11.2016</i>	<i>4,51,639.00</i>
<i>Closing Balance as on 08.11.2016</i>	<i>1,41,70,921.45</i>
<i>Out of closing cash balance as on 08.11.2016 the amount of Rs. 38,921/- was in non-demonetized currency i.e. notes of 50, 100 etc. and the amount of Rs. 1,41,32,000/- was in demonetized currency.</i>	

From the above summary, it is apparent that the assessee had cash balance of Rs. 1,41,70,921.45 as on 08-11-2016 which was generated from cash sales and such sales was part of total sales credited in trading a/c and the assessee has already offered income on such sales in Trading Account by reducing the cost of sales from sales. The AO has not pointed out any defect in the cash books and other books of account produced before her. The AO herself accepted the sales shown in trading a/c and has not disturbed the cash sales so declared by assessee and the sales of assessee duly supported by the sale bills and invoices and duly verifiable from books of accounts including stock register and considering availability of stock in hand, it proved that the sales made by the assessee are genuine sales duly recorded in the books of account. All the details required to prove the sales made by the assessee were provided in the assessment proceedings. The assessee has filed sufficient evidence to substantiate his

sales. He has filed (1) Copy Cash book (Copy at APB Page 93 to 107) and sales Register APB at page 47-69 comprising the date wise transaction of sales and cash receipts (2) Monthly summary of stock register (Copy of the same is at APB Page 108 to 120 which shows that before making the sale the sufficient stock was available with assessee (3) Copy of Assessment Order of VAT APB Page 121 to 127. The VAT department accepted the sales of the assessee. Thus the assessee substantiated his cash receipts from sales from the documentary evidence and also with the facts. The assessee explained the AO that the assessee's contention of cash sales is duly supported with own previous history and trend that cash sales & corresponding cash in hand have been a regular feature of the assessee's business since the past several years. The cash receipts against sales in FY 2015-16 was of Rs. 2,45,73,510/- while in the FY 2016-17 the year under consideration the same was of Rs. 2,57,31,459/- which is more or less similar to the previous year cash sales. The month to month sales varies due to demand in market, festival seasons, fluctuation in gold prices and for several other factors. Further in previous year also during the period 09.11.2015 to 31.12.2015 the assessee deposited total cash of Rs. 1,23,00,000/- in his bank accounts and in comparison to that during the period 09.11.2016 to 31.12.2016 the assessee deposited total cash of Rs. 1,41,32,000/- which shows increase by 14.89% over the previous year which is quite reasonable looking to the fact that overall sales of the assessee in comparison to previous year have increased by Rs.6,63,12,037/- which is 59% as explained by the assessee to AO vide letter dated 26/12/2019 copy at APB page 40-44. The assessee has justified higher sales in Oct 2016 by submitting letter dated 28/12/2019 to AO copy place at APB page 45-46. The assessee submitted that on 06.10.2017 the income tax department conducted survey u/s 133A of the Act at the business premises of the assessee. During the survey proceedings the department did not find any positive material/evidence to show that the assessee was having any source of undisclosed income or sales of the assessee was not genuine. The assessee is engaged in the business of Jewellery and gold. The higher cash sale on festival season Karva Chouth, Dhanteras and Diwali and marriage season is general feature in the trade of the assessee and such sales is also apparent from the cash book submitted during the course of assessment proceedings wherein the AO has not found any defect. Looking to the above facts and circumstances of the case the sales made by the assessee is genuine which is executed after giving the goods to the customer, duly reflected in the invoice issued, assessee having sufficient stock in the books, sales is duly reflected in the books of accounts supported by payment of VAT and the revenue has not brought any positive material to prove it as bogus sales. It is not the case of the A.O. that the assessee did not have the sufficient stock for making the sales. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details. As regards not providing the name, address and PAN of the customers to whom cash sales was made, the assessee has explained that the sales were below the prescribed limit so it is not

compulsory or mandatory under the Income Tax Act, 1961 to collect the information related to full name, address and PAN of the customer to whom goods were sold in cash during the course of business below to the prescribed limit. The assessee further explained that in the preceding financial years, subsequent financial years and other periods of this same financial year, the same practice was being followed by the assessee where no details of name, address and PAN of customer was available with the assessee and such practice was accepted by the AO. We find the explanation of the assessee is genuine and the sales cannot be doubted merely on surmises and conjectures on the ground of non furnishing of address and PAN of the customer. The AO did not make any enquiry on the material submitted by the appellant. She merely proceeded on statistical analysis to make the addition on account of cash deposits. We agree with the findings of ld. CIT(A) that the AO has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus and merely having some doubt by twisting the data and giving some findings which are not alone sufficient to justify the addition the income so assessed in not tenable in the eye of law. In fact the AO neither found any concrete and conclusive evidence of back dating of the entries of sales, evidence of bogus sales, evidence of bogus purchases, and non-existing cash balance in the books of account. The AO did not even reject the books of accounts of the appellant under the provision of section 145(3) of the Act. Therefore, the contention of the revenue on the facts and circumstances of the case is not accepted and we see no reason to interfere in the order of the ld. CIT(A). Thus, we sustain the order of the ld. CIT (A) with the observations above. The appeal of the revenue stands dismissed.”

In the light of discussion herein above and taking into consideration the facts, circumstances and the case laws cited (supra) and also the elaborate discussion on the issue raised by the assessee we do not concur with the findings of the ld. CIT(A) and we set aside the findings of ld CIT(A) in this regard. Since no material was brought on record by revenue authorities to draw any adverse inference, therefore, we hold that the ld AO has not justified in making the addition of Rs. 6,76,59,000/- under section 68 of the Act and direct to delete the same. It is further noted that the assessee had already offered cash sales as income in trading account then the same cannot be taxed under section 68 or under section 69A read

with section 115BBE. In the result Ground and 1 and 2 raised by the assessee are allowed.

10. Since we have decided the Ground No 1 and 2 on its merits and the entire addition has been deleted, ground no. 3 and 4 challenging the impugned order on technical aspects of the matter becomes academic. Ground no. 5 being general does not require any finding.

11. Resultantly the appeal filed by the assessee in ITA no. 488/JPR/2025 stands allowed.

Order pronounced in the open court on 19/08/2025.

Sd/-
(गगन गोयल)
(Gagan Goyal)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/08/2025

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Peeyush Agarwal, Jaipur.
2. प्रत्यर्था / The Respondent- ITO, Ward-1(5), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 488/JPR/2025)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar