

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, 'DB': AMRITSAR**

**BEFORE SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER
AND**

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.364/ASR/2024
[Assessment Year: 2016-17]**

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| Mohammad Muzamil Mushtaq Wani, Sadar Bazar Kulgam Kashmir, Jammu & Kashmir-192231 | Vs | National Faceless Appeal Centre, Delhi-110001 |
| PAN-ADJPW4885H | | |
| Appellant | | Respondent |

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|---------------|---------------------------|
| Appellant by | None (Written submission) |
| Respondent by | Shri Charan Dass, Sr. DR |

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| Date of Hearing | 29.05.2025 |
| Date of Pronouncement | 26.08.2025 |

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC)/learned Commissioner of Income Tax (Appeals), Delhi (hereinafter referred to 'ld. CIT(A)') dated 15.05.2024 pertaining to Assessment Year 2016-17 arising out of assessment order dated 05.03.2024 passed u/s 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred as 'the Act').

2. None appeared on behalf of the assessee. However, the assessee has filed a written submissions filed before the Tribunal, therefore, this appeal is being decided after hearing the Id. Sr. DR and on the basis of the written submission of the assessee and on the basis of material available on record.

3. Brief facts of the case:- The assessee had not filed his return of income for the AY 2016-2017. The case was reopened on the basis of information available with the AO that the assessee had made cash deposit of Rs.1,35,48,543/- in two different accounts (Cash credit a/c no. xxxx00499 J&K TP Kulgam – Rs.45,48,843/- out of the total deposit of Rs.52,73,223/- and current a/c the xxxx003061 at J&K Bank Kingdom Main – Rs.89,99,700/- out of total deposit Rs.1,14,91,600/-) as noted by the AO at page-4 of the assessment order.

3.1. During the assessment proceeding it was submitted by the assessee vide letter dated 27.11.2023 that he was involved in the retail trade of artificial & natural jewellery under the name and style of M/s Banday Jewellers at Qazigund, Kulgam, Kashmir. The assessee also submitted the computation of income declaring income of Rs.2,46,470/- and also filed the trade license. The assessee also filed Balance Sheet and P&L account which are placed at Pg 5, 6, and 8 of the assessment order. In the P&L Account, the assessee had shown total sale of Rs. 1,67,64,823/- and net profit of Rs. 2,96, 474/ and after claiming deduction of Rs. 50,000/- under Section 80C has offered Rs.2,46,470 as total income. In the said reply, the assessee also submitted that he did not

file ITR for previous year under consideration because the total income did not exceed the taxable limit.

3.2. It was also explained by the assessee that the reason for high cash transaction was due to the business limited to small scale only with most of the customer from the middle income group who at that time primarily dealt in cash. It was further submitted that the cash sales were primarily deposited in the Bank account on the same day or the next day and the suppliers were paid through account transfer or account payee cheques.

3.3. The AO noted that the assessee had furnished the sales register, purchase register, bank ledger, cashbook and relevant accounts ledger but also observed that the assessee did not file his ITR within due date despite having huge transaction and also did not furnish the PAN of the parties to whom the jewellery has sold in cash Rs.6,24,380/-. The amount of sale of Rs.6,24,380/- in cash was noted by the Assessing Officer on page no.9 of his order from the sale book furnished by the assessee. The AO also adversely noted that the case of the assessee was an auditable case and the assessee was required to file his ITR. In view of these facts, the AO determined the income of the assessee @8% of the total turnover of Rs.1,68,55,655/-, which came to Rs.13,48,452/- and , added the excess of the net profit of Rs.10,51,978/- after giving credit of the net profit of Rs.2,96,474/- declared by the assessee in its Profit & Loss account.

4. Aggrieved with the order of the AO, the assessee preferred an appeal before the Ld. CIT(A). The ld. CIT(A) dismissed the appeal of the assessee on the ground that the assessee failed to file any documentary evidence to substantiate his ground. The relevant finding of the ld. CIT(A) in para no. 6.4 of his order is reproduced as under:-

“6.4 During appellate proceedings appellant in his submission reiterated the same submission but failed to file any documentary evidence to substantiate his Grounds. The appellant failed to submit any documentary evidence to back up the claims which appear as mere assertions without any hard evidence to hold it up. The appellant has not produced any additional facts before this appellate requiring deliberation and discussion to succeed on the grounds raised against the additions and owing to the dearth of substantiating evidence, there is no scope for much discourse on the issue dealt with in this instant case. Therefore, in the prevailing circumstances of the case, I find no infirmity in the action of the AO of determining the net profit at 8% u/s 44AD of the Act. In this view of the matter, the addition of Rs. 10,51,978/- as net profit rate of 8% against the total turnover by the AO is hereby upheld. Consequently, the Ground Nos. 1 to 3 are dismissed.”

5. Aggrieved with the said order, the assessee is in appeal before us by raising the following grounds of appeal:-

1. *Ground 1, Income Tax Return Filed w/s 148: The (TR has been filed against the notice issued w/s 148 within its due date alongwith the Audit Report in Form 3CB-JCD. The same stands accepted by the Ld. Assessing Officer. It is requested to accept the returned income as the same is authenticated and verified through books of accounts and audit report by the CA*

2. *PAN details of Customers: Please refer to the last para of Page 9 of the Assessment Order, on the basis of which the assessment has been completed, which reads as; "Since the assessee did not file ITR within due date and also could not furnish PAN of the parties to whom he sold the jewellery in cash the income of the assessee is concluded to be 8% of turnover of Rs 1,68,55,655/- which comes to Rs 1348452/-, The excess of net profit of Rs 296474/-declared by the assessee in its P & L account which comes to Rs 1051978/- is added." In response to the*

above said conclusion by the Ld. AO, the following submission is hereby made for your perusal of the actual facts as well as the legality of the conclusion drawn;

3. The Ld. AO has alleged that the ITR has been filed after the due date, but the ITR actually has been filed u/s 148 on 20.04.2023, within its due date being 26.04.2023 (30 days Ironi Notice u/s 148 issued on 27.03.2023 vide Notice No.ITBA/AST/S/148_1/2022-23/1051431699(1)), Moreover, the reasons for the non-filing of ITR w/s 139 had already been provided through the submissions to the Ld. AO which were not countered by him, so that should also not be the basis of rejecting the returned income.

4. The Ld. AO had called for PANs of the customers vide its SCN dated 23.02.2024, which was replied by the appellant on 29.02.2024 with the following Remark: "As mentioned in my previous submission, the sales were made mostly to retail customers and it was common practice as well as not illegal to take cash from the parties, so PAN was not taken as it was not mandated by the Income Tax Law for the previous year relevant to the Assessment Year in Assessment." It is pertinent to draw your kind attention towards the provisions of relevant Sections of Income Tax Act. which could have effected the above said transactions viz. Section 139A or 269ST. In regards to both the sections it is hereby clarified that Section 269ST was not yet applied for the relevant Assessment Year.

5. In respect of provisions of Section 139A, especially Sub-section (5) read with Rule 114B, the Serial No.18 mandates taking of PANs from the parties to which sale is made exceeding Rs 2,00,000.00 per transactions, but in reality only few transactions (being less than 1% of all transactions, two in-fact through Cash mode and two by modes other than cash) have been made above the said limit during the year from which the PAN has actually been taken. The same can be provided if needed for your perusal. Since the PANs were asked for all the transactions irrespective of transaction amounts, the same couldn't be provided to the Ld. Assessing Officer. The same should not have negatively effected the opinion of the Ld.AO which lead to the addition to the returned income. Moreover, the fact that the cash transactions were preferred for before the Demonetization done by the Nation, later in the year 2017, it was a common practice to prefer deals in Cash within the allowed limits as per the provision.

6. The above details should have been considered by the Ld. Assessing Officer and accept the income as returned income since all other submissions required for his satisfaction had been provided during assessment proceedings. It is requested to please consider the facts and reject the additions made by the Ld. AO.

7. *Books of Accounts: The Ld. Assessing Officer has not been justified by invoking the provisions of Section 44AD, since the books had been maintained, which were accepted, business had been established by the uploading the documents and necessary information vide timely responses, which were also considered. The same may be reconsidered and delete the basis of addition.*

8. *Appeal filed by the Assessee against order u/s147: That the Assessee has filed an Appeal with the Commissioner of Income Tax (CIT Appeals) against the order u/s 147 vide acknowledgement no143592240150324 dated 15.03.2024 challenging the Assessment order passed by the Ld.AO. Furthermore, to explain the grounds which were primarily based on "Law" rather than facts, the clarifications were provided in hearing submission dated 10.05.2024. The CIT(A) has dismissed the appeal of the Assessee without giving any further opportunity of being heard and passed the closure order u/s 250 by taking in account the reasons already stated by the jurisdictional AO without seeking any further information or evidence from the Assessee for the sake of justice and fair play. The CIT(A) seemed to be in a hurry to pass the closure order and hence did not make any further enquiry in the stated Appeal filed by the Assessee.*

6. The assessee has filed a written submission and the relevant extract of the same is reproduced as under:-

"The Ld. AO has alleged that the ITR has been filed after the due date, but the ITR actually has been filed u/s 148 on 20.04.2023, within its due date being 26.04.2023 (30 days from Notice u/s 148 issued on 27.03.2023 vide Notice No. ITBA/AST/S/148_1/2022-23/1051431699 (1)).

Moreover, the reasons for the non-filing of ITR u/s 139 had already been provided through the submissions to the Ld. AO which were not countered by him, so that should also not be the basis of rejecting the returned income.

The Ld. AO had called for PANs of the customers vide its SCN dated 23.02.2024, which was replied by the appellant on 29.02.2024 with the following Remark:

"As mentioned in my previous submission, the sales were made mostly to retail customers and it was common practice as well as not illegal to take cash from the parties, so PAN was not taken as it was not mandated by the Income Tax Law for the previous year relevant to the Assessment Year in Assessment."

It is pertinent to draw your kind attention towards the provisions of relevant Sections of Income Tax Act, which could have affected the above said transactions viz. Section 139A or 269ST.

In regards to both the sections it is hereby clarified that Section 269ST was not yet applied for the relevant Assessment Year.

In respect of provisions of Section 139A, especially Sub-section (5) read with Rule 114B, the Serial No. 18 mandates taking of PANs from the parties to which sale is made exceeding Rs 2, 00,000.00 per transactions, but in reality only few transactions (being less than 1% of all transactions, two in-fact through Cash mode and two by modes other than cash) have been made above the said limit during the year from which the PAN has actually been taken. The same could be provided, but have never been asked during the assessment proceedings as well as appellate proceedings with JCIT (Appeals). Since the PANs were asked for all the transactions irrespective of transaction amounts, the same couldn't be provided to the Ld. Assessing Officer.

The same should not have negatively effected the opinion of the Ld.AO which lead to the addition to the retuned income. Moreover, the fact that the cash transactions were preferred for before the Demonetization done by the Nation, later in the year 2017, it was a common practice to prefer deals in Cash within the allowed limits as per the provisions of Income tax Act.”

7. The Id. Sr. DR supported the orders of the authorities below.

8. We have heard the Id. DR and perused the material available on the record. On perusal of the order of the Ld. CIT(A), it is seen that submissions made by the assessee before him was not been considered in proper perspective. The assessee has shown a net profit of Rs.2,96,470/- out of a sales turnover of Rs.1,67,64,823/- from retail trade of artificial & natural jewellery. The same should have examined by the Assessing Officer by examining the books of accounts and the supporting evidences before not accepting the net profit by the Assessing Officer. However, the Assessing Officer did not accept the books results on the ground that the assessee did not file return of income

within the due date and also could not furnish PAN of the parties to whom he sold the jewellery in cash. However, the assessee filed his return of income in response to the notice u/s 148 of the Act along with audit report in Form 3CB and 3CD. Further, the assessee also filed its balance sheet and Profit & Loss account along with the computation of income. It was further submitted that in respect of provisions of Section 139A, especially Sub-section (5) read with Rule 114B, the Serial No. 18 mandates taking of PANs from the parties to which sale is made exceeding Rs 2,00,000/- per transaction, but in reality only few transactions (being less than 1% of all transactions, two in-fact through Cash mode and two by modes other than cash) have been made above the said limit during the year from which the PAN has actually been taken and the same could be provided, but were never asked during the assessment proceedings as well as appellate proceedings. It was further submitted that the cash sales were primarily deposited in the Bank account on the same day or the next day and the suppliers were paid through account transfer or account payee cheques.

8.1. However, the Assessing Officer has not examined the above explanation of the assessee and has also not verified the balance sheet and the profit & loss account filed by the assessee along with the books of accounts and the supporting documents therein. The assessee submits that the cash deposits was on account of sale of cash jewellery but as noted by the Assessing Officer on perusal of the sale book, the cash sales was only Rs.6,24,380/-, whereas the total cash deposit amounts to Rs.1,35,48,543/-. This discrepancy has not been

explained by the assessee in its written submission. Moreover, there is no finding of the Assessing Officer on the submission of the assessee that the cash sales were primarily deposited in the Bank account on the same day or the next day and the suppliers were paid through account transfer or account payee cheques. Also, the Assessing Officer has not examined the source of balance cash deposit of Rs.1,29,24,163/- (Rs.1,35,48,543/- - Rs.6,24,380/-).

8.2. Therefore, in the given facts of the case, the order of the Assessing Officer is set-aside and remitted back to his file for *de novo* assessment keeping in view the above observation and as per law.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced as per Rule 34(4) of the ITAT Rules, 1963 on 26th August, 2025.

Sd/-
[UDAYAN DAS GUPTA]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 26.08.2025.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, Amritsar