

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.1452/Del/2024
Assessment Year: 2017-18

Income Tax Officer, Ward-29(1), New Delhi	Vs.	Sh. Sahil Jain, 117, Engineering Enclave, Pitampura, New Delhi
PAN: AFSPJ1105L		
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Manish Gupta, Sr. DR

Date of hearing	03.11.2025
Date of pronouncement	12.11.2025

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2017-18, arises against the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [in short, the "CIT(A)/NFAC"], Delhi's DIN and order no. ITBA/NFAC/S/250/2023-24/1060281087(1), dated 30.1.2024 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Case called twice. None appears at the assessee's/respondent's side. He seems to have not appeared on the earlier hearings as well. We make it clear that today is the eight hearing in the Revenue's instant appeal. We accordingly proceeded *ex-parte* against the assessee.

3. It next transpires during the course of hearing that the Revenue/appellant is aggrieved against the CIT(A)/NFAC's detailed discussion reversing the Assessing Officer's assessment findings treating the assessee's/respondent's cash deposits during demonetization amounting to Rs.5,89,13,065/- as unexplained under section 68 r.w.s. 115BBE of the Act in assessment order dated 18.12.2019 as under:

"1. We have heard the rival parties and have gone through the material placed on record. We find the pertinent question to be decided by us is as to whether the surrendered amount can be taxable u/s 115BBE read with section 69A of the Act or it was to be taxed as a regular business receipt. To decide the issue, it is important first to visit the statement of the Director of the assessee which was recorded during the course of survey. We have particularly gone through answer to question No. 35 wherein the Director of the assessee has clearly stated that the figures noted in the diary represented sales unrecorded in the books of account and these figures related to the period April 2015 to August 2015. For the sake of completeness, question No. 35 and its answer are reproduced below:

1. I find that the above answer to question, put up by the search authorities, clearly states that the amount, recorded in the diary represented unrecorded sales and after that the search authorities did not put any question to the assessee regarding explanation of these sales recorded in the diary. In the assessment order also, we find that the Assessing Officer did not raise any further query regarding unrecorded sales and therefore, he did not doubt the sales and therefore, accept the same. If he was not satisfied with the explanation of assessee regarding unrecorded sales, he should have recorded his dissatisfaction regarding the explanation of assessee. He did

not record any such dissatisfaction and neither any further clarification sought from the assessee. He did not allow any set off against such unrecorded sales and rejected the contention of the assessee by simply saying that the assessee had recorded unreasonable higher expenditure to set off the surrendered amount. In this respect, it is important to reproduce the findings of the Assessing Officer, which are as under

“So, it is clear that the assessee has retracted his and not filed its income correctly. Assessee has done so by making false and incorrect entries in its books of account by first including income figure of Rs. 1,51,00,000/- and then claiming bogus expenses for the same. The assessee company has done this by claiming unreasonably high expenditures under the head freight, advertisement, travelling expenses and manure processing charges totaling Rs. 1,48,88,937/- (77, 19, 030 + 23, 46, 436 + 36, 20, 125) but it could not produce any supporting evidence to substantiate its claim.” The learned CIT(A) also mistook the surrendered sales as undisclosed income of the assessee and confirmed the addition. However, he deleted the addition which the Assessing Officer had made by applying net profit rate and also allowed exemption u/s 80JJA of the Act.

1. 1. find that provisions of section 115BBE are overriding provisions which provide for taxing the income referred to in section 68 and from section 69 to 69D at a flat rate of tax and do not allow any deduction in respect of expenditure or allowance under the provisions of the Act. Therefore, it is important for application of section 115BBE that the assessee should first fall in any of these sections. In our opinion, in the present case, the addition u/s 69A could have been made only if no explanation, regarding source of such income, was offered or the explanation offered by the assessee was not satisfactory in the opinion of the Assessing Officer. In the present case, as we have already noted that the assessee had given complete explanation regarding the source of entries recorded in the diary, which were explained to be part of unrecorded sales and Assessing Officer also did not object to the said explanation. Therefore, addition cannot be made u/s 69A of the Act and if the addition cannot be made u/s 69A, the provisions of section 115BBE will not be applicable.

2. find that in similar situation, the Hon’ble Rajasthan High Court in the case of Pr. CIT vs. Bajrang Traders in I.T.A. No. 258 of 2017, vide judgment dated 12/09/2017, had dismissed the appeal of the Revenue. The relevant question framed by Hon’ble High Court and its finding are reproduced below:

1.1 is the findings of Tribunal in the other case laws relied on by the assessee, a copy of which is placed at pages 30 to 72 of the paper book. Therefore, in view of the judicial precedents and in view of the fact and circumstances of the present case, we hold that the addition sustained by learned CIT(A) u/s 115BBE is not in accordance with law and the surrendered income has rightly been included in the sales of the assessee and all the expenses have rightly been set off against the surrendered income and therefore, being business income, the assessee is also eligible for deduction u/s 80JJA of the Act.

1. 176 ITD 246 (Chd) dated 8.2.2019 Famina Knit Fabs vs. ACIT

“19. In the facts of the case in ITA No. 408/Chd/2018, the income surrendered was on account of unaccounted receivables of the business of the assessee amounting to Rs. 1.25 crores. The Ld. CIT (A) in para 9 of the order has outlined the facts relating to the surrender made by the assessee stating that during survey a pocket diary was found from the account section of the assessee-company which contained entry of receivables amounting to Rs. 1.25 crores on pages 27, 28, 31 and 33, which were not recorded in the regular books of the assessee and were subsequently surrendered stating that these entries were unaccounted sundry receivables being surrendered as income under the head business, to buy piece of mind and subjected to no penalty and further that the losses incurred by the assessee in the impugned year will be adjusted against this surrendered income. The relevant facts as stated by the CIT (A) in para 9 of his order and which are not disputed, are reproduced hereunder:

1. Clearly, it is evident from the above that the surrender was on account of debtors/receivables relating to the business of the assessee only. The Revenue has accepted the surrender as such, as being on account of receivables. It follows that the debtors were generated from the sales made by the assessee during the course of carrying on the business of the assessee, which was not recorded in the books of the assessee. Though the said income was not recorded in the books of the assessee but the source of the same stood duly explained by the assessee as being from the business of the assessee. Even otherwise no other source of income of the assessee is there on record either disclosed by the assessee or unearthed by the Revenue. The preponderance of probability therefore is that the debtors were sourced from the business of the assessee. Therefore, there is no question of treating it as deemed income from undisclosed sources u/ss. 69, 69A, 69B and 69C of the Act and the same is held to be in the nature of Business Income of the assessee. Having held so, the same was assessable under the head 'business and profession' and as stated above, the benefit of set off of losses both current and brought forward was allowable to the assessee in accordance with law.

2. The contention of the Revenue therefore that the income be treated as deemed income u/s. 69,69A/B/C of the Act is accordingly rejected and as a consequence thereto the plea that no set off of losses be allowed against the same u/s. 115BBE of the Act also is rejected.

3. Therefore, as per the facts of the case in ITA No.408/Chd/2018 and as per the provisions of law relating to the issue, the surrendered income, we hold, was assessable as business income of the assessee and set off of losses was to be allowed against the same as rightly claimed by the assessee.

ITA 142-146/Jodh/2018 dated 25.5.2018 Lovish Singhal & Ors. Vs. ITO
(Assessment Year 2014-15)

“3. The issue involved in all the appeals pertains to upholding rate as per provisions of Section 115BBE of the Act.

1. At the outset, the ld AR of the assessee has contended that the issue is covered by the decision of Hon'ble Rajasthan High court.

2. I have considered the rival contentions and gone through the orders of the authorities below. From the record, I found that a survey u/s. 133A was carried out at assessee's business premises on 09-01-2014. During the course of survey proceedings, the assessee offered an amount of Rs. 10,90,000/- for taxation on account of discrepancy in stock, incriminating documents and excess cash found. Subsequently, the assessee filed his return of income for AY 2014-15, declaring the total income at Rs. 10,15,000/-. During the course of assessment proceedings, the AO noted that though the assessee in his return filed for AY 2014-15 included the surrendered amount of Rs. 10,90,000/- as income from business, however, while calculating the tax on this income, it had calculated / paid tax at normal rate instead of 30% as per the provisions of sec. 115BBE of the Act. Accordingly, the AO issued a show-cause notice on 23-11-2016 requiring the assessee as to why tax may not be calculated @30% as per provisions of sec. 115BBE of the Act. The assessee filed his reply dated 29-11-2016, the AO reproduced this reply at page no. 3 of the assessment order. The assessee's main contention before the AO was that since he had disclosed the surrendered income in its return of income, it was not covered by any deeming provisions viz. 68, 69, 69A, 69B, 69C or 69D, the provisions of sec. 115BBE could not be applied in respect of this surrendered income. The AO however, did not accept this reply of the assessee and levied taxes @ 30% in respect of income so surrendered. ...

1. It was argued by the ld AR that the assessee is individual and was earning income out of trading as well as interest income from M/s M.R. Seeds Pvt. Ltd. That during the year under consideration, a survey was conducted on 09.01.2014 at the business premises of the assessee. During survey, the assessee has offered an amount of Rs. 10,90,000/- for taxation on account of incriminating documents, excess cash found and stock discrepancies. During the assessment proceeding the assessee has explained before the ld AO that the surrender amount was in relation to business activities and there are direct nexus with business and accordingly he has treated same as business income. The ld AO has not brought on record any evidence or material to establish that the assessee was involved in any other activities and as such the income disclosed as business income by the assessee is accordance with law and also supported from judicial decisions.

2. Reliance was placed on the decisions of Hon'ble Rajasthan High Court in the case of CIT of CIT v/s Bajargan Traders D.B. I.T. No. 258/2017 dated 12/09/2017 the Hon'ble Rajasthan High Court held as under:.....

3. It was further argued that from the above jurisdictional High Court decisions the excess stock and incriminating documents and cash found as a result of search are related to business activities and as such same may kindly be accepted as business income. Further it is relevant to mention here that the ld CIT (A) has categorically recorded the finding that "even when source is explained same is accrued through business undertaken by the assessee, it will be treated as income u/s 68 to 69C and provisions of section

115BBE will apply accordingly." The observation made by the Id CIT (A) is totally and apparently contrary to the provisions of the law and also against the decision of Hon'ble Jurisdictional High Court referred above.

4. As per the Id AR the surrender income disclosed by the assessee are part of the business activities and no other activities carried out by the assessee and also no material or evidence brought on record by the Department and as such the income declared in the nature of business income and the provisions of section 69 applied by the Id AO and confirmed by Id CIT (A) is totally unjustifiable and also contrary to the decision of Hon'ble Jurisdictional High Court.

5. The Id AR has further contended that the Hon'ble ITAT, Jodhpur Bench, Jaipur Bench and Hon'ble ITAT, Mumbai Bench has allowed the appeal on identical facts:

1. ACIT v/s Sanjay Bairathi Gems Ltd., ITAT Jaipur Bench. The relevant finding recorded by the Hon'ble ITAT at para 4.1 to para 4.3 page 8 to 11 of the order reads as under: -....

2. Reliance was also placed on the decision of Hon'ble ITAT, Jodhpur Bench in the case of ACIT, Central Circle -1 v/s Miraj Tradecom Pvt. Ltd., I.T.A. No. 124/JODH/2017 dated 03/07/2017 wherein the Hon'ble Bench held as under:-.....

The Hon'ble ITAT, Mumbai Bench in the case of ACIT v/s Rahil Agencies in I.T.A. No. 4413/Mum/2014 dated 23/11/2016. The Hon'ble Bench held as under: -.....

13. I have heard the rival contentions and record perused. I have also carefully gone through the orders of the authorities below. I have also deliberated on the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by the Id AR during the course of hearing before the ITAT in the context of factual matrix of the case. From the record, I find that during the course of survey, income was surrendered by the assessee on account of stock, excess cash found out of sale of stock and also in respect of incriminating documents. As per judicial pronouncements cited by the Id. AR and also the decision of Hon'ble Rajasthan high court in the case of Bajrang Traders in Income Tax Appeal No. 258/2017 dated 12/09/2017 I observe that the Hon'ble High Court in respect of excess stock found during the course of survey and surrender made thereof was found to be taxable under the head 'business and profession'. Similarly in respect of excess cash found out of sale of goods in which the assessee was dealing was also found to be taxable as business income. Applying the proposition of law laid down in the judicial pronouncements as discussed above, I hold that the lower authorities were not justified in taxing the surrender made on account of excess stock and excess cash found U/s 69 of the Act. Thus, there is no justification for taxing such income U/s 115BBE of the Act.

1. 190 ITD 128 (Chd Trib.) Bajaj Sons Ltd. Vs. DCIT

8.....We find that a separate surrender of Rs. 97.11 lacs has been made by Shri SB Bajaj Director of the assessee company on account of unexplained cash found during the search action. However, so far as the surrender of Rs. 15 lac to cover any discrepancy is concerned, the AO has not pointed out any unexplained credit in the books of account, any unexplained investment, any unexplained money, bullion or jewellery, any unexplained expenditure or any amount of loan repaid in the assessment order in this respect. Therefore, the provisions of section 68, 69, 69A, 69B, 69C and 69D are not attracted on the surrendered amount of Rs. 15 lacs. The said amount of Rs. 15 lacs was offered in case any discrepancy is found in the books of account. However, in actual neither any unexplained investment nor any unexplained expenditure or otherwise any unexplained asset was found during the search action so far as the aforesaid surrender of Rs. 15 lacs was concerned. In these circumstances, the aforesaid surrender of Rs. 15 lacs can be said to have been offered to cover up the discrepancies in respect of likely disallowances of claims, if any, relating to its business income. In view of this, since the aforesaid surrender is not covered under the provisions of section 68, 69, 69A, 69B, 69C and 69D, the provisions of section 115BBE are not attracted in this case That without prejudice to the above and in the alternative, even otherwise, the learned Assessing Officer has erred both in law and on facts in holding that amount deposited in the bank by the appellant is taxable as income under section 68 of the Act and thereafter computed the demand in accordance with the rates specified in section 115BBE of the Act as amended by Taxation Laws (Second Amendment) Act, 2016.

1. It is submitted that the learned Assessing officer has failed to appreciate that the amendment made by the Taxation Laws (Second Amendment) Act, 2016 was w.e.f. 1.4.2017 and thus applicable from financial year 2017-18 onwards and not from the financial year 2016-17 relevant to assessment year 2017-18 and therefore, demand computed was not only arbitrary but highly excessive. is submitted that tax liability increased as per section 115BBE is indirectly penal in nature. Higher rate is introduced where the income is taxed under six sections for which the learned Assessing Officer is not satisfied with the explanation of the assessee.

2. It is submitted that since this is penal in nature, retrospective applicability of amended section 115BBE of the Act is not permitted. In this regard appellant seeks to place reliance upon judgment of Hon'ble Apex Court in the case of Star India (P) Ltd. Vs. Commissioner of Central Excise reported in 280 ITR 321 (SC) wherein Hon'ble Court has held as under:

“it is well established that while it is permissible for the Legislature to retrospectively legislate, such retrospectivity is normally not permissible to create an offence retrospectively. There were clearly judgments, decrees or orders of courts and Tribunals or other authorities, which were required to be neutralized by the validation clause. We can only assume that the judgments, decrees or orders, etc. had, in fact, held that persons situate like the appellants were not liable as service providers. This is also clear from the Explanation to the validation section which says that no act or acts on the part of any person shall be punishable as an offence which would have

been so punishable if the section had not come into force. [Para 7] The liability to pay interest would only arise on default and is really in the nature of a quasi-punishment. Such liability although created retrospectively could not entail the punishment of payment of interest with retrospective effect.”

1. It is next submitted that every assessee is entitled to arrange his financial affairs on the basis of the law as it exist on the date of arranging the financial affairs. He cannot foresee the amendment to be taken with retrospective effect and imposing the liability on him. This is unreasonable and shows the arbitrariness on the part of the legislature. The Hon’ble Supreme Court in the case of *Lohia Machines Ltd. v. Union of India [1985] 20 Taxman 9 (SC)* has held as under:

“Even the power and competence of the Parliament to amend any statutory provision with retrospective effect cannot be doubted. Any retrospective amendment to be valid must, however, be reasonable and not arbitrary and must not be violative of any of the fundamental rights guaranteed under the Constitution. Unreasonableness or arbitrariness of any such amendment with retrospective effect has necessarily to be judged on the merits of the amendment in the light of the facts and circumstances under which such an amendment is made.

The imposition of any fresh tax with retrospective effect for years for which there was no such levy is bound to operate unduly harshly on every assessee who is entitled to arrange and normally arranges his financial affairs on the basis of the law as it exists. Such retrospective taxation imposes an unjust and unwarranted accumulated burden on the assessee for no fault on his part and the assessee has to face unnecessarily without any just reason very serious financial and other problems. Imposition of any tax with retrospective effect for years which no such tax was there, cannot also be considered to be just and reasonable from the point of view of the Revenue.”

1. It is also submitted that before the new provisions came into operation, a vested right had already accrued to the assessee and the assessee has even estimated the income at the law prevailing on the date when the income has accrued to him and even would have computed and paid the advance tax accordingly. The new provisions cannot revive the barred right or take away the accrued vested right. was a substantive amendment creating new obligation and was not a matter of procedure. This contention takes support from the following judgments of the Hon’ble Apex Court:

1. 243 ITR 48 (SC) *CIT vs. Hindustan Electro Graphites Ltd.*

“Income by way of cash compensatory support became taxable retrospectively with effect from 1-4-1967but that was by amendment of section 28 by the Finance Act, 1990 which amendment could not have been known before the Finance Act came into force. Levy of additional tax bears all the characteristics of penalty. Additional tax was levied as the assessee did not in its return show the income by way of cash compensatory support.

The Assessing Officer on that account levied additional income-tax. No additional tax would have been leviable on the cash compensatory support if the Finance Act, 1990 had not so provided even though retrospectively. The assessee could not have suffered additional tax but for the Finance Act, 1990. After it had filed its return of income, which was correct as per law on the date of filing of the return, it was thereafter that the cash compensatory support also came within the sway of section 28. When additional tax has imprint of penalty, the revenue cannot be heard saying that levy of additional tax is automatic under section 143(1A). If additional tax could be levied in such circumstances, it would be punishing the assessee for no fault of it. That cannot ever be the legislative intent. It shocks the very conscience if in the circumstances section 143(1A) could be invoked to levy the additional tax. In the circumstances of the case, levy of additional tax taking into account the income by way of cash compensatory support was not warranted.”

1. 367 ITR 466(SC) CIT vs. Vatika Township (P) Ltd.

*“Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. One principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Philips v. Eyre* [1870] LR 6 QB 1 a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law. [Para 31]*

1. 417 ITR 521 (Patna) Loknath Goenka Vs CIT

In view of the judgments of the Apex Court in the case of Kesoram Industries and Cotton Mills Ltd. (supra) as well as Karimtharuvi Tea Estate Ltd. (supra) this Court would have no hesitation in holding that for deciding the liability of a particular provision of the Income Tax Act, the date of accrual of income would be relevant. If the provision comes into force in a particular financial year, it would apply to the assessment for that year but cannot be made applicable in respect of assessment for a previous year.

3. *The Amending Act introduced a new Section 64(1) (iii) in the Income Tax Act with effect from 1.4.1976. The tax liability under the said provision could therefore be charged on the assessee, in the assessment which was to be made for that accounting year i.e. 1976-77, which would be done in the assessment year 1977-78. The Amending Act introducing a new tax liability which came into force with effect from 1.4.1976 could not be given a retrospectivity and be made applicable to the previous accounting year i.e. 1975-76 corresponding to the assessment year i.e. 1976-77.*

In light of the aforesaid, addition made of Rs. 5,89,13,065/- may kindly be deleted.

1. The seventh ground of appeal is against the disallowance of depreciation of Rs. 20,700/- for alleged non acceptance of addition to fixed assets in the absence of purchase bills. The Ld. Assessing Officer has wrongly disallowed Depreciation Rs 20,700/- claimed by the assessee on Computer /Printer purchased during the year on-line simply in absence of bills only not submitted for verification during the course of Asstt Proceeding despite of ignoring the fact that the payment has been made through bank and Bank Statement and vouchers duly approved by the assessee were uploaded for verification during the course of Asstt Proceeding. Thus, the disallowance of Rs 20,700/- is totally wrong and illegal.

2. In view of the aforesaid, it is therefore, prayed that addition made by the learned assessing officer may kindly be deleted and appeal of the appellant be allowed. Should your goodself require any further information, the appellant shall be glad to furnish the same.

Decision:

In the above background and after considering the entire material on record, and submission of appellant each of the grounds are decided as under:

1. Ground No. 1 is general in nature, as far as framing the assessment u/s 143(3) of the IT Act, 1961, is not illegal and excessive in nature. Ground No. 1 stand Dismissed.

Ground No. 2 to 6 In these grounds, the appellant has challenged the addition made of Rs. 5,89,13,065/- on account of cash sale made during the demonetization period. The addition has been made by the A.O. u/s. 68 of IT Act, 1961. The provisions u/s. 68 have been carefully examined. The appellant is engaged in the business of Pan Masala and Tobacco product & Mobile during the year of Group of famous companies. The appellant has submitted the details of sales/ receipts and purchase/ payments for the year under consideration as also the comparison and justification of cash generated and deposited during the relevant years. The appellant has also submitted the comparative details of purchases, sales, and stock position during the relevant period. The appellant had also submitted copies of VAT returns along with copies of the sale bills. However, the Assessing Officer was not satisfied with the details submitted by the appellant and has made the addition of Rs. 5,89,13,065/- u/s 68 of the IT Act, 1961.

The provisions of Section 68 can be applicable where any sum is found credited in the books of the assessee and the assessee offers no explanation about the nature and source of the same or the explanation offered by the assessee is not satisfactory in the opinion of the Assessing Officer. Further, perusal of the chart of cash sale vis-a-vis cash deposit during pre-demonetization period shows that cash sale and cash deposit is a regular feature of the assessee business. The assessee has shown peak cash sales of 9.64 crore in the month of July-2016 and depositing cash every month. The assessee has shown the cash deposit of Rs. 25.65 crore from 1.4.2016 to 8.11.2016. The AO did not point out any defects in the books of account

nor discrepancies were found in the stock, sales and purchases. There is no finding by the AO that the purchases were inflated to show inflated sales to cover up the cash deposit in the bank during the demonetization period. Once cash deposits in bank account are explained to have originated from sales and the appellant has filed complete details of sales, including cash sales, along with bills, sales ledger and vouchers for the period from 01/04/2016 to 08/11/2016, there is no ground for making the addition. The appellant has also relied on various case laws which are squarely applicable in the case of the assessee.

Further, in the case of ACIT vs. Hirapanna Jewellers (189 ITD 608) Vishakhapatnam Bench of the Tribunal held as under:

“Purchases, sales and the Stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/stocks. Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. The assessing officer accepted the sales and the stocks. He has not disturbed the dosing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales. Audit report u/s 44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. The assessee has furnished the trading account, P& L account in page No. 7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared the exorbitant profits. Though certain suspicious features were noticed by the AO as well as the DDIT (Inv.), both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the assessee. Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence, (para 7)

In the instant case the assessee has established the sales with the bills and representing outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. In spite of conducting the survey the AO did not find any defects in sales and the stock. Therefore we do not find any reason to suspect the sales merely because of some routine observation of suspicious nature such as making sales of 270 bills in the span of 4 hours, non availability of KYC documents for sales, non writing of tag of the jewellery to the sale bills, non availability of CCTV footage for huge rush of public etc. The contention of the assessee that due to demonetization, the public became panic and the cash available with them in old denomination notes becomes illegal from 9-11-2016 and made the investment in jewellery, thereby thronged the jewellery shops appear to be reasonable and supported by the newspaper clippings such as The Tribune, The Hindu etc. It is observed from the newspaper clippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through the country, "(para 7.2)

In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case', we have no hesitation to hold that the 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 (supra) and the Hon'bte Gujarat High Court in the case of Visha/ Exports Overseas Ltd. (supra), Hence, we do not see any reason to interfere with the order of the Ld. CU(A) and the same is upheld, (para 9)"

Considering the facts of the case in totality and in the light of judicial decisions discussed here in above, I am of the view that the conditions to invoke provisions u/s. 68 are not prevailing in this case. The addition u/s. 68 of Rs. 5,89,13,065/- is unjustified, therefore, cannot be sustained as per provisions of IT Act, 1961. Upon observing that the appellant has successfully discharged its onus in light of the various reasons mentioned above, it is easy to accept the appellant's contention. Given the appellant's effective fulfillment of its onus, I am inclined to believe that the addition made by the AO is not justified

Hence, the addition of Rs. 5,89,13,065/- is hereby deleted. Ground no. 2-6 are allowed."

This is what leaves the Revenue/departmental aggrieved who has filed the instant appeal.

4. We have given our thoughtful consideration to the Revenue's and the assessee's respective vehement stands against and in support of the correctness of the CIT(A)'s foregoing detailed discussion deleting the impugned addition. We sought to verify the assessee's business activity first of all. We are fairly informed by the Revenue side that the assessee has been carrying out his regular business of wholesale/retail trading of panmasala tobacco products and mobile goods etc. That being the case and in view of

the fact that possibility of some cash sale receipts in such an unorganized business could not be altogether ruled out, we hereby deem it appropriate to observe that although the taxpayer has not pleaded and proved all the relevant facts to the entire satisfaction of the learned Assessing Officer; addition of his entire cash deposits would be prima facie too harsh in the given circumstances. Be that as it may, we thus conclude in these peculiar facts that a *lumpsum* addition of Rs.25 lakhs only would be just and proper with a rider that the same shall not be treated as a precedent. Learned CIT(A)'s detailed lower appellate discussion deleting the impugned addition of Rs.5,89,13,065/- stands upheld to the extent of Rs.5,64,13,065/- in other words. Necessary computation shall follow as per law.

5. So far as assessee's assessment under section 115BBE is concerned, we quote S.M.I.L.E. Microfinance Ltd. Vs. ACIT, W.P. (MD) No.2078 of 2020 & 1742 of 2020, dated 19.11.2024 (Madras) that the impugned statutory provision would come into effect on the transaction done on or after 01.04.2017 only. The assessee is accordingly directed to be assessed under the normal provision as per law.

6. This Revenue's appeal is partly allowed.

Order pronounced in the open court on 12th November, 2025

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 12th November, 2025.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi