



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.412/LKW/2023  
(Assessment Year: 2017-18)

<b>Gurdas Mal Arora</b> 21/L/4, Daboli, Kanpur.	v.	<b>The Assessing Officer, Circle-1(2)(1)</b> 16/69, Aayakar Bhawan, Civil Lines, Kanpur- 208001.
<b>PAN:AFEPM4342J</b>		
(Appellant)		(Respondent)

Appellant by:	Shri Ashish Jaiswal, Advocate
Respondent by:	Shri Amit Kumar, CIT-DR

**ORDER**

**PER ANADEE NATH MISSHRA, A.M.:**

(A). The present appeal has been filed by the assessee against the order dated 31.10.2023 passed by the Ld. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2017-18. The grounds of appeal of the assessee are as under: -

*"1. That the Id.AO has erred in making addition u/s 69A read with section 115BBE of the Income Tax Act, 1961 as well as Id.CIT(A) has also erred in confirming the addition u/s 68 of the Act when the books of accounts have already been rejected u/s 145(3) of the IT Act, 1961.*

*2. That the Id.AO has erred in rejecting the books of account without issuance of show-cause notice to the appellant before rejection of books of account u/s 145(3) of the Income Tax Act, 1961 making the order itself void-ab-initio by violating the principle of natural justice.*

*3. That the Id.CIT(A) has erred in confirming addition of Rs.1,93,48,000/- u/s 68 of the IT Act, 1961 rws 115BBE of the IT Act, 1961.*

*4. That the Id.AO as well as Id.CIT(A) has erred in confirming addition of Rs.1,93,48,000/- u/s 68 of the IT Act, 1961 rws 115BBE of the IT Act, 1961 leading to double taxation as the cash deposit has already been considered in the return of income.*

5. That the Id. CIT(A) has erred in not appreciating the fact that the sale has been made out of the stock available with the appellant out of which the major stock is out of opening stock and during the year of purchase made from registered dealer and only minor part of purchase in stock amounting to Rs.15,88,468/- has been made in cash.

6. That the Id.AO has erred in making addition of Rs.23,06,000/- u/s 40A(2)(b) of the Income Tax Act, 1961.

7. That the Id.CIT(A) has erred in not providing the proper and adequate opportunity of hearing to the appellant in the form of virtual hearing as requested by the appellant.

8. That the order passed by the Id.AO as well as Id.CIT(A) is arbitrary, prejudicial and unlawful without proper appreciation of facts and position of law.

9. That the appellant craves leave to introduce, modify or withdraw any ground of appeal with kind permission of your honour.”

(B) In this case, assessment order dated 31.12.2019 was passed u/s 143(3) of the Income Tax Act, 1961 (“Act” for short) wherein the assessee’s total income was assessed at Rs.2,90,18,740/- as against the returned income of Rs.73,64,740/-. In the aforesaid assessment order, an addition of Rs.1,93,48,000/- was made on account of cash deposit made by the assessee in the bank. Further, an addition of Rs.23,06,000/- by way of disallowance u/s 40A(2)(b) of the Act was also made, disallowing part of the salary paid by the assessee to persons specified u/s 40A(2)(b) of the Act. The relevant portion of the assessment order is reproduced as under: -

3. The assessee is individual and engaged in the business of trading of gold & diamond ornaments under the name & style of M/s Pankaj Chain & Jewellers, at Naya Ganj, Kanpur. The comparative chart of trading results are as under:

Particulars	A.Y. 2017-18	A.Y. 2016-17	A.Y. 2015-16
Sales	3,05,04,137/-	93,52,787/-	92,53,873/-
Gross Profit	1,23,51,098/-	33,37,749/-	13,79,792/-
G.P. Rate	40%	35%	14%
Net Profit	63,64,744/-	9,80,280/-	9,14,952/-
N.P. Rate	24%	10%	9%

During the course of assessment proceedings, the assessee has submitted ledger accounts of major transactions, audit report, Balance Sheet/P&L account, copy of bank statement etc. which were examined.

4. During the year under consideration, the assessee has deposited cash of Rs. 1,93,48,000/- during the demonetization period. The details of cash deposits are as under:-

S.No.	Name of Bank	A/c No.	Amount of Cash Deposit during demonetization period
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1.	HDFC BANK	012760200000226	Rs. 1,93,48,000/-
Total Rs. 1,93,48,000/-			

1. On perusal of the month wise cash sales shown by the assessee, it is found that the assessee has shown huge cash sales in the month of September 2016 & October 2016 as compared to cash sales in the remaining previous months of the year under consideration. The month wise cash sales, cash deposits & closing cash in hand etc. shown by the assessee is being reproduced as under:-

Month	Op. hand	Cash in hand	Cash sales	Cash deposits	Cash withdrawal	Closing cash in hand
April, 2016		128878	48950	0	0	144479
May, 2016		144479	494908	130000	0	492844
June, 2016		492844	594761	620000	0	445275
July, 2016		445275	571202	300000	0	687454
Aug. 2016		687454	578230	860000	0	776587
Sep. 2016		776587	1956893	631000	0	1104676
Oct. 2016		1104676	20708131	850000	0	20311376
Nov. III		20311376	161175	150000	0	20312051

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08.11.2016					
09.11.2016 to 30.11.2016	20312051	0	19348000	0	928252
Dec. 2016	928252	0	0	0	910343
Jan. 2017	910343	0	0	0	867343
Feb. 2017	867343	0	0	0	854843
March, 2017	854843	0	500000	0	307843
Total for the F.Y. 2016-17	25506251	0	23389000	0	

The above chart reveals that the assessee has shown abnormal high sales in huge volume mainly in the month of October 2016, in which total cash sales of Rs. 2,07,08,131/- were shown. In other months, the figures of sales are too less.

- On perusal of purchase ledger submitted by the assessee, it is found that the assessee has shown total purchase of Rs. 76,92,388.41 (including VAT & Central Excise Duty). It was observed that the assessee has purchased goods mostly in cash amounting to range of Rs. 18,000/- to 49,900/-. All the cash purchases have been shown from 01.09.2016 to 07.10.2016.
- On perusal of Sales Ledger submitted by the assessee, it is found that the assessee has shown total sales of Rs. 3,08,09,199.81 (including VAT & Central Excise Duty). It was observed that the assessee has sold goods mostly in cash amounting to range of Rs. 32,000/- to 49,500/- upto the 08.10.2016. It was again observed that the assessee has sold goods mostly in cash amounting to range of Rs. 1,46,000/- to 1,48,500/- from 27.10.2016 to 03.11.2016. It is found



- that the assessee has shown cash sale mostly in the month of October 2016 i.e. well before the demonetization period i.e. before 09.11.2016.
3. On perusal of the cash book and as per chart shown above in para 4(a), it is found that the cash balance at the end of the month upto September 2016 was maximum in the month of September 2016 which was Rs. 11,04,675/- but the closing cash balance as on 08.11.2016 was shown at Rs. 2,03,12,051/- due to cash sales in the month of October 2016. It has also been observed that the assessee has shown the firm closed by 29.11.2016. A receipt from Commercial Tax Department dated 08.12.2016 for cancellation of registration has been submitted by the assessee during the course of assessment proceeding.
  4. On perusal of ITR filed for A.Y. 2015-16, it was observed that the assessee has filed ITR - 4 on 31.03.2016 which is filed after due date and the system has marked this ITR as invalid. In this return, the assessee has shown gross profit of Rs. 13,79,792/- on which net profit shown at Rs. 9,14,952/-. It has also been observed that the assessee has not shown gross receipt for A.Y. 2015-16. On perusal of ITR, it is found that the assessee has not shown any turnover or gross receipt from trading business. In view of the facts and circumstances on record, it is established that the assessee is not engaged in trading of Jewellery during F.Y. 2014-15, relevant to A.Y. 2015-16. Also, the assessee has not maintained books of accounts for A.Y. 2015-16.
  5. On perusal of the ITR (Revised) filed by the assessee for A.Y. 2016-17, it is found that the assessee has shown total sales of Rs. 93,52,787/- on which the assessee has shown income u/s 44AD of the Act at Rs. 9,80,280/-. Again on perusal of this ITR, the assessee has shown cash balance at Rs. 98,078/-, however, on perusal of the month wise chart of opening & closing cash in hand for A.Y. 2017-18 the opening balance has been shown at Rs. 1,28,875/-. The assessee could not explain the difference of cash in hand as on 01.04.2016.
  6. On perusal of Original ITR for A.Y. 2016-17, it was observed that the original ITR - 4S was filed on 08.08.2016 which was after due date u/s 139(4) and the system has marked the ITR as invalid. The assessee has filed revised return for A.Y. 2016-17 which is not being taken on record because the original ITR was already filed after due date of filing of return. Accordingly, the amount of total stock in trade shown at Rs. 1,04,96,122/- in the revised ITR for A.Y. 2016-17 is not being taken on record as the original ITR filed after due date. Also the assessee has not maintained the books of account for F.Y. 2015-16 relevant to A.Y. 2016-17.
  7. On perusal of all the replies submitted by the assessee, it is gathered that the assessee has failed to produce the cash book and bills / vouchers for examination. On perusal of the squared up accounts it is observed that after the huge cash deposit of Rs. 1,87,00,000/- on 13.11.2016 in HDFC Bank account

- no. 01278020000226, the assessee has paid the balance amount of unsecured loans mostly to his family members. On perusal of the cash deposits and squared up accounts during the year under consideration, it is established that the un-explained cash has been introduced in the business in the shape of cash sales and this unexplained money was routed to the beneficiaries. It is to mention here that on perusal of squared up accounts the assessee has shown opening balances as on 01.04.2016, however it is found that the assessee has not maintained the books of accounts for A.Y. 2016-17 then how the assessee has shown the opening balances in respective bank accounts. The assessee could not explain this issue during the course of assessment proceeding.
8. The assessee has deposited cash of Rs. 8,50,000/- in the month of October, 2016 and Rs. 1,50,000/- between 01.11.2016 to 08.11.2016. At that time, the assessee had cash in hand more than 2 crores as per the details filed by him. In fact this cash was non-existent otherwise the assessee could have deposited that cash too and not small amounts of Rs. 8,50,000/- and Rs. 1,50,000/-. This clearly shows that cash sales are not real.
  5. In view of the above narrated facts and circumstances of the case, it is established that the assessee has shown fictitious purchase and sales to cover up the unexplained cash deposits of Rs. 1,93,48,000/- during the demonetization period i.e. from 09.11.2016 to 30.12.2016 for the year under consideration. There were no opening stock as on 01.04.2016, but in the shape of fictitious trading of Jewellery, the assessee has made an imaginary story of trading of Jewellery business so that the unexplained money / cash deposits made during demonetization period may be whitened. As the assessee could not establish the sale, purchase, opening stock etc. with supporting evidences, therefore, in absence of the required documents / explanation the books of account is hereby rejected u/s 145(3) of the Income Tax Act, 1961 to the extent of cash deposits made during the demonetization period i.e. from 09.11.2016 to 30.12.2016.
  6. All this only establish that showing such a bogus cash sale before demonetization period is only a colourable device to legitimate his unaccounted cash accumulated in the form of SBN. The Hon'ble Supreme Court in Sumati Dayal vs. CIT [(1995)214 ITR 801] has observed that 'apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities'. In the present case, the transactions the transactions as shown in the



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books of accounts are beyond human probabilities. The assessee has not been able to furnish complete evidence in support of the claimed transactions in respect of the cash claimed to have been received from various persons. Thus, it is evident that the assessee had introduced his own unaccounted cash in the books of accounts.

7. In view of the above facts and circumstances of the case, the entire cash deposits of Rs.1,93,48,000/- in his bank account mentioned above is being treated as unexplained income earned by him. I hold that the amount of cash deposits of Rs. 1,93,48,000/- in the bank accounts represents income from un-disclosed sources being un-verifiable and no details has been made available by the assessee. Accordingly, the cash deposits of Rs. 1,93,48,000/- during demonetization period is being treated as unexplained money owned by the assessee and being assessed and added to the total income of the assessee u/s 69A of the I.T. Act, 1961. The Income Tax on this income shall be charged u/s 115BBE of the I.T. Act, 1961. Penalty proceedings are being initiated separately on this issue. Penalty proceedings u/s 271AAC of the Act in respect of unexplained income is being initiated separately.

(Addition of Rs. 1,93,48,000/-)

7. On perusal of para 23 of the audit report, it is found that the assessee has made payments to the persons specified u/s 40A(2)(b) which is reproduced as under:-

Name of related party	PAN	Relation	Nature of transaction	Payment made (Amount)
Pankaj Arora	AIWPA4308B	SON	Salary	15,81,000/-
Versha Kumari Arora	AAMPA8961C	WIFE	Salary	10,21,000/-
Palak Arora	AGGPA3697P	Daughter in law	Salary	9,60,000/-

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Mohit Kumar Dua	AEQPK2736K	Son in law	Salary	1,90,000/-
Beena Arora	AGGPA3701L	Daughter	Salary	80,000/-
Versha Kumari Arora	AAMPA8961C	Wife	Rent	4,84,000/-
Total				42,86,000/-

8. On perusal of the above chart, it is found that the assessee has made excessive payments to his family members. It is found that the total salary of Rs. 38,02,000/- has been paid to his son, wife, daughter in law, son in law and his daughter. During the course of assessment proceedings, the assessee could not justify the huge salary paid to his family members. No satisfactory justification / explanation were offered by the assessee on the above issue of payment of salary. As per market trend, a person is available having salary of Rs. 20,000/- to 25,000/- per month. The assessee could not justify the monthly salary paid to his family members. It is observed that the assessee has diverted his profit in shape of salary paid to his family members. Salary of Rs. 3,00,000/- per person per year is being estimated as reasonable and accordingly salary of Rs. 15,00,000/- (5 persons as above) is being allowed. A disallowance of Rs. 23,02,000/- (3802000 - 1500000) is being made and added to the total income of the assessee on account of disallowance of salary paid to the persons specified u/s 40A(2)(b) of the Income Tax Act, 1961.

(B.1) The assessee's appeal against the aforesaid additions was dismissed by the Ld. CIT(A) vide impugned appellate order dated 31.10.2023. The relevant portion of the impugned order of the Ld. CIT(A) is reproduced as under: -

3. The assessee is individual and engaged in the business of trading of gold diamond ornaments under the name & style of M/s Pankaj Chain & Jewellers, at Naya Ganj, Kanpur. The comparative chart of trading results are as under:

Particulars	A.Y. 2017-18	A.Y. 2016-17	A.Y. 2015-16
Sales	3,05,04,137/-	93,52,787/-	92,53,873/-
Gross Profit	1,23,51,098/-	33,37,749/-	13,79,792/-
G.P. Rate	40%	35%	14%
Net Profit	73,64,744/-	9,80,280/-	9,14,952/-
N.P. Rate	24%	10%	9%

During the course of assessment proceedings, the assessee has submitted ledger accounts of major transactions, audit report, Balance Sheet/P&L account, copy of bank statement etc. which were examined.

4. During the year under consideration, the assessee has deposited cash of Rs.

1,93,48,000/- during the demonetization period. The details of cash deposits are as under-

S.No.	Name of Bank	Amount of cash deposit during demonetization period i.e. from 09.11.2016 to 30.12.2016
1	HDFC Limited	Rs.1,93,48,000/-
Total		Rs.1,93,48,000/-

1. On perusal of the month wise cash sales shown by the assessee, it is found that the assessee has shown huge cash sales in the-month of September 2016 & October 2016 as compared to cash sales in the remaining previous month for the year under consideration. The month wise cash sales, cash deposits & closing cash in hand, shown-by-the assessee is being reproduced as under:



Month	Cash in hand	Cash sales	Cash received	Cash withdrawals	Closing cash in hand
April, 2016	126875	48950	0	0	144479
May, 2016	144479	494909	130000	0	492844
June, 2016	492844	594761	620000	0	445276
July, 2016	445276	571202	300000	0	687454
Aug. 2016	687454	978230	860000	0	776587
Sep. 2016	776587	1958593	631000	0	1104675
Oct. 2016	1104675	20708131	850000	0	20311376
Nov. 2016	20311376	151176	150000	0	20312051
08.11.2016					
09.11.2016 to 30.11.2016	20312051	0	19348000	0	928252
Dec. 2016	928252	0	0	0	910343
Jan. 2017	910343	0	0	0	867343
Feb. 2017	867343	0	0	0	854843
March, 2017	854843	500000	0	0	307843
Total for the F.Y. 2016-17					

The above chart reveals that the assessee has shown abnormal high sales in huge volume mainly in the month of October 2016, in which total cash sales of Rs. 2,07,08,131/- were shown. In other months, the figures of sales are too less.

1. On perusal of purchase ledger submitted by the assessee, it is found that the assessee has shown total purchase of Rs. 76,92,388.41 (including VAT & Central Excise Duty). It was observed that the assessee has purchased goods mostly in cash amounting to range of Rs. 18,000/- to 13,900/-. All the cash/purchases have been shown from 01.09.2016 to 07.10.2016.

2. On perusal of Sales Ledger submitted by the assessee, it is found that the assessee has shown total sales of Rs. 3,08,09,199.81 (including VAT & Central Excise Duty). It was observed that the assessee has sold goods mostly in cash amounting to range of Rs. 32,000/- to 49,500/- upto the 08.10.2016. It was again observed that the assessee has sold goods mostly in cash amounting to range of Rs.

1,46,000/- to 1,48,500/- from 27.10.2016 to 03.11.2016. It is found that the assessee has shown cash sale mostly in the month of October 2016 i.e. well before the demonetization period i.e. before 09.11.2016.

3. On perusal of the cash book and as per chart shown above in para 4(a), it is found that the cash balance at the end of the month upto September 2016 was maximum in the month of September 2016 which was Rs. 11,04,675/- but the closing cash balance as on 08.11.2016 was shown at Rs. 2,03,12,051/- due to cash sales in the month of October 2016. It has also been observed that the assessee has shown the firm closed by 29.11.2016. A receipt from Commercial Tax Department dated 08.12.2016 for cancellation of registration has been submitted by the assessee during the course of assessment proceedings.

4. On perusal of ITR filed for a.Y.2015-16, it was observed that the assessee has filed ITR - 4 on 31-03-2016 filed after due date and the system has marked this ITR as invalid. In this return, the assessee has shown gross profit of Rs. 13,79,792/- on which net profit shown at Rs. 9,14,952/-. It has also been observed that the assessee has not shown gross receipt for A.Y. 2015-16. On perusal of ITR, it is found that the assessee has not shown any turnover or gross receipt from trading business. In view of the facts and circumstances on record it is established that the assessee is not engaged in trading of jewellery during F.Y.2014-15, relevant to A.Y.2015-16. Also the assessee has not maintained books of account for A.Y.2015-16.

5. On perusal of ITR (Revised) filed by the assessee for A.Y.2016-17, it is found that the assessee has shown total sales of Rs. 93,52,787/- on which the assessee has shown income u/s 44AD of the Act at Rs. 9,90,280/-. Again on perusal of this ITR the assessee has shown cash balance at Rs. 99,078/- however, on perusal of the month wise chart of opening & closing cash in hand for A.Y. 2017-18 the opening balance has been shown at Rs. 1,29,875/-. The assessee could not explain the difference of cash in hand as on 01-04-2016.

6. On perusal of Original ITR for A.Y. 2016-17, it was observed that the original ITR 4S was filed on 08.08.2016 which was after due date u/s 139(4) and the system has marked the ITR as invalid. The assessee has filed revised return for A.Y. 2016-17 which is not being taken on record because the original ITR was already filed after due date of filing of return. Accordingly, the amount of total stock in trade shown at Rs. 1,04,96,122/- in the revised ITR for A.Y. 2016-17 is not being taken on record as the original ITR filed after due date. Also the assessee has not maintained the books of account for F.Y. 2015-16 relevant to A.Y.2016-17.

7. On perusal of all the replies submitted by the assessee, it is gathered that the assessee has failed to produce the cash book and bills / vouchers for examination. On perusal of the squared up accounts it is observed that after the huge cash deposit of Rs. 1,87,00,000/- on 13.11.2016 in HDFC Bank account no. 01278020000226, the assessee has paid the balance amount of unsecured loans mostly to his family



members. On perusal of the cash deposits and squared up accounts during the year under consideration, it is established that the un-explained cash has been introduced in the business in the shape of cash sales and this unexplained money was routed to the beneficiaries. It is to mention here that on perusal of squared up accounts the assessee has shown opening balances as on 01.04.2016, however it is found that the assessee has not maintained the books of accounts for A.Y. 2016-17 then how the assessee has shown the opening balances in Respective bank accounts. The assessee could not explain this issue during the course of assessment proceeding.

8. The assessee as deposited cash of Rs.8,50,000/- in the of October, 2016 and Rs.1,50,000/- between 01.11.2016 to 08.11.2016. At that time, the assessee had cash in hand more than 2 crores as per the details filed by him. In fact this cash was non-existent, otherwise the assessee could have deposited that cash too and not small amounts of Rs.8,50,000/- and Rs.1,50,000/-. This clearly shows that cash sales are not real.

5. In view of the above, narrated facts and circumstances of the case, it is established that the assessee has shown fictitious purchase And sales to cover up the unexplained cash deposits of Rs.1,93,48,000/- during the demonetization period i.e. from 09.11.2016 to 30.12.2016 for the year under consideration. There were no opening stock of as on 01.04.2016, but in the shape of fictitious trading of jewellery, assessee has made an imaginary story of trading of jewellery business so that the unexplained money/cash deposits made during the demonetization period may be whitened. As the assessee could not established the sale, purchase, opening stock etc. with supporting evidences, therefore, in absence of the required documents/explanation the books of account is hereby rejected u/s.145(3) of the Income tax Act, 1961 to the extent of cash deposits made during the demonetization period i.e. from 09.11.2016 to 30.12.2016.

6. All this only establish that showing such a bogus cash sale before demonetization period is only a colourable device to legitimate his unaccounted cash accumulated in the form of SBN. The Hon'ble Supreme Court in Sumati Dayal Vs. CIT (1995) 214 ITR 801 has observed that "apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. In the present case, the transaction the transaction as shown in the books of accounts are beyond human probabilities. The assessee has not been able to furnish complete evidence in support of the claimed transactions in respect of the cash claimed to have been received from various persons. Thus, it is evident that the assessee had introduce his own unaccounted cash in the books of accounts.

7. In view of the above facts and circumstances of the case, the entire cash deposits of Rs.1,93,48,000/- in his bank account mentioned above is being treated as unexplained income earned by him. I hold that the amount of cash deposits of Rs. 1,93,48,000/- in the bank accounts represents income from un-disclosed sources being un-verifiable and no details have been made available by the assessee Accordingly, the cash deposits of

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Rs.1,93,48,000/- during demonetization period is being treated as unexplained money (owned by the assessee and being assessed and added to the total income of the assessee u/s.69A of the I.T. Act, 1961. The Income Tax on this income shall be charged U/s. 115BBE of the I.T. Act, 1961. Penalty proceedings are being initiated separately on this issue. Penalty proceedings u/s 271AAC of the Act in respect of unexplained income is being initiated separately.

(Addition of Rs. 1,93,48,000/-)

7. On perusal of para 23 of the audit report, it is found that the assessee has made payments to the persons specified u/s 40A(2)(b) which is reproduced as under:-

Name of related party	PAN	Relation	Nature Transaction	Payment made (amount)
Pankaj Arora	AIWPA4308B	Son	Salary	15,81,000
Versha Kuman Arora	AAMPA8961C	Wife	Salary	10,21,000
Palak Arora	AGGPA3697F	Daughter-in-law	Salary	9,60,000
Mohit Kumar Dua	AEQPK2738K	Son-in-law	Salary	1,60,000
Beena Arora	AGGPA3701L	Daughter	Salary	80,000
Versha Kuman Arora	AAMPA8961C	Wife	Rent	4,84,000
Total				42,86,000

8. On perusal of the above chart it is found that the assessee has made excessive payments to his family members. It is found that the total salary of Rs.38,02,000/- has been paid to his son, wife, daughter in law, son-in-law and his daughter. During the course of assessment proceedings, the assessee could not justify the huge salary paid to his family members. No satisfactory justification/explanation were offered by the assessee on the above issue of payment of salary. As per market trend, a person is available having salary of Rs.20,000/- to Rs.25,000/- per month. The assessee could not justify the monthly salary

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paid to his family members. It is observed that the assessee has diverted his profit in shape of salary of Rs. 3,00,000/- per person per year is being estimated as reasonable and accordingly salary of Rs. 15,00,000/- (5 persons-as above) is being allowed disallowance of Rs. 23,02,000/- (3002000 - 150000) is being made and added to the total income of the assessee on account of disallowance of salary paid to the persons specified u/s 40A(2)(b) of the Income Tax Act, 1961.

Addition of Rs. 23,06,000/-

3.2 Aggrieved by the order of the AO, the assessee raised the following specific grounds of appeal:

#### 4.0 GROUNDS OF APPEAL:

1. That the learned Assessing Officer has erred in rejecting books of account under section 145 (3) of the Income Tax Act, 1961 and making addition without any show-cause notice to the appellant making the order void-ab-initio by violating the principle of audi alteram partem.
2. That the learned Assessing Officer has erred in making addition of Rs. 1,93,48,000/- under section 69A read with section 115BBE of the Income Tax Act, 1961 when the books of account have been rejected under section 145 (3) of the Income-tax Act, 1961.
3. That the learned Assessing Officer has erred in making addition of Rs. 1,93,48,000/- under section 69A read with section 115BBE of the Act leading to double taxation as the cash deposit has already been considered in the part of return of income.
4. That the learned Assessing Officer has erred in making addition of Rs. 23,06,000/- under section 40A (2) (b) of the Income Tax Act, 1961.
5. That the learned Assessing Officer has erred in not providing proper and adequate opportunity to the appellant.
6. That the order passed by learned Assessing Officer is arbitrary, prejudicial and un-lawful.
7. That the appellant craves leave to introduce, modify or withdraw any ground of appeal with kind permission of your honour.

#### 5.0 OPPORTUNITY OF HEARING:

5.1 In response to several notices of hearing issued u/s.250 of the Act, the assessee filed written submissions in support of the grounds of appeal raised and requested to dispose of the appeal on the basis of the same.

5.2 As seen from the above, the assessee filed the present appeal against the

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AO's action in treating the cash deposits made in his bank accounts during the demonetization period as unexplained money u/s.69A of the Act and addition on account of salary paid to persons specified u/s.40A(2)(b) of the Act. Accordingly, the said issues are taken up for discussion and adjudication in the subsequent paragraphs of this order.

5.3 Further, in the statement of facts, the assessee made certain submissions and the same are reproduced below for ready reference.

"1. That the assessee is an individual and engaged in trading of gold and diamond ornaments under the name and style of M/s. Pankej Chain and Jewellers and has filed return of income at Rs. 73,64,740.00. That the case was selected for scrutiny and completed under section 143 (3) of the Act at total income of Rs. 2,90,18,740.00 by making addition of Rs. 1,93,48,000.00 under section 69A read with section 115BBE of the Income Tax Act, 1961 on account of cash deposit and Rs. 23,06,000/- on account of salary paid under section 40A (2) (b) of the Income Tax Act, 1961.

2 That the assessee being aggrieved is in appeal before your honour for appropriate relief."

6.0 The assessee has raised 7 grounds of appeal, out of which ground NO. 6 and 7 are general in nature and do not require any adjudication.

6.1 The Ground No.1, 2, 3 are raised against the AO's action in treating the amount of cash deposits during the demonetization period of Rs.1,93,48,000/- as unexplained money u/s.69A of the IT Act.

6.2 The ground No.4 is raised against the AO's action in making an addition of Rs. 23,06,000/- u/s.40A(2)(b) of the Act.

Ground No.5 is raised against the AO's action in not providing adequate opportunity.

#### 7.0 ANALYSIS and DECISION:

7.1 I have carefully considered the issues under dispute and examined the same in the light of the facts and circumstances of the case as emanating from the impugned assessment order u/s.143(3) of the Act and relevant provisions of the statute.

Ground No.1, 2, 3 are raised against the AO's action in treating the amount of cash deposits during the demonetization period of Rs.1,93,48,000/- as unexplained money u/s.69A of the IT Act

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7.2 As seen from the facts of the case, the assessee made cash deposits in his bank accounts during the demonetization period i.e., 09.11.2016 to 31.12.2016 i.e., in FY 2016-17 relevant to the Impugned AY 2017-18, amounting to Rs. 1,93,48,000/- in SBNs. During the course of assessment proceedings, the assessee explained to the AO that the said cash deposits in his bank accounts were made out of his business receipts i.e., cash sales from jewellery business. However, the AO rejected the argument of the assessee and treated the same as unexplained money u/s 69A.

7.3 During the appellate proceedings, the assessee filed the written submissions the relevant part of which is reproduced as under:

"6. That the assessee is regular income tax payer having PAN- AFEPM4342J aged about 70 years deals in the business of trading of gold jewellery. The assessee maintain all the regular records necessary for accounting purpose as well as for the purpose of other government agencies (VAT etc.). The assessee has followed mercantile system of accounting, which has been accepted by the department in preceding years. The family members of assessee namely Beena Arora, Veena Kumari, Pankaj Arora, Palak Arora are regular income tax payer with regard to independent professional income in the field of gold ornament manufacturing and its repairing (moti mala etc.). Due to prolong illness the assessee has to closed business on 29-11-2016 and the entire gold inventory have been cleared and realization thereof utilized towards the payments of unsecured loans. Assessee, being senior citizen has strictly followed and abided by rule of law either of income tax or VAT/GST. In another word compliances towards all government agencies have been made regularly by disclosing the entire statement of business affairs like purchase, sale, closing stock etc. taxes has been paid in accordance to law. After assessment year 2017-18 it was the last assessment year no ITR has been filed related to business income as the business was closed on 29-11-2016. There is no major cash sale from November, 2016 except for Rs. 1,51,177/- in the month of November, 2016. Vide para 2 of the assessment order the Id. A.O has himself stated that total cash sale upto 8-10-2016 is at Rs. 3,80,09,099/- including VAT and Central Excise duty. It is therefore clear that there is no cash sale after the introduction of demonetization applicable from 8-11-2016. The Id. A.O has not appreciated the surrounding circumstances of the case which force the assessee to close down the business, therefore before closure of business the assessee has clear all its assets and liability upto 8-11-2016. This is not against human probability. The month wise cash sale, cash deposit and closing cash in hand is as under:-

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Month	Opening cash in hand	Cash sales	Cash deposited in bank	Cash withdrawn from the bank	Closing cash in hand
April, 2016	178875	48550	0	0	144475
May, 2016	144475	894909	130000	0	492844
June, 2016	492844	594761	420000	0	445273
July, 2016	445273	571102	300000	0	647454
August, 2016	647454	878330	860000	0	776587
September, 2016	776587	192893	411000	0	1104675
October, 2016	1104675	20708131	850000	0	2011176
November till 08-11-2016	2011176	151175	150000	0	20912051
09-11-2016 to 30-11-2016	20912051	0	19348000	0	928152
Dec. 2016	928152	0	0	0	910343
Jan. 2017	910343	0	0	0	867343

Feb. 2017	867343	0	0	0	854843
March, 2017	854843	0	500000	0	307943
Total for the F.Y. 2016-17		23506252	23389000		

7. The allegation of the A.O vide last para of para 1 is incorrect that there is an abnormal high sales in huge volume mainly in the month of October 2016 where as the factual position is as above (total cash sale in the month of October 2016 is at Rs.20708131/-) the Id. A.O has failed to appreciate that because of Diwali festival and because of assessee determination to close the business because of old age, the assessee has cleared his entire inventory as per books upto October, 2016. The A.O has accepted sales and purchases and has not pointed out any defect therein. The sale is as per demand and supply, particularly and because of major festivals of Indian culture in the month of October. VAT return has also been filed within time as per requirement of government law. All the transactions, closing stock has been disclosed in VAT return. This is not a pure case where the credit/cash purchase during the year without inventory. In the instant case the assessee has opening inventory as on 1-4-2016 at Rs.10496122/- based on ITR filed for A.Y.2016-17 and it has been processed u/s 143(1) of the I.T Act, 1961 dt. 25-03-2017. Copy of ITR and processing intimation are being enclosed herewith. The objection of the A.O is based on presumption and assumption there is no major sale in November. The total purchase during the year is at Rs. 76,92,388/- out of which cash purchase is at Rs. 16,04,353. The contention of the A.O is misleading and contrary to the facts stating that the assessee has shown total purchase of Rs. 76,92,388/- including VAT/excise duty and these are mostly in cash in the range of 18000 to 19000 shown from 1-9-16 to 7-10-16. Whereas the fact is that the cash purchase 1-9-16 to 7-10-16 is at 747.406gmsonly.

8. The assessee's family has also started jewellery business in partnership w.eJ 23-11-2016 therefore they required return back of their funds to redeposit as a capital contribution or as an advance with the partnership firm constituted on 23-11-2016 being run in the name and style of M/s. K Pankaj Chain & Jewellers. This was also one of the main reasons for closure of the business.

9. That on para 3 of the assessment order the A.O alleged that A.O has himself taken



cognizance of closure of business on 29-11-2016 and acknowledging receipt from Commercial Tax department dt. 8-12-2016 for cancellation of registration.

10. Vide para 4 the Id. A.O has stated that the assessee has not shown gross receipt for A.Y 2015-16, the assessee has not shown its turnover, gross receipt from business thereby disbelieving that the assessee is engaged in trading of Jewellery in A.Y 2015-16 where as the fact is that the assessee has maintain regular books of account and as per regular books of account the total turnover is at Rs. 92,53,873/- gross receipt at Rs. 36,98,867/- and Net Profit is at Rs. 9,14,951/-. The return was filed e[1]filing along with financial statement of the assessee in the form of trading account, profit and loss account and balance sheet. Therefore the observation of the A.O for A.Y 2015-16 is incorrect.

11. In fact it appears that while uploading documents in support of submission of assessee, due to inadvertent mistake second page of computation for A.Y 2015-16 of Pankaj Arora (son of assessee) has been uploaded instead of assessee's computation along with computation of assessee in two sheets. And third sheet was related to Pankaj Arora (son of assessee) for the reason best known to the A.O he has taken only note of this sheets which contain details of Pankaj Arora in support of his own return of income u/s 44AD and A.O has completely brush aside assessee's own data in the form of Trading A/c, P/L A/c Balance sheet and Computation of income. It appears that the purpose for drawing the incorrect inference was to demolish the assessee's business activity on record stating that assessee is not engaged in trading of Jewellery in A.Y 2015-16 and has not maintained books of account. By drawing this inference the A.O was trying to draw conclusion that the assessee has no business inventory and no trading of Jewellery in F.Y 2014-15.

12. In para 5 & 6 of assessment order the Id. A.O admitted that there is a sale of Rs.9352787/- on which the assessee has shown income u/s 44AD at Rs. 980280/- and there is a stock in trade shown at Rs. 10496122/- in revised return for A.Y 2016-17. In fact as your honour is aware that for filing disclosing income u/s 44AD only and only form No. 4S is prescribed. In this form the assessee has to fill Turnover, Cash in hand, Debtors, Creditors, closing stock. Due to mistake the assessee forget to incorporate closing stock and cash in hand and a revised return was filed on 28-10-2016 containing closing stock of Rs. 10496122/- and this revised return was processed by the CPC on 25-03-2017. In support of 6 this acknowledge receipt of revised return, computation of income along with VAT return copy is being furnished herewith. The Id. A.O has wrongly ignored the revised ITR for A.Y 2016-17 simply for the reason that it was filed after due date of filing of return, therefore he has not taken cognizance of total stock in trade as on 31-03-2016 for Rs. 10496122/- which was the opening stock for the year under appeal. In assessment year under appeal he has not made any independent addition on account of brought forwarded stock for immediate earlier year u/s 69 of the I.T Act. It is humbly submitted that not only assessee has disclosed his financial transactions of purchase and sales gold Jewellery to the I.T department by filing returns may be belated and also before the other government agencies like VAT etc. and has paid taxes due thereon. The claim of closing stock Jewellery as on 31-03-16 and its carry forwarded to next financial year as on 1-4-2016 cannot be ignored at any cost as it not permissible under the I.T law. There may position that the assessee has claimed deduction

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under Chapter VIA or u/s 12A or any exemption under the Act which required that the corresponding ITR for the assessment year has compulsorily to be filed u/s 139(1) i.e. within the prescribed time limit for filing of his ITR otherwise the assessee's claim for exemption/deduction will not available. In the instant case the A.O has wrongly barred the claim of stock in trade at Rs. 1,04,96,122/- as on 31-03-2016.

13. Vide para 7 of the assessment order the Id. A.O has wrongly held that the assessee could not establish that the assessee has not produced books of account whereas the fact is that the books of accounts were produced before him and after going through the books of account the A.O has called for ledger copy of major transactions, audit report balance sheet, P/L A/c along with bank statements etc. which were examine by him and these very fact has been accepted by the A.O in his body of assessment order vide para 5 therefore this finding is also contrary to the facts of the case.

14. Vide main para 5 of the assessment order the Id. A.O has wrongly held that taking into consideration the facts mentioned in page 3, 4, 5 of the assessment order it is established that the assessee has shown fictitious purchases and sale to cover up unexplained cash deposit of Rs. 14893000/- during the demonetization for the year under question. For drawing this conclusion he hold that there is no opening stock as on 1-4-16 and the assessee has made fictitious trading of Jewellery, 7 imaginary story of trading of Jewelelry, unexplained money/ cash deposit during the demonetization period may be whitened he could not establish sale, purchase, opening stock therefore he is applied provision of section 145(3) of the I.T Act to the extent of cash deposit from 9-11-16 to 30-12-16. It is humbly submitted that he has not given any show cause notice before rejecting partly books of account u/s 145(3) which is a precondition in a case where the assessment is completed u/s 143(3) of the I.T Act. Secondly the rejection of books of account has not valid base. The Id. A.O has not pin pointed any defect in the audited books of account of audit report for the year under question. Even partial rejection of books of account is not permissible. It should be either NIL or whole books of account.

15. The books of account can be rejected only the A.O is not able to draw correct profit and loss from the books of account maintained by assessee in the regular course of business. In the instant case the books of account are audited and there is no deviation from method of account adopted by the assessee and the A.O has not found any flaw in the books of account therefore without issuing any show cause notice which is mandate of I.T law and the action of A.O is bad both in law and on facts and it is requested that the assessee's books of account which have been examined by Id. A.O may please be very kindly accepted.

That the assessee is furnishing trading results from 1-4-2016 to 31-03- 2017 in the form of opening stock, purchase (cash/credit) and sales.

16. The Id. A.a has not made any enquiry and has not brought any evidence on record etc. or raised any query on bogus purchase and sale. He has not appreciated surrounding circumstances and cash sales. It appears that he himself raised the query and drawn the conclusion without any investigation.

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17. Application of section 69A The Id. A.O. on the facts and circumstance of the case has wrongly applied section 69A of the I.T Act instead of section 69 of the Act because he himself stated that entire cash deposit of Rs.1,93,48,000/- is deposited in his bank account and treated as unexplained income earned by him. The precondition for application of section 69A is that 8 which is specifically state that where the assessee is found to be owner of money, bullion, jewellery or other valuable article and such above item are not recorded in the books of account and the assessee offered no explanation about the nature and source of acquisition of above valuable or the explanation offered by him is not to the satisfaction of the A.O only then the addition u/s 69A can be made.

18. In the instant case of assessee cash sale transaction are recorded in the books of account of assessee and from this books of account deposit has been made in bank account regularly maintain by him. This establish that there is a maintenance of books of account duly audited and the entire transactions of purchase and sales, bank account are a part of assessee's regular books of account and bank account cannot be separated for the purpose of section 69A, therefore in the instant case applicability of section 69 A is unlawful. Further the assessee has given satisfactorily explanation regarding nature and source of income (sale proceeds). It is not applicable to the sales receipts shown by the assessee recorded in the books of account. It is because sale proceeds have already been shown in the books of account as income at the time of sale only. There is no iota of evidence having any adverse remark on the purchase shown by assessee in the books of account and once the purchase has been accepted, the corresponding sales cannot be disturbed without giving any conclusive evidence. There is a realization of sale of Rs. 30504137/- recorded in the books of account, books of accounts are audited along with auditor's report and income on the sales has been accepted by the A.O and the separate addition on account of cash sale and rotation thereof in bank account in a regular business bank account, the addition of the same by the A.O amounts to double taxation of the same income. Further when the availability of stock and purchase recorded in the books of account of the assessee has been accepted by the revenue as genuine and cash balance shown therein was sufficient to cover high demonetization notes held by assessee is not required to prove source of such receipts of the said high demonetization notes which were legal tender at that time.

19. The Id. A.O has wrong suspicion only towards opening stock in trade as on 1-4-2016 where as he has accepted all purchases during the year and realization of sale proceeds there from. Without prejudice to above it is further submitted that when the books of account of assessee are maintained and transactions of purchase and sales, bank account are 9 recorded transactions there is no requirement for application of section 69A in the eye of law as all the sales are recorded in the books of account. Even banking transactions are also recorded in the books of account. Had there not been any books of account the application u/s 69A may be advisable. The reliance place in the case of Smt. Teena Bhatia vs. ITO ITA No 1383/Bang/2019 dt. 28-08-2020 and DCIT vs. Kartik Construction Co. in ITA No 2292/Mum/2016 dt. 23-02-2018.

20. Similarly, as regard double taxation as done by the Id. A.O by taxing both gross profit and separately cash sale reliance is place to Devas Sahai Ujjain ITA No. 336/Indore/2012 CIT Vs.



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*Devi Pd. Vishwananth 72 ITR 94 (SC) in this case it is held that case if cash credit represent income it is a income from source which has already been taxed no separate addition can be made.*

• *Cash Sale post demonetization accepted by AO except cash sale In SBN on the basis on CBDT SOP. Deviation from CBDT SOP cannot be reason for addition (Agons Global P Ltd VIS ACIT (Appeal No 3741 To 3746/Del/2019)*

• *Cash Sale and non availability of complete particulars of the names and addresses of customers in the case of cash transactions in the sale bills could not be a ground for not accepting the cash sale and its deposit. (R.B. Jessaram Fatehchand vs. CIT, 75 ITR 33 (Bom.), M. Dural Raj vs. CIT, 83 ITR 484 (Ker.))*

• *No addition if no other source of income available or established by AO not disclosed in the return ( Hon'ble Lucknow Tribunal in the case of Smt. Veena Awasthi,ITA No.215/LKW/20160rder dated 30.11.2018, Hon'ble Punjab & Haryana High Court in in the case of CIT vs Jawaharlal Oswal and Others (I.T.A. No. 49 of 1999,Judgment delivered on 29.01.2016).*

• *Purchase and Sale alongwith Trading result has not been disturbed and has been accepted by AO except Cash deposit in SBN apart from cash sale post demonitization, once the sale is from business and has been included under the books of the business, the same can only be taxable under the head of Profit and again from business & profession u/s 28 and cannot be treated as unexplained u/s 69. Moreover, when there is no other source of income not disclosed in the return, the same can only be treated as business receipt. Reliance is placed upon:*

- *Pr.CIT V. Bajargan, Traders, In-ITA-No.258 Of-2017, Vide Judgement Dated 12/09/2017*
- *HIGH COURT OF DELHI AT NEW DELHI In ITA 613/2010 COMMISSIONER OF INCOME TAX, Ms Suruchi Aggarwal Versus KAILASH JEWELLERY HOUSE*
- *ACT Central Circle-13 Mumbai V. Rahil Agencies, Order Dated 23 November, 2016, The Hon'ble Mumbai Tribunal*
- *Kanpur Organics Pvt. Ltd Vs. Dy. CIT Lucknow Bench Of ITATITA.675/LKW/2018 Dated 10/01/2020*
- *Lakhmichand Baljnath V. CIT [1959]1351TR416, Supreme Court*
- *ITAT GAUHATI BENCH 'E' In The Case Of Abdul Hamid V. Income-Tax Officer, IT APPEAL NOS.46 & 47 (GAU.) OF2019, JULY17, 2020*
- *INCOME TAX APPELLATE TRIBUNAL "0" BENCH, AHMEDABAD, ITA.No.1652/Ahd/2011 In The Case Of Shri Pavan kumar Bhagatram Sharma Dated 11/04/2016*

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- Gujarat High Court Approving ITAT Order In Case Of Vishal Exports Overseas Limited, Income Tax Appeal No.2471 Of 2009,Dated 03/07/2012
- INCOME TAX APPELLATE TRIBUNAL JODHPUR BENCH (SMC), JODHPUR, ITA No. 143/Jodhp/2018, Shri Lovish Singhal Order Dated 25/05/2018
- M/S Singhal Exim Pvt. Ltd. V. ITO ITA No. 6520/Del/2018 Decided By ITAT Delhi On 12.04.2019

- Double Taxation of same income by the AO as the cash sale has already been included in the sale and GP derived has been accepted by AO whereas AO has only rejected book to extent of cash deposit as specifically mentioned in the order.

- No application of Section 69A as its applicable where the transaction is not recorded in the books, addition on this account is not sustainable in law.

21. Book of accounts maintained and addition made u/s 69A for unsatisfactory explanation: In various cases, It is observed that assessee had explained to the AO that amount deposited during demonetization period is from cash sales, receipts from debtors etc and such transaction is duly recorded in the books of the assessee but AO has not considered explanation of the assessee satisfactory and made addition u/s 69A.

22. In such a situation addition is not tenable in the eyes of law because assessee had RECORDED such transaction in his books of accounts and once it is recorded then no explanation is required to be made for section 69A. It is fair chances that such addition may be quashed by the courts.

23. If AO would have made addition u/s 68 then situation would have been different. If addition is made u/s 68 in such a situation then assessee has to prove genuineness and credential of the transaction to the satisfaction of AO and case would be decided by appellate authorities on merits and facts.

24. In a recent decision in the case of SMT. Teena Bathala vis ITO (ITA No 1383/Bang/2019) dated 28/08/2019 The Ld. Bangalore branch had delivered that: On a reading of section 69A (supra), it is clear that the onus is upon the AO to find the assessee to be the owner of any money, bullion, jewellery or valuable article and such money, bullion, jewellery or valuable article was not recorded in the books of account, if any, maintained by the assessee for any source of income. In these circumstances, the AO can resort to making an addition under section 69A of the Act only in respect of such monies / assets / articles or things which are not recorded in the assessee's books of account. In the case on hand, the cash deposits are recorded in the books of account and are reportedly made on the receipt from a creditor. Further, the PAN and address of the creditor as well as ledger account copies of the creditor in the assessee's books of account have also been filed before the AO. In these circumstances, it is evident that the AO has not made out a case calling for an addition under section 69A of the Act. Probably, an addition under section 68 of the Act could have been considered; but then that is not the case of the AO. The assessee, apart from raising several



other grounds, has challenged the legality of the addition being made under section 69A of the Act. In support of the assessee's contentions, the learned AR placed reliance on the decision of the ITAT - Mumbai Bench in the case of DCIT Vs. Karthik Construction Co. In ITA No. 2292/Mum/2016 dated 23.02.2018, wherein the Bench at para 6 thereof has held that addition under section 69A of the Act cannot be made in respect of those assets / monies / entries which are recorded in the assessee's books of account. In ITA Nos.1383 and 1384/Bang/2019 my considered view, the aforesaid decision of the ITAT - Mumbai Bench (supra) is squarely applicable to the facts of the case on hand, where the entries are recorded in the assessee's books of account. In this view of the matter, I am of the opinion that the addition of Rs.6,30,000/- made under section 69A of the Act is bad in law in the facts and circumstances of the case on hand and therefore delete the addition of Rs.6,30,000/- made there under. The AO is accordingly directed.

25. Regular Cash sale converted as unexplained cash credit: In various cases, it is observed that regular cash sale just before demonetization period is also not accepted and addition were made on the basis of deviation in ratio as set out in various SOP issued by CBDT. 12

26. The Ld. Delhi Tribunal in the case of AGONS GLOBAL P LTD vis ACIT (Appeal No 3741 to 3746/Del/2019) has held that mere addition made on this ground that there is deviation in ratio is not proper. When the assessee had regular cash sale and deposit of cash in bank accounts and if nothing incrementing is found contrary then addition u/s 68 of such cash sale would tantamount to double taxation.

27. The Ld. Indore Bench in the case of DEWASSOYALTD / UJJAIN vis Income Tax (Appeal No 336/Ind/2012) has held that "The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act. This view has been held by the Hon'ble Supreme Court in the case of CIT vs. Devi Prasad Vishwnath Prasad (1969) 72 ITR 194 (SC) 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.

28. Reliance can also be placed on the decision of Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More (1969) 72 ITR 807 (SC) in which it was held "If the amount represented the income of the assessee of the previous year, it was liable to be included in the total income and an enquiry whether for the purpose of bringing the amount to tax it was from a business activity or from some other source was not relevant".

29. Reliance can be placed on the decision of Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordia vs ITO (2008) 298 ITR 349 in which it was 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".

30. In the decision of Hon'ble ITAT, Nagpur Bench in the case of *Mis Heera Steel Limited vs ITO* (2005) 4 IT J 437 is also worth to be mentioned here that wherein it was held that "Both the lower authorities failed to appreciate the case of the assessee that these were the trade advances and not cash credits and against such advance, the assessee has supplied the 13 material in due time as per details available on record. In view of the above, there is no justification for the revenue authorities to treat these cash advances as unexplained cash credit u/s 68".

31. Reliance can also be placed on the decision of Hon'ble M.P. High Court in the case of *Addl. CIT vs. Ghal Lime Stone Co.* (1983) 144 ITR 140(MP). It is evident from these judicial rulings that trade advances or cash received against which goods are supplied subsequently is not a cash credit as contemplated by section 68.

32. Reliance can further be placed on the decision of the ITAT, Mumbai Bench in the case of *ITO vs. Surana Traders*, (2005)93 TII 875: (2005)92 ITO212, the relevant observation of the Mumbai Bench were as under :- "So merely because for the reasons that the purchaser parties were not traceable, the assessee could not be penalized. In the sales documents, the assessee has made available a\* necessary details, i.e. the total weight sold as well as the rate per kilogram. Undisputedly, the assessee has maintained complete books of accounts along with day to day and kilogram to kilogram stock register. These were produced before the AO by the assessee. The assessee also submitted stock tally sheet along with the audited accounts. The audit report of the assessee also bears ample testimony in favour of the assessee. The factum of the assessee having maintained stock register and quantitative details have been mentioned by the AO in the assessment order. No mistake was pointed out by the AO in these records maintained by the assessee. Since the purchases have been held to be genuine, the corresponding sales cannot, by any stretch of imagination be termed as hawala transaction. It is the burden of the department to prove the correctness of such additions.

### 33. Applicability of section 115BBE

The application of section 115BBE is bad both in law and on facts in the instant case. Section 115BBE can be applied if ingredients of allegation u/s 69A are proved. Section 69A specifically states that where the assessee is found to be owner of any money, bullion, jewelry, or other valuable article or the explanation offered by him is not to the satisfaction of the AO, only then the addition u/s 69A can be applied. In the instant case the following are missing ingredients of section 69A:-

a) a\* sales are recorded in the books of account. Nothing valuable as per section 69A was found to be not recorded. Bank pass book is also a part of regular books of account because all transactions of bank account are maintained in a systematic method and transactions thereof are recorded in the books of account duly audited.

b) The assessee has tendered a reasonable and satisfactory reply / explanation stating that the entire sale proceeds particularly sale proceeds upto 9-11-16 and deposit thereof from bank from 9-11-2016 to 30-12-16 is against the opening stock inventory of the year as well as



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against credit purchase during the year,

c) The addition itself is not warranted u/s 69A and therefore the consequential application of section 115BBE is not applicable. It is further submitted that the retrospective change in section 115BBE through taxation amendment bill 2016 cannot be made applicable retrospective and it can be made only after the date of taxation bill publish in a Gazette of India and cannot be applicable to the transaction made prior to amendment. It is worthwhile to notice that section 115BBE was amended on 15-12-2016 therefore transaction falling beyond this date can be a subject matter of charging section of 115BBE. Reliance is being place to the judicial pronouncement in the order of Hon'ble Rajasthan High Court in the case of PCITvs. Bajrang Traders ITA No. 258/ 2017. It is submitted that similar question was aroused before the court and it was decided in favour of assessee. In the instant case there is source of income/amount credited in the assessee's books of account/regular bank account out being regular sales out of regular inventory of stock as on 1-4-16 added with purchase during the year.

34. The case law relied upon by the A.O in the case of Sumati Dayal vs. CIT reported in 214 ITR 801(5C). In fact this case is not applicable in the case of assessee because in this case fact this lady having earned horse race income having no knowledge of it but in the instant case, it is a case of purchase/sale on regular basis covering from earlier years and followed by subsequent years. Therefore this case is not applicable in our case."

7.4 As seen from the above, during the appellate proceedings, the assessee contended that he is a regular income tax payer and maintained all the regular records for the purposes of government agencies and therefore addition on account of cash deposits during the demonetization period should not have been made. The assessee further submitted that the sales were high in October due to Diwali and due to prolonged illness he had to close his business from 29.11.2016 and entire gold inventory has been cleared. It was stated that there was an inadvertent mistake in computation for the A.Y 2015-16 and similarly in the return filed for the A.Y 2016-17, he forget to incorporate closing stock and cash in hand by mistake. Further, the assessee contended that the provisions of section 69A are not applicable to facts of the case as the transactions are recorded in the books of accounts and relied on some case laws including decisions of the ITAT Bangalore in the case of Smt. Teena Bhatia vs. ITO ITA No 1383/Bang/2019 dt. 28-08-2020 and DCITvs. Kartik Construction Co. in ITA No 2292/Mum /2016 dt. 23-02-2018. The assessee further stated that the provisions of section 115BBE are not applicable to his case.

7.5 I have given my thoughtful consideration to the Issue under dispute and found that the AO made the Impugned addition based on proper appreciation of factual matrix of the case.

7.6 At the outset, It is an admitted fact that consequent to demonetization of SBNs i.e., Rs.500/- and Rs.1000/- notes, i.e., w.e.f. 09.11.2016, it has become illegal to transact in SBNs while conducting business operations or for that matter any other activities in exchange of SBNs.

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7.7 The assessee is an individual and engaged in the business of trading of gold diamond ornaments under the name & style of M/s Pankaj Chain & Jewellers, at Naya Ganj, Kanpur.

7.8 The assessee has shown huge cash sales in the month of September 2016 & October 2016 as compared to cash sales in the remaining previous months for the year under consideration.

7.9 There was an abnormal increase in cash sales mainly in the month of October 2016, in which total cash sales of Rs. 2,07,08,131/- were shown.

7.10 The assessee has shown total purchase of Rs. 76,92,388.41 (including VAT & Central Excise Duty). All the cash/purchases have been shown from 01.09.2016 to 07.10.2016.

7.11 The assessee has shown total sales of Rs. 3,08,09,199.81 (including VAT & Central Excise Duty). It was observed that the assessee has sold goods mostly in cash amounting to range of Rs. 32,000/- to 49,500/- upto the 08.10.2016. and has sold goods mostly in cash amounting to range of Rs. 1,46,000/- to 1,48,500/- from 27.10.2016 to 03.11.2016. It is found that the assessee has shown cash sale mostly in the month of October 2016 i.e. just before the demonetization period i.e. before 09.11.2016.

7.12 On perusal of the cash book, it is found that the cash balance at the end of the month upto September 2016 was maximum in the month of September 2016 which was Rs. 11,04,675/- but the closing cash balance as on 08.11.2016 was shown at Rs. 2,03,12,051/- due to abnormally high cash sales in the month of October 2016.

7.13 After the huge cash deposit of Rs. 1,87,00,000/- on 13.11.2016 in HDFC Bank account no. 01278020000226, the assessee has paid the balance amount of unsecured loans mostly to his family members. On perusal of the cash deposits and squared up accounts during the year under consideration, it is evident that the un-explained cash has been introduced in the business in the shape of cash sales and this unexplained money was routed to the beneficiaries/family members.

7.14 The assessee has deposited cash of Rs. 8,50,000/- in the month of October, 2016 and Rs. 1,50,000/- between 01.11.2016 to 08.11.2016. At that time, the assessee had cash in hand more than 2 crores as per the details filed by him. In fact this cash was non-existent, otherwise the assessee could have deposited that cash too and not small amounts of Rs. 8,50,000/- and Rs. 1,50,000/-. This clearly shows that cash sales are inflated and not genuine.

7.15 In view of the above, it is evident that the assessee has shown inflated cash sales to cover up the unexplained cash deposits of Rs. 1,93,48,000/- during the demonetization period i.e. from 09.11.2016 to 30.12.2016. As the assessee could not establish the sale, purchase, opening stock etc. with supporting documentary evidences, therefore, in absence of the necessary documents/explanation the AO rejected the books of account u/s.145(3) of the Income tax Act, 1961. The case laws relied upon by the assessee are not applicable to the



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facts of the case.

7.16 In view of the above facts and circumstances, it is clear that bogus cash sales claimed to have been done just before the demonetization period is only a device to legitimize his unaccounted cash accumulated in the form of SBN. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of Durga Prasad More and Sumati Dayal Vs.CIT(1995) 214 ITR 801 wherein it was held that 'apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. In the instant case, the transactions as shown in the books of accounts are beyond human probabilities. The assessee has not been able to furnish complete/necessary documentary evidence in support of the claim that the cash has been received from the customers just before the demonetization. Thus, it is evident that the assessee had introduced his own unaccounted cash in the books of accounts.

7.17 Regarding the argument of the assessee that the provisions of Sections 69A are not applicable as the said cash deposits were recorded in the books of accounts, where the factual matrix is not commensurate with the human probability, additions cannot be deleted merely on technical grounds as held by the Hon'ble ITAT Delhi in the case of Gloria Eugenia Rynah Banerji in ITA No.3510/Del/2019. Reliance is also placed on the decisions of the Hon'ble High Courts in the following cases i.e., 113 Taxmann.com(Mad), 20 Taxmann.com 853(CG). Further, even though the said cash deposits were recorded in the books of accounts, as the assessee failed to substantiate the nature and source of the cash credits, ingredients of section 68 are applicable to the facts of the case and therefore the addition should be considered to have been done u/s 68.

7.18 Further, regarding the argument of the assessee that the provisions of section 115BBE are not applicable to the facts of the case, as the addition should be considered to have been done u/s 68 and the assessment year under consideration is A.Y 2017-18, provisions of section 115BBE are squarely applicable to the facts of the case.

In view of the above, it is clear that the assessee inflated the cash sales just before the demonetization period to justify the cash deposits made during the demonetization period and therefore, addition of Rs. 1,93,48,000/- considered to have been done u/s 68 is hereby confirmed. Thus, the ground No. 1, 2, 3 raised by the assessee on this issue are dismissed.

7.19 The ground No.4 is raised against the AO's action in making an addition of Rs.23,06,000/- u/s.40A(2)(b) of the Act.

During the assessment proceedings, on perusal of para 23 of the audit report, the AO found that the assessee has made payments to the persons specified u/s 40A(2)(b)

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which is reproduced as under:-

Name of related party	PAN	Relation	Nature Transaction	Payment made (amount)
Pankaj Arora	AIWPA4308B	Son	Salary	15,81,000
Versha KUMari Arora	AAMPA8961C	Wife	Salary	10,21,000
Palak Arora	AGGPA3697P	Daughter-in-law	Salary	9,60,000
Mohit Kumar Dua	AEQPK2736K	Son-in-law	Salary	1,60,000
Beena Arora	AGGPA3701L	Daughter	Salary	80,000
Versha KUMari Arora	AAMPA8961C	Wife	Rent	4,84,000
Total				42,86,000

7.20

As seen from the above, the assessee has made excessive payments to his family members. It is found that the total salary of Rs.38,02,000/- has been paid to his son, wife, daughter in law, son-in-law and his daughter. During the course of assessment proceedings, the assessee could not justify the huge salary paid to his family members. No satisfactory justification/explanation were offered by the assessee on the above issue of payment of salary. As per market trend, a person is available for a salary of Rs.20,000/- to Rs.25,000/- per month. The assessee could not justify the monthly salary paid to his family members. It is observed that the assessee has diverted his profit in the shape of salary of Rs. 3,00,000/- per person per year is being estimated as reasonable and accordingly salary of Rs. 15,00,000/- (5 persons-as above) is being allowed and the balance amount of Rs. 23,02,000/- (3802000 - 1500000) has been disallowed on account of excess salary paid to the persons specified u/s 40A(2)(b) of the Income Tax Act, 1961.

During the appellate proceedings, the assessee filed the written submissions the relevant part of which is reproduced as under

*"Application of section 40A(2)(b) This issue has been discussed by the Id. A.O in the body of assessment order vide para 7 & 8. The Id. A.O has disallowed salary by estimate paid to PankajArora, Versha Kumari Arora, PalakArora, BeenaArora & Mohit Kumar Dua*



holding without investigation, examination of persons and without giving comparable cases of market wrongly held that salary of Rs. 3 lac per person per year is being estimated as reasonable and therefore out of total claim of salary to the tune of salary 3802000/- on turnover of Rs. 30504137/-. He has not doubted the services rendered by them and bonafidy payment of salary expenses. It is submitted as under:-

3. That Shri Pankaj Arora is a regular Income tax payer and he is well verse with testing of gold and repairing thereof. He has also introduced interest free capital of Rs. 8 lacs. Sale for the assessment year under question has increased substantially. He is a graduate, he has vast experience in this line of business and on the basis of his experience he has started his own partnership business. He has disclosed his salary in his ITR as salary income from this concern as well as his professional income arises from testing of Gold and repairing work. This can be seen from computation of income for A. Y 2016-17 & 2017-18. Whatever the salary he has offered the same in his ITR and has paid taxes @ 30%. Therefore the disallowance in the hands of employer is amount to double taxation. It is not permissible in the I.T law. Taking into consideration his day to day activities in the participation of his old father's business, the payment of salary is quite reasonable and had the Id. A.O examine him he might has been satisfy the salary paid to him. But the Id. A.O sitting in the own chair, at his own whims has estimated the salary saying that there is a market trend therefore Rs.3 lac salary is reasonable. His basis of judgment is not reflecting in the assessment order. Therefore the action of A.O is wrong. No interest is being taken by them on deposit with concern

3. That Smt. Versha Kumari Arora, she is a regular employee of assessee drawing salary from A.Y 2015-16 except in A.Y 2016-17, (in this year she has done in her own business making chain) she is also introduced interest free capital of Rs.14,20,000/- in assessee's firm. She participate in his day to day business activity as your honour is aware that in this line of trading of gold ornaments the major role of female member cannot be denied. Therefore salary paid to her in consence of services the Id. A.O has not denied her services but he has estimated the same on presumptive basis.

5. That Smt. Palak Arora, she is a regular employee of assessee. She has also introduced interest free capital of Rs.1240000/-, she is well verse in repairing in motimala of gold. She also disclosed income there form in her hand. She is skill lady having knowledge in sales of jewellery ornaments and looking entire counter sales. Therefore salary paid to her in consence of services the Id. A.O has not denied her services but he has estimated the same on presumptive basis.

6. That the salary of Mohit Kumar has not increased in this year as in A.Y 2014-15, 2015-16, 2017-18. His salary was Rs.192000, 198000, 160000/- respectively. The Id. A.O has himself stated that a salary of Rs.3 lac per year is reasonable therefore salary is below 3 lacs and similar is the position of Smt. Beena Arora. 17

7. Your honour may appreciate that the increase in remuneration during the year has link with the turnover / profit of the entity. The assessee has filed reply and details thereof. The

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Id. A.O has not issued any show cause notice. He himself raised the query and draws the question without any investigation or opportunity of being heard. That the A.O has not disputed the rendering of services of the employees. It has been held in the case of Ramlal Kashi 106 ITR 189 Madras HC matter of commercial expediency should be left to the business concern. In the instant case recipients are identified and payment of salary is also taxed in their hands they assessed in higher bracket of tax slab. The disallowance is purely based on surmises and conjecture. The A.O has not brought any material on record, any cognizance basis as to why the business expenditure is disallowed. It is not the case that the expenditure was considered as bogus. It is a estimation without any basis. No disallowance in preceding year is made. The details of salary paid was filed before the A.O. the observation for estimation of remuneration paid to the employee, allowed in previous year is very general in nature. It has no basis are evidencible. The assessee was doing business in his all segments and this is undisputed fact, which is not possible without services of employee. Once the services are undisputed remuneration cannot be disallowed. In the light of decision of Hon'ble Supreme Court in the case of Upper India Publishing House P. Ltd. Vs. CIT reported in 117 ITR 569 it is held that onus is on the revenue to prove that the expenditure incurred by the business man is unreasonable then the provision of section 40A(2)(b) can be applied. The action of the A.O should be based on well founded reason the assessee also relied upon CIT vs. NEPC India Ltd. reported in 303 ITR 271, CIT vs. Forbes Tea Brokers reported in 315 ITR 404 and CIT vs. Denso Haryana (P.) Ltd. Reported in 328 ITR 14. In the case of Coronation Flour Mills vs. ACIT reported in 314 ITR 1 it is held that A.O. has to record it's finding as to whether the expenditure is excessive or unreasonable on the basis of three basic requirement/section (like a fair market price of the goods, services for which the payment is made, legitimate need of business and benefit derived to the assessee on receipt of services). In the instant case this exercise is missing the disallowances made purely on the basis of assumption and presumption which is unjustified."

7.21 In the case of Pankaj Arora, the assessee contended that Mr. Pankaj Arora offered the amount received as salary to tax and paid tax @30%. However, the assessee did not furnish any documentary evidence in support of his claim. Further, in case of the remaining family members, the assessee simply claimed that they are skillful and experienced and therefore deserve high salary which is more than the market rates. However, the assessee did not furnish any documentary evidence in support of his claim. Further, the assessee did not pay such high salary to any of his other employees other than his family members. The AO observed that the salary paid to the family members is excessive as per the market rate. Therefore, the contention of the assessee that the AO disallowed excess salary without making any observation about the market rate is not tenable. Therefore, the case laws relied upon by the assessee are not applicable to the facts of the case. Further, the assessee did not furnish any justification for paying such high salaries to only his family members and not to other employees. In view of the above, I am of the considered opinion that the AO rightly made the impugned addition of Rs. 23,06,000/- u/s.40A(2)(b) warranting no interference of the appellate authority.

Therefore, ground no. 4 raised by the assessee on this issue is dismissed.

(C) The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 30/07/2024 passed by the learned CIT(A). In the course of appellate proceedings in Income Tax Appellate Tribunal (ITAT), the assessee filed paper book containing the following particulars: -



Sl. No.	Particular
1	Copy of acknowledgement alongwith Brief Facts of the case and Written Submission filed during the Appeal proceeding
2	Copy of ITR, Computation along with of Balance sheet and P/L Account for A.Y 2014-15
3	Copy of Sales Tax order for F.Y 2013-14
4	Copy of ITR, Computation along with of Balance sheet and P/L Account for A.Y 2015-16
5	Copy of Sales Tax order for F.Y 2014-15
6	Copy of Revised ITR, Computation along with Form No. 4S for A.Y 2016-17
7	Copy of Balance sheet and P/L Account for A.Y 2016-17

8	Copy of Intimation u/s 143(1) dt. 25-03-2017 for A.Y 2016-17
9	Copy of annual VAT return for F.Y 2015-16
10	Copy of Vat Order for the F.Y 2015-16
11	Copy of ITR, Computation along with audited financial statements for A.Y 2017-18
12	Copy of annual VAT return for F.Y 2016-17
13	Copy of notice u/s 142(1) and reply to query along with supporting documents filed before A.O during the course of assessment proceeding. Stock Register of Gold Jewellery Stock Register of Gold Diamond Purchase Register Sale Register
14	Copy of stock summary opening, purchase and sale alongwith summary of cash/credit purchase and sale for F.Y 2016-17
15	Copy of Purchase accounts for F.Y 2016-17
16	Coy of sale accounts for F.Y 2016-17
17	Copy of ITR, Computation of Pankaj Arora for A.Y 2017-18 to 2014-15
18	Copy of ITR, Computation of Smt. Versha Kumari for A.Y 2017-18 & 2015-16
19	Copy of ITR, Computation of Palak Arora for A.Y 2017-18

20	Copy of ITR, Computation of Beena Arora for A.Y 2015-16 & 2016-17
21	Copy of ITR, Computation of Mohit Kumar Dua for A.Y 2014-15 to 2017-18
22	Copy of intimation filed before Sales Tax authorities surrender of TIN and closure of business
23	Copy of GST registration documents of new partnership M/s. K Pankaj Chain & Jewellers along with copy of PAN Card.

(C.1) Moreover, written submissions were also filed from the assessee's side which are reproduced below for the ease of reference: -

*"1. That it is undisputed facts that the appellant is an individual and engaged in the business of trading of gold and diamond ornaments under the name and style of M/s Pankaj Chain & Jewellers, 54/1, Naya Ganj, Kanpur. The appellant is regular income tax payer having PAN:- AFEOM4342J aged about 75 years deals in the business of trading of gold jewellery and has maintained all the regular records necessary for accounting purpose as well as for the purpose of other government agencies (VAT etc.).*

*2. The appellant has filed his return on 30-10-2017 alongwith audited financial statements disclosing return of income at Rs. 73,64,740/-. The assessment in this case has been framed u/s 143(3) on a total income of Rs. 2,90,18,740/- after making an addition of Rs. 1,93,48,000/- u/s 69A of the I.T. Act, 1961 as discussed in para 6 of the assessment order and addition of Rs. 23,06,000/- u/s 40A(2)(b) of the I.T. Act, 1961.*

*Addition of Rs. 1,93,48,000/- on Cash Deposit from Sale u/s 68/69A of the Income Tax Act, 1961:*

*3. That the appellant humbly submits before your honour that the Id.AO as well Id.CIT(A) has erred in making addition of Rs.1,93,48,000/- on account of cash deposit from cash sale made during the demonetization period. The conclusive finding of the Id.AO is reproduced as under:*

*"the assessee has shown fictitious purchase and sale to cover up the unexplained cash deposits of Rs. 1,93,48,000/- during the demonetization period i.e. from 09.11.2016 to 31.12.2016 for the year under consideration, there were no opening stock as on 01.04.2016, but in the shape of fictitious trading of jewellery, the assessee has made an imaginary story of trading of jewellery business so that the unexplained money/cash deposits made during demonetization period may be whitened. As the assessee could not established the sale, purchase, opening stock etc. with supporting evidences, therefore, in absence of the required documents/explanation the book of account is hereby rejected u/s 145(3) of the Income Tax Act, 1961 to the extent of cash deposits*



mode during the demonetization period i.e. from 09.11.2016 to 30.12.2016."

4. That the appellant being aggrieved from the order of Id.AO as well as the order of Id.CIT(A) is in appeal before your honour for appropriate relief in the interest of justice. The Id.CIT(A) has dismissed the appeal by giving verbatim finding of the Id.AO.

5. The appellant humbly submits before your honour that Id.AO has doubted the cash deposit on account of sale on the basis of erroneous presumption that the appellant does not have any jewellery business and that there is no opening stock as on 01.04.2016 and that the appellant has made an imaginary story of trading of jewellery business so that the unexplained cash deposit may be whitened.

Whereas the appellant humbly submits that the Id.AO has erred in making such presumption as the appellant has been doing trading of jewellery business since long in support of which the appellant has filed ITR, Computation, Balance Sheet and Sale Tax Order for FY 2013-14, FY 2014-15 & FY 2015-16 as appearing on page 27 to 73 of the paper book.

6. The appellant further humbly submits that the allegation of the A.O. that there is a abnormal high sales in huge volume mainly in the month of October, 2016 whereas the Ld. A.O. has failed to appreciate that there is high sale in October because of Diwali festival and because of appellants determination to close the business because of old age, the appellant has cleared his entire inventory as per books upto October, 2016 and had closed the business on 29.11.2016 copy of intimation filed before Sale tax authorities, surrender of TIN and closure of business is appearing at page 245-246 of the paper book.

7. The appellant has filed VAT return as per requirement of government law and all the transactions, closing stocks has been disclosed in VAT return. In the instant case the appellant has opening inventory as on 01.04.2016 at Rs. 1,04,96,122/- reflecting in the VAT Return for FY 2015-16 and VAT Order for FY 2015-16 on page 66-68 and 69-73 respectively which has also been shown in ITR filed for A.Y. 2016-17 reflecting on page 58 of the paperbook and the return has been processed u/s 143(1) of the I.T. Act, 1961 dated 25.03.2017 appearing on page 49 of the paperbook to which the Id.AO has erroneously alleged that the ITR filed for AY 2016-17 and AY 2015-16 are invalid. For the AY 2015-16, the ITR filed and its processing u/s 143(1) is appearing at page 41 and 35 to 40 of the paperbook respectively. The objection of the A.O. is based on presumption and assumption.

8. Further, the total purchase during the year is at Rs. 76,92,388/- out of which cash purchase is at Rs. 16,04,353/-only. The contention of the A.O. is misleading and contrary to the facts stating that the assessee has shown total purchase of Rs. 76,92,388/-including VAT/excise duty and these are mostly in cash in the range of 18000 to 19000 shown from 01.09.2016 to 07.10.2016. Whereas the fact is that the cash purchase 01.09.2016 to 07.10.2016 is at 747.406 gms. only.

9. The appellant humbly submits before your honour the supporting documentary evidence to establish the existence of business and stock on which the Id.AO has alleged on the presumption while making addition as to existence of trading of jewellery business and stock availability as on 01.04.2016 and the cash purchase made during the year as following:

*Existence of Business & Availability of Stock:*

*Assessment Year 2014-15*

*Copy of VAT order of the F.Y 2013-14 (Pg 31-34)*

*Copy of ITR alongwith financial statement for A.Y 2014-15 (Pg 27-30)*

*Assessment Year 2015-16*

*Copy of VAT order of the F.Y 2014-15 (Pg 46-48)*

*Copy of ITR alongwith financial statement for A.Y 2015-16 (Pg 41-45)*

*Copy of intimation under section 143(1) for A.Y 2015-16 (Pg 35-40)*

*Assessment Year 2016-17*

*Copy of VAT return & VAT order of the F.Y 2015-16 (Pg 66-68 & 69-71)*

*Copy of ITR alongwith financial statement for A.Y 2016-17 (Pg 54-61)*

*Copy of intimation under section 143(1) for A.Y 2016-17 (Pg 62-65)*

*Details of Stock Register & Purchase/ Sale Register:*

*Copy of Stock register of Gold Jewellery (Pg 114-120)*

*Copy of Stock Register of Diamond (Pg 121-123)*

*Copy of Purchase Register (Pg 124-125)*

*Copy of Sale Register (Pg 126-132)*

*Stock Summary of Opening Stock, Purchase & Sale alongwith Summary of Cash/Credit Purchase & Sale for the F.Y 2016-17 (Pg 154)*

*Copy of Purchase Account for F.Y 2016-17 (Pg 155-165)*

*Copy of Sale Account for FY 2016-17 (Pg 166-198)*

*10. The appellant humbly submits before your honour that from the above the facts are undisputed that the appellant is doing trading of jewellery business and that the stock as on 01.04.2016 was available at Rs. 1,04,96,122/- reflecting in the VAT Return for FY 2015-16 and VAT Order for FY 2015-16 on page 66-68 and 69-73 respectively and that the purchase out of Rs. 76,92,388/- cash purchase is at Rs. 16,04,353/- only and mostly the purchases has been made from the registered parties to whom payment has been made through cheque. Therefore, once the purchase has been made and the stock is available for sale then sale made by the appellant recorded in the book cannot be doubted without any cogent material on record to establish the same. Merely on presumption and surmises addition cannot be made.*

*Reliance is placed upon the following decision where purchase*

*ACIT vs. Harshit Garg, ITA 451/Lkw/2024 dated 04.07.2025*

*Track Exim Pvt Ltd. vs. ACIT, ITA 324/Lkw/2024 dated 29.11.2024*

*Pradeep Kumar vs. ACIT, ITA 198/Lkw/2024 dated 04.09.2024*

*Smt. Charu Aggarwal vs. CIT [2022] 140 taxmann.com 588.*

*ACIT vs. Hirapanna Jewellers [2021] 128 taxmann.com 291.*

*Anantpur Kalpana vs. ITO [2022] 138 taxmann.com 141.*

*Mahesh Kumar Gupta vs. ACIT [2023] 151 taxmann.com 339.*

*DCIT vs. Roop Fashion [2022] 145 taxmann.com 216.*



*ITO vs. J.K. Woods India Pvt. Ltd. [2024] 158 taxmann.com 208. Shobha Devi Dilipkumar vs. ITO (2024) 160 taxmann.com 1249.*  
*Bawa Jewellers Pvt. Ltd. Vs. DCIT, ITA No.352/DEL/2021 [ITAT, Delhi Bench].*  
*Lalchand Bhagat Ambica Ram vs. CIT, 371 ITR 288 (SC).*  
*Mehta Parikh Co. vs. CIT, 30 ITR 181 (SC).*  
*CIT vs. Associated Transport Pvt. Ltd. [1996] 84 taxmann 146.*  
*CIT vs. Chandra Surana, ITA No.166/JP/2022 [ITAT Jaipur Bench].*  
*Balvinder Kumar vs. ITO, ITA No.256/Amr/2022 [ITAT Amritsar Bench].*  
*JKG Exports vs. ACIT, 161 taxmann.com 481.*  
*Prashant Pitti vs. ACIT, ITA No.3032/DEL/2022 [ITAT Delhi Bench].*  
*Smt. Sarika Jain vs. CIT, [2017] 84 taxmann.com 64.*  
*Sunny Kapoor vs. ITO [2022] 142 taxmann.com 577.*  
*Sita Ram Rastogi vs. ITO, ITA No.23/LKW/2022 [ITAT Lucknow Bench]*

11. Moreover, the purchase and sale has been recorded in the books to which the appellant has offered the profit to tax and the Id.AO has accepted the same and has made partial rejection of books of account to the extent cash deposited. Such addition made would lead to double taxation as the sale has been offered to tax and accepted by the Id.AO while making addition to the return of income and computing the assessed income as apparent from the assessment order.

12. The Ld. Indore Bench in the case of DEWAS SOYA LTD, UJJAIN v/s Income Tax (Appeal No 336/Ind/2012 has held that "The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act. This view has been held by the Hon 'ble Supreme Court in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 72ITR194 (SC) 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.

*(Disallowance of Salary of Rs. 23,06,000/- u/s 40A(2)(b)*

13. The appellant would like to humbly submit that the issue has been discussed by the Ld. A.O. in the body of assessment order vide para 7 & 8. The Ld. A.O. has disallowed salary by estimate paid to Pankaj Arora, Versha Kumari Arora, Palak Arora, Beena Arora and Mohit Kumar Dua holding without investigation, examination of persons and without giving comparable cases of market wrongly held that salary of Rs. 3 lacs per person per year is being estimated as reasonable and therefore out of total claim of salary to the tune of salary 38,02,000/- on turnover of Rs. 3,05,04,137/-. He has not doubted the services rendered by them and bonafide payment of salary expenses. It is accepted practice that the jewellery business is run by family members themselves and salary is paid in the form of remuneration for their work in the business which are discussed below.

14. That Shri Pankaj Arora is a regular income tax payer and he is well verse with testing of gold and repairing thereof. He has also introduced interest free capital of Rs. 8 lacs. Sale for the assessment year under question has increased substantially. He is a graduate, he has vast experience in this line of business and on the basis of his experience he has started his own partnership business. He has disclosed his salary in his ITR as salary income from this concern as well as his professional income arises from testing of Gold and repairing work. This can be seen from computation of income for A. Y 2016-17 & 2017-18. Whatever the

salary he has offered the same in his ITR and has paid taxes @ 30%. Therefore the disallowance in the hands of employer is amount to double taxation. It is not permissible in the I.T law. Taking into consideration his day to day activities in the participation of his old father's business, the payment of salary is quite reasonable and had the Id. A.O examine him he might has been satisfy the salary paid to him. But the Id. A.O sitting in the own chair, at his own whims has estimated the salary saying that there is a market trend therefore Rs. 3 lac salary is reasonable. His basis of judgment is not reflecting in the assessment order. Therefore the action of A.O is wrong. No interest is being taken by them on deposit with concern.

15. That Smt. Versha Kumari Aroa, she is a regular employee of assessee drawing salary from A.Y 2015-16 except in A.Y 2016-17 (in this year she has done in her own business making chain) she is also introduced interest free capital of Rs. 14,20,000/- in assessee's firm. She participate in his day to day business activity as your honour is aware that in this line of trading of gold ornament the major role of female member cannot be denied.. Therefore salary paid to her in consence of services the Id. A.O has not denied her services but he has estimated the same on presumptive basis.

16. That Smt. Palak Arora, she is a regular employee of assessee. She has also introduced interest free capital of Rs. 1240000/-, she is well verse in repairing in motimala of gold. She also disclosed income thereform in her hand. She is skill lady having knowledge in sales of jewellery ornaments and looking entire counter sales. Therefore salary paid to her in consence of services the Id. A.O has not denied her services but he has estimated the same on presumptive basis.

17. That the salary of Mohit Kumar has not increased in this year as in A.Y 2014-15, 2015-16, 2017-18. His salary was Rs. 192000, 198000, 160000/- respectively. The id. A.O has himself stated that a salary of Rs. 3 lac per year is reasonable therefore salary is below 3 lacs and similar is the position of Smt. Beena Arora.

18. Your honour may appreciate that the remuneration during the year has link with the turnover / profit of the entity. The Id. A.O has not issued any show cause notice. He himself raised the query and draws the question without any investigation or opportunity of being heard. That the A.O has not disputed the rendering of services of the employees. It has been held in the case of Ramlal Kashi 106 ITR 189 Madras HC matter of commercial expediency should be left to the business concern. In the instant case recipients are identified and payment of salary is also taxed in their hands they assessed in higher bracket of tax slab. The disallowance is purely based on surmises and conjuncture. The A.O has not brought any material on record, any cognizance basis as to why the business expenditure is disallowed. It is not the case that the expenditure was considered as bogus. It is an estimation without any basis. No disallowance in preceding year is made. The details of salary paid was filed before the A.O. the observation for estimation of remuneration paid to the employee, allowed in previous year is very general in nature. The assessee was doing business in his all segments and this is undisputed fact, which is not possible without services of employee. Once the services are undisputed remuneration cannot be disallowed. In the light of decision of Hon'ble Supreme Court in the case of Upper India Publishing House P. Ltd. Vs. CIT reported in 117 ITR 569 it is held that onus is on the revenue to prove that the expenditure incurred by the business man is unreasonable then the provision of section 40A(2)(b) can be applied. The action of the A.O should be based on well founded reason the assessee



*also relied upon CIT vs. NEPC India Ltd. reported in 303 ITR 271, CIT vs. Forbes Tea Brokers reported in 315 ITR 404 and CIT vs. Denso Haryana (P.) Ltd. Reported in 328 ITR 14. In the case of Coronation Flour Mills vs. ACIT reported in 314 ITR 1 it is held that A.O. has to record its finding as to whether the expenditure is excessive or unreasonable on the basis of three basic requirements/section (like a fair market price of the goods, services for which the payment is made, legitimate need of business and benefit derived to the assessee on receipt of services.) In the instant case this exercise is missing the disallowances made purely on the basis of assumption and presumption which is unjustified.”*

(C.2) At the time of hearing, the Ld. Counsel for the assessee relied on the aforesaid written submissions and on the aforesaid paper book referred to in foregoing paragraph no. (C) and (C.1) of this order. The Ld. Departmental Representative for Revenue supported the impugned order of the Ld. CIT(A) as well as on the assessment order referred to foregoing paragraph no. (B) and (B.1) of this order.

(C.1) We have heard both sides. We have perused the materials available on records. As far as the aforesaid addition of Rs.1,93,48,000/- is concerned; perusal of the assessment order shows that the AO has taken view of the fact that the assessee showed heavy cash purchases in the range of Rs.18,000 to 19,900/-. This range is significant, because purchase transactions above Rs.20,000/- (*slightly above this range*) are hit by section 40A(3) of the Act. The AO has also observed that the assessee made heavy sales in cash, in the range of Rs.1,46,000/- to Rs.1,48,500/-. This range is also significant, because in this range, an assessee is able to avoid being hit by provisions of section 271DA r.w.s. 269ST of Income Tax Act. Further, the AO has also noted that the assessee failed to produce cash books and bills/vouchers for examination. The AO has also noted that on perusal of cash deposits and squared up accounts it was established that the unexplained cash had been introduced in the business, as cash sales. The AO has also noted that the assessee did not maintain books of accounts for AY. 2016-17;

and despite that, the assessee has shown opening balances in respective bank accounts; and the assessee could not explain this issue during assessment proceedings. The AO also treated the claim of the assessee that although the assessee had more than Rs.2 crores of cash in hand; the assessed deposited only Rs.1,50,000 between 01.11.2016 to 08.11.2016; as devoid of credibility. The AO rejected the assessee's books of accounts u/s 145(3) of the Act; observing that the assessee could not establish sale, purchase, opening stock, etc with supporting evidences; and holding that the assessee made an imaginary story of trading of jewellery business. In these facts and circumstances, the AO held that the amount of Rs.1,93,48,000/- deposited in cash in the bank during demonetization period was assessee's unexplained money. In the impugned appellate order of Ld. CIT(A), the aforesaid addition was sustained. The Ld. CIT(A) also held that bogus cash sales claimed to have been done just before the demonetization period was only a device to legitimate the assessee's unaccounted cash accumulated in the form of SBN (specified bank notes in the denominations of Rs.1000/- and Rs.500 that were in circulation before announcement of demonetization). We are of the view, having regard to the aforesaid facts and circumstances, that Revenue has made a strong case for the aforesaid addition of Rs.1,93,48,000/-. Although the assessee has placed reliance on numerous precedents, those precedents have their own respective factual matrices; which are clearly distinguishable from factual matrix in the present case before us. Whether sales and purchases claimed by an assessee are genuine or not, is a question of fact. It is well settled that doctrine of precedence has no application for a question of fact. Every case has its own set of facts, and even a slight change in factual matrix can alter the finding on a question

of fact. In the facts and circumstances of the present case, as presented by the Assessing Officer and Ld. CIT(A) in their respective orders; and as discussed in detail earlier in this order, we are satisfied that the addition of the aforesaid amount of Rs.1,93,48,000/- is warranted in the present case. The assessee did not produce books of accounts, and also did not establish genuineness of purchase, sales, stock etc with credible evidence. Reliance of Revenue on decision of Hon'ble Supreme Court in the precedent restored at Sumati Dayal vs CIT 214 ITR 801 (SC) is quite apt in the facts of the case. The doctrine of Human Probability famously laid down by Hon'ble Supreme Court in Durga Prasad More 82 ITR 540 (SC) and in Sumati Dayal 214 ITR 801 (SC) is firmly against the assessee in the facts and circumstances of the case. The claims made by the assessee are; cumulatively, beyond the realm of human probabilities in the present case. Further, purchases and sales are not proved, and when the books of accounts have been rejected u/s 145(3) of the Act; the book results claiming cash sales as explanation for cash deposits of SBNs in bank; deserves to be rejected and cannot be relied upon. In view of the foregoing discussion, we confirm the finding of the AO and the Ld. CIT(A) that the amount of Rs.1,93,48,000/- represented the assessee's unexplained income; and we sustain this addition.

(D) As far as the disallowance of Rs.23,06,000/- made u/s 40A(2) of the Act is concerned; the partial disallowance of salary paid to relatives specified u/s 40A(2)(b) of the Act has been made by the Assessing Officer, whereas partly the claim has been allowed. When a disallowance u/s 40A(2) of the Act is under consideration, the genuineness of the expenditure is not a relevant issue. The genuineness is accepted by Revenue in such



cases, only the quantum of expenditure is disputed. Therefore, the contention of the assessee that the genuineness of the expenditure was not in dispute, does not advance the assessee's case. Further, whether one or more of the recipients is paying tax at a high rate, or even at the highest rate, is also not decisive. Under section 40A(2) of the Act, typically the whole amount of claim is not disallowed. The claim is partly disallowed, because the claim of payments made to relatives specified u/s 40A(2)(b) of the Act is found to be excessive or unreasonable having regard to fair market value or the legitimate needs. The Assessing Officer disallowed of Rs.23,06,000/- out of total salary paid to persons specified u/s 40A(2)(b) of I. T. Act, amounting to Rs.42,86,000/- and allowed the remaining amount. After examination of the facts and circumstances, the Ld. CIT(A) confirmed the action of the Assessing Officer. No material has been brought for our consideration to persuade us that the amount of Rs.19,80,000/- allowed by the Assessing Officer (being Rs.42,86,000/- minus Rs.19,80,000/-) out of total claim of Rs.42,86,000/- was insufficient or inadequate, having regard to fair market, value, or legitimate needs of assessee's business; having regard to facts and circumstances of the case. That being the case, we find no reason for interference with impugned order of Ld. CIT(A) or the assessment order. In view of the foregoing, the aforesaid disallowance of Rs.23,06,000/- made u/s 40A(2) of the Act is confirmed.

(E) All the grounds of appeal are treated as disposed of in accordance with the aforesaid.

(F). In the result, the appeal of the assessee is dismissed for statistical purposes.

Order pronounced in open Court on 08/01/2026.

Sd/-  
[KUL BHARAT]  
VICE PRESIDENT

Sd/-  
[ANADEE NATH MISSHRA]  
ACCOUNTANT MEMBER

DATED: 08/01/2026

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

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2. Respondent
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4. DR
5. Guard file