

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH "SMC" SURAT**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)  
AND  
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 691/SRT/2025  
Assessment Year: 2017-18**

Magnifique Gems Private Limited  
105 Rajshree Building, Maniyara  
Sheri Na Naka, Surat,  
Gujarat- 395003

Income Tax Officer,  
Ward-1(1)(4)  
**Vs.** Aayakar Bhavan Income Tax  
Colony, Athwa, Surat,  
Gujarat- 395001

**PAN NO. AAGCM 5160 N**  
**Appellant**

**Respondent**

Assessee by : Mr. Rasesh Shah, CA  
Revenue by : Mr. J.K. Chandani, Sr-DR

Date of Hearing : 08/10/2025  
Date of pronouncement : 23/12/2025

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 09.06.2025 passed by the Ld. Commissioner of Income-tax (Appeals)-National Faceless Appeal Centre- Delhi [in short 'the Ld.CIT(A)'] for assessment year 2017-18, raising following grounds:-

*"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs. 30,67,288/- on account of undisclosed income u/s. 68 of the LT Act, 1961.*



2. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in taxing the addition by taking the rate @77.25% by attracting S. 115BBE instead of taxing as per normal tax slab. The addition if any that maybe confirmed should be taxed as business income.

3. On the facts and circumstances of the case as well as law on the subject, the assessing officer has erred in taxing the income u/s 115BBE @ 77.25% in a retrospective manner by applying the duly substituted S.115BBE inserted retrospectively instead of taxing it at 35.54 % as per the old provisions of S.115BBE.

4. It is therefore prayed that the above addition made by the Assessing Officer and confirmed by Ld. CIT(A) may please be deleted.

5. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Briefly stated, facts of the case are that the assessee company was engaged in the business of trading in Diamonds. The assessee filed its return of income for the year under consideration on 18.10.2017 declaring its total income at Rs. 1,44,750/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income Tax Act, 1961 (in short ‘the Act’) were issued and complied with. During the scrutiny proceeding, the ld Assessing Officer(AO) observed that aggregate cash of Rs. 34,55,000/- was deposited into bank account maintained with UCO Bank. The assessee claimed that said cash deposit was out of the cash sales during the year under consideration and that of earlier year. The ld AO noticed that entire cash sale of diamond has been shown during the period from 01.08.2016 to 22.10.2016. The ld AO further observed that assessee that there was no cash deposit in earlier years during the corresponding period.



2.1 The assessee contended that the said sales were made to retail customers in cash during the Diwali vacation period but the ld AO was not convinced that during the post Diwali period for one week i.e. the period during which the assessee has shown sales, the diamond industry remains closed in Surat. The ld AO asked details of the parties to whom goods were sold, GIA/IGI certificate for the type and quantity sold etc. The ld AO also asked the details of corresponding purchase, type of diamond and size and also requested to provide GIA/IGI in this regard for purchases. In view of no satisfactory explanation, the ld AO only allowed benefit for the opening cash balance of Rs. 3,87,712/- at the beginning of previous year corresponding to the assessment year and made addition for amount of Rs. 30,67,288/- out of the cash deposited of Rs. 34,55,000/- during the demonetization period. Accordingly the ld AO in assessment year passed u/s 143(3) of the Act on 24.12.2019 assessed the total income at Rs.32,12,040/-.

2.3 On further appeal, Ld. CIT(A) also upheld the addition mainly for the reasons that assessee failed to provide subsequent details of stocks, the parties to whom goods were sold and the month-wise purchase to justify the cash out of the regular sale of the assessee. The Ld. CIT(A) noted that details of the stock and purchases were also not proved by the assessee. Accordingly, he upheld the addition made by Ld.AO. The relevant finding of the Ld. CIT(A) is reproduced as under:



*“Ground No. 1 to 4: The brief facts of this case are that the return of income was filed by the appellant on 18.10.2017 for the FY under reference and the case was selected under CASS as there were cash deposits at Rs. 34,55,000/- in the bank account of the appellant during the demonetization period. Before the AO no satisfactory explanation was offered regarding the source of cash deposits during the demonetization period. Accordingly the cash deposits during the demonetization period were added to the total income of the appellant and the same were to be taxed at special rates u/s 115BBE of the Act,*

*During the appellate proceedings, it was contested by the appellant that the amount deposited was out of the sale proceeds of diamonds by the appellant which have been recorded in the books.*

*I have perused the assessment order, submissions of the appellant and the details on the record. It is seen that the appellant has not been able to provide specific provide stock details, details of the parties to whom sales were made, and the month-wise purchase details to justify that the cash generated was out of the regular sales of the appellant. Appellant was also called upon to furnish the specific details of the stock sold ie the GI number/GIA number, which was not submitted before the AO. It is a settled position in law that wherever there are credits in the books of the appellant, the onus is upon the appellant to satisfactorily explain the source of these deposits. In the present case, apart from a general statement, the appellant has not been able to bring on records, any specific evidences to substantiate that the cash deposited had proximate nexus with sales of the appellant. Even the details of stock purchase were not proved before the AO as noted in the assessment order. Under these circumstances, I do not have any reasons/grounds to interfere with the order of AO on this issue. The additions made by AO on account of unexplained credits are hereby confirmed and these grounds of appeal are dismissed.”*

3. Aggrieved, the assessee is in appeal before the Tribunal by way grounds as reproduced above.



4. Before us, the learned counsel for the assessee submitted that the assessee is engaged primarily in the wholesale trade of diamonds, i.e., Business-to-Business (B2B), involving import of diamonds as well as purchases from the domestic market. With a view to augment sales and expand its business footprint, the assessee had, during the relevant year, temporarily ventured into the Business-to-Customer (B2C) retail segment. It was submitted that the retail initiative initially showed encouraging results in October 2016; however, following the demonetisation announcement on 08.11.2016, the business was adversely affected owing to severe cash constraints in the economy and a sharp decline in discretionary spending on luxury items.

4.1 Reliance was placed on contemporaneous Government data evidencing reduced currency circulation during the relevant period. In view of the changed market conditions, the management, as a matter of commercial prudence, decided to discontinue the retail vertical and revert exclusively to its core wholesale business.

4.2 The learned counsel further submitted that the total turnover during the year under consideration was broadly comparable with that of the preceding year and that the Assessing Officer had neither doubted the audited financial statements nor the overall sales declared. It was contended that out of the total turnover of ₹103.25 lakhs, only about 33.54% represented cash sales. The cash so received from business transactions was duly recorded in the



books of account and deposited into the bank within the time permitted by the Government. It was emphasised that all cash sales were effected prior to the demonetisation date and that no cash sales were made thereafter i.e post declaration of demonetization declared on 8/11/2016. All the cash received from the business were deposited in the bank account well in time of the deadline issued from the Central Government.

4.3 With respect to the observation of the Assessing Officer that there were no cash sales in the subsequent year, it was submitted that cash sales during the year constituted a small fraction of total sales and that the mode of payment was determined by customer preference. Following the discontinuation of the retail segment, no further cash sales were undertaken.

4.4 As regards the name, address and PAN of the sales parties is concerned, the Id Counsel submitted that the sales made in cash which was within the prescribed limit of below Rs. 2,00,000/- where maintenance of PAN, address, etc was not mandatory, hence the assessee did not collect those details at time of making the sales over the counter in the retail segment.

4.5 It was further submitted that the assessee could not produce the retail customers before the Assessing Officer, as no customer particulars were maintained in such transactions. Regarding the nature of diamonds sold and the absence of IGI certification, it was



explained that the assessee dealt in polished diamonds of smaller sizes, for which grading certificates are generally not obtained. Certificates are procured only upon specific customer request and at their cost..

4.6 The learned counsel strongly assailed the addition made under section 68 of the Act, contending that the Assessing Officer failed to appreciate that the assessee had duly explained the nature and source of the cash deposits. It was submitted that purchases were fully supported by bills, payments were made through banking channels, suppliers had confirmed transactions, and quantitative stock details were furnished and duly tallied with closing stock. The sales, therefore, necessarily flowed from accounted stock, and in the absence of any defect in stock reconciliation, the genuineness of sales could not be doubted.

4.7 Further, the ld counsel submitted that the assessee had also provided the Quantitative details of the stock during the assessment proceedings which is perfectly tallied with the closing stock as on 31st March 2017. The sales were made from the stock held with the company, which consist of the Opening quantity of diamonds and the purchases during the year from the parties. And also, It is evident that the sales were duly made otherwise there would be a mismatch in the Stock quantity and the same would not tally. Hence the cash sales made before the period of demonetization cannot be doubted. It is 100% genuine and within



the provisions of Act. The goods purchased from the above parties have been sold and quantitative tally thereof is given in the tax audit report u/s 44AB of the Act and the quantity is perfectly tallied with books of accounts.

4.8 The 1d Counsel further submitted that the Ld. A.O. made the addition of cash credit u/s 68 of the Act. The said provision contemplates that the assessee has to give satisfactory explanation about nature and source of the credit entries in the books. In the present case the assessee has given full explanation about the nature and source of the entries in the books and proved the genuineness of transaction. Where the nature and source of cash deposit is known than the same cannot be considered as undisclosed income. The assessee has discharged the onus cast upon him.

4.9 The 1d Counsel submitted that according to Ld A.O. the assessee has introduced unaccounted cash in its books of accounts through cash deposit, however, the Ld A.O. failed to understand that cash is generated through the sales and sales were made out of the stock held by the appellant. Therefore, the above finding of the Ld. A.O. is merely based on assumption and surmises as he does not possess any evidence in against the claim of the appellant. The cash sales were only to be considered as a business opportunity grabbed by the assessee. Just because the cash was deposited during demonetization period, it cannot be considered as the



ground to make the addition u/s 68 as cash credit. If it would have not been deposited in the bank after 31st December 2016, it would have become invalid and that would have been the ultimate loss of hard earned money of the assessee.

4.10 The ld Counsel further submitted that moreover, the Ld. A.O. has not made the addition on account of the purchases made during the year and therefore it can be said that there were no doubts in regards to the genuineness of the purchases. He only raised the question on the sales made in cash without even giving a thought that such sales were credited in the books as business receipts generated through the stock held in the business only. Therefore, such Business receipts cannot be added u/s 68 of the Act.

4.11 Regarding the contention of the Ld. A.O. that the company made sales during Diwali time is against the market tradition as the diamond market remains closed due to Diwali vacations, the ld Counsel submitted that the company's management had decided to keep the office open on all day during Diwali vacations to facilitate the B to C business, hence the Ld. AO cannot make standard assumption that all the shops were closed during Diwali period. It is irrelevant whether the company can sell during Diwali or not. The decision to make sales is exclusive right of assessee. The Ld. AO cannot get into the shoes of the assessee and direct it as to how to conduct the business. The management of company is capable to



decide the day to day operation of company, Keeping in mind the wedding season just after Diwali, it is the main business time. Simply on this ground the Ld A.O. has doubted the cash sale of the appellant.

4.12 Further regarding allegation of the Ld. AO that there was delay in cash deposit by the assessee from the time of sale and that there was no apparent reason to accommodate the cash for such a long time period, the ld Counsel submitted that the Ld. AO had not defined what is the correct time period for which the cash could be held and could not be held. There is no specific time limit issued by the Government for which the cash could be held in business. Therefore the decision to keep cash in business is on the management and nothing on this part the addition could be made by the Ld. A.O.

4.13 The ld Counsel submitted that the Ld A.O. failed to find out any real defect in the books of accounts of the assessee. As, without rejecting the books of Accounts u/s 145(3) of the Act Ld A.O. passed the order which confirmed that the addition has been made purely on conjectures and surmises.

4.14 He further submitted that from the assessment order, it transpires that the Ld. AO has solely relied upon some cash deposit in bank account and did not carry out any worthwhile independent inquiry in the matter. He totally ignored the documentary evidences submitted by the appellant. The Ld. A.O. has not pointed out any



defects in the above mentioned documentary evidences submitted during assessment proceedings. Without pointing out any lacunae in the evidences submitted by the appellant, the sources and the genuineness cannot be doubted. Once evidences related to a transaction is submitted before the A.O., the onus shifts on him to prove these as non-genuine or accommodation. The Ld. A.O. has not discharged the onus casted on him and remained silent and did not comment on the documentary evidence filed by the appellant. Further, no evidence was provided by the Ld. A.O. to prove that the source of the cash was other than the cash sales made by the appellant. This makes it significant that Ld. A.O. does not possess any documentary evidence to support and substantiate his claim.

4.15 The ld Counsel submitted that without prejudice to above submitted that all the sales made by the assessee whether cash or credit were duly accounted and recorded in the books of accounts and therefore income generated through this gets automatically offered for taxation. Any further ad hoc addition on account of cash deposit will tantamount to double taxation in the hands of the appellant company. Taxing the sales which were credited in the Books of accounts and again making the addition on account of the same sales as cash credit will never be considered as the justice done. It would be a harsh decision against the assessee who had just made the deposit of demonetized currency earned by doing business during the year under consideration. Even if Ld. A.O. prefer to make the addition for cash credit u/s 68 of the Act and



deny to consider the cash sales as genuine sales then the credit for the sales offered for taxation by the assessee should be given in order to avoid the double taxation of the same income, This right of the assessee cannot be denied at any cost and needed to be considered if at all the addition is sustained.

5. On the contrary Ld. DR relied on the order of the lower authorities.

6. We have carefully considered the rival submissions and perused the material available on record. It is not in dispute that the assessee has recorded cash sales in its books of account and that corresponding cash deposits were made in the bank. However, the core issue is whether the assessee has satisfactorily discharged the onus cast upon it under section 68 of the Act to explain the nature and source of the cash credits.

6.1 Upon examination, we find that the assessee has failed to furnish specific and verifiable details regarding the diamonds allegedly sold in cash, such as item-wise description, quality, size, and their direct linkage with corresponding purchases. In the absence of such correlation supported by contemporaneous documentary evidence, the explanation tendered remains general and unsubstantiated.

6.2 Further, the surrounding circumstances cannot be ignored. The cash sales are claimed to have been effected during a period immediately post-Diwali, when, as a matter of common commercial



knowledge, the local diamond market at Surat largely remains closed. Additionally, the assessee, admittedly a wholesale trader, claims to have undertaken retail cash sales during this limited period without maintaining customer details. These factors, when cumulatively considered, render the explanation improbable on the touchstone of human conduct and commercial reality.

6.3 The settled legal position is that while suspicion alone cannot substitute proof, the assessee must, at the minimum, provide cogent and credible evidence to substantiate its claim, particularly in unusual factual circumstances. In the present case, such burden has not been satisfactorily discharged.

6.4 Where cash deposits are credited in the books during abnormal or unusual circumstances, the assessee must establish, by reliable and specific evidence, that such receipts arise from genuine business transactions. Mere recording of sales, without correlation to identifiable stock and without satisfactory explanation of attendant circumstances, is insufficient. If the explanation offered does not accord with human conduct and commercial probability, the addition under section 68 is justified, notwithstanding that the receipts are reflected in the books of account.

6.5 Accordingly, we find no infirmity in the order of the learned CIT(A) in sustaining the addition made under section 68 of the Act.



6.6 However, we find merit in the alternative plea of the assessee. The Assessing Officer cannot, on the one hand, treat the cash deposits as unexplained under section 68 and, on the other, simultaneously accept the corresponding sales as part of business turnover. Such an approach would result in double taxation of the same income, which is impermissible in law.

6.7 Therefore, if the cash deposits are finally held to be unexplained, the corresponding sales credited in the books must be excluded while computing taxable income. The Assessing Officer is directed to give consequential effect accordingly. The relevant ground of appeal is accordingly partly allowed.

7. As regards the levy of tax under section 115BBE of the Act, we find that once the addition under section 68 is sustained, the application of section 115BBE follows as a statutory consequence. We, therefore, find no infirmity in the order of the learned CIT(A) on this issue. The relevant ground of the appeal is accordingly dismissed.

8. In the result, appeal of the assessee is allowed partly.

**Order pronounced by way display of result on notice board on  
23/12/2025 under Rule 34(4) of ITAT Rules, 1963.**

Sd/-  
**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Sd/-  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**



Surat

Dated: 23/12/2025

Disha Raut, Stenographer

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Surat
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)  
**ITAT, Surat**