

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.1420/Mum/2023

(निर्धारण वर्ष / Assessment Years: 2017-18)

ITO-23(3)(6) Room No. 608, Earnest House, Nariman Point, Mumbai-400021.	बनाम / Vs.	Swarnsarita Jewellers 1/E, Ruby Chamber, 40/42, Dhanji Street, Zaveri Bazar, Mumbai- 400003.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABYFS2206F		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Suchek Anchaliya Shri Tushar Nagori
Revenue by:	Shri Suresh D. Gaikwad (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 13/07/2023

घोषणा की तारीख /Date of Pronouncement: 23/08/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Mumbai dated 27.02.2023 for the assessment year 2017-18.

2. The sole grievance of the Revenue in this appeal is against the action of the Ld. CIT(A) deleting the addition of Rs.98 Lakhs made by the Assessing Officer (hereinafter “the AO”) u/s 68 of the Income Tax Act, 1961 (hereinafter “the Act”).

3. Brief facts as noted by the AO is that the assessee is engaged in the business of trading in Gold and Diamond jewellery and precious stones. For AY 2017-18 the assessee had filed its return of income for AY. 2017-18 declaring total income of Rs.15,73,840/-. The AO observed that, search action was conducted in the case of one, M/s. Raksha Bullion on 13.11.2016, in the course of which cash of Rs.2.50



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crores was seized which inter alia comprised of cash of Rs.98 Lakhs found in the hands of Shri Dungsing Parmar, an employee of M/s. Swarnsarita Jewellers (Assessee). The AO noted that, according to DDIT(Inv.)-5(1), Mumbai, this cash of Rs.98 lacs belonged to the assessee which was corroborated by the statement of assessee's employee, Mr. Parmar, recorded in the course of search u/s 132(4) of the Act. In this background facts, the AO, in the course of assessment, required the assessee to furnish details of the source and cash of Rs.98 Lakhs along with supporting evidence. Before the AO, the assessee is noted to have furnished the cash register, sales register, stock register, books of accounts, sale bills etc. The assessee explained that the source of cash found from the possession of his employee represented realization from sale of bullion/jewellery in cash. Upon perusal of the books furnished by the assessee, the AO noted that the majority of the sales reported by the assessee was claimed to have been made on the day of demonetization i.e. 08.11.2016. The assessee had explained that, upon the announcement of demonetization several people had thronged jewellery stores to utilize their old currency notes and therefore, the assessee had grabbed this excellent opportunity and sold their stock to several customers, each of them being less than Rs.2,00,000/-. Upon examining these details/explanation furnished by the assessee, according to AO, following discrepancies were found therein.

- The stock purchased on 15.10.2016 was acquired on credit and that later on the assessee had adjusted the same against the sales



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made to the same supplier and therefore effectively no payment was made to this supplier.

- The fact that the supplier had sold gold jewellery on credit was suspicious considering the nature of trade.
- Most of the sales made by the assessee in the month of November 2016 was only on the date of demonetization and that too less than Rs.2,00,000/- and therefore in absence of KYC, the same was not verifiable.
- According to AO therefore, the purchases & sales were shown as artificial trade to bring in unaccounted monies into the books of accounts and therefore was a colourable device

4. After making the above observations, the AO however noted to have ultimately accepted the book results, sales of Rs.4,51,77,586/- and the profits declared by the assessee from this business of trading jewellery and assessed the profits of Rs.15,74,840/- reported therefrom as the taxable business income of the assessee. The AO thereafter added this sale proceeds of Rs.98,00,000/- found from the possession of assessee's employee and seized by the Department as unexplained cash credit u/s 68 of the Act. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same by observing as under: -

“7.8 Appellant has cash of Rs.98,00,000/- during demonetization period on 08.11.2016 which was out of cash sales which is shown as income by the appellant. Appellant maintains regular books of account, which are audited by



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independent auditor. Sales including cash sales are duly reflected in books of the appellant. The audited financial statements form part of the regular returns filed by the appellant. The details of Turnover, Gross profit and NP ratio is as under:

Particulars	AY. 2016-17	AY. 2017-18
GP ratio	4.81%	8.98%
NP ratio	0.52%	2.21%

Appellant had cash out of cash sales made by appellant. Copy of cash Book and Bank Book was maintained and Audited.

To substantiate the appellant's claim that cash of Rs.98,00,000/- is out of cash sales appellant has submitted following documents during the course of assessment proceedings:

- a. Cash Sale Register along with all the cash sale bills
- b. Copy of Purchase bills along with bank statement duly marked
- c. Jewellery Stock Register
- d. Balance Sheet and P & L account.

Appellant has discharged its onus by submitting documentary evidence in regards to cash sales of Rs.98,00,000/-.

Sales and purchases are duly recorded in books of accounts. Copy of sales register and purchase register were produced before AO.

All transactions of purchases/ sales are recorded in stock register.



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There is no discrepancy in quantity. Copy of stock register was available with appellant.

Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. The AO has not disturbed the closing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales.

The reduction of stock is matching with the corresponding sales. The A.O. as not found any, back dating of the entries, evidence of bogus sales, evidence of bogus purchases, and non-existing cash in the books of account.

Hence the corresponding as available with employees of appellant of Rs.98,00,000/- out of such cash sales cannot be rejected and deemed to have arisen on account of income-from-unexplained sources on mere surmises and conjecture.

It must be noted that the A.O. has not doubted opening stock, purchase and closing stock in the case of the appellant. Further the profits as disclosed by the appellant have also been accepted by the A.O.

It is to be submitted that sale proceeds cannot be taxed U/S 68 of the Act. The receipts of sale proceeds from the parties were not in the form of credits or loans at any given point of time. Therefore, cash received against sale cannot be treated as cash credit within the meaning of section sec 68 of the Act.

Further in number of cases it is held that the Cash received adjusted against sales could not be added U/S 68 of the Act treating the same as unexplained. Sales to all the customers were in the nature of counter sale.



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If such sale proceeds are permitted to tax U/S 68 of the Act then all the transactions where amounts are received against sale will be taxed and will result into absurdity.

The AO misunderstood the meaning of income and cash credit. Sales which the appellant has shown which AO has accepted as income later was considering as unexplained cash credit clearly shows goes against the accounting principles and taxation law.”

5. Aggrieved by the above order of the Ld. CIT(A), the Revenue is now in appeal before us.

6. We have heard both the parties and perused the material placed before us. The admitted and uncontroverted facts before us are that, the assessee is engaged in the business of trading in jewellery. During the relevant year the assessee had achieved sales turnover in this business of Rs.451 lacs which inter alia comprised of receipts of Rs.98 lacs from sales made on the day of demonetization. These sales are found recorded in the sales register, stock register, cash book etc. The impugned sum also formed part of the overall sales credited in the P&L A/c and offered for taxation under the ‘Business Income’. Perusal of the stock register along with sales register shows that the movement of stock fully reconciles with the reported sale proceeds on the day of demonetization. The Ld. DR was also unable to controvert the fact that the AO had accepted the sales and the stocks in as much as he had not invoked provisions of Section 145(3) of the Act and rejected the book results. The AO is also noted to have assessed the profits derived from these sales which inter alia included the sale proceeds of Rs.98 received on the day of demonetization. The Ld. DR although emphasized on the suspicious features which were noticed by the AO



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casting aspersions on the sales made on the day of demonetization and stock movement etc., but the fact remains that the AO ultimately did not reject in the books of accounts and trading account, P&L account and the financial statements and also assessed the business profits derived from such sales to tax. We therefore agree with the Ld. AR that, once the book results and inter alia the sale proceeds of Rs.98 lacs had been accepted by the AO as assessee's business income, it was unjustified on AO's part to again assess the same by way of unexplained cash credit.

7. Even if the aspersions cast by the AO is considered, the Ld. AR showed us that, although the AO suspected the purchases made by the assessee from M/s Zee Bangles Pvt Ltd out of which sales, according to AO, were made, to be not genuine, but ultimately he did not dispute this purchase or the invoice, nor did he make any addition/disallowance by way of bogus purchases. He also showed us that, the AO had cherry picked the purchases made from M/s Zee Bangles Pvt Ltd from the stock register and made a false narrative of artificial stock, whereas the stock register, which was placed before us, showed us that preceding the sales made on the night of demonetization, the assessee had made purchases from M/s Shri Rishabh Jewellers, which was never doubted by the AO.

8. On the issue of sales made to fifty (50) different customers on the night of demonetization of less than Rs.2 lacs each, the Ld. AR has rightly argued that it was not practically improbable for any jeweller to deal with fifty customers in a span of 3-4 hours, as alleged by the AO.



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He particularly invited our attention to the decision of Vishakapatnam Tribunal in the case of ACIT Vs Hirapanna Jewellers (128 taxmann.com 291) wherein sales made to 270 different customers was held to be plausible by observing as follows:-

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

9. The Ld. AR also showed us that the assessee had achieved higher gross profit & net profit margin in comparison to preceding year which supported the assessee's case that the sales made on the night of demonetization was in pursuance of the excellent opportunity presented to them.



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10. In view of the above facts therefore, according to us, the Ld. CIT(A) had rightly held that, when the sale proceeds of Rs.98 lacs had been supported with book results & primary evidences, which were not disproved by the AO, and that the same had already been assessed by the AO as revenue receipts from 'Business', then it was wholly improper for the AO to again tax these sale proceeds as unexplained cash credit u/s 68 of the Act, as it would amount double taxation of the same sum. The reliance placed by the Ld. AR in support thereof on the following decisions are found to be relevant.

a. CIT Vs Vishal Export Overseas Ltd [TA No. 2471 of 2009] (Guj HC)

"5. The Tribunal however, upheld the deletion of Rs.70 lakhs under section 68 of the Act observing that when the assessee had already offered sales realisation and such income is accepted by the Assessing Officer to be the income of the assessee, addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income.

6. Having heard learned counsel for the parties and having perused the documents on record, we are in agreement with the above view of the Tribunal."

b. CIT Vs Kailash Jewellery House [TA No. 613/2010] (Del HC)

"The Tribunal also observed that it is not in dispute that the sum of Rs 24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. It is in these circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The findings of the Commissioner of Income-tax (Appeals) and the Tribunal, which are



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purely in the nature of the factual findings, do not require any interference and, in any event, no substantial question of law arises for our consideration.”

11. Following the above decisions, it is noted that similar view has been expressed by the coordinate Bench of this Tribunal in the case of DCIT Vs Kundan Jewellers Pvt Ltd [ITA No. 1035/Mum/2022] dated 29.05.2023. The relevant findings are noted to be as under:-

“4. The CIT(A) has considered the details of sales, the stock register and the turnover is consistently maintained. The assessee has submitted the details of cash sales/receipts and party wise details of sales above Rs.2 lakhs and when a query was raised to Ld.AR on submissions of details were the cash sales are below Rs.2 Lakhs. The Ld.AR mentioned that the assessee has submitted details of sales below Rs2 lakhs and highlighted rule 114B of the I T Rules r.w.s139(a)(5)(c) of the Act and there was no KYC required. Further the Ld.AR demonstrated the sample Tax Invoice below Rs.2 lakhs in the demonetization period and the invoice contains, name and address etc. Further there is no significant increase in the cash sales out of total sales, whereas for F.Y.2016-17 it is @ 31.27% and in comparison to F.Y. 2015-16 @ 31.44%, the Ld.AR referred to the cash flow statement, cash book and demonstrated the details of deposits made out of the cash sales and the assessee has been consistently maintaining the stock of Rs.68.07 crs for the F.Y 2015-16 and for F.Y 2016-17 it was maintained at Rs.65.38crs and the cash sales are part of the stocks maintained which is not disputed. Further the addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the cash sales proceeds/receipts received from



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the customers are reflected in the Audited Profit & Loss account as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. The AO has not pointed out any specific adversity but made a generalize addition without considering the factual aspects and primary evidences. The A.O has failed to make further enquiries on the information filed and the assessee has discharged the initial burden placed by submitting the information and details. We find the CIT(A) has dealt on the facts, provisions of law, notes and judicial decisions. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information on the disputed issues to take different view. We considered the facts, circumstances, submissions and ratio of judicial decisions as discussed above are of the view that the CIT(A) has passed a reasoned and conclusive order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.”

12. For the reasons discussed above and in light of the above decisions (supra), we see no reason to interfere with the order of the Ld. CIT(A). Accordingly, the order of the Ld. CIT(A) is upheld and all the grounds raised by the Revenue are dismissed.

13. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on this 23/08/2023.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 23/08/2023.
Vijay Pal Singh, (Sr. PS)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
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