

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "F" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
1790/Mum/2024	2017-18	M/s. Vidisha Gold Pvt. Ltd., R/8, Shankar Pandey Chawl, P.P. Road, Ambewadi, Andheri (E), Mumbai [PAN: AAFCV5479C]	ITO-11(3)(3), 4 th Floor, Aayakar Bhavan, M.K.Road, Mumbai
2663/Mum/2024	2017-18	ITO, 428, Aayakar Bhavan, M.K.Road, Mumbai	M/s. Vidisha Gold Pvt. Ltd., R/8, Shankar Pandey Chawl, P.P. Road, Ambewadi, Andheri (E), Mumbai [PAN: AAFCV5479C]

For Assessee :	Shri Gaurav Bansal
For Revenue :	Shri Paresh Deshpande, Sr.DR

Date of Hearing :	18-12-2024
Date of Pronouncement :	06-02-2025

ORDER

PER B.R. BASKARAN, A.M :

These cross appeals are directed against the order dated 13-03-2024 passed by the Ld CIT(A), NFAC, Delhi and they relate to the Assessment Year (AY.) 2017-18. The additions made by the AO, having been deleted by the Ld CIT(A) partially, both the parties have filed these appeals.

2. The facts relating to the case are stated in brief. The assessee is a private limited company incorporated on 26-07-2016. This is the first year of operation. It is engaged in the gold business. The assessee filed its return of income for the year under consideration declaring a total income of Rs.71,750/-. It was taken up for scrutiny by the AO. The AO noticed that the assessee has shown unsecured loan of Rs.30,34,000/-. Since the assessee did not furnish the required documents to prove the cash credits, the AO assessed the above said amount as unexplained cash credit u/s 68 of the Act.

2.1. The AO noticed that the assessee has made cash deposits to the tune of Rs.5,95,65,000/- in three of its bank accounts during demonetization period using SBNs. When enquired about the same, the assessee furnished the details of cash sales and also the cash deposits made into the bank accounts. The assessee also uploaded the details of stock statement and VAT statements to the AO. It also furnished the details of purchases of gold along with the details of suppliers. In this regard, the AO issued notices u/s 133(6) of the Act to nine suppliers. In response thereto, the AO received replies from five suppliers only and the remaining notices issued to four suppliers were returned unserved. Accordingly, the AO took the view that the purchases made from four suppliers remained unverified. Accordingly, he took the view that the assessee has deposited its own unaccounted money into the bank accounts on compulsion due to demonetization. The AO further noticed that the assessee has made cash sales in retail showing each sales below Rs.2.00 lakhs. Hence, the assessee did not collect all the details of customers. Further, the assessee had also purchased gold on retail basis and all the details of the sellers were not available with the assessee. Hence, the AO took the view that both the retail sales and retail purchases are also not verifiable. The assessee had also sold gold on credit basis to

two parties, but both of them did not respond to the notices issued by the AO u/s 133(6) of the Act. In view of the above, the AO rejected the books of accounts and assessed the entire cash deposit of Rs.5,94,60,000/- as unexplained cash credits u/s 68 of the Act.

3. The AO also noticed that the assessee has received funds from other concerns and they have been transferred to other parties. The amounts so received and credited in the bank accounts were claimed to be receipts from the customers of the assessee to whom sales were made on credit. Since those customers did not respond to the AO, he presumed that the assessee is engaged in the business of providing accommodation entries. Accordingly, he estimated commission income @ 1% of the credit entries amounting to Rs.14,21,57,158/- and accordingly assessed commission income of Rs.14,21,572/-.

4. In the appellate proceedings, the Ld CIT(A) allowed the appeal in part. On going through the order passed by the first appellate authority, we notice that there is no clarity on the relief granted by him. Hence the assessee is in appeal before the Tribunal on all the three types of additions mentioned above. The revenue has filed appeal in granting partial relief in respect of cash credit additions relating to unsecured loans and cash deposits. It is also contended by the revenue that the Ld CIT(A) has granted relief in respect of unsecured loans by accepting new evidences without confronting them with the AO.

5. In view of the obscurity in the order passed by the Ld CIT(A), we proceed to adjudicate both the appeals issue wise.

6. The first issue is related to the rejection of books of accounts. The contention of the assessee is that the AO was not justified in rejecting the books of accounts of the assessee. We noticed earlier that the AO has

taken such a decision for the reason that the notices issued to some of the suppliers have returned back unserved. Another reason cited by the AO is that the customers to whom cash sales were made could not be identified. In our view, both the reasons cited by the AO for finding fault with the books of accounts do not justify rejection of books, i.e., they cannot be considered as defects in the books of accounts. The AO has only expressed doubts about the supporting evidences relating to purchases and sales. However, a perusal of the details furnished by the assessee before the AO would show that the assessee has given all the evidences that were available with it to prove both purchases and sales. They are listed out below:-

- a. Copy of partywise Purchase summary
- b. Copy of partywise Sales summary
- c. Copy of partywise confirmation of sales and purchases (credit)
- d. Copy of purchase invoices
- e. Copy of all sales invoices
- f. Copy of Stock summary
- g. Copy of bank statements
- h. Copy of VAT returns.

Besides the above, the books of accounts of the assessee have been audited and the auditor did not find fault with them. We notice that the AO also did not find fault with any of the documents furnished by the assessee.

6.1. The AO took the view that the purchases made from some of the parties are unverified purchases, since the notices issued to them u/s 133(6) of the Act were returned unserved. However, the details furnished by the assessee would show that they have supplied gold to the assessee

on credit and received payments through banking channels. In our view, all these evidences could not be brushed aside, merely for the reason that the notices issued to them have been returned back unserved. We notice that the AO did not take any further steps to locate the suppliers, i.e., after returning of the notices, the AO concluded that those suppliers are bogus and hence the purchases made from them are unverified. In our view, the same is not justified. If the AO is doubting the genuineness of purchases, the same would trigger further investigation, when the assessee has furnished all the documents supporting those purchases. Another important point we notice is that the AO did not verify the stock summary furnished by the assessee at all. Had the said purchases were bogus in nature, then the assessee would not have received physical stock at all, which is not the case here. Accordingly, the AO was not justified in treating the purchases as unverified purchases, merely for the reason that the notices issued to them were returned unserved, more particularly when the assessee has received the stock purchased through those bills. Hence, this reasoning given by the AO to reject the books of accounts is not justified.

6.2. The next reasoning given by the AO is that the cash sales and cash purchases could not be verified. There is no allegation that the assessee has violated any of the provisions of the Act when it made purchases and sales in cash. Accordingly, when there is no requirement under the Act for collecting full details relating to these transactions, in our view, the assessee cannot be found fault with for non-collection of all the details. There is no dispute with regard to the fact that the stocks represented by those cash purchases and cash sales are duly incorporated in the stock summary. Had it been a case of bringing unaccounted cash in the books as alleged by the AO, then the assessee would have shown only cash sales, which will generate cash and there was no necessity to make cash

purchases, which would drain the cash. Hence, in our view, the apprehension of the AO is not correct and not justified.

6.3. We notice that the AO did not find fault with the stock summary furnished by the assessee. When the transactions of purchases and sales have duly been recorded in the stock register, it would show that there was physical movement of corresponding goods. In that case, it may not be proper to suspect the corresponding purchases and sales.

6.4. Accordingly, we are of the view that the rejection of books of accounts by the tax authorities was not justified. Accordingly, we reverse the decision so taken by them.

7. The first issue on merits relates to the addition of Rs.30,34,000/- relating to unsecured loans made u/s 68 of the Act. The AO noticed that the following unsecured loans were outstanding as on 31-03-2017:-

Rameshchandra Shah	-	20,00,000
Jyoti Granite and Marble	-	10,00,000
Hanumant Sales Corporation	-	34,500

		30,34,500
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Before the AO, the assessee furnished a computerized confirmation letters obtained from the above said three parties, but they did not have PAN, address and signature of the concerned parties. Hence the AO added the above said loans as unexplained cash credits u/s 68 of the Act.

7.1. The Ld CIT(A) granted partial relief in respect of this issue. However, as contended by the revenue, the Ld CIT(A) has granted relief after considering certain additional evidences furnished before him and those

materials were not confronted with the AO. Hence, there is violation of Rule 46A of I T Rules. Accordingly, we are of the view that this issue requires fresh examination at the end of the AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh.

8. The next issue relates to the addition of Rs.5,94,60,000/- relating to cash deposits made into the bank accounts of the assessee. It appears that the Ld CIT(A) has granted partial relief on this issue also, but the same is not clearly emanating from his order. Be that as it may, we noticed earlier that the above said cash deposits were made into the bank accounts of the assessee out of the cash balance available in the books of accounts, which were in turn, were generated on effecting cash sales of jewellery. When the assessee has made cash deposits out of the cash balance available in the books of accounts, in our view, the nature and sources of the said deposits would stand explained by the books of accounts itself. We have already held that the rejection of books of accounts was not justified in the facts and circumstances of the present case. In that view of the matter, we are of the view that the books of accounts of the assessee should be accepted. Hence the purchases and sales made by the assessee should also be accepted. There is no dispute with regard to the fact that the books of accounts of the assessee had sufficient cash balance, out of which the impugned cash deposits have been made. Accordingly, we are of the view that the tax authorities are not justified in assessing the cash deposits as unexplained cash credit. We notice that identical view has been taken by the Co-ordinate Benches in number of cases, some of which are listed below:-

SR. NO.	PARTICULARS
1	ITO vs. Sahana Jewellery Exports (P.) Ltd. [2023] 157 taxmann.com 680 (Chennai - Trib.)
2	ACIT vs. Chandra Surana [2023] 149 taxmann.com 379 (Jaipur - Trib.)
3	Mahesh Kumar Gupta vs. ACIT [2023] 151 taxmann.com 339 (Jaipur - Trib.)
4	JMK Exports vs. ACIT [2024] 161 taxmann.com 481 (Delhi - Trib.)
5	Harisons Diamonds (P.) Ltd. vs. ACIT [2024] 161 taxmann.com 669 (Delhi - Trib.)
6	ACIT vs. Ramlal Jewellers (P.) Ltd. [2023] 154 taxmann.com 584 (Mumbai - Trib.)
7	Smt. Charu Agarwal vs. DCIT [2022] 140 taxmann.com 588 (Chandigarh - Trib.)
8	ACIT, Central Circle - 1, Viskhapatnam vs. Hiraipanna Jewellers [2021] 128 taxmann.com 291 (Visakhapatnam - Trib.)
9	Fine Gujranwala Jewellers vs. ITO [2023] 151 taxmann.com 340 (Delhi - Trib.)
10	R. S. Diamonds India (P.) Ltd. vs. ACIT [2022] 145 taxmann.com 545 (Mumbai - Trib.)
11	DCIT Circle - 2(1)(1) vs. M/s Kundan Jewellers Pvt. Ltd. ITA No. 1035/Mum/2022 (Mum-Trib.)
12	ITO 4(3)(1) vs. Zee Bangles Pvt. Ltd. ITA No. 815/Mum/2022 (Mum-Trib.)
13	DCIT - 6(1)(2) vs. Bandari Gold and Jewellers Pvt. Ltd. ITA No. 1564/Mum/2022 (Mum-Trib.)
14	Bandari Gold and Jewellers Pvt. Ltd. vs. CIT(A) ITA No. 1619/Mum/2022 (Mum-Trib.)

8.1. We may gainfully take support of the decision rendered by the Co-ordinate Bench in the case of Ramlal Jewellers P Ltd (supra), wherein identical issue has been decided in favour of the assessee. The relevant observations made by the Co-ordinate Bench are extracted below:-

“12. We find that the only reason given by the ld. AO for treating the entire cash deposited in the bank account is that, there was abnormal growth on the cash sales in the month of November 2016 and corresponding cash deposits from the month of November to December, which alone cannot be the ground when deposits are directly linked with sale duly disclosed in the books. Another point raised by him was that, some of the cash sales made to different parties cannot be identified and the parties who responded were unable to explain the source of their funds. From the perusal of the material placed on record and also the explanation given by the assessee before the ld. AO, it is seen that assessee has maintained regular books of accounts which was subject to audit and has produced the entire sale bills, stock register and purchases

and also quantitative tally of sales and corresponding stock. The assessee has also demonstrated that there was a direct correlation of cash outflow from the books of accounts with cash deposit in the bank accounts and also produced day wise stock report, wherein the outflow of stock against sales has been clearly reflected. Apart from that, sales declared under the Maharashtra VAT Act and the VAT return Shri Ramlal Jewellers Pvt. Ltd completely tallied with the sales of the assessee shown in the books of accounts. Even the ld. AO before whom all these documents were furnished has not pointed out any discrepancy in the sales bills, sales register, purchases and stock. Neither has he admitted the quantity of purchases at the stock with assessee and the corresponding quantity of sales made by the assessee during the year.

13. Another important fact is that assessee has duly filed cash compliance report with respect to cash sales in Form 61A giving all the details with respect to cash sales. Nowhere, the ld. AO has pointed out that assessee did not have sufficient stocks in its possession or otherwise found any defect in the stock register. If that finding has not been given and no discrepancy has been pointed out, then how the corresponding sales of same stock and quantity can be treated as 'undisclosed income' of the assessee. Once, AO has accepted the sales and there is direct nexus with the closing stock and the sales alongwith movement of stock linked to purchases then such credit on account of sales cannot be added u/s.68. If the cash sales have been accepted, then deposit of the same cash in the bank account which is tallying with the entries in regular cash book, cannot be treated as deposits made out of any undisclosed income.

14. Addition u/s.68 on account of cash deposits cannot be made simply on the reason that during the demonetization period, cash deposits vis-a-vis cash sales ratio is higher. If the Shri Ramlal Jewellers Pvt. Ltd parties during the period of demonetization has purchased huge quantity of jewellery on cash which has been duly recorded in the books of accounts of the assessee and also tallying with the quantity of stock, then simply because there was a huge cash sales in that particular month cannot be the reason for treating it as undisclosed income from undisclosed sources. Here in this case the parties to whom notices u/s. 133(6) were issued have confirmed the purchases but also filed the purchase bills. The ld. AO cannot disbelieve the purchases made from the assessee simply on the ground that those parties could not submit the source of their funds which is not the requirement of the assessee to prove specifically when assessee is a retail seller of jewellery and even law does not prohibit any cash sales or there is any requirement to seek any further detail. For this compliance assessee has also filed Form 61A before the ld. AO. Once, it has been established that sales representing outflow of stocks is duly accounted in the books of accounts and there are no abnormal profits during the year, then there is no justification why

AO should treat the deposits made in the bank account out of cash sales to be income from undisclosed sources. Thus, aforesaid finding recorded by the ld. CIT(A) which is based on correct appreciation of facts on record and there is no adverse finding by the ld. AO with regard to the availability of stock and quantity of items shown in the stock register and the corresponding sales, no addition can be made. Accordingly, order of the ld. CIT (A) is confirmed and the grounds raised by the Revenue is dismissed.”

Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition of Rs.5,94,60,000/- made by the AO u/s 68 of the Act.

9. The next issue is relating to estimation of commission income on the allegation of providing accommodation entries. The assessee had received cheques from its customers, majority of them were received from M/s Dev Bullion and M/s Neeyorkan Corporation. Initially, the AO proposed to assess those credits as unexplained cash credits u/s 68 of the Act. However, the assessee explained that they represent either collection from its debtors or as loan receipts. However, the AO took the view that the amounts received from parties like M/s Dev Bullion and M/s Neeyorkan Corporation represent accommodation entries provided by the assessee. The aggregate amount received from the customers of the assessee was Rs.14,21,57,158/-. The AO estimated the commission income @ 1% of the above said amount and accordingly assessed a sum of Rs.14,21,572/- as commission income. The Ld CIT(A) also confirmed the same.

9.1. We heard the parties on this issue and perused the record. We notice that the transactions of sales made by the assessee to M/s Dev Bullion; M/s Neeyorkan Corporation and other parties have been duly recorded in the books of accounts. We further notice that the AO has only drawn presumptions that the collections made from them are only accommodation entries, i.e., he did not bring any material on record to show that there was no actual movement of goods. We noticed earlier that

the assessee has maintained stock register and summary of stock register was also furnished to the AO. When the sales made by the assessee to these parties are duly recorded in the books of accounts and also in the stock register, in our view, the AO could not have disbelieved them and hold that they represent accommodation entries only. Accordingly, we are of the view that the AO was not justified in estimating commission income on genuine sales. Accordingly, we set aside the order passed by the Ld CIT(A) on this issue and direct the AO to delete this addition also.

10. In the result, the appeal of assessee is treated as allowed and the appeal of the Revenue is treated as partly allowed.

Order pronounced in the open court on 06-02-2025

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai, Dated: 06-02-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai