

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "A" : NEW DELHI)**

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

ITA No. 3305/Del/2023
Asstt. Year : 2017-18

ITO, Ward 43(6),
New Delhi

vs.

Ankur Jain,
BH-4, Delhi East,
Shalimar Bagh,
Delhi
(PAN: ADKPJ1885H)
(Respondent)

(Appellant)

Appellant by : Shri Sankalp Malik, Adv.

Respondent by : Shri Ajay Kumar Arora, Sr. DR

Date of Hearing	24.06.2025
Date of Pronouncement	27.06.2025

ORDER

PER MAHAVIR SINGH, VP:

This appeal has been filed by the Revenue against the order dated 10.10.2023 passed by the NFAC, Delhi for the assessment year 2017-18. The solitary issue raised in this appeal is relating to deletion of addition of Rs. 1,32,31,000/- made by the AO u/s. 68 of the Act, being the cash deposits made out from cash sales during the demonetization period by the Ld. CIT(A)

2. Heard both the parties at length and perused the relevant records.

3. Brief facts of the case are that the assessee is in the business of trading /remarking of old jewellery proprietorship concern. Assessee filed return of income on 11.10.2017 declaring an income of Rs. 5,29,070/-. Thereafter, AO assessed the income at Rs. 1,37,60,070/- against the returned income of Rs. 5,29,070/-. Aggrieved, assessee preferred the appeal before the Ld. CIT(A), who vide his impugned order has deleted the addition. Against the same, Revenue is in appeal before us.

4. Ld. DR relied upon the order of the AO.

5. Per contra, Ld. AR relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order, which do not require any interference and need to be upheld. In support of his contention he submitted that where cash deposited in bank by assessee during demonetization period was out of cash sales which was duly shown in books of account and Assessing Officer did not point out any specific defect in books of account maintained by assessee and no inflated purchases or suppressed sales were found, such cash deposit could not be treated as unexplained money of assessee was to be deleted. Reliance is placed on:

Deepak Sharma v. ACIT, ITA No. 2886/Del/2022

Bharat Agro Industries v. DCIT, ITA No.3934/Del/2023

JB Nuts v. ITO, I.T.A No.104/Del/2022

M/s Shivam Industries v. ACIT, ITA No.1612/Del/2021

Raju Dinesh Kumar v. DCIT, [2024] 159 taxmann.com 1598 (Chennai - Trib.)

Fine Gujranwala Jewellers v. ITO, [2023] 151 taxmann.com 340 (Delhi - Trib.)

Balwinder Kumar v. ITO, [2023] 102 ITRT) 228 (Amritsar - Trib.)

- DCIT v. Roop Fashion, |2022| 98 ITRT) 419 (Chandigarh - Trib.)

- Anantpur Kalpana v. ITO, |2022| 194 ITD 702 (Bangalore - Trib.)

5.1 It is further submitted that the addition has been made solely on the basis of suspicion and surmises without there being any material to justify the same. as no specific defect has been pointed out in the books of accounts maintained by the assessee which were submitted before the Ld. AO. Therefore, the addition made solely on the basis of suspicion and surmises is liable to be quashed as 'suspicion no matter how strong cannot take the place of proof.

5.2 Merely because demonetization was in progress cannot be the basis to suspect the genuine business transactions. Hence, the addition so made is without any merit and thus, is liable to be quashed.

5.3 Secondly, it is also to be noted that the addition has been made u/s 68, without considering that source of the cash deposits, ie the alleged unexplained cash credits, was duly recorded in the books as Sales and has also not been controverted.

5.4 Furthermore, there is no iota of evidence to justify the application of the deeming fiction, as no material to even prima-facie dispute the cash sales has been brought on record, nor has it been alleged that any sales / purchases etc. were made outside the books. Therefore. in these circumstances, there remains no basis on which the illegal addition so made, can be sustained.

5.5 Without prejudice to the above, it is also to be noted that the Ld. AO has applied the provision of 115 BBE which came into effect only on 15.12.2016 and hence was not applicable to the additions made herein.

5.6 To conclude it is stated that, from the perusal of the assessment order, it shall be clear that the whole purpose of the Ld. AO in singling out the cash deposited during the demonetization period as arising out of unexplained sources (as against the accepted position in the past and the subsequent periods) is to somehow trigger the provisions of section 115B(1) read with section 68 of the Act to the income already offered for tax by the appellant (as cash sales. received from debtors) at a higher rate of tax of 77.25% (i.e. flat rate of 60% plus surcharge a 25% on such tax and cess as applicable) on gross basis (without any deduction/ allowance). In fact, it is reiterated that the treatment of the cash deposits as unexplained money U/s 69A by the A.O has resulted in double taxation of the same amount, once in the form of cash sales already offered to tax by the appellant at the rate of tax applicable to firms and again by way unexplained money. Such recourse is unwarranted keeping in mind the objective to introduce section 115B(1) of the Act was only to curb the practice of laundering of unaccounted money by taking advantage of the basic exemption limit. In light of the above, it is prayed that the order of the Ld. CIT(A) may kindly be upheld.

6. We have heard the rival contentions and gone through the facts of the case. We find Ld. CIT(A) has discussed the issue in dispute elaborately by observing as under:-

"I have gone through the impugned assessment order passed by the AO, the submissions of the Appellant, the ratio of judicial pronouncement referred and relied upon as well as the provisions of Law.

The facts adduced would reveal that the Appellant is an individual and during the captioned assessment year (as also in the earlier assessment years), the Appellant was engaged in the business of retail trading/remaking of old jewellery through its proprietor firm M/s Prem Diamonds from the jewellery shop at 1403. First Floor, Karta jhajjhar,

Chandni Chowk, Delhi-110006. For the assessment year under consideration, the case of the appellant was selected for scrutiny. During the course of the assessment proceedings the AO observed that the appellant has made some cash deposits during the demonetization period (to be precise on 9.11.2016 to 31.12.2016) amounting to Rs. 1,32,31,000/-. On being enquired in this regard, Appellant had furnished the relevant details to substantiate the cash deposited. The Appellant had explained that the cash deposited in the bank accounts emanated / was sourced out of cash sales made by the appellant.

In the impugned assessment order, the AO has referred to a bank account wise chart (para-4 of page- 2 of the said assessment order). Even during the course of the assessment proceedings, vide his submission dated 11.12.2019, the Appellant had explained and contended that, 2 out of the 4 bank accounts did not belong to the Appellant. Account no. ending XXX619 maintained with Kotak Mahindra Bank is of master Prakshal Jain who is the son of the assessee and account no.- ending XXX939 maintained with Kotak Mahindra Bank is of Ms. Ruchi Jain who is the wife of the assessee. Unfortunately, it appears that, owing to the pressure of work, the AO had overlooked this primary / preliminary issue.

In order to substantiate the source of cash deposited, during the course of the assessment proceeding (as well during the appellate proceedings), the Appellant had submitted the following evidence:

- * Copies of invoices (sale bills) of jewellery sold*
- * Copy of Sale Register / Sale Book*
- * Copy of Purchase Register / Purchase Book*
- * Copies of VAT returns*
- * Copies of Tax Audited Annual Accounts*
- * Copy of Cash Book*

From a perusal of the impugned assessment order, it is noted that the explanation of the appellant, pertaining to the source of cash deposited, was rejected by the AO only on account of purported difference between the cash deposited in the bank accounts of the Appellant during the previous year relevant to captioned assessment year vis-a-vis the cash deposited in the bank accounts of the appellant

during the immediately preceding previous year. While assailing the aforesaid comparison, the Appellant has contended that during the immediately preceding previous year (FY 2015-16), the Appellant was unwell. The relevant medical papers in this regard have been enclosed in the paper book and were also filed before the AO. IT has been contended that the ill-health of the appellant was one of the major reasons which prevailed in the A.Y. 2016-17 and hence the cash sales for that period were low and cannot be considered and compared for the A.Y. 2017-18. The AO has however completely failed to appreciate this. As per the evidence adduced the appellant is suffering from multiple sclerosis and had gotten himself examined at AIIMS, as well as other notable medical institutions within and outside India. Even though the period to which these prescriptions pertain to do not correspond to the FY 2015-16, yet considering that the disease is a disease which pertains to life style / living habits, the explanation adduced by the Appellant ought to have been considered and taken note of.

In the instant case, the following facts emerge:

- i. The Appellants books of accounts were duly tax audited by a competent Chartered Accountant and an audit Report dated 16.09.2017 has been issued in Form 3CB/ Form 3CD
- ii. The Appellant, as per the aforesaid Tax Audit Report, has been stated to be proprietor of M/s Prem Diamonds. M/s Prem Diamonds is statedly having its address at 1403, First Floor, Katra Jhajjar, Chandni Chowk, Delhi - 110006. Chandi Chowk Delhi is a notable market of Gold and jewellery dealers and traders.
- iii. The Appellant was duly registered under the Delhi VAT and Central Sale Tax and the copies of the corresponding returns filed by the appellant under these acts were furnished to the AO. There is no adverse finding or observation of the AO in respect of these returns.
- iv. The tax audited books of accounts of the appellant were not rejected by the AO. Further, the AO has not pin-pointed any defect or discrepancy in these books of accounts.
- v. As per para 21(d) of Form CD, there is no adverse observation of the tax auditor that any payment towards purchases were made in cash in violation of section 40A(3) of the Act. In fact from a perusal of page nos. 108-110 of the paper book (submission dated 18.12.2019 filed

before the AO) it is noted that the party wise list of purchases containing name of the party, complete address and aggregate amount of partywise purchases made was furnished before the AO. The purchases made have not been disbelieved or doubted upon.

vi. The business of the appellant was also accepted as such by the department in past. The appellant has furnished copy of assessment order dated 03.03.2016 for the AY 2013-14 passed in the case of the appellant by the then ITO Ward 34(2), New Delhi. In this assessment order, the nature of business of the appellant has been stated as proprietor of M/s Prem Diamonds engaged in trading of gold and diamond jewellery.

vii. The appellant had furnished his cash book for the FY 2016-17 before the AO. The AO has not rejected the cash book or pin-pointed any defect in the cash book. The cash deposited in the bank accounts is duly evident / sourced out of the available cash in hand (As per the cash book of the appellant).

viii. The AO did not question the sales figure and accepted books of account. There is no adverse finding with respect to the acceptability/veracity of books of account. The fact / contention of the appellant that the cash was deposited out of cash sales has not been controverted. Thus, the impugned addition has resulted in double taxation of the same amount, once in the form of cash sales already offered to tax by the appellant at the rate of tax applicable to the appellant and then again by way unexplained Cash Credit on deposits arising from such sales u/s 68 at higher rates specified u/s 115BBE.

ix. The appellant had furnished his sale register for the FY 2016-17 before the AO. The sales were duly corroborated with the output tax on account of VAT. The copies of VAT returns were also furnished before the AO.

x. When the assessee had purchased goods through proper banking channel and the books of accounts were neither disbelieved nor rejected by the AO, so merely for the reason that assessee had made higher cash sale during the impugned assessment order vis-à-vis the preceding previous year cannot be a sole reason for disbelieving the cash sales made, more-so when the lesser sales during the preceding previous year is substantiable on account of ill health of the appellant. The addition appears to have been made, more on the basis of

suspicion, conjectures and surmises than on the basis of any independent third-party enquiry or tangible material on record. The law is trite that suspicion howsoever strong cannot partake the character of an evidence.

Here it would be pertinent to refer to the order of the Chandigarh Bench of the ITAT in the case of Kalaneedhi Jewellers reported in (2022) 96 ITR Trib. 66 (Chd.) wherein, by relying upon the judgment of the Hon'ble Delhi High Court in the case of Agson Global Ltd. and PCIT vs. Akshit Kumar, the Hon'ble ITAT has deleted the addition on account of cash deposited during the demonetization period by observing as under:

"10.11 In the present case also the opening stock, purchases and sales and closing stock, declared by the assessee has not been doubted, the sales were made by the assessee out of the opening stock and purchases and the resultant closing stock has been accepted, the sales had not been disturbed either by the Assessing Officer or by the Sales Tax/VAT Department and even there was no difference in the quantum figures of the stock at the time of search on April 12, 2017, therefore, the sales made by the assessee out of the existing stock were sufficient to explain the deposit of cash (obtained from realization of the sales) in the bank account and cannot be treated as undisclosed income of the assessee."

Similarly, In the case of ACIT vs. Goel Jewellers Overseas Corp and (Vice-Versa), Order dated 24.08.2023 passed in r/o ITA No. 1597/Del/2022 and Cross Objection No. 131/Del/2022, the Hon'ble ITAT Delhi held as under:

"7. We have heard both the parties and perused the material available on record. The only issue involved in the grounds of appeal of the Revenue is regarding addition made by the A.O. u/s 68 of the Act to the tune of Rs. 3,89,52,097/- which has been deleted by the CIT(A). During the assessment proceedings, the A.O. did not find difference in the stock/Inventory register or the stocks maintained by the assessee, no adverse recording or findings have been made vis-a-vis any difference noticed by the A.O. in the stock, thus, in the absence of any defect or infirmity in the stock data, the A.O. has no reason to disbelieve the sales. Though, the A.O. found certain suspicions features in the books in terms of sudden spike in cash sales as compared to earlier and succeeding years, but the A.O. was not able to point out

any defect in the books of account or audit financial statement of the assessee. The suspicion, however, strong it may be the same cannot be accepted as final truth without bringing on record some tangible evidence.

Mere surmise cannot replace an evidence to prove the wrong doing if any by the assessee. Once, the A.O. accepts the books of accounts and the entries in the books of account are matched, there is no case for making the addition as bogus sales. The Hon'ble High Court in the case of Lal Chand Bhagat Ambica Ram Vs. CIT (1959) 37 ITR 288 (S.C) held that the assessee maintained the books of accounts according to the mercantile system and there was sufficient cash balance in its cash books and the books of account of the assessee were not challenged by the Assessing Officer. If the entries in the books of accounts are genuine and the balance in cash is matching with the books, it can be said that the assessee has explained the nature and source of such deposit.

8. The another reason for making the addition by the A.O. that the assessee has not obtained full address details of the customers who have purchased jewellery below the amount of Rs. 2 lacs. Taking full address and PAN of the customers who have purchased the jewellery below 2 lakhs is not mandatory under law and not taking the address and the PAN details during demonization rush and pressure on the sales of the jewellery which is otherwise not mandatory under law cannot be ground for drawing adverse inference against the sales made by the assessee specially when all the other parameters like purchase, stock register, sufficient of stock for sale made are accepted. Considering the fact that entries pertaining to cash sales and corresponding bank accounts have been duly reflected in the books of accounts, the stock position shown in the books of accounts have also been accepted by the A.O. and there is no allegation on the assessee of non-availability of stocks or fictitious purchases and A.O. has also not rejected the Assessee's books of account u/s 145(3) of the Act, we find no ground to interfere with the observations and conclusion of the CIT(A) and find no merit in the grounds of Appeal of the Revenue, accordingly, the Grounds of Appeal of the Revenue are dismissed."

Here it would be pertinent to yet further refer to the Order of the Vishakhapatnam Bench of the ITAT in the case of CIT vs. Hira Panna Jewellers reported in 96 ITR (Trib.) 128 wherein the findings were given as under:

"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 account and there were no abnormal profits. In spite of conducting the survey the Assessing Officer did not find any defects in sales and the stock. Therefore, I 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 four hours, nonavailability 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 November 9, 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."

In view of the facts discussed earlier and respectfully being in agreement with the judgment cited and relied upon by the appellant and also in view of the judgment referred earlier, I find that in the present case also the cash deposited post demonetization by the assessee was out of the cash sales which had been accepted by the Sales Tax/VAT Department. Further, the sale were not doubted upon by the Assessing Officer. Further, there is no adverse observation of the AO that the appellant was not having the stock with him to effectuate the corresponding sales. Also, the fact that sales were made in the period during which there was festive season cannot be lost sight of.

Accordingly, I am of the view that the impugned balance addition of 1,26,47,000/- made by the Assessing Officer is liable to be deleted.

In view of the present adjudication, the aggregate addition of Rs. 1,32,31,000/-made by the AO under Section 68 of the Act is deleted. This ground of appeal is allowed."

7. In the background of the aforesaid discussions and upon careful perusing the finding of the Ld. CIT(A), as reproduced above, we note that Ld.

CIT(A) has rightly observed that in the instant case the cash deposited post demonetization by the assessee was out of the cash sales which had been accepted by the Sales Tax/VAT Department. Further, the sale were not doubted upon by the Assessing Officer. Further, there is no adverse observation of the AO that the assessee was not having the stock with him to effectuate the corresponding sales. Also, the fact that sales were made in the period during which there was festive season cannot be lost sight of. Accordingly, we affirm the action of the Id. CIT(A) in deleting the addition in dispute and reject the ground raised by the Revenue.

8. In the result, the revenue's appeal is dismissed.

Order pronounced in the Open Court on 27.06.2025.

Sd/-
(AMITABH SHUKLA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

SRBhatnagar

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT,
Delhi Bench