

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.999/Chny/2022
निर्धारण वर्ष /Assessment Year: 2017-18

The Income Tax Officer, Corporate Ward-2, Coimbatore.	v.	M/s.Sahana Jewellery- Exports Pvt. Ltd., 600, Raja Street, Coimbatore-641 001. [PAN:AAECS 7045 N]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
Department by	:	Shri R. Clement Ramesh – Kumar, CIT
Assessee by	:	Shri S.Sridhar, Adv.
सुनवाई की तारीख /Date of Hearing	:	04.10.2023
घोषणा की तारीख /Date of Pronouncement	:	20.12.2023

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi, dated 05.10.2022, and pertains to assessment year 2017-18.

2. The Revenue has raised the following grounds of appeal:

1. The order of Ld. CIT(A) is against the facts and circumstances of the case.

:: 2 ::

2. The Ld. CIT(A) failed to appreciate the fact that the assessee has failed to prove the identity of the creditors, creditworthiness of the creditors and genuineness of the transaction which is a pre-requisite for accepting the entries made in the books of accounts.

3. The Ld. CIT(A) failed to appreciate the fact that the assessee has not furnished the details fully viz. Purchase Bills, Sale Bills etc. as called for by the AO which were required for finalizing the assessment.

4. The Ld. CIT(A) failed to appreciate the fact that the assessee has not furnished any details with supporting evidence, except the name and address of the persons, in respect of the cash credit entries made in the books of accounts.

5. The Ld. CIT(A) failed to appreciate the fact that the assessee, without any reasonable cause, has deposited the cash said to be received as "Trade Advance" since April, 2016 into the bank accounts only after the announcement of "Demonetization".

6. The Ld. CIT(A) failed to appreciate the fact that the assessee has not substantiated its claim that the "Trade Advances" received were converted into sales and brought into Profit & Loss Account thereby giving the character of income, with supporting evidence.

7. The Ld. CIT(A) failed to appreciate the fact that in the absence of any submission with supporting evidence, the AO has no other option but to treat the credits as appearing in the books of the accounts of the assessee, which remain unexplained, as the income of the assessee and add to the total income of the assessee for the respective assessment year.

8. The Ld. CIT(A) failed to appreciate the fact that the replies of the assessee were contradictory i.e. initially the assessee submitted that there was a Gold Scheme for which advances were collected but when details of such schemes were called for, replied that it doesn't have any such scheme which indicate that the concerned entries made in the books of accounts were not genuine.

9. The Ld. CIT(A) failed to appreciate the fact that the issue of huge cash withdrawal amounting to around Rs.150 crores, which was said to be the source for the cash deposits made, has never been brought to the knowledge of the AO at any point of time during the course of assessment proceedings. Being a new issue, Remand Report should have been called for from the AO by the Ld. CIT(A) before deciding the appeal. Further the reason for such huge cash withdrawal and its application were not furnished even before the Ld. CIT(A), it seems.

10. The Ld. CIT(A) failed to appreciate the fact that out of the 50 creditors to whom summons were issued by the AO, 46 tapals were returned by the Postal Authorities with remarks viz. Addressee left, Addressee not available, No such Addressee etc. Only three have responded. Out of these, 2 creditors denied of having any transaction with the assessee. Only one creditor though admitted about having transaction with the assessee, but did not furnish any supporting evidence.

11. For these and any other grounds that may be adduced at the time of hearing, the order of the CIT(A) may be quashed and that of the AO restored.

:: 3 ::

3. The brief facts of the case are that the assessee, M/s.Sahana Jewellery Exports Pvt. Ltd., is engaged in the business of trading in gold and jewellery. The assessee has filed its return of income for AY 2017-18 on 07.11.2017 admitting total income of Rs.15,36,890/-. The case was selected for scrutiny under CASS in order to verify cash deposits during demonetization period. During the course of assessment proceedings, the AO called for information from various banks by issuing notice u/s.133(6) of the Income Tax Act, 1961 (in short "the Act") and ascertained that the assessee has deposited cash into accounts with Oriental Bank of Commerce, Coimbatore, State Bank of India, SME, Coimbatore, and State Bank of India, Main Branch, Coimbatore, in total amounting to Rs.48,80,73,000/- during demonetization period. The AO called upon the assessee to furnish books of accounts, including cash book and also explain source for cash deposits during the demonetization period. In response, the assessee vide letter dated 11.12.2019 submitted that source for cash deposits is out of advance received from customers for gold scheme and the same has been recorded in the books of accounts of the assessee. The assessee further claimed that as on the date of demonetization i.e. 08.11.2016, cash in hand as per cash book maintained by the assessee was at Rs.48,82,75,750/-. The assessee claimed that source for cash deposits is out of sales declared prior to the date of demonetization and argued that it has sufficient cash in hand to explain cash deposits during the demonetization period. In order to verify

:: 4 ::

the claim of the assessee, the AO issued summons u/s.131(1) of the Act dated 19-12-2019 to 50 persons. Out of 50 persons, 46 summons issued were returned by postal authorities citing 'addressee cannot be located' or 'no such person' or 'no such addressee at the above address'. However, remaining three persons have responded to summons issued by the Assessing Officer, and out of three, two persons denied having any transaction with the assessee and one person has confirmed that he has paid an advance with the company for purchase of gold. The AO issued show cause notice dated 24.12.2019 and informed that summons issued to various persons were returned 'unnerved', and therefore, called upon the assessee to file necessary details, including name and address of the parties from whom advance has been collected against gold scheme and also file books of accounts and other details to justify cash deposits. In response, the assessee vide letter dated 28.12.2019 submitted that due to human error of 'CUT' & 'PASTE', the Auditor who was handling the case before the AO, has filed wrong details with regard to source for cash deposits and claimed that source for cash deposits is out of advances received from various persons. However, fact remains that the assessee has received advances from various persons for sale of gold jewellery and the same has been accounted as sales for relevant period.

4. The AO after considering relevant submissions of the assessee and also taken note of various facts, analyzed the claim of the assessee towards source for cash deposits in light of total sales and cash sales for

:: 5 ::

the impugned assessment year and corresponding total sales and cash sales for earlier Financial Year and observed that the assessee claims to have collected deposits from more persons during the impugned assessment year when compared to earlier assessment year to cover up source for cash deposits during the demonetization period. The AO further observed that although, the assessee claims to have furnished books of accounts, including cashbook, but, no evidence has been produced. The AO has discussed the issue at length in light of various evidences filed by the assessee and observed that the assessee has designed a *modus operandi* to create source for cash deposits in to bank accounts during the demonetization period and introduced cash receipts as scheme payment from parties. The huge disproportion in the number of parties and collections for the period from 01.04.2016 to 08.11.2016 and from 09.11.2016 to 31.03.2017, clearly portrays the method of the assessee. Further, although, the assessee had furnished name and address of the purported parties, till date assessee has not furnished confirmation from even single person. Substantial number of summons issued u/s.131(1) of the Act, were returned back by the postal authorities by citing 'no such person' or 'insufficient address'. Therefore, opined that assessee could not discharge the initial onus to establish three things necessary to obviate the mischief of sec.68 of the Act i.e. identity of the investors, about their creditworthiness and genuineness of the transactions. Since, the assessee has failed to prove the credits found in his bank account to

:: 6 ::

the satisfaction of the AO, the total cash receipts amounting to Rs.51,39,39,100/- has been treated as unexplained cash credit and brought to tax u/s.68 of the Act r.w.s.115BBE of the Act.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed written submissions on the issue which has been reproduced in Para No.2.2 on Page Nos.10-16 of the order of the Ld.CIT(A). The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that source for cash deposits is out of sales achieved before the demonetization period and also substantial amount of cash withdrawal from very same bank account before the date of demonetization. The assessee further contended that closing cash balance as on the date of demonetization i.e. 07.11.2016 was much higher than the amount of cash deposits made during the demonetization period. The assessee has furnished all evidences, including books of accounts, purchase and sales bills, to establish genuineness of sales declared up to/before the date of demonetization and also explained that there is no abnormal variation in total sales and cash sales declared for the impugned assessment year when compared to earlier Financial Year. The assessee further contended that the AO has not pointed out any discrepancy in books of accounts maintained by the assessee, including purchase and sales declared for the period prior to the date of demonetization period. In fact, the assessee has declared huge sales for the month of June & July, 2016, which is

:: 7 ::

more than the amount of sales declared for the month of November, 2016, and also explained reasons for high volatility in sales month on month and according to the assessee, the demand for gold and jewellery is high during festival seasons and if you compare months, in which, the assessee has declared higher sales which falls under various festivals whereby customers buy more and more gold and jewellery. The assessee had also took support from certain judicial precedents including the decision of the Hon'ble Delhi High Court in the case of CIT v. Agson Global (P) Ltd reported in 441 ITR 550 (Del) and also the decision of the Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram v. CIT reported in [1959] 37 ITR 288 (SC).

6. The Ld.CIT (A) after considering relevant submissions of the assessee and also by considering the ratios of various judicial precedents, including the decision of the Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram v. CIT(Supra) opined that the assessee is able to explain source for cash deposits during the demonetization period out of cash in hand available before the date of demonetization as per cash book maintained for the impugned assessment year. The Ld.CIT(A) further observed that the AO tries to build up a case on the presumption that the so-called advances claims to have been received by the assessee or cash credits which needs to be examined in light of provisions of Sec.68 of the Act, ignoring the legal position settled by various courts, including the Hon'ble Supreme Court that trade advances which has been

:: 8 ::

subsequently accounted sales in the books of accounts of the assessee, cannot be treated as cash credits in light of provisions of Sec.68 of the Act. The Ld.CIT(A) has discussed the issue at length in light of various evidences filed by the assessee, including books of accounts, purchase bills, sale bills, and stock registers maintained by the assessee for the business, and opined that the AO has not pointed out any discrepancy in books of accounts maintained by the assessee with regard to purchase and sales declared for the relevant period. The AO failed to make out any of such irregular movement of stock in trade or deficit stock in trade when the assessee has declared sales for the relevant period. In fact, there is no iota of evidence in the order passed by the AO with regard to discrepancy in books of accounts and stock details maintained by the assessee. In fact, the assessee has declared purchase and sales to GST authorities and the same has been accepted without any deviation. In absence of any findings with respect to incorrectness in books of accounts maintained by the assessee, the AO cannot simply bring trade advance received by the assessee as cash credits which falls under the mischief of sec.68 of the Act, more particularly, when the assessee has declared said advances as sales and also offered to tax. The Ld.CIT(A) had also negated observation of the AO with regard to certain judicial precedents, including the decision of the Hon'ble Supreme Court in the case of Sumati Dayal v. CIT(Supra) and CIT v. Durga Prasad More reported in 82 ITR 540 and also the decision of the Hon'ble Supreme Court in the case of CIT v.

:: 9 ::

Kale Khan Mohammad Hanif reported in 50 ITR 1 (SC) and argued that those case laws are rendered in the context of the theory of human probability and not applicable to the facts of the present case. On the other hand, the assessee has relied upon the decision of the Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram v. CIT (supra), where the Hon'ble Supreme Court held that when the assessee maintained the books of accounts and there was sufficient cash balance in its books and the books of accounts of the assessee were not challenged by the AO, then, the entries in the books of accounts, needs to be considered as genuineness. This principle is supported by the decision of the Hon'ble Patna High Court in the case of Lakshmi Rice Mills v. CIT reported in [1974] 97 ITR 258 (Patna). Therefore, the Ld.CIT(A) opined that the AO is erred in making additions towards cash receipts u/s.68 r.w.s.115BBE of the Act, and thus, directed the AO to delete addition made towards cash deposits u/s.68 of the Act. Being aggrieved by the order of the Ld.CIT(A), the Revenue is in appeal before us.

7. The Ld.DR, Shri R. Clement Ramesh Kumar, CIT, submitted that the Ld.CIT(A) failed to appreciate the fact that the assessee has failed to prove the identity of the creditors, creditworthiness of the creditors and genuineness of the transactions which is pre-requisite for accepting the entries made in the books of accounts. The Ld. DR further submitted that the Ld.CIT(A) failed to appreciate the fact that the assessee has not furnished the details like purchase bills, sales bills, etc., which is evident

:: 10 ::

from the observations of the AO in his assessment order, where the AO records categorical findings that the assessee has failed to file necessary evidences. The Ld.CIT DR further submitted that the assessee has made huge deposits into his bank account after demonetization and to cover up source for said cash deposit, introduced cash into its books of accounts in the form of cash receipts from various persons. But, fact remains that when the AO conducted necessary enquiries by issuing summons u/s.131(1) of the Act, except three persons, no other persons has responded to summons issued by the AO. In fact, summons issued to various persons have been returned un-served with a remark 'no such person' or 'insufficient addresses. The AO called upon the assessee to furnish confirmation letter from the persons from whom the assessee claims to have been received trade advances, but the assessee neither submitted any confirmation nor complete name and address of the persons with their PAN to discharge onus cast upon the assessee as per the provisions of Sec.68 of the Act. Although, the assessee could not justify source for cash deposits made during demonetization period, but the Ld.CIT(A) simply accepted the submissions of the assessee and directed the AO to delete additions made u/s.68 of the Act.

8. The Ld. DR further submitted that the Ld.CIT(A) failed to appreciate the fact that the assessee initially stated that source for cash deposits is out of deposits received from various persons for gold scheme, but subsequently changed its stand and argued that it has huge cash

:: 11 ::

withdrawals from very same bank account prior to demonetization period. The subsequent stand taken by the assessee was not taken before the Assessing Officer, but the Ld.CIT(A) without confronting those evidences, simply accepted the claim of the assessee and deleted additions made by the AO. The Ld. DR further submitted that the Ld.CIT(A) failed to appreciate the fact that there is a substantial increase in cash sales during the impugned Financial Year when compared to earlier Financial Year. Although, the assessee claims that the percentage of cash sales to total sales is almost equal when compared to earlier years, but fact remains that when it comes to value, the assessee could not explain sudden spike in cash sales before the demonetization period. Although, the AO has brought out clear facts to the effect that the so-called trade advances received from various parties is unexplained cash credits, which comes under the provisions of Sec.68 of the Act, but the Ld.CIT(A) simply accepted the explanation of the assessee and directed the AO to delete the addition and therefore, the Ld. DR submitted that the order of the Ld.CIT(A) should be set aside and additions made by the AO should be upheld.

9. The Ld. Counsel for the assessee, Shri S. Sridhar, Advocate, supporting the order of the Ld.CIT(A) submitted that there is no dispute with regard to the fact that the assessee has maintained books of accounts and as per cash book, the cash balance available as on the date of demonetization was much higher than the amount of cash deposit

:: 12 ::

made during demonetization period. The Ld. Counsel for the assessee further submitted that the sole basis for the AO to treat cash receipts recorded in the books of accounts of the assessee as unexplained cash credits and taxable u/s.68 of the Act, is the fundamental mistake committed by the AO in understanding difference between trade advances and cash credits. It is a well settled principle of law by the decision of various courts that trade advances are outside the scope of provisions of Sec.68 of the Act, and those advances cannot be examined in light of provisions of Sec.68 of the Act. Further, the AO rest their findings solely on the basis of non-submission of confirmation letter from various parties without understanding the law that as per Rule 114B of Income Tax Rules, 1962, there is no need for assessee to collect the PAN details of the buyers, if the sale value is less than Rs.2 lakhs. Further, threshold limit under PMLA was reduced to Rs.50,000/- only w.e.f.04.05.2023, for which, the KYC norms were prescribed to collect the identity of such customers. Since, the assessee was not required to maintain KYC of its customers, in case, the sales do not exceed the prescribed limit, the assessee has simply taken name and address of the persons who purchased gold jewellery without there being any PAN. Although, the assessee has furnished the list of persons from whom it has collected trade advances, but many have not responded for the reasons best known to them. But, fact remains that for someone's mistakes the assessee cannot be held responsible. The only obligation of the assessee is to file details of sales and

:: 13 ::

purchases and name and address of the persons to whom sales were made. In the present case, the assessee has discharged its onus and filed necessary details.

10. The Ld. Counsel for the assessee further submitted that the AO made additions towards cash receipts purely on suspicion and surmise without there being any findings 'as to how' trade advances collected by the assessee comes under the purview of provisions of Sec.68 of the Act. In fact, the AO is not disputing the fact that cash in hand as on the date of demonetization was much higher than the amount of cash deposits. Further, the assessee has filed all evidences before the Ld.CIT(A) to prove that the source for cash deposits, is out of cash withdrawal from very same bank account prior to the date of demonetization. As per the details submitted by the assessee, the assessee has withdrawn about Rs.150 Crs. from bank accounts. The assessee had also explained the reasons for cash withdrawal. The assessee has furnished cash book and as per cash book maintained by the assessee, sufficient cash in hand was available before date of demonetization. The assessee has furnished books of accounts, including purchase bills and sales bills and also stock registers maintained for the relevant period. The AO has not pointed out any discrepancy in books of accounts maintained by the assessee nor was it the case of the AO that any adverse findings from the GST authorities on purchase and sales declared for the relevant period. In fact, the AO has not rejected books of accounts and also not pointed out any discrepancy

:: 14 ::

in books of accounts. In absence of any findings with regard to incorrectness in books of accounts, the AO cannot make additions towards trade advances which has been subsequently converted into sales as unexplained cash credits and brought to tax u/s.68 of the Act r.w.s.115BBE of the Act. The Ld.CIT(A) after considering relevant facts has rightly deleted the additions made by the AO and their orders should be upheld.

11. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We have also carefully considered relevant reasons given by the AO to make additions towards cash receipts amounting to Rs.51,39,39,100/- u/s.68 of the Act. The AO has made additions towards cash receipts pertains to sale of jewellery for the period from 01.04.2016 to 08.11.2016 u/s 68 of the Act, on the ground that the assessee could not prove the identity of the creditors, genuineness of transactions, and creditworthiness of the parties. The genesis of the dispute started from the point of verification of source for cash deposits into bank account during demonetization period amounting to Rs.48,73,80,000/-. In fact, the assessee has made cash deposits of Rs.48,73,80,000/- to Oriental Bank of Commerce, Coimbatore, State Bank of India, SME Branch, Coimbatore, and State Bank of India, Main Branch, Coimbatore, in aggregating Rs.48,73,80,000/-. The assessee has explained source for cash deposits out of trade advances received from various persons and same has been

:: 15 ::

subsequently converted into sale of jewellery. The assessee has accounted sales made before 08.11.2016 in its books of accounts and cash balance available as on 08.11.2016 as per cash book maintained by the assessee was at Rs.48,82,75,750/-.

12. During the course of assessment proceedings, the AO called upon the assessee to file details of name and address of the persons from whom it has received trade advances for sale of jewellery. The assessee has filed a list of persons from whom it has received trade advances for sale of jewellery. Out of list submitted by the assessee, the AO has issued summons u/s.131(1) of the Act, to 50 persons to verify the genuineness of the assessee claim of receipt of cash from them. Out the above 50, summons issued to 40 persons returned by the Postal Authorities citing 'addressee cannot be located' or 'no such person' or 'no such address' or 'insufficient address' or 'no such address at the above place'. In response to summons, three persons were responded and out of three, two persons namely, Shri N.Armugam and Smt.B.Deepa denied having any kind of transactions with the assessee. Further, one person namely Shri A.M.Vargies confirmed having paid advance to the assessee company and also purchased jewellery from them. The Assessing Officer, on the basis of enquiry conducted u/s.131(1) of the Act, came to the conclusion that the assessee could not substantiate cash receipts received from various persons towards sale of jewellery before the date of demonetization. Therefore, vide letter dated 24.12.2019 called upon the

:: 16 ::

assessee to file confirmation from all the parties and also called upon the assessee to show cause 'as to why' the credits should not be considered as unexplained cash credit u/s.68 of the Act. In response, the assessee submitted that as per law, it is not required to collect complete address and PAN from the persons to whom it has sold jewellery. Further, as per Rules 114B of the Income Tax Rules 1962, if sale value of jewellery is in excess of Rs.2 lakhs to a single person, then, it is required to collect PAN. Since, there is no requirement of collecting PAN, the assessee does not having details of PAN and correct postal address of the persons from whom it has received trade advances for sale of jewellery. Therefore, assessee submitted that the question of filing confirmation letter from the parties, from whom, it has collected advance for sale of jewellery does not arise, and consequently, cash receipts cannot be assessed u/s.68 of the Act. The assessee had also explained the AO that it has sufficient cash balance as on 08.11.2016 as per books of accounts maintained for that assessment year and argued that the total cash deposits into bank account is explained out of cash in hand. The assessee has also made an alternative submission that it has sufficient cash withdrawal from very same bank account on various dates, which has been recorded in books of accounts of the assessee and source for cash deposits is also out of cash withdrawal from very same bank account. The assessee had also filed necessary books of accounts, including cashbook, sales register, sale bills, purchase details along with bills and stock details to prove that there is no

:: 17 ::

discrepancy in books of accounts and also the assessee has reported sales made before the date of demonetization to GST authorities.

13. In light of above factual matrix, if one examines the issue, the AO has rejected the contention of the assessee on two grounds. The first and foremost reasons given by the AO to reject the explanation of the assessee is that persons from whom assessee claims to have been received advance are not responded to summons issued u/s.131(1) of the Act, and in few cases, they have denied any kind of transactions with the assessee. According to the AO, the assessee could not discharge its onus cast upon as per the provisions of Sec.68 of the Act, in respect of cash receipts, and thus, opined that cash receipts claimed to have been received by the assessee from various persons is unexplained cash credits taxable u/s.68 of the Act. The second reason given by the AO was that there is a contradiction in the claim of the assessee in so far as source for cash deposits are concerned in as much as initially, the assessee claims to have explained cash deposits out of cash receipts from various persons towards sale of jewellery and subsequently changed its stand and argued that source for cash deposits is out of cash withdrawals from very same bank account. In so far as the first and foremost reason given by the AO to assess cash receipts u/s.68 of the Act, we find that there is a distinction between cash credits and cash receipts towards sales. If assessee claims certain cash credits in his books of accounts and not able to explain credits to the satisfaction of the AO, then, such cash credits

:: 18 ::

need to be examined in light of provisions of Sec.68 of the Act. In case, the assessee claims that it has received trade advances in cash and the same has been subsequently converted into sales by issuing sale bills, then, said trade advance cannot be examined in light of provisions of Sec.68 of the Act, because, trade advances have been subsequently converted into sales and sales has been accounted in the books of accounts of the assessee. Therefore, in our considered view, the AO has committed a fundamental mistake in examining the cash receipts claimed to have been received by the assessee towards sale of jewellery in light of provisions of Sec.68 of the Act.

14. Be that as it may. The fact remains that, the assessee has furnished name and address of the customers from whom it has received cash for sale of jewellery. The assessee need not obtain confirmation and submit to the AO, because, the law does not mandate collecting PAN details of the persons, if sale value of jewellery does not exceed Rs.2 lakhs as per Rule 114B of Income Tax Rules, 1962. In so far as compliance of KYC norms, it is mandatory under Prevention of Money Laundering Act, 2002, w.e.f.04.05.2023 onwards and not applicable for the impugned assessment year. Therefore, in our considered view, when the assessee has furnished name and address of the persons from whom it has received trade advances for sale of jewellery, the assessee has satisfactorily discharged onus cast upon to furnish name and address of the persons. Therefore, the observation of the AO in light of provisions of

:: 19 ::

Sec.68 of the Act, that the assessee has not satisfactorily explained cash receipts is unwarranted and devoid of merits.

15. Having said so, let us come back whether the assessee could able to explain source for cash deposits made during demonetization period or not. It is an admitted fact that the assessee was having sufficient cash balance as per cash book maintained for the relevant period. In fact, cash in hand as on the date of demonetization i.e. 08.11.2016 was at Rs.48,84,03,169/- and said cash balance is backed by cash receipts recorded in the books of accounts before the date of demonetization. Further, cash receipts from various persons have been further substantiated with sales made to them before the date of demonetization. In fact, the assessee has filed various evidences, including sales bills to support its arguments. The AO never disputed sales declared by the assessee nor pointed out any discrepancy in purchase or stock in trade held in the business of the assessee before the date of demonetization. In fact, the assessee has filed comparative sales for the month of April, 2016 to November, 2016 and corresponding April-15 to November, 2015 and we find that there is no abnormal deviation in sales declared for the month of November, 2016 when compared to earlier periods. It is not a case of the AO that the assessee has declared sales without purchases. In fact, a sale declared by the assessee is backed by corresponding purchases, and is supported by necessary purchase bills. The AO could not point out any discrepancy in stock register maintained by the

:: 20 ::

assessee nor made out a case that the assessee has declared sales without there being any stock in hand. Therefore, in absence of any contrary findings to the effect that the sales declared by the assessee is not backed by any corresponding purchase or supported by stock in hand, in our considered view, simply sales cannot be rejected on the ground that sale for the particular month or period is higher when compared to corresponding previous period. In our considered view, there cannot be any reason for uniform sales in all days or month or year. There may be various reasons for increase or decrease in sales which depends upon various factors, including festival sales, clearing sales, yearend sales, etc. Therefore, in our considered view, the explanation of the assessee that it has received cash from various customers towards sale of jewellery and subsequently the advances have been converted into sales, appears to be *bona fide* and reasonable.

16. Coming back to second observation of the AO in rejecting explanation of the assessee with regard to source for cash deposits. Initially, assessee claims that source for cash deposits is out of trade advances received in cash from various persons. However, during the course of assessment proceedings itself, the assessee claimed that it was an error in making a submission that it has received trade advances from various persons before the date of demonetization, but fact remains that authorized representative who appeared and made submissions before the AO made an inadvertent error of copying submission made in another

:: 21 ::

group case which is also pending for assessment. Further, immediately after noticing the above inadvertent error, the assessee has submitted details of cash book along with bank statements and explained that it has sufficient cash withdrawal aggregating to Rs.150 Crs. from very same bank account on various dates before the date of demonetization and after utilization of the cash for the purpose, for which, it has been drawn the net withdrawal was at Rs.136.85 Crs. The assessee was carrying cash balance in books and once demonetization was announced, the available cash balance in Specified Bank Notes, has been deposited into bank account. We have perused relevant cash book and bank statements which are available in paper book and after considering relevant materials, we find force in the arguments of the assessee for simple reason that as per the details furnished by the assessee like bank statements, cash book, it is undoubtedly clear that assessee was having sufficient withdrawals from very same bank accounts before the date of demonetization which was recorded in the books of accounts of the assessee. Further, the cash balance maintained by the assessee as per books of accounts as on 08.11.2016 was much higher than the amount of cash deposited to bank account during demonetization period. Therefore, in our considered view, when the assessee is able to file necessary evidences to prove that there was sufficient cash withdrawal from very same bank account which is further backed by bank statements, where it has been clearly evident that there are sufficient cash withdrawals, in our

:: 22 ::

considered view, there is no reason for the AO to reject explanation of the assessee that cash deposits are out of cash withdrawals from very same bank account.

17. At this stage, it is necessary to consider certain judicial precedents on this issue. The assessee has relied upon the decision of the Hon'ble Delhi High Court in the case of PCIT v. Agson Global (P) Ltd., reported in [2022] 441 ITR 550 (Delhi) (19-01-2022). The Hon'ble Delhi High Court under identical set of facts, has deleted the additions made by the AO towards cash deposits during demonetization u/s.68 of the Act. The relevant findings of the Hon'ble Delhi High Court are as under:

- *A careful perusal of the extract of the statement made by managing director of the assessee (as recorded in " the assessment orders in-issue) would show that all that he had stated was that it was the assessee's own money, given in the form of loan and/or bogus sales or purchases, that had been routed back to the assessee in the form of share capital/share premium, albeit, through banking channels. [Para 10.3]*
- *The Tribunal, in this context, records a finding of fact that "no unaccounted income of the assessee" had been introduced in its books of account in the form of share capital. Based on this, the Tribunal concluded that there was 'no confession' made by the managing director that unaccounted income had been introduced by the assessee in the form of share capital. Therefore, according to the Tribunal, the statement made under section 132(4) did not constitute incriminating material. [Para 10.4]*
- *The Tribunal, has correctly analyzed the statement of the managing director. The statement does not allude to the fact that the assessee had introduced 'unaccounted money' in the form of share capital/share premium through investor entities. The retraction letter, as noted by the Tribunal, also did not advert to the introduction of investment of money in the assessee in the form of share capital/share premium. [Para 11.1]*
- *The trail of the money received from various entities in the form of share capital/share application money, concluded that the assessee had been able to place before the Assessing Officer sufficient documentary evidence which established that the money which the assessee had paid to the investor entities was routed back to it in the form of share capital/share premium. [Para 11.4]*

:: 23 ::

- *That being the position, the Tribunal concluded that the assessee had been able to prove the identity of the investors, their creditworthiness and genuineness, which are the ingredients of section 68. [Para 11.5]*
- *In instant case, insofar as the assessee is concerned, it placed the evidence on record, which established the trail of the money, the mode through which the money had travelled from the assessee to the investor entities and back to the assessee, and the fact that each of the investor entities was in existence. Therefore, once the assessee claimed (and it was found as a fact) that it was its own money which was routed back to it in the form of share capital/share premium, the traditional test which is sought to be applied by the revenue, for triggering the provisions of section 68, which is, that the assessee had to establish the creditworthiness, genuineness and identity of the transactions would have to adapt to the circumstances obtaining in the instant case. [Para 12.1]*
- *Therefore the addition made under section 68 needed to be sustained as untenable, in view of the finding recorded by the Tribunal. [Para 14.4]*
- *The entire purchase and sales had been duly recorded in the regular books of account of all parties; the transactions were routed through regular banking channels; the purchase and sales were duly supported by quantitative details; copies of bank statements showing sales and purchases were placed before the Assessing Officer, and no incriminating documents concerning sales and purchases were found in the course of search and seizure actions. [Para 15.1]*
- *Tribunal also found that in respect of assessment years 2012-13, 2013-14 and 2014-15, sale and purchase transactions were verified and assessment orders were framed under section 143(3). The books of account were duly audited, both, under the Companies Act, 2013 and the Income-tax Act; no defects concerning books were found either by the Assessing Officer or the Commissioner (Appeals). Thus, according to it, no incriminating evidence was found. [Para 15.1]*
- *Insofar as the abated assessment years were concerned i.e., assessment years 2015-16, 2016-17 and 2017-18, it was, apparent that the assessee had purchased goods, which were in value less than the sum for which they were sold. Therefore, as held by the Assessing Officer, in the deviation report, if the purported bogus purchases were to be disallowed then necessarily the sales shown in the assessee's regular books of account would also have to be excluded which would result in the assessee's income falling below the returned/declared income. [Para 15.1]*
- *Furthermore, the Assessing Officer had not placed on record any material to justify the disallowance of 25 per cent of the purchases on the ground that they were bogus without carrying out any inquiry or investigation. In particular, the Tribunal also flagged the issue that the purported shortage of stock was based on a reference made qua that aspect in the appraisal report of Investigation Wing which, as noted above, did not find mention in the remand report, as during the search it was found that the stock worth the aforementioned value was lying at the assessee's warehouse, something which was completely ignored. This position, was fortified by the fact that no addition in respect of any excess or shortage of stock had been made in the assessment orders of any of the years. In effect, according to the Tribunal, the stock found in the books reconciled with the stock which was found physically. [Para 15.3]*

:: 24 ::

- *It appears, that the Commissioner (Appeals) did not call for the books of account i.e., to examine the same. Furthermore, the Tribunal records that the Assessing Officer, in the remand report, did not advert to the fact that the books of account were either incorrect or incomplete. According to the Tribunal, the books of account could not have been rejected till such time the revenue found "patent, latent and glaring defects in the books of account". The revenue, according to the Tribunal, made no such attempt and simply relied upon the statement of the managing director, which was retracted and in any event, did not relate to the booking of bogus expenditure'. Therefore, insofar as the Tribunal was concerned, the rejection of books of account by the Commissioner (Appeals) did not meet the legal standards. [Para 15.6]*
- *Thus, in effect, the Tribunal held that the books of account were rejected without crystalizing the defect in the books of account, which could have been done only after examining the same. Furthermore, according to the Tribunal, even if it is assumed that the books of account could be rejected, the profit had to be estimated based on proper material. As noted above, the Tribunal recorded the inconsistent approach adopted by the Commissioner (Appeals) in applying the gross profit ratio concerning non-related parties to purported bogus transactions i.e., those involving related parties, resulting in unsustainable conclusions. [Para 15.7]*
- *Accordingly, the observations made by the Tribunal are pure findings of fact, which cannot be interdicted by the Court in appeal. The inconsistency in the approach adopted by the Assessing Officer, while preparing the deviation report and framing the assessment order with regard to purported bogus purchases is an aspect, which cannot be ignored and has been correctly highlighted by the Tribunal. [Para 15.8]*
- *If the revenue chooses to disallow bogus purchases, it would necessarily have to ignore the corresponding sales recorded against the very same parties. As pointed out by the Tribunal, the Commissioner (Appeals) could have rejected the books of account only, after it had examined and come to the conclusion that he was not satisfied as regards their correctness or completeness. The finding of fact returned by the Tribunal is that books of account were not examined by the Commissioner (Appeals). If that be so. then, section 145(3) could not have been triggered by the Commissioner (Appeals), based on the mere statement of the managing director of the assessee. Besides this, as noted by the Tribunal, the Commissioner (Appeals) had attempted to quantify the profit by resorting to a methodology, which was incomprehensible. [Para 15.9]*
- *The average cash deposited by the assessee with its bankers before demonetization was, approximately, Rs.42.35 crores, whereas the actual sum deposited during the demonetization period was Rs.180.53 crores. The assessee's explanation was, broadly, that deposits were made out of cash sales and, during Diwali, cash sales increase; especially in the business in which the assessee is i.e.. dry fruits. [Para 16.2]*
- *The assessee. in support of its plea that cash deposits were made by the assessee in respect of sales which were duly accounted for, reliance was placed on the following material:- audited books of account; bank-wise summary of cash deposits; copies of bank statements; and details of monthly cash sales and cash deposits made in earlier financial years. [Para 16.2]*

:: 25 ::

- *In this context, the Tribunal analyzed the data pertaining to cash sales and cash deposits made in the financial year in issue. The analysis made by the Tribunal showed that, in the three financial years, the total cash deposits more or less corresponded with the cash sales. [Para 16.6]*
- *Based on the data, the Tribunal concluded that, in the year in which demonetization kicked in i.e., financial year 2016-17, the increase in sales in percentage terms was less than the earlier year. The Tribunal, thus, held that it could not be said that the assessee had booked non-existing sales in its books post-demonetization. [Para 16.6]*
- *In sum, it was the Tribunal's assessment of the material placed on record that cash deposits made by the assessee with its bankers, more or less compared with the cash sale transactions entered into by it with its - customers. The Tribunal's view was that given the fact that there was no allegation made by the revenue that the assessee had backdated its entries to enhance its cash sale figures, one could only conclude that there was a growth in the assessee's business. [Para 16.9]*
- *Having regard to the extensive material which has been examined by the Tribunal, in particular, the trend of cash sales and corresponding cash deposited by the assessee with earlier years, it is opined that there was nothing placed on record—which could have persuaded the Tribunal to conclude that the assessee had, in fact, earned unaccounted income i.e., made cash deposits which were not represented by cash sales. Therefore, in the Tribunal correctly found in favour of the assessee and deleted the addition made under section 68. [Para 17.6]*

18. The assessee had also relied upon the decision of the ITAT Visakhapatnam Bench in the case of M/s.Hirapanna Jewellers, Visakhapatnam, in ITA No.253A/Viz/2020 and CO No.02/Viz/2021, AY2017-18, wherein, the ITAT Visakhapatnam Bench, under identical set of facts has held as under:

" We have heard both the parties and perused the material placed on record. In the instant case, the assessee has admitted the receipts as sales and offered for taxation. The assessing officer made the addition u/s 68 as unexplained cash credit of the same amount which was accounted in the books as sales. In this regard, it is worthwhile to look into section 68 which reads as under:

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year;

:: 26 ::

From the perusal of section 68, the sum found credited in the books of accounts for which the assessee offers no explanation, the said sum is deemed to be income of the assessee. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. The assessee is engaged in the jewellery business and maintaining the regular stock registers. Both the DDIT (Inv.) and the AO have conducted the surveys on different dates, independently and no difference was found in the stock register or the stocks of the assessee.

Purchases, sales and the Stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/ stocks. 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 assessing officer accepted the sales and the stocks. He 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. Audit report u/s.44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. The assessee has furnished the trading account, P& L account in page No.7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared he exorbitant profits. Though certain suspicious features were noticed by the AO as well as the DDIT (Inv.), both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence.

Provisions or section 68 are applicable in case of unexplained cash credit. Looking at the discussion at the foregoing paragraphs and the Judicial Precedents presented, I find that with sufficient stock in record for which excise duty was paid and vat taxes were paid, the sales could not be treated as unexplained cash credit u/s.68 of the Income Tax Act. It must be appreciated that an unexplained credit would imply credit which has unexplained source which is not so. The addition made on account of bogus sale thus failed that test of being unexplained as envisaged u/s 68 of the Income Tax Act. In view these of the addition of Rs.51,39,39,100/- stands deleted.

19. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the AO is erred in making additions towards cash receipts received for sale of jewellery, which has been subsequently converted into sales, for the impugned assessment year as unexplained cash credits taxable u/s.68 of

:: 27 ::

the Act. The Ld.CIT(A) after considering relevant facts has rightly deleted the additions made by the AO, and thus, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the Revenue.

20. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on the 20th day of December, 2023, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/VICE PRESIDENT

Sd/-
(मंजूनाथा.जी)
(MANJUNATHA.G)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 20th December, 2023.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

- | | | |
|--------------------------|-------------------------|------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त/CIT | 5. गार्ड फाईल/GF |
| 2. प्रत्यर्थी/Respondent | 4. विभागीय प्रतिनिधि/DR | |

