

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH “B”, CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री सुधांशु श्रीवास्तव, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI. SUDHANSHU SRIVASTAVA, JM

आयकर अपील सं./ ITA NO. 136/Chd/2021

निर्धारण वर्ष / Assessment Year : 2017-18

The DCIT Central Circle-1, Ludhiana	बनाम	M/s Roop Fashion Dr. Gujjar Mal Road, Ghumar Mandi Road, Ludhiana
स्थायी लेखा सं./PAN NO: AALFR5035M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

CROSS OBJECTION NO. 6/CHD/2021

IN

(आयकर अपील सं./ ITA NO. 136/Chd/2021)

(निर्धारण वर्ष / Assessment Year : 2017-18)

M/s Roop Fashion Dr. Gujjar Mal Road, Ludhiana	बनाम	The DCIT Central Circle-1, Ludhiana
स्थायी लेखा सं./PAN NO: AALFR5035M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

Shri Ajay Kumar Katyal, CA

राजस्व की ओर से/ Revenue by : Shri Sarabjeet Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 21/04/2022

उद्घोषणा की तारीख/Date of Pronouncement : 14/06/2022

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

The Appeal by the Department and the Cross Objection by the Assessee are directed against the order dt. 31/03/2021 of the Ld CIT(A)-5, Ludhiana.

2. In its appeal, the department has raised the following grounds:

1. Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition made on account of unexplained cash deposits during demonetization period u/s 69A of the Income Tax Act, 1961 amounting to Rs. 97,50,000/-?

June									
July									
Aug									
Sept									
Oct									
Nov									
Dec									
Jan									
Feb									
March									

iv. Kindly submit the copy of month wise cash book for F.Y. 2016-17 and month wise cash sales ledger for F.Y. 2016-17.

v. Please explain the source of the above cash deposits and also explain the reasons for making large cash deposits during the demonetization period as compared to the returned income.

vi. Kindly give details of persons with their name, address, PAN and amount from whom cash has been received and which was deposited during demonetization period

vii. Kindly give details of demonetization of the currency (New/Old) deposited during demonetization period. Kindly submit the copy of bank deposit slips showing the currency withdrawals.

4.2 The assessee furnished the financial monthly data which has been reproduced at page no. 3 of the assessment order dated 28/12/2019. The AO also asked the assessee to explain the source of the deposit in its bank account. He further observed that the assessee had deposited Rs. 2,47,50,000/- during demonetization period and failed to submit any satisfactory reply with regard to cash deposited. He was of the view that the assessee had introduced its own unaccounted money in the disguise of sale in the wake of demonetization. The AO worked out the average sale from April 2016 to October 2016 at Rs. 1,00,27,807/- and considering this fact that due to festive season there was surge in October 2016. He estimated the sales of the assessee at Rs. 1,50,00,000/- considering the 50% surge in sale of October 2016. The AO opined that the assessee had deposited excess cash of Rs. 97,50,000/- (Rs. 2,47,50,000 – Rs. 1,50,00,000) from undisclosed sources during the demonetization period. The AO invoked the provision of section 69A of the Act by observing that the assessee was found owner of the money but had not offered any acceptable and cogent explanation regarding the

source of such money found in its bank account. The reliance was placed on the following case laws:

- *Churarmal Vs. CIT (1988) 172 ITR 250 (SC)*
- *Smt. Srilekha Banerjee and others Vs. CIT, Bihar & Orissa, 1964 AIR 697 dt. 27/03/1963 (SC)*

4.3 The AO made the addition of Rs. 97,50,000/- by observing in opera 3.15 and 3.16 of the assessment order dt. 28/12/2019 as under:

3.15 Therefore, in cases where assessee's deposited huge Cash in bank accounts during Demonetization period (9th November, 2016 to 30th December, 2016), but the sources were not satisfactorily explained such money offered for taxation, the onus is on the assessee's to prove that the Cash deposits made did not bear the character of income. In this case, the assessee company had failed to prove this fact that the Cash deposited during demonetization period are normal business receipts and therefore, I hold that the amount of Rs. 97,50,000 cash deposited during Demonetization period, represented income from undisclosed sources. The assessee company has concealed its true income which otherwise is taxable. Further, by relying upon the decision of Hon'ble Supreme Court in the cases cited above that there was ample evidence that Cash was deposited in bank accounts, which is prima facie evidence against the assessee that the deposits are undisclosed income on which the Department can proceed in absence of satisfactorily explanation.

3.16 The assessee company failed to give satisfactorily explanation about the nature and source of cash deposits amounting to Rs. 97,50,000/- hence the value of is deemed as unexplained money u/s 69A of the Income Tax Act, 1961 and added to the Total Income of the assessee. The total Income assessed is taxed u/s 115 BBE of the Act at the rate of 60%.

(Addition: Rs. 97,50,000)

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and furnished the written submission which had been reproduced by the Ld. CIT(A) in para 3 of the impugned order and read as under:

Sub: Written submission in the case of M/s Roop Fashion, Gujjar Mai Road, Ludhiana for Assessment Year 2017-18. PAN: AALFR 5035M

This is an appeal filed by the assessee by raising various grounds of appeal. In, so far as, the nature of business is concerned, the submissions have been made in Asstt. Year 2012-13, which are being relied upon here also. Similarly, by way of Ground No. 1 & 2, we have challenged the very validity of assessment as framed u/s 153A, as there has been only survey at the partnership concern and no search was conducted and for which, we have given our detailed submissions in our appeal for Asstt. Year 2012-13. Since the facts are identical, the same submissions may, please, be considered here also alongwith the evidences as furnished by us in the form of paper book for Asstt. Year 2012-13.

2. The only addition in this year has been of the amount deposited in the regular bank account, out of cash sale/realization from debtors from the accounted for parties, and the Ld. Assessing Officer out of the cash of Rs. 2,47,50,000/-, deposited on estimated basis during the demonetization period, has accepted the sales of the assessee at Rs.

1,50,00,000/- and for the balance, addition of Rs. 97,50,000/- has been made u/s 69A and applied the provisions of section 115BBE.

3. It is an accepted fact that the business of the assessee is of trading in ladies dress material/hosiery cloth and some of the sales are made in cash due to the nature of trade and this modus operandi has been accepted in the earlier years and, later years, as per chart being enclosed in the Paper Book at page no 132 and on account of this, the Ld. Assessing Officer has given the benefit of Rs. 1,50,00,000/- out of the total deposits during the demonetization period to the tune of Rs. 2,47,50,000/-. Thus, it is an accepted fact that the Ld. Assessing Officer has accepted that the cash sales is the modus operandi of the business and the Assessing Officer has estimated the figure of Rs. 1,50,00,000/-, which is on surmises and conjectures, ignoring the fact that in the last years, the cash deposits were much more in the month of October and November 2015 as compared to the cash deposits during the year under consideration and which evidence would have been enough to substantiate the contention of the assessee.

4. Before, we go to the merit of addition made by the Assessing Officer, it is pertinent to mention here that immediately after the of demonetization in the month of December 2016, there was a query from the Investigation Wing-II on the basis of summons issued U/S 131(A) and which was replied by us on 12.12.2016 (please refer to pages from 81 to 83 of the paper book) and all the information as desired were submitted. The information related to the bank statement, audited balance sheets for Asstt. Year 2015-16, 2016-17, month-wise deposit of cash in financial year 2015-16, 2016-17 as per copy of the letter, dated 12.12.2016 being attached herewith, (please refer to pages from 1 to 40 and 83 to 132 of the paper book). After submissions of these voluminous details, including cash book, no further query was raised by the 'Investigation Wing' and for your kind perusal, the following details were submitted besides the audited profit and loss account for the year ending 31.03.2015 and 31.03.2016 to the Investigation Wing:-

i). The cash book for the period from 1.09.2016 to 30.09.2016, 1.10.2016 to 31.10.2016 and 01.11.2016 to 30.11.2016. (please refer to page no 84 to 131 of the paper book)

ii). Besides that our yearly total sales, cash sales and cash realized from debtors as reflected in the audited books of accounts are as under:-

ASSTT YEAR	TOTAL SALES	CASH SALES	CASH REALISED FROM DEBTORS
2015-16	17,21,85,280/-	2,47,74,931/-	8,08,69,295/-
2016-17	18,01,49,041/-	6,89,63,188/-	6,37,18,386/-
2017-18	13,82,27,373/-	4,12,59,227/-	3,09,78,586/-

iii) Thus, there being no doubt in the modus operandi of the trade and if a case where the stock has been realized by way of cash sales and realization from debtors, its nature and source of amount stands established beyond any iota of doubt. Even most of the parties from whom the cash has been realized are identifiable parties as is evident from the copy of cash book submitted to the Investigation Wing. Thus, no doubt could have been raised for which, the ad-hoc addition has been made without any justification by the Assessing Officer. In short, your goodself shall observe that cash sales in the Financial Year 2015-16 are more by Rs. 2,77,03,961/- as compared to Asstt. Year 2017-18 and realization from debtors is more in the earlier year by Rs. 2,99,39,800/-.

iv). It is also a fact that the assessee is a trader and running the business from the past many years in the same mode and manner and had deposited the cash in the regular bank account during the demonetization period, out of the cash sales and on account of realization of debtors made by him regularly not only in this year, but in the earlier years also. It is also apparent from the previous history of the case that some credit sales are made to identifiable parties and our salesmen are deputed to collect the amount regularly from such parties, who are located in small towns/villages and such parties make

the cash payments against which, receipts are issued by our salesmen and this modus operandi is proved from the documents submitted in the paper book in Asstt. Year 2013-14, 2014-15 and 2015-16 and for this year also, we are enclosing herewith such sample copies. (Please refer to page no. 41 to 80). The said cash sales are regular business sales made to customers and majorly, these are to identifiable parties as is evident from the list of cash sales.

v). Now coming to our submissions at the outset, it is submitted that the addition in the case of assessee u/s 69A is not warranted, which is reproduced as under:-

"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

The conditions of section 69A is that the assessee is found to be owner of money, bullion, jewellery or valuable article and the same is not recorded in the books of accounts. As per the above provisions of section 69A, there certain few conditions that need to be satisfied to qualify in cumulative sense for addition to be made as per section 69A of the Act and these conditions and their distinguish from the facts of the case of the assessee are as under:-

Sr. No.	Conditions of Section 69A	Facts of the case of assessee
	The assessee is found to be owner of money, bullion etc and the same is not recorded in books.	The assessee is maintaining regular books of accounts and such amount of sales have been recorded in the books of accounts and there is no case of investment outside the books of accounts. Hence section 69A is not applicable.
	The books of accounts being maintained for any source of income	The books of accounts have been maintained and duly audited in respect of trading of ladies dress material/hosiery cloth. No doubt has been raised by the Assessing Officer.
	The assessee offers no explanation about the nature and source of valuable articles with him.	The assessee has offered explanation supported by documentary evidences of audited books of accounts, purchase and sale vouchers, past history of the case and even the reply was submitted immediately in the month of December 2016 to the Investigation Wing and no doubt was raised by the Investigation Wing.
	Or the explanation offered by him is not in the opinion of the Assessing Officer satisfactory.	The Ld. Assessing Officer has accepted the sale and cash realisation from the debtors to the tune of Rs. 1.50 crores and even the sales during the earlier financial year in some months i.e. in October and November 2015 were much more which have totally been ignored by the Assessing Officer. Thus, no issue of not accepting the valid explanation.
	Such income may be deemed to the Income of the assessee.	When the basic fact that the sales have been recorded in the audited books of accounts, the nature of source stands identified as per past practice, the whole basis of making the addition is unjustified. The Assessing Officer has disregarded the evidence based on documentary

		evidence and, thus, the explanation offered by the assessee is very much reasonable and if the Assessing Officer was not satisfied, he should have explained the reasons for not accepting the cash sales and realisation from debtors, rather has accepted the cash of Rs. 1.50 crores out of total cash deposited in the bank to the tune of Rs. 2,47,50,000/- and no defect has been pointed out in the sales made by the assessee and, thus, it is merely a suspicion, addition cannot be sustained as per the judgement cited during the course of submissions for Asstt. Year 2013-14, 2014-15 and 2015-16.
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Thus, from the above, it is absolutely clear that the Assessing Officer has wrongly invoked section 69A without any justification and the addition made on surmises and conjectures is not valid.

Reliance in this regard is placed on the latest judgment of Ahmedabad Tribunal in the case of **Shree Sanand Textiles Industries Ltd. vs. DCIT(OSD)** in ITA No.995/Ahd/2014 With CO No. 167/Ahd/2014 (in ITA No.1166/Ahd/2014) dated **06.01.2020** wherein it has been held as under:

vi). From the above, it is clear that the provisions of section 69A of the Act can be attracted, where there is a credit found in the books of accounts and the assessee failed to offer any explanation or the offer made by the assessee is not satisfactory in the opinion of the Assessing Officer. The assessee has explained to the authorities below that the impugned amount represents the sales figures, which has not been doubted by the authorities below. Thus in our considered view, the impugned amount cannot be treated as unexplained cash credit under section 69A of the Act merely on the ground that the assessee failed to furnish the details of the existence of the parties.

ii). We also note that the provisions of section 69A cannot be applied in relation to the sales receipt shown by the assessee in its books of accounts. It is because the sales receipt has already been shown in the books of accounts as income at the time of sale only.

viii). We are also aware of the fact that there is no iota of evidence having any adverse remark on the purchase shown by the assessee in the books of accounts. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/finding. In view of the above we are not convinced with the finding of the learned CIT(A) and accordingly we set aside the same with the direction to the AO to delete the addition made by him."

5. Without prejudice to above, now coming to the merits of the case, it is submitted that the assessee has deposited the amount of Rs. 2,47,50,000/- in its regular bank account during the demonetization period, out of the cash sales and realization from the debtors and cash sales are forming part of total sales of Rs. 13.82 crores as reflected in the trading account forming the part of the paper book and similarly realization from debtors is from identifiable parties..

6. As already substantiated in reply to the Investigation Wing that the cash sales during the financial year 2015-16 and 2016-17 as per books are as under:-

Month	Total cash sales in the month	Total sales in the month

October 2015	1,99,88,776/-	3,46,95,947/-
November 2015	3,18,76,008/-	4,66,82,641/-
October 2016	1,04,97,098/-	2,11,65,607/-
November 2016	62,00,849/-	1,31,46,206/-

From the above chart, your goodself would appreciate that the cash sales were much more in the earlier years months and rather it is a regular phenomenon as is evident from the following facts:-

Asstt. Year	Total sales	Cash Sales
2015-16	17,21,85,280/-	2,47,74,931/-
2016-17	18,01,49,041/-	6,89,63,188/-
2017-18	13,82,27,373/-	4,12,59,227/-

Besides, cash sales, as a modus operandi of the trade, assessee also receive cash from his trade debtors also. Same is also given below in a chart:-

Asstt. Year	Cash Realised from Debtors
2015-16	8,08,69,295/-
2016-17	6,37,18,386/-
2017-18	3,09,78,586/-

These sales year after year having been accepted and, thus, opening stock, purchases, Sales and closing stock, no doubt has been made and the same Assessing Officer has accepted our books of accounts during the earlier assessments starting from Asstt. Years 2012-13 to Asstt. Year 2018-19.

5.1 The assessee on the basis of aforesaid submissions stated that it was clear that the source of cash deposits and genuineness of cash sales had duly been reflected in the regular books of accounts and even from the cash books submitted to the Investigation Wing, it was very much clear that the cash sales were genuine and had majorly been accepted by the AO and then once the AO had accepted more than 50% of the cash sales which was the modus operandi of the business, stood proved beyond any iota of doubt. It was also submitted that the name of the parties were majorly there in the copy of the cash book and thus all the possible documents and information proved the genuineness of the sale, purchase, balances of debtors and creditor and the amounts received from the debtors, therefore the same could not be doubted or brushed aside lightly by the AO without establishing any defect or short coming or falsification in the same.

5.2 It was also submitted that it was very much clear that all the above informations were with the AO during the course of assessment proceedings and that the AO was free to verify the same as per his statutory powers. However, the AO did not look into the details filed by the assessee and made the addition for the sake of making the addition without any evidence on record to negate cash sales and realization from debtors of the assessee.

5.3 It was further submitted before the Ld. CIT(A) that the books of accounts of the assessee were duly audited under section 44AB of the Act, the copy of Tax Audit Report, Balance Sheet and P&L Account were duly enclosed in the Paper Book, the Auditor had not pointed out any discrepancy in the books of accounts which had not been rejected by the AO under section 145(3) of the Act. It was also stated that the stock position depicted in the books of account had been accepted by the AO and the sales were made out of the accounted stock, accepted as such by the AO, thus, it was only exchange of asset from stock to cash by way of cash sales and realization from debtors to whom sales were made in earlier period, the stock available with the assessee was commensurate with sales made as per the books of accounts on which gross profit had been declared and taxed.

5.4 The assessee submitted before the Ld. CIT(A) that the sales were duly supported by relevant vouchers which were produced before the AO in the course of assessment proceedings and nothing adverse in connection therewith was noted by the AO, the figures of sales, inclusive of cash sales, offered by the assessee in its Return of Income for the F.Y. 2016-17 was accepted as such by the AO and considered in arriving at the assessed income of the assessee, therefore, the cash sales and realization from debtors duly recorded in the books of the assessee having been accepted as such by the AO, the corresponding cash deposits made out of the same could not have been rejected and deemed to have arisen on account of income from unexplained sources, on mere surmises and conjecture of the A.O.

5.5 It was further submitted that during the current year the cash sales in the month of October and November was less as compared to the cash sales in the same month in the earlier years and as regards to the realization from debtors, the same was from

identifiable parties as per sample evidence of collection of cash from debtors which depicted that cash sales vs cash received from debtors was a modus operandi of business and not a new thing happened during the year under consideration and in fact it was the past history connected with the business line of assessee, therefore, cash deposits deserves to be accepted as made out of cash sales of the assessee.

5.6 It was also submitted that the AO had not pointed out any defect in the purchases, sales, expenses debited in the books of accounts. No adverse remarks had been given against the documents filed by the assessee and moreover the books of accounts were not rejected. Thus making the addition on account of deposits of cash which was duly accounted for in the books of accounts, without rejecting the books of accounts was totally against the law. It was stated that on the one hand the AO had accepted the books results and on the other hand he had made the addition on account of cash deposited out of regular books of account which was totally baseless and was based on surmises and conjectures. It was further stated that once the books of accounts for the F.Y under consideration i.e; 2016-17, were accepted by the Department and the sales recorded therein were considered in arriving at the assessed income of the assessee, the cash deposited in banks against such sales could not be treated as undisclosed income of the assessee under section 69A of the Act without bringing on record any credible evidence / material in support of such allegation was merely on the basis of surmises and conjecture of the Revenue Authorities. Reliance was placed on the following case laws:

- * *Lalchand Bhagat Ambica Ram Vs. CIT*[1959] 31 ITR 288(SC)
- * *Mehta Parikh & Co. Vs. CIT* [1956] 30 ITR 181 (SC)
- * *CIT Vs. Anil Kumar & Co. in ITA No. 200001 & 200002 vide order dt. 25/02/2016* (Karnataka HC)
- * *ITO Vs. Amit Verma in ITA No. 4558/Del/2011 vide order dt. 19/12/2012* (Del Bench)
- * *ACIT Vs. Ercon Composites reported in 49 taxmann.com 489* (Jodhpur Bench)
- * *ITO Vs. Pranab Prakash Dutta in ITA No. 1492/Kol/2011 vide order dt. 25/06/2012*
- * *CIT Vs. PashupatiNath Agro Food Products P Ltd. ITA No. 165 of 2010* (Allahabad HC)
- * *Ramjiwan Lal Vs. CIT* (1980) 123 ITR 319 (All.)
- * *ACIT Vs. Roopchand Tharani* (2012) 66 DTR 104 (Chattisgarh)
- * *CIT Vs. Paradise Holidays* (2010) 325 ITR 13 (Del HC)
- * *CIT Vs. Smt. Poonam Rani* (2010) 326 ITR 223 (Del HC)
- * *CIT Vs. Om Overseas* (2009) 315 ITR 185 (P&H HC)

- * CIT Vs. Ludhiana Steel Rolling Mills(2007) 295 ITR 111
- * Dewas Soya Ltd. Ujjain Vs. Income Tax (Appeal No. 336/Ind/2012)
- * CIT Vs. Devi Prasad Vishwnath Prasad (1969) 72 ITR 194 (SC)
- * CIT Vs. Durga Prasad More (1969) 72 ITR 807 (SC)
- * Smt. Harshila Chordia Vs. ITO (2008) 298 ITR 349
- * M/s Heera Steel Limited Vs. ITO (2005) 4 ITJ 437
- * CIT Vs. Ghai Lime Stone Co. (1983) 144 ITR 140 (MP)
- * R.B. Jessaram Fatehchand (Sugar Dept.) Vs. CIT [1970] 75 ITR 33 (Bom)
- * M. Durai Raj Vs. CIT [1972] 83 ITR 484 (Kerala)
- * M/s Asian Consolidated Industries Ltd. Vs. ITO in ITA No. 4873/Del/1998 vide order dt. 05/10/2018 (Del)
- * ITO Vs. M/s Sunny Jewellery House in ITA No. 196/Chd/2014 order dt. 06/05/2016
- * ACIT Vs. M/s Kewal Singh in ITA No. 664/Chd/2016 order dt. 08/02/2017
- * ITO Vs. Jethu Ram Prem Chand reported at [2001] 114 Taxman 219 (Delhi)(Mag.)
- * Nitisha Silk Mills(P) Ltd. Vs. ITO [IT Appeal No. 896 (Ahd) of 2011, dt. 20/07/2012]
- * M/s Singhal Exim Pvt. Ltd. Vs. ITO ITA No. 6520/Del/2018 dt. 12/04/2019 (Del)
- * CIT Vs. Kailash Jewellery House (Del HC) in ITA 613/2010 dt. 09/04/2010
- * Bansal Rice Mills Vs. ITO in [2002] 120 Taxman 155 (Chd Trib)
- * CIT Vs. Vishal Exports Overseas Ltd. (Guj HC) in ITA No. 2471 of 2009 dt. 03/07/2012

5.7 The assessee submitted to the Ld. CIT(A) that when complete books of accounts maintained by the assessee had duly been accepted by the AO then the addition without any evidence on the basis of conjectures and surmises was against the principles of natural justice. It was further submitted that the AO made the addition by treating the cash deposits out of regular books of accounts as undisclosed income of the assessee which was totally incorrect. Reliance was placed on the judgment of the Hon'ble Gujrat High Court in the case of President Industries reported in 258 ITR 654.

5.8 It was submitted before the Ld. CIT(A) that the books of accounts of the assessee were duly audited under section 44AB of the Act and the auditor had not pointed out any discrepancy in the books of accounts which had not been rejected by invoking the provisions of Section 145(3) of the Act. The stock position depicted in the books of accounts had been accepted by the AO and the cash in hand / cash sales were made out of the accounted stock and that the cash sales as well as realization from debtors were duly supported by the relevant vouchers which were produced before the AO in the course of assessment proceedings and nothing adverse in connection there with was noted by the AO.

5.9 It was further stated that the figures of cash sales offered by the assessee for F.Y. 2016-17 were accepted as such by the AO, therefore, the corresponding cash deposit made out of such cash sales and realization from debtors could not be rejected. It was also stated that the AO had not pointed out any defect in the purchases, sales and expenses debited in the books of accounts, no adverse remarks had been made against the documents filed by the assessee, therefore, the addition made on account of deposit of cash which was duly accounted for in the books of account was totally against the law. The reliance was placed on the following case laws:

- CIT Vs. K.C. Malhotra reported in 164 Taxman 101 (P&H)
- CIT Vs. Surinder Pal Anand reported in 192 Taxman 264 (P&H)
- Nand Lal Popli Vs. DCIT reported in 71 taxmann.com 246 (Chd. Trib)
- Pr. CIT Vs. Akshit Kumar reported in 197 DTR 121(Del)
- Agsons Global P Ltd. Vs. ACIT in Appeal No. 3741 to 3746/Del/2019 dt. 31/10/2019
- R.B. Jessaram Fatehchand (Sugar Dept.)Vs. CIT [1970] 75 ITR 33 (Bom)
- M. Durai Raj Vs. CIT [1972] 83 ITR 484 (Kerala)
- M/s Asian Consolidated Industries Limited Vs. ITO in ITA No. 4873/Del/1998 dt. 05/10/2018 (Delhi Bench)
- ITO Vs. M/s Sunny Jewellery House in ITA No. 196/Chd/2014 dt. 06/05/2016
- ACIT Vs. M/s Kewal Singh in ITA No. 664/Chd/2016 dt. 08/02/2017
- President Industries reported in 258 ITR 654 (Guj)
- Chuhamal Vs. CIT reported in 172 ITR 250 (SC)

5.10 The assessee concluded the submissions before the Ld. CIT(A), in the following words:

CONCLUSION:

Therefore, to conclude the issue, on the basis of above facts and judicial pronouncements, it is submitted that the addition as made by the AO u/s 69A of the Act r.w.s. 115BBE of the Act is against the facts of the case on the following issues; sales have been accepted as per the trading account filed by the assessee and there is no new unexplained credit/investment since there is available stock with the assessee and the opening stock, purchases, sales, closing stock have been accepted and assessed from ay 2012-13 to AY 2018-19 , thus, on account of the reduction of stocks, the sale proceeds have been recorded in the regular books of accounts and the profit embedded in such sale proceeds have also been offered to tax and taxed accordingly, by the Assessing Officer and, therefore, the Ld. Assessing Officer has grossly erred in making the addition of alleged unexplained cash credit, which amounts to double addition :-

- ❖ The assessee maintains proper books of accounts that are regularly being audited by the Chartered Accountant u/s 44AB of the Act.

❖ All the sales, purchases, stock are recorded in the books of accounts and the same have not been doubted by the AO.

❖ Sales year after year having been accepted and, thus, opening stock, purchases, Sales and closing stock, no doubt has been made and the same Assessing Officer has accepted our books of accounts during the earlier assessments starting from Asstt. Years 2012-13 to Asstt. Year 2018-19.

❖ The books of accounts maintained by assessee and book results arriving out of them have also been accepted by the AO without pin pointing any specific defect.

❖ The cash sales made by the assessee have been credited in the books of accounts duly accepted by the AO and therefore, once the book results are accepted by the AO, the sales out of which those book results have been arrived cannot be doubted, otherwise it would amount to double taxation.

❖ As already stated that majorly the parties to whom the sales are made to identifiable parties and also realization from debtors is from the parties by our salesmen mainly in cash against which the proper reports are issued.

❖ It is also a fact that in the earlier year in the month of October/November 2015, there were much cash sales but in the month of October/November-2016, the cash sales are less, which proves the bonafide of the assessee.

❖ The AO himself has deleted part of the cash deposited by the assessee by allowing the benefit of cash balance as on 30.09.2016 which means the AO himself has accepted part of the book results of the assessee then addition of the balance cash deposits is incorrect and in-genuine.

❖ Addition so made by the AO deeming the impugned cash deposits arising out of accounted cash sales and realisation from debtors as unexplained u/s 69A merely on the basis surmises & conjectures is fallacious and deserves to be deleted.

5.11 It was also stated that the AO had erred in invoking the provisions of Section 115BBE of the Act which came into effect on 15/12/2016 which was applicable for the A.Y. 2017-18 and not for the year under consideration. The reliance was placed on the following case laws:

- CIT(Central)-1 Vs. Vatika Township Private Limited (2014) 367 ITR 466(SC)
- CIT Vs. Scindia Steam Navigation (1961) 42 ITR 589 (SC)
- Karimtharuvi Tea Estate Ltd. Vs. State Of Kerala (1966) 60 ITR 0262 (SC)
- STO Vs. Oriental Coal Corporation [1998] 68 STC 398 (SC)
- CIT Vs. Ansal Land Mark Township (P) Ltd. [2015] 61 taxmann.com 45(Del)
- DIT vs. Medical Trust of the Seventh Day Adventists [2017] 84 Taxmann.com 202 (Madras HC)
- National Agricultural Co-operative Marketing Federation of India Vs. UOI in Civil Appeal No. 6170 of 2001 (SC)

5.12 The concluding submissions of the assessee had been incorporated by the Ld. CIT(A) in para 9.6 of the impugned order which read as under:

9.6 Thus, to conclude, it is submitted as under:-

a). It is a modus operandi of the trade, where cash sales and realization from debtors are being made in the previous and later years.

b). Most of the parties are identifiable as per copies of cash book submitted to the Investigation Wing for the Financial Year 2015-16 and 2016-17.

c). The books of accounts have not been rejected u/s 145(3) or otherwise.

d). Cash sales and the amount received from debtors are far more in immediate preceding year comparing to the year under consideration.

e). The sales as recorded in the books of accounts and realization from the debtors are from identifiable parties and no doubt has been raised therein.

f). The Assessing Officer has given no basis that why the nature and source of the amount deposit is not to be accepted and why the provisions of section 69A has been invoked .The Assessing Officer has not substantiated about 60% of the amount deposited in the bank as the cash has been deposited from such modus operandi and why for the balance has not been accepted is not substantiated.

g). Sales have been accepted as per the trading account filed by the assessee and there is no new unexplained credit/investment since there is available stock with the assessee and the opening stock, purchases, sales, closing sock have been accepted and assessed from ay 2012-13 to AY 2018-19 , thus, on account of the reduction of stocks, the sale proceeds have been recorded in the regular books of accounts and the profit embedded in such sale proceeds have also been offered to tax and taxed accordingly, by the Assessing Officer and, therefore, the Ld. Assessing Officer has grossly erred in making the addition of alleged unexplained cash credit, which amounts to double addition.

g). The sales are recorded in the credit side of the books of accounts and as per the above judgment, the addition of Rs. 97,50,000/- cannot be sustained on surmises and conjectures.

The reliance was placed on the following case laws:

- Sh. Omar Salay Mohammed Sait Vs. CIT as reported in 37 ITR 151 (SC)
- Umacharan Shaw & Bros Vs. CIT [1959] 37 ITR 271 (SC)
- Lalchand Bhagat Ambica Ram Vs. CIT [1959] 37 ITR 288(SC)

5.13 The Ld. CIT(A) after considering the submissions of the assessee asked the AO to furnish the factual report on the following points raised by the assessee.

2. It is contended in the grounds of appeal that there was no search & seizure operation on the Company and therefore the assessment framed by the Assessing Officer u/s 153 A is void-ab-initio. A copy of the submission filed by the AR during the appellate proceedings for the assessment year 2012-13 is enclosed. The AR in his written submission claimed that there was search and seizure operation at the residential premises of the partners of the firm (M/s. Roop Fashion) and there was only a survey operation at the business premises of the partnership firm (M/s. Roop Fashion) at Dr. Gujjar Mai Road, Ludhiana. The AR has enclosed the copy of order dated 01.11.2017 passed u/s 133A(3)(ia) of the Income Tax Act,

1961 and copy of summon dated 12.01.2018 along with Annexure-A in support of his claim regarding survey.

3. To clarify whether any authorization u/s 132 was executed for conducting search in the case of M/s. Roop Fashions, Dr. Gujjar Mai Road, Ludhiana and if so, please provide a copy of the Panchnama drawn at the time of search operation in the case of M/s. Roop Fashions, Ludhiana.

5.14 In response the AO submitted as under:

"Sub: Appeal No. 10316, 10320, 10328, 10387, 10391 & 10395/CIT(A)-5/Ldh/2019-20 in the case of M/s. Roop Fashion, Dr. Gujjar Mall Road, Ludhiana for the A.Y. 2012-13 to 2017-18 u/s 153A -Regarding-

Kindly refer to your office letter No. 610 dated 01.03.2021 on the above cited subject.

2. At the outset, it is submitted that a search and seizure action u/s 132(1) of the Act was initiated in the case of M/s. Roop Fashion on the strength of Warrant of Authorization issued by the Pr. DIT (Inv.), Ludhiana on 01.11.2017. During the course of search, the premises where books of account/document of M/s. Roop Fashion were suspected to be found were searched as per the above Warrant. At the premises (i.e. H. No. B-XX-3190/C, Gurdev Nagar, Opp. Thapar Bhawan, Ludhiana), the partner of the firm is residing. Copy of Warrant of Authorization duly served upon Sh. Ramesh Kumar partner of the M/s. Roop Fashion is enclosed herewith for kind reference.

3. M/s. Roop Fashion was mainly covered u/s 132(1) and the business premise of M/s. Roop Fashion at Dr. Gujjar Mall Road, Ludhiana was covered u/s 133A of the Act. Copy of the Authorization u/s 133A is also enclosed herewith.

4. It is further submitted that M/s. Roop Fashion is a partnership concern having two partners namely:

(i) Sh. Ramesh Kumar Sachdeva

(ii) Smt. Sarita Sachdeva

As per partnership deed name/address of the partnership firm is mentioned as M/s. Roop Fashion, Ludhiana. Copy of the partnership deed is enclosed herewith.

5. It is further submitted that the Warrant of Authorization issued by the Pr. DIT (Inv.), Ludhiana for the premises at the address.

H. No. B-XX-3190/C, Gurdev Nagar, Opp. Thapar Bhawan, Ludhiana was in the name of following assessee(s):-

M/s. Roop Square (P) Ltd., M/s. Roopam International (P) Ltd., M/s. Roop Fashions group concerns and persons associated with this group namely Sh. Manohar Lai, Sh. Krishan Lai; Sh. Darshan Lai; Sh. Om Parkash; Sh. Sat Pal; Sh. Shiva Sachdeva and Sh. Ramesh Kumar & their respective family members was executed on Sh. Ramesh Kumar, the partner of M/s. Roop Fashion, Ludhiana. The panchnama drawn also bears the name of Sh. Ramesh Kumar, the partner of M/s. Roop Fashion, Ludhiana. Copy of Panchnama is enclosed herewith.

5. In view of the Warrant of Authorization issued u/s 132(1) in the name of M/s. Roop Fashion, the assessments completed by the AO u/s 153A in the case of M/s. Roop Fashion for the A. Y. 2012-13 to 2017-18 are valid and as per law. .

The above is submitted for your kind personal."

5.15 The aforesaid report furnished by the AO was forwarded to the assessee for comments, in response the assessee submitted the rejoinder as under:

We have to very humbly submit that we have already filed a reply in connection with the appeal for the relevant year and the only addition made by the Assessing Officer is on account of cash deposited in the regular bank account of the assessee out of sale proceeds of ladies dress material.

It is submitted that before the Ld. Assessing Officer, we had submitted a chart, which have been reproduced in the assessment order by the Assessing Officer and a readable copy is being filed herewith. From this chart, your goodself would find that last year in October 2015, we had deposited an amount of Rs. 2.74 crores and in November 2015 an amount of Rs. 3.61 crores was deposited and, whereas, during the year under consideration, we had deposited lesser cash in the bank account, which was to the tune of Rs. 62 lacs in October 2016 and in November 2016, an amount of Rs. 2.44 crores was deposited. The Chart is self explanatory and from this chart, it is very clear that the cash has been deposited in this year is far less than the cash deposited in the earlier year, when there was no demonetization. This amount is on account of sale proceeds and also realization from the debtors and, therefore, the Assessing Officer has grossly erred in making the adhoc addition. This issue alongwith other facts which we have mentioned may, please, be considered and the addition as made on account of adhoc basis may, please, be deleted and oblige."

5.16 The Ld. CIT(A) after considering the submissions of the assessee observed that the assessee had submitted a Chart which revealed that in October 2015 the assessee deposited in the bank an amount of Rs. 2.74 crores, in November 2015 an amount of Rs. 3.61 crores, in October 2016 Rs. 62 lacs and in November 2016 Rs. 2.44 crores. Therefore the cash deposited in this year was far less than the cash deposited in the preceding years when there was no demonetization. He also observed that out of the cash deposits of Rs. 2,47,50,000/- the AO on estimate basis had accepted the sales to the tune of Rs. 1,50,00,000/- and the balance amount of Rs. 97,50,000/- had been added. The Ld. CIT(A) observed that the assessee had given figures of total sales, cash sales and cash realization from debtors for the A.Y. 2015-16, 2016-17 and 2017-18 which were at Rs. 17,81,85,280/-, Rs. 18,01,49,041/- and Rs. 13,82,27,373/- respectively out of which the cash sales were of Rs. 2,47,74,931/-, Rs. 6,89,63,188/- and Rs. 4,12,59,227/- and the cash realization from the debtors were at Rs. 8,08,69,295/-, Rs. 6,37,18,386/- & Rs. 3,09,78,586/- respectively. The Ld. CIT(A) pointed out that in reply to the Investigation Wing, the assessee submitted that the cash sales during the F.Y. 2015-16 and 2016-17 in the month of October 2015 and November 2015 were at Rs. 1,99,88,776/- and Rs. 3,18,76,008/- with the corresponding figure in October 2016 and November 2016 at Rs. 1,04,97,098/- and Rs. 62,00,849/- respectively and that the cash sales were made in the same months of earlier years which was a regular phenomenon.

5.17 The Ld. CIT(A) also observed that the auditor had not pointed out any discrepancy in the books of accounts of the assessee which had not been rejected by the AO under section 145(3) of the Act and that the stock position depicted in the books of account had been accepted by the AO, the cash sales were made out of the accounted stock, so there was only exchange of asset from stock to cash. The Ld. CIT(A) was of the view that when the sales recorded in the books of account having been accepted by the AO the corresponding cash deposit made out of such cash sales and cash realization from debtors could not be rejected. He further observed that the AO had accepted the substantial portion of cash sales but had not given any reason / justification for accepting the availability of cash to the tune of Rs. 1.5 crores only and that the whole basis of making the addition was on surmises and conjectures.

5.18 The Ld. CIT(A) found merit in this submission of the assessee that the entries in the books of accounts depicted a true state of affairs unless some contrary evidence was found and the books were rejected by the AO. The Ld. CIT(A) categorically stated that there was no such findings regarding any evidence about bogus sales or bogus purchase by the assessee and that the AO had not find any defect in the opening cash in hand available with the assessee and there was nothing which was in the nature of undisclosed because the AO had made the addition by treating the cash deposited out of regular books of account without rejecting the books of accounts. The Ld. CIT(A) observed that the AO had not pointed out any specific sales which were unacceptable and that as to why only a part of the sales was accepted and the rest was rejected based on surmises and conjectures. The Ld. CIT(A) further observed that the AO had applied the provisions of section 69A of the Act for which two conditions were required to satisfy namely investment /expenditure were not recorded in the books of accounts of the assessee and that the nature and the source of acquisition of the asset or expenditure were not explained or not explained satisfactorily, however, in the present case the cash deposited was duly recorded in the books of account of the assessee who offered the explanation regarding the nature and source being the cash sales and realization of debtors out of earlier sales and that the money was duly recorded and accounted for in the books of account. The Ld. CIT(A) pointed out that the AO mentioned that the assessee had failed to prove the cash deposited during the

demonetization was normal business receipts, however he himself accepted Rs. 1.5 crore as normal business receipt out of total cash deposit of Rs. 2,47,50,000/-therefore, it could not be said that the assessee failed to give substantial explanation about nature and source of cash deposit and that once, the explanation of the assessee was partially accepted by the AO for Rs. 1.50 crores without pin pointing the basis as to why the same explanation was not acceptable in respect of balance Rs. 97,50,000/-.

5.19 The Ld. CIT(A) observed that the facts that the assessee deposited Rs. 2.74 crores in October 2015 and Rs. 3.61 crores in November 2015 shows that it was a regular feature of its business to deposit the cash in bank even during the period prior to the announcement of demonetization on 08/11/2016, these facts had not been negated by the AO and that it was also on fact that the assessee was in the nature of trade where there were cash sales in abundance. The Ld. CIT(A) was of the view that track records of deposits of cash in immediate preceding year justify the genuineness of cash deposited during the demonetization period. He also pointed out that during the search no irregularity, regarding unaccounted sales or purchase was noticed and the discrepancy in the stock was explained. The Ld. CIT(A) opined that there was merit in the contention of the assessee that when book results of the assessee had been accepted and the GP rate declared was also accepted which included all the sales recorded then without rejecting the books of accounts and only doubting part of sales and adding the part sale as cash, would give an absurd result which would also result in double addition because those sales had already been accounted for while arriving at gross profit in the trading account and then adding them separately also as unaccounted cash which means that sales of Rs. 97,50,000/- had once been credited in the trading account forming part of gross profit and then also adding them separately treating as unaccounted cash of Rs. 97,50,000/-. The Ld. CIT(A) observed that there was no indication as to which sales bills out of total sales of Rs. 2,47,50,000/- were treated as genuine and which sales bills were not treated as genuine, and that why this distinction was done and why this differential treatment was given by the AO had not been specified in the assessment order. According to the Ld. CIT(A) if sales were to be doubted then it had to be shown that these were bogus sales and there were either no corresponding stock with the assessee or there was no such purchases

against those sales, therefore merely on suspicion the AO could not have casually rejected the claim of the assessee without any enquiry in the matter which was totally lacking in this case as there was no mention of any such enquiry in the assessment order and that no incidence of any bogus sales was noticed by the AO, he therefore deleted the addition of Rs. 97,50,000/- made by the AO.

6. Now the Department is in appeal.

7. The Ld. CIT DR reiterated the observation made by the Ld. CIT(A) at page no. 35 onwards of the impugned order and supported the assessment order passed by the AO particularly para 3.15 of the assessment order dt. 28/12/2019.

8. In his rival submissions the Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee filed the return of income on the basis of audited books of account which had been accepted by the AO while passing the order under section 143(3) of the Act and no defect had been pointed out in day to day maintenance of such books of accounts neither any evidence of purchases or sales outside the books of accounts had been found.

8.1 The Ld. Counsel for the assessee referred to page no. 74 of the assessee's compilation and submitted that specific queries were raised by the Deputy Director of Investigation Wing, the assessee replied and submitted details of bank account, copy of the ITR's alongwith computation chart and audited balance sheet for the A.Y. 2015-16 and 2016-17, month wise details of cash deposits in bank for the period April 2016 to November 2016 etc. copy of which are placed at page no. 75 to 123 of the assessee's compilation, no doubt was raised on the said details by the Investigation Wing. It was stated that total sales of the assessee during the year under consideration were to the tune of Rs. 13.82 crores and due to the nature of trade cash sales were being made and that the assessee was dealing in the Ladies Dress Material.

8.2 The Ld. Counsel for the assessee submitted that the AO had reproduced a Chart at page no. 3 of the assessment order which gives the total cash sale and other details copy of which is also placed at page no. 447 of the assessee's compilation but the AO had not given any adverse comments with respect to the said chart. It was further

stated that the AO adopted the adhoc method and that out of the total cash deposits of Rs. 2,47,50,000/-, he accepted the cash sales of Rs. 1,50,00,000/- the balance amount of Rs. 97,50,000/- was added to the income of the assessee but without any basis. The Ld. Counsel for the assessee reiterated the submissions of the assessee made before the Ld. CIT(A) which had been summarized in para 19 of his written submission copy of which is placed on record and reads as under:

i). *Our opening stock, sales and closing stock have been accepted and no defects have been pointed out in day to day maintenance of books of accounts and it is also a fact that the assessee is in trading of ladies dress material and from October onwards, the sales are much higher side because of festivals/marriages and also in this trade, the case sale is the modus operandi of the trade as per past practice, not denied by the Assessing Officer.*

ii). All purchases are from identifiable parties and payments have been made through normal banking channels and no defects have been pointed out and nothing has been doubted about the same, by the Assessing Officer.

iii). That no evidence of purchases or sales outside the books of accounts have been found as is evident from the assessment order for the year under consideration or in the later years and there is no finding of the Assessing Officer that any item of purchases/sales are not verifiable.

iv). All the sales have been made out of regular stock of the assessee as per books and there is no 'unexplained money' in the books of accounts of the assessee, because on one hand, there is decrease of stocks and in lieu of that, the cash has been received from the customers and which have duly been recorded in the regular books of accounts of the assessee.

v). We also invite your goodself's attention to the chart at page 4 of the order of CIT(A), which is being relied upon.

vi). We also rely on the submissions at page 7 of the order of CIT(A) and from page 6 , 7 & 8 of the order of CIT(A), the cash sales in the month of October are there and both the cash sales and recovery from debtors as compared to last year, are less and the cash deposited in November 2016 is to the tune of Rs. 2,44,80,000/- as compared to 3,61,64,350/- in November 2015. Thus, the same itself demonstrates the genuineness of our books of accounts.

vii). We had also submitted that it is only an exchange of assets from stock to cash by way of cash sales and realization from debtors, to whom the sale is made in the earlier period and no doubt have been made in earlier period and, no doubt, have been raised by the Assessing Officer about the availability of stock and the gross profit has been accepted and taxed and, thus, the whole basis of addition is out of context. We had relied upon various judgments before the CIT(A) and we also rely on various judgments as per pages 21 to 23 and our summary of the arguments is at page 26.

viii). It is also stated that the cash as per the regular books of accounts cannot be doubted out of the sale of the ladies dress material and reliance was placed in the judgment of the P & H High Court in the case of Sh. K. C. Malhotra reported in 164 Taxman 101 & other cases, discussed at page no 22 to 25 of the order of CIT(A), along with conclusion as mentioned at page 26 of the order of CIT(A).

ix). There is Delhi ITAT Judgment in the case of "Agson Global" which finding have been reproduced at page no. 23 of the order of CIT(A) and the said judgment had been

approved by the Hon'ble High Court very recently and the copy of that decision is dated 19.01.2022 placed at pages 262 to 314 of the 'Paper Book' and it has been held that the finding of the tribunal was not perverse and this issue of the deposit of cash during post demonetization period had been discussed at length.

x). Similar view, has been taken by the 'Vishakhapatnam Bench of the ITAT' in the case of "Hirapanna Jewellers vs. ACIT" in ITA No. 253/Viz/2020 vide order dated 12.05.2021 and the copy placed **at page no. 315 to 321 of the Paper Book** and in the above said case, again the issue was with regard to deposit of cash during the demonetization and it was held that there was no defect in the purchases & sales and same were matching with the inflow and outflow of stock and the financial statements, clearly shows that the reduction of stock position matching with the sales which clearly showed that the cash generated, represented sales and the Assessing Officer accepted sales, stocks, purchases, and had not disturbed the stock, which had direct nexus with the sales and, therefore, the said addition was deleted and the judgment which we have cited in our written submission before the CIT(A) have all been referred and we strongly rely on this judgment. The facts are similar of our case.

xi) Similar reliance has been placed on the Third Member' judgment reported, in 78 ITD 326 in the case of "Bansal Rice Mills of the Chandigarh Bench" placed **in the paper book pages 322 to 339** and it was held that since the sales proceed have already been accounted for in the trading account, no addition could be sustained, even if, the said deposit could be treated as bogus sales as complete stock tally is there.

xii). We rely on the judgment placed at Serial No. 10 of Paper Book of Delhi High Court in the case of 'Sh. Akshit Kumar' and judgement of Hon'ble Punjab & Haryana High Court in the case of Sh. K.C. Malhotra.

xiii). We also rely on the latest judgment of Jurisdictional ITAT, Chandigarh Bench, Chandigarh in the case of Kalaneedhi Jewellers LLP in ITA No. 311/Chd/201 vide order dated 25.03.2022, (Copy of the judgment is placed in the Paper Book-III, at pages 462 to 531), wherein the Hon'ble Bench after discussing the similar judgment and by relying upon on number of judgments had deleted the addition as sustained by the Ld.CIT(A) on the context that if opening stock, purchases, sales and closing stock have been accepted, proper books of accounts have been maintained and after relying upon similar judgements as being relied upon here, the addition as sustained by the CIT(A) has been deleted.

xiv). Compared the above said facts with our case, the facts in our case are more stronger, since there is no basis of making the adhoc addition of Rs. 97,50,000/- and on the contrary, the sales have not been doubted as recorded in the regular books of accounts, therefore,, the CIT (A) has rightly deleted the addition.

9. We have considered the submissions of both the parties and material available on the record. In the present case it is not in dispute that the books of accounts maintained by the assessee in the regular course of its business were audited and accepted by the AO while framing the assessment through deep scrutiny under section 143(3) of the Act. The AO did not point out any specific defect in the books of account maintained by the assessee, no inflated purchases or suppressed sales were found. In the instant case, even the Investigation Wing asked the assessee to furnish the details which were submitted, copy of which is placed at page no. 75 to 123 of the assessee's

compilation, on those details, no adverse comment was made by the Investigation Wing. It is also noticed that the assessee is having cash sales in all the years which is evident from page no. 4 of the impugned order passed by the Ld. CIT(A). For the year under consideration the assessee was having cash sales of Rs. 4,12,59,227/- out of total sale of Rs. 13,82,27,373/-, the cash sale was about 1/3rd of the total sales, similar was the position there in the preceding year. The assessee was also having cash realized from the debtors and it was not the case of the AO that the debtors of the assessee were bogus or those were not related to the business of the assessee. The cash deposited in the bank by the assessee during the demonetization period was out of the cash sales and the realization from the trade debtors duly shown in the book of accounts which were accepted by the A.O. The assessee had deposited Rs. 2,47,50,000/- during the demonetization period in the bank account, the AO accepted Rs. 1,50,00,000/- as cash sale on estimated basis but no basis or method was adopted for that estimation, in other words the AO considered the aforesaid estimated sales only on the basis of surmises & conjectures which is not tenable in the eyes of law. In the present case, in the month of October 2016 and November 2016 the assessee was having cash sales of Rs. 1,04,97,098/- and Rs. 62,00,849/- which had not been doubted by the AO who had also not commented on the claim of the assessee that the balance of the amount which was deposited in the bank account was out of the realization of cash from the debtors which for the year under consideration was at Rs. 3,09,78,586/-. In the present case the AO accepted the trading results and had not doubted opening stock purchase sales and closing stock as well as GP rate shown by the assessee. Therefore, the addition of Rs. 97,50,000/- made by the AO on the basis of surmises and conjectures was rightly deleted by the Ld. CIT(A). We do not see any valid ground to interfere with the detailed and logical findings given by the Ld. CIT(A) in the impugned order.

10. In Cross Objection the assessee had raised the following grounds:

1. *That the Ld. CIT(A) has rightly deleted the addition of Rs. 97,50,000 on account of alleged unexplained cash deposits u/s 69A. in the regular bank account of assessee.*

2.a) *That the Ld. CIT(A)-5, Ludhiana has erred in confirming the action of the Assessing Officer for assumption of jurisdiction u/s 153A for the year under consideration, as there was no Panchnama draw in the case of the assessee*

b) That even in the remand report of the Assessing Officer, it could not prove that there was search warrant in the case of the assessee and, therefore, the proceedings as initiated u/s 153A, are void-ab-initio.

c) That the Ld. CIT(A)-5, Ludhiana has failed to appreciate the decision of the Hon'ble Mumbai Bench in the case of Regency Mahavir Property in ITA No. 682 & 683/Mum/2016 wherein, on similar facts & circumstances, the proceedings u/s 153A have been quashed.

3. Notwithstanding the above said ground of appeal, the assessment as framed by the Assessing Officer deserves to be quashed since "Mandatory Approval" as given by the Ld. Addl. CIT u/s 153D is without any application of mind and being a 'Mechanical Approval' only, the assessment as framed by the Assessing Officer at an income of Rs. 99,85,350/-deserves to be quashed in view of the binding judgment of Hon'ble Jurisdictional Bench of ITAT, in the case of Inder International in ITA No.1573/Chd/2018.

4. That the respondent craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed off.

11. Vide Ground No. 1 the assessee supports the order of the Ld. CIT(A) in deleting the addition made by the AO. Since we have already confirmed the order of the Ld. CIT(A) in deleting the addition made by the AO on merit in the former part of this order, therefore Ground No. 1 of Cross Objection is to be treated as allowed while no findings are being given on the legal issues raised by the assessee vide Ground No. 2 to 4 in this cross objection.

12. In the result, appeal of the Department is dismissed and the Cross Objection of the Assessee is partly allowed.

(Order pronounced in the open Court on 14/06/2022)

Sd/-

सुधांशु श्रीवास्तव
(SUDHANSHU SRIVASTAVA)

न्यायिक सदस्य/ JUDICIAL MEMBER

AG

Date: 14/06/2022

Sd/-

एन.के.सैनी,
(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File