

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 166/JP/2022
निर्धारणवर्ष/Assessment Year :2017-18

The ACIT Central Circle-2 Jaipur	बनाम Vs.	Shri Chandra Surana 2 nd Floor, 4, Lee Road Kolkata – 700 020
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ALHPS 2664 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma, CA &
Shri R.K. Bhathara, CA
राजस्व की ओर से / Revenue by: Shri Chanchal Meena, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 20/09/2022
उद्घोषणा की तारीख / Date of Pronouncement: 15 /12/2022

आदेश / ORDER

PER SANDEEP GOSAIN, JM

The Revenue has filed an appeal against the order of the Id. CIT(A)-4, Jaipur dated 25-02-2022 for the assessment year 2017-18 raising therein following grounds of appeal.

“1. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in deleting the addition to Rs.2,90,93,500/- made by the AO on account of unexplained cash credits u/s 68 of the Income Tax Act.

2. Further, the Id. CIT(A) has erred in law and on facts in granting relief to the taxpayer by ignoring the finding of Assessing Officer detailed in para

4.4.5 at page no. 9 of the assessment order wherein among others he has held that the assessee does not maintain day to day stock register as such the same could not be subject to the audit before auditor. Any stock register whatsoever was not furnished during the course of assessment proceedings to verify the quantitative sale made during the year whether the item shown by the assessee as sold was actually in stock of the assessee or not and quantity and value of the sale shown remains unverified.

3. The Id. CIT(A) has erred in law and on facts by ignoring the vital fact.

2.1 Brief facts of the case are that the assessee e-filed his return of income for the assessment year 2017-18 on 26-10-2017 declaring an income of Rs.47,52,660/- .The case of the assessee was taken up for “complete scrutiny” u/s 143(3) of the Act on the basis of CASS and statutory notice u/s 143(2) of the Act dated 21-09-2018 was issued through ITBA and duly served upon the assessee. Information u/s 142(1) of the Act was called for vide questionnaire through ITBA. In compliance thereof, the assessee submitted details/information through e-proceedings which were examined by the AO and the AO thus noted that the assessee has declared income from business and other sources i.e. to say that the assessee is engaged in the business of sale of gold jewellery and ornaments having two sales outlets one at Kolkata and other at Bangaluru. In this case, the AO completed the assessment of the assessee u/s 143(3) of the Act at an income of Rs.3,38,46,160/- by making addition of Rs.2,90,93,500/- in declared income by holding that said amount of cash deposited by the assessee in his bank account during the demonetization

period is nothing but the undisclosed income of assessee which was under the garb of cash sales, therefore, the cash deposited amounting to Rs.2,90,93,500/- is liable to be added to u/s 68 of the Act and taxable @60% under provision of Section 115BBE.

2.2 In first appeal, the ld. CIT(A) has deleted the addition by observing as under:-

“5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(i) I have perused the facts of the case and it is observed that the A.O. has added an amount of Rs.2,90,93,500/- deposited by the appellant in cash in the bank account considering that these were Specified Bank Notes. However, out of the aforesaid amount, an amount of Rs.3,23,500/- deposited in the bank account were not specified bank notes. The entire amount of Rs. 2,90,93,500/- was added by the AO as income of the appellant by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transactions are already part of the income which is already credited in P&L account, therefore there is no occasion to again consider the same as income of the assessee by applying the provisions of section 68 of the Act.

(ii) The Hon'ble Supreme Court in the case of CIT vs Devi Prasad Vishwanath Prasad (1969) 721TR194 (SC) (Copy at Case Law PB Page No. 225-228) held that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again.

(iii) 2021 (5) TMI 447 - The Hon'ble ITAT Visakhapatnam in the case of Asst. Commissioner of Income Tax, Central Circle-1 Visakhapatnam versus M/s Hirapanna Jewellers and (vice-versa)) (Copy at Case Law PB Page No. 181-184) held that:-

Addition u/s 68 r.w.s 115BBE - Assessee had deposited the sum in high denominations of specified bank notes (SBNS) post demonetization CIT-A deleted the addition HELD THAT:- The assessee produced the newspaper clippings of The Hindu, The Tribune and demonstrated that there was huge rush

of buying the jewellery in the cities consequent to declaration of demonetization of 1000 and Rs. 500 notes on 08.11.2016.

As cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House [2010 (4) TMI 1070 Delhi High Court] and Vishal Exports Overseas Ltd. [2012 (7) TMI 1110- Ahmedabad High Court]

(iv) The case of CIT v/s. Kailash Jewellery House ITA No. 613/2010 was decided by the Hon'ble Delhi High Court on 09.04.2010(Copy at Case Law PB Page No. 239) wherein it was held that "In the facts of above case, cash of Rs.24,58,400/- was deposited in bank account. The Assessing Officer made the addition on the ground that nexus of such deposit was not established with any source of income. The assessee claimed that it was duly recorded in the books on account of cash sales and was considered in the Profit and Loss Account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book was submitted to the Assessing Officer and no discrepancy was pointed out. On this basis CIT(A) deleted the addition. Tribunal also observed that it is not in dispute that sum of Rs.24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. Therefore, cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The Hon'ble High Court dismissed the appeal filed by the Department"

(v) The case of CIT v. Vishal Exports Overseas Ltd., Tax Appeal No. 2471 of 2009 was decided by the Hon'ble Gujarat High Court on 03.07.2012(Copy at Case Law PB Page No. 238) wherein it was held that "In the facts of above case the assessee was an exporter. The issue was regarding sale of Rs.70 lacs included in turn-over which was more than 500 crores. The assessee had claimed deduction u/s 80HHC of the Act. On the basis of information received by the Assessing Officer from investigation he considered the entry for export of 70 lacs as bogus. He denied benefit u/s 80HHC of the Act. Further, he made addition of Rs. 70 lacs in the income u/s 68 of the Act. It was held that once the assessee has already included the amount of sale of Rs. 70 lacs in Profit and Loss Account and determined the income on that basis no further addition could be made u/s 68 of the Act as it would tantamount to double taxation of same. income. The Assessing Officer could only reject claim u/s 80HHC of the Act".

(vi) In view of the facts of the case, it is observed that the books of accounts have not been rejected as no discrepancy was found therein and the fact remains that the A.O. has accepted the cash sales as he accepted the sales, declared purchases and declared opening & closing stock and declared profits as well. The amount of

cash sales is being reflected in its trading and profit and loss account. Thus the contention of the appellant that assessing the said cash sales as unexplained cash credit u/s 68 means that the impugned sales had been taxed twice, firstly the same was treated as sales and secondly the same was treated as unexplained cash credit/money under section 68 of the Act appears to be correct and therefore this would tantamount to double taxation of income, which is impermissible in law. Accordingly, the action of the AO in holding that the appellant could not substantiate the increase in sales with documentary evidences is not based on correct appreciation of the facts. Therefore, I find that the A.O. was not justified in making an addition of Rs.2,90,93,500/- under section 68 of the Act and consequently the aforesaid addition is directed to be deleted. The Ground of Appeal no. 2 & 4 are treated as allowed.”

2.3 During the course of hearing, the ld. DR relied on the order of the AO and prayed that the ld. CIT(A) is not justified in deleting the addition of Rs.2,90,93,500/-. To this effect, the ld.DR relied upon the following decisions.

1. CIT vs McMillan & Co. (1958) 33 ITR 182 (SC)
2. S.N. Namasivayam Chettiar vs CIT (1960) 38 ITR 579 (SC)
3. CIT vs Durga Prasad More (1971) 82 ITR 540 (SC)
4. Sumati Dayal vs CIT (1995) 214 ITR 801 (SC)

2.4 On the other hand, the ld. AR supported the order of the ld. CIT(A) and filed the following written submission.

Submission of assessee

As ground NO., 1 to 3 of the department are interlinked hence a combined submission is made hereunder:-

The assessee reiterates its submission made before CIT(A) as under:-

1.1 It is submitted that complete regular books of accounts, bills, vouchers and a day to day stock register having complete quantitative details have been maintained by assessee. The said books of accounts are audited. A copy of audited statement of accounts alongwith complete quantitative details have been submitted alongwith the return of income. The assessee maintained manual itemwise Stock - Register. The said Stock Register was bulky and so could not be produced in e-proceedings but was produced before A.O. in course of hearing as

is evident from submission dated 27-09-2019. The fact of maintenance of stock register manually is stated in Tax Audit Report also. Thus, the cash sales transaction is recorded in regular books of accounts, sales are made out of stock-in-trade. The assessee also filed copies of sales invoice No. 82 to 158 of Bangaluru and 110 to 216 of Kolkata outlets before A.O, which were of 28-10-2016 and these were earlier produced before Investigation Wing in F.Y. 2016-17 i.e. after the sales were made and same were verified by the Investigation Wing also.

1.2 Further just before the demonetization on 28th day of October, 2016 there was 'Dhanteras' and after that Diwali Festival was there. These are very auspicious day for Hindus, and they prefer to buy gold/silver and other items (depending on their capacity) which is considered very auspicious. This could be one of the reason for such high sale on that day. The assessee has charged VAT on all bills and all such sales has been reflected in the VAT Returns of the assessee. The sales of jewellery business depends on turn up of customers in a particular month, festivals & weddings etc. and it may happen that there may be no cash sales in a particular day(s), month(s) in the preceding year(s) and sales may be in the same day(s), month(s) in subsequent year(s). Thus the authenticity of making the cash deposits out of such cash sales cannot be disregarded and rejected merely on account of variation or deviation of cash sales, cash deposits of earlier year or the ratio of cash sales in the current period with that of an earlier period.

The Hon'ble Delhi Tribunal in the case of AGSONS GLOBAL P LTDvs. ACIT (Appeal Nos. 3741 to 3746/Del/2019) have held that the addition being made on the sole ground of deviation in ratio of cash sales and cash deposits during the demonetization period with that of earlier period, is not proper and lawful.

1.3 It is submitted that demonetization was announced in the evening of 8th November, 2016 viz. Indian Currencies of the denomination of Rs. 500 and of Rs. 1000 were withdrawn vide the Hon'ble Prime Minister announcement through television channels effective after midnight i.e. from 9th November, 2016 and vide Gazette Notification 2653 dated 8th November, 2016 declared that from 9th November, 2016 Rs. 500 and Rs. 1000 (specified Bank Notes) ceased to be legal tender. The persons were advised to deposit the demonetized currencies (called as SBNs) into their bank account without any limit or exchange them across the counter in their banks up to a maximum of Rs. 4,000 (with attendant conditions). Besides this, usage of demonetized currencies in purchase of medicines, in petrol pumps, hospitals and with specified government departments etc. were also permitted along with attendant conditions and guidelines. The express legislative provisions as contained in "the Specified Bank Notes (Cessation of Liabilities) Act, 2017", implemented pursuant to the Demonetization exercise.

These legislative provisions are as under:

(a) Section 5 of the Specified Bank Notes (Cessation of Liabilities) Act, 2017 provides that "On and from the appointed day, no person shall, knowingly or voluntarily hold, transfer or receive any specified bank note."

(b) Section 2 (1) (a) in Specified Bank Notes (Cessation of Liabilities) Act, 2017 provides that "appointed day" means the 31st day of December, 2016.

(c) Further Section 3 of Specified Bank Notes (Cessation of Liabilities) Act, 2017 states that "On and from the appointed day, notwithstanding anything contained in the Reserve Bank of India Act, 1934 or any other law for the time being in force, the specified bank notes which have ceased to be legal tender, in view of the notification of the Government of India in the Ministry of Finance, number S.O 3407 (E), dated the 8th November, 2016, issued under sub-section (2) of section 26 of the Reserve Bank of India Act, 1934, shall cease to be liabilities of the Reserve Bank under section 34 and shall cease to have the guarantee of the Central Government under sub-section (1) of section 26 of the said Act."

From the above, it is clear that use of Specified Bank Notes (SBN) pursuant to 8 November, 2016 upto 31st December, 2016 was always allowed. It was never the intention of the Law to prohibit their use for transactions upto 31st December, 2016. The Banks were directed under demonetization law to deposit SBNs of any amount from persons in their respective Bank A/c(s) upto 31-12-2016.

Also, the Specified Bank Notes (Cessation of Liabilities) Act, 2017 clearly provides that the specified bank notes shall cease to be liabilities of the Reserve Bank under section 34 and shall cease to have the guarantee of the Central Government under sub-section (1) of section 26 of the said Act from the appointed date, i.e. 31st December, 2016.

It is submitted that various persons after hearing the news of demonetization on television channels flooded to the shops of jewellers for the purpose of buying jewellery and bullions and dispensing with such SBN's. There was certain euphoria immediately after the announcement as the people having sums of money rushed to the jewellers to buy gold and other precious items. During such period gold worth crores of rupees was sold in few hours across the country and the jewellers have to do their business until midnight. This issue was also widely circulated in print media. Similarly, the comparative sales of other products across the country in various business segments also increased during such period. The effect of the same was that the sale figures of the demonetization period of the jewellery businesses was comparatively more than that of previous years. In case of assessee also the sales figures of November, 2016 increased as compared to November, 2015 as that of other jewellers in the country. The assessee otherwise cannot put a condition that no cash sales shall be made to its customer as there is no provision in I. T. Act, 1961 which restricts in making cash sales by any

business man. It is also a practice that on festive occasions & wedding etc, the customer prefers to buy gold jewellery in cash.

Further there is neither requirement nor there is any provision in the I. T. Act, 1961 to ask IT PAN. complete address and name proof etc. from the customers buying goods in cash upto the prescribed limit and so customers do not inform the same. However as evident and verifiable from the copy of sales invoices that name of the buyer, quantity and amount is mentioned on the said sales invoices. In view of the above facts and provisions of I. T. Act, 1961 the assessee company nor enquired nor noted the complete address and PAN of customers on cash sales invoices and also do not have I.T. PA No. and the complete addresses of the buyers/customers as the same is not required in law.

The allegation made by A.O. regarding fabrication of cash sales transactions on the assessee is thus completely without any basis, documents or any supporting legal evidence in the eyes of law. Thus the finding of Ld. A.O. that assessee could not substantiate increase in cash sales with documentary evidence is based only on suspicion, guess work and surmises which cannot be sustained in law.

2.1 The Ld. A.O. in assessment has accepted the cash sales as he accepted the declared profit, declared sales declared purchases and declared opening & closing stock and declared profits. It is, therefore, submitted that the amount of cash sales as claimed by the assessee was offered to tax by the assessee by reflecting the same in its trading and profit and loss account. The action of Ld. A.O. in again assessing the said cash sales as unexplained cash credit u/s 68 means that the impugned sales had been taxed twice, firstly the same was treated as sales and secondly the same was treated as unexplained cash credit/money under section 68 of the Act. This clearly tantamount to double taxation of income, which is impermissible in law. It is submitted that section 68 could not be applied in relation to the sales receipt shown by the assessee in its books of accounts as the same have already been taxed. It was because the sales receipt had already been shown in the books of accounts as income at the time of sale only and once the purchases had been accepted then the corresponding sales could not be rejected. In support of the above, reliance is placed on the following few decisions:

CIT v. Vishal Exports Overseas Ltd. Tax Appeal No. 2471 (Guj) of 2009, wherein the Hon'ble High Court has observed as under: -

"Revenue carried the matter in appeal before the Tribunal. The Tribunal did not address the question of correctness of the CIT (Appeal)'s conclusion that amount of Rs. 70 lakhs represented the genuine export sale of assessee. The Tribunal however, upheld the deletion of Rs. 70 lakhs under section 68 of the Act observing that when the assessee had already offered sales realisation and such income is accepted by the Assessing Officer to be the income of the assessee, addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income. In view of the above situation, we do not find any reason to interfere with the Tribunal's order".

Smt. Harshil Chordia v. ITO [2008] 298 ITR 349 (Raj.) wherein the Hon'ble High Court has observed as under::

“23. So for as question No. 2 is concerned, apparently when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of account of the assessee would not attract Section 68 because the cash deposits becomes self-explanatory and such amounts were received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition would not arise”.

Asstt. CIT v. Dewas Soya Ltd. [IT Appeal No. 336/Ind/2012], wherein the Hon'ble ITAT has observed as under:-

"The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s 68 of the Act. This view has been held by the Hon'ble Supreme Court in the case of CIT v. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194 that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed. The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again”.

Thus the ratio decidendi of the aforesaid case laws is that when the assessee has already shown the amount under the sales, meaning thereby, the amount generated in cash has already been offered for taxation, the same cannot be again taxed as unexplained cash credit u/s 68 and provisions of section 115BE (1) (a) cannot be invoked”.

3. It is evident from assessment order that L.d. A.O. in assessment did not invoke provisions of section 145 (3) of the Act. In law it means that Assessing Officer was satisfied about the correctness or completeness of books of accounts and method of accounting employed by assessee. Thus the A.O. is wrong in not accepting the declared cash sales as not verifiable which are recorded in books of accounts which were found correct and complete.

4. Further regarding alleged ground that no stock register whatsoever was produced before auditor for audit and before Ld. Assessing Officer during the course of assessment proceeding it is submitted that said allegation is grossly wrong, far from facts of the case and without any conclusive evidence. The said allegation or ground of department is not supported by any documentary evidence/finding. The assessee during the course of assessment proceedings produced the stock register in physical and said facts is also mentioned in the reply filed by assessee vide letter dated 28-11-2019 in which it is specifically

mentioned that stock register was also produced before Ld. AO. A copy of said letter filed attached with this submission..

The Ld. CIT(A) also given her findings on this issue in para no. 4.2 (vii) at page no. 7 of appeal order. For ready reference the finding of Ld. CIT(A) are reproduced herein below:-

“Though Ld. AO has stated that the stock register was not subject to audit and that the appellant has not shown the relevant stock register before the assessing officer, however on perusal of the details filed by the appellant before the A.O. as well as on perusal of the assessment record called for during the appellant proceedings, it is observed that all the books of accounts were produced by the appellant before the Ld. AO. It is not the case of the Ld AO that the appellant did not have the sufficient stock for making the sales. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantitative details. The Ld. AO did not make any enquiry on the material submitted by the appellant He merely proceeded on statistical analysis to make the addition on account of cash deposits. He neither found any concrete conclusive evidence of back dating of the entries of cash sales, evidence of bogus sale, evidence of bogus purchase and non-existing of cash in the books of accounts. In fact the AO did not have even reject the books of accounts under the provisions of section 145(3) of the Act.”

It is again submitted that complete regular books of accounts, bills, vouchers and a day-to- day stock register having complete quantitative details have been maintained by assessee. The said books of accounts are audited. It is, therefore, prayed that order of Ld. CIT(A) may kindly be upheld and addition of Rs.2,90,93,500/- made in the income of appellant deserves to be deleted.”

2.5 Further, the ld. AR of the assessee submitted that the judgements relied upon by the ld. DR are quite different from the facts of the case which has been distinguished by the ld. AR of the assessee as under:-

“In the matter of above appeal, the office of Ld. DR has supplied copies of four judgment's. It is submitted that facts of the said judgements are quite different from the facts of this case. However brief facts of said cases and how they are distinguish from this case are elaborated as follows:-

1. [1958] 33 ITR 82 (SC) CIT Vs Mcmillan & Co In this case Appellate Assistant Commissioner (AAC) reject the books of accounts of assessee which have been accepted by ITO. It is submitted that in appellant's case the Ld. CIT(A) allowed the appeal of assessee and also not rejected the

books of accounts of assessee. Further Hon'ble ITAT is the fact finding authority having no such power of enhancement of assessment order passed by Ld. AO. Also the case pertains period before enactment of Income Tax Act, 1961.

2 [1960] 38 ITR 579 (SC) S.N. Namasivavam Chettiar Vs CIT:- First this case law pertains period before enactment of Income Tax Act, 1961. Further in this case section 145 of the IT Act, 1961 (corresponding the section 13 of the India Income Tax. 1922) was applied by Ld. AO however in the case under appeal the Ld. AO neither applied the provisions of section 145(3) of the IT Act, 1961 nor rejected the books of accounts,

3. [1971] 82 ITR 540 (SC) CIT Vs Durga Prasad More:- In this case the issue before the Hon'ble Court to decide in which hand the income from property be taxed whether in individual assessee's hand or as trust property. Here the facts of the case are altogether and not at all relevant in present appellant's case.

4. [1995] 80 Taxmann 89 (SC) Sumati Dayal vs CIT: In this case assessee shown certain amounts in capital accounts in books claiming same to be winning from horse races. - For this contention she filed sworn statement. Assessing officer disbelieved her version and Settlement Commission upheld the assessment order holding that it was reasonable to infer, on facts that assessee did not participate in races but purchased winning tickets after events with unaccounted money.

It is submitted that in the above case assessee only filed sworn statement to justify the amount shown credited in capital account however in the appellant's case the sales made during the demonetization period are evidenced with GST invoices, stock register etc. The complete regular books of accounts, bills, vouchers and a day-to-day manual stock register having complete quantitative details have been maintained by assessee. The said books of accounts are audited and accepted by Ld. AO and CIT(A). Further in this case the Id. AO has accepted declared sales and accordingly double addition made on account of said sales firstly as a 'sales' and secondly on account of unexplained cash credits. Further no section under which addition made by the Ld. AO mentioned in assessment order.

In view of the above facts, the case laws relied by the Sr. DR are not applicable in appellant case by any stretch of imagination. ”

2.6 We have heard both the parties and perused the materials available on record. From the assessment records, it is noted that the AO made an addition of

Rs.2,90,93,500/- in declared income by holding that said amount of cash deposited by the assessee in his bank account during the demonetization period is nothing but the undisclosed income of assessee which was shown under the garb of cash sales and thus it is liable to be added u/s 68 of the Act and taxable @ 60% under the provision of Section 115BE of the Act. It is also noted from the order of the Id. CIT(A) at para 4.1 wherein the Id. CIT(A) has described para 1.4 of assessee written submission that *complete regular books of accounts, bill, vouchers and day to day stock register having complete quantitative details have been maintained by the assessee. The said books of accounts are audited. A copy of audited statement of account alongwith complete quantitative details have been submitted alongwith the return of income. The assessee maintained manual itemwise stock register. The said stock register was bulky and so could not be produced in e-proceedings but was produced before the AO in course of hearing as is evident from submission dated 27-09-2019. The fact of maintenance of stock register manually is stated in Tax Audit Report also. Thus the cash sales transaction is recorded in regular books of accounts, sales are made out of stock-in-trade. The assessee also filed copies of sales invoice No. 82 to 158 of Bangaluru and 110 to 216 of Koklata outlets before AO which were of 28-10-2016 and these were earlier produced before Investigation Wing in F.Y. 2016-17 i.e. after the sales were made and same were verified by the Investigation Wing also.* This view of the Id. CIT(A) indicates

that the assessee has maintained regular books of accounts, bills, vouchers and day to day stock register having complete quantitative details and said books of accounts are audited. The assessee vide submission dated 27-09-2019 had produced stock record during the course of hearing. The cash sales transactions are recorded in regular books of accounts and the sale are made out of stock in trade for which no adverse finding had been observed by the AO except for the change in the methodology in issuing bills as mentioned at page 7 to 8 of the assessment order. Further the Id. CIT(A) observed that the AO had treated the cash deposited in the bank during the demonetization period in demonetized currency as unexplained cash credit u/s 68 of the Act although the nature and source of the cash deposits being proceeds arising out of cash sales etc. was evident from the entries in the audited books of accounts of the assessee. In this case, the books of account of the assessee had been audited by an independent auditor. The cash sales and receipts are duly supported by relevant bills which were produced in the course of assessment proceedings before the AO and it is not the case of the AO that the assessee did not have sufficient stock for making the sales. Hence, it cannot be said that the figures of sales and purchases are not supported by the quantitative details and the AO did not make any enquiry on the material supplied by the assessee. Thus the AO neither brought any material on record to establish that the sale bills are bogus nor provided any evidence that such sales are bogus. It

is also an open fact that the demonetization of Rs.500/- and Rs.1000/-note was declared by the Hon'ble Prime Minister at 8 PM on 8-11-2016 and after this announcement the persons reached the jewellery shop to buy jewellery in exchange of notes. Thus all such scenario indicates that the assessee had duly substantiated its claim from the documentary evidences and also with the facts. It is also observed from the assessment order that the AO had not rejected the books of account of the assessee as no contrary material was available with him to reject the books of account of the assessee. As regards the addition of Rs.2,90,93,500/- made by the AO by applying the provisions of Section 68 of the Act, it is noted that provisions of Section 68 are not applicable on the sale transactions recorded in the books of accounts as sales are already part of the income which is already credited in P&L account. Hence, there is no occasion to consider the same as income of the assessee by invoking the provisions of Section 68 of the Act. In view of the above deliberations and case laws relied upon by both the parties, we find that the AO was not justified in making an addition of Rs.2,90,93,500/- u/s 68 of the Act which has rightly been deleted the Id. CIT(A) and we concur with his findings. Thus the appeal of the Revenue is dismissed.

3.0 In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 15 /12/2022.

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15 /12/2022

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- The ACIT, Central Circle-2, Jaipur
2. प्रत्यर्थी / The Respondent- Shri Chandra Surana, Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 166/JP/2022)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar