आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य **एवं** श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA No.98/RPR/2020

(Assessment Year: 2017-18)

Asstt. Commissioner of Income Tax-1(1), Bhilai	Vs	Shri Nitin Sankhla 1st floor, Navkar Bullion, Above Navin Jeweller, Jawahar Chowk, Durg
PAN No. :BBUPS 4874 C		
(**अपीलार्थी /Appellant**)	..	(**प्रत्यर्थी / Respondent**)

निर्धारिती की ओर से /Assessee by	:	Shri Ravi Agarwal, CA
राजस्व की ओर से /Revenue by	:	Shri Ila M. Parmar, CIT- DR
सुनवाई की तारीख / **Date of Hearing**	:	02/06/2023
घोषणा की तारीख/**Date of Pronouncement**	:	08/06/2023

आदेश / O R D E R

Per Arun Khodpia, AM :

The revenue has filed this appeal against the order passed by the Commissioner of Income Tax (Appeals)-II, Raipur (CIT(A)) dated 17.08.2020 for the assessment year 2017-18, on the following grounds:-

1. *"Whether on points of law and on facts & circumstances of the case, the Ld CIT(A) was justified in deleting the addition of Rs.39,09,000/- made by the AO who treated as unexplained cash credit u/s 68 and the same was unexplained during the course of assessment proceedings?"*

2. *"Whether on points of law and on facts & circumstances of the case, the Ld CIT(A) was justified in deleting the addition of Rs.2,90,00,000/- made by the AO who treated the cash deposited during demonetization period as unexplained cash credits due to lack of evidences regarding source of such cash deposits?*

3. *"Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified by ignoring that the government has brought amendment in the section 68 of the Act by introducing two provisos that the source of source of share capital may be verified. An additional onus*

needs to be placed on such companies to also prove the source of money in the hands of such shareholder or persons making payment towards issue of shares before such sum is accepted as genuine credit. If the company fails to discharge the additional onus, the sum shall be treated as income of the company and added to its income which in this case is completely unverified.

4. *"Whether on points of law and on facts & circumstances of the case, the ld. CIT(A) erred in ignoring the Hon'ble Supreme Courts recent judgement in an identical case of NRA Iron & Steel Pvt. Ltd. vs. Principal Commissioner of Income Tax (Central) 1 (SLP (Civil) No. 29855 of 2018), dated 5th March, 2019 that the assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO.*

5. *"The Ld.CIT(A) has failed to appreciate that the unsecured loan received from nine persons accounts did not have substantial balance before the cash deposit and which is then transferred to the assessee's a/c in a day or two, establishing that the main beneficiary is the assessee.*

6. *"Whether on points of law and on facts & circumstances of the case, the ld. CIT(A) erred in ignoring that not a single cash sale was made during the period 01/04/2016 to 04/11/2016 and the sales multiplied exponentially during the period prior to 08/11/2016.*

7. *"The Ld. CIT(A) has not gone into the merits of the case and just dismissed the order by relying on the orders of jurisdictional ITAT/High Court though there is no nexus between the conclusion of fact and primary fact upon which conclusion is based.*

8. *The order of the ld. CIT(A) is erroneous both in law and on facts.*

9. *Any other ground that may be adduced at the time of hearing."*

2. Brief facts of the case culled out of the material on records are that, this case was selected for scrutiny under CASS for the assessment year 2017-18. Accordingly notice under section 143(2) was issued on 08/08/2018 online and was duly served upon the assessee online and by post also. The case was received in transfer from ITO-1(3), Bhilai on

30/08/2018. A fresh notice u/s 143(2) was issued on 27/09/2018 by ITO-2(2), Bhilai. With the change of incumbency, a fresh notice under section 129 was issued on 01/11/2019. Notice under section 142(1) along with query letter was issued on 04/10/2019 & 02/11/2019 The assessee was queried to explain the sources of his investment made during the financial year 01/04/2016 to 31/03/2017 and justify the same with documentary evidence. Notices u/s 133(6) were issued to various banks to furnish bank statements of the assessee.

3. The case of the assessee for AY 2017-18 was selected for scrutiny u/s 143(2) of the Act and assessment order was passed on 29.12.2019 by ITO-2(2), Bhilai after making addition of Rs. 39,09,000/- in the garb of unsecured loan treated as cash credits liable to be disallowed u/s 68 of the I.T. Act & Rs. 2,90,00,000/- on account of cash deposit during demonetisation which was treated as bogus sales.

4. Against the above order of the AO, the assessee preferred an appeal before the ld. CIT(A), wherein the ld. CIT(A) had rejected the findings of the AO and allowed the appeal of the assessee. The relevant finding of the ld. CIT(A) are as under:-

> *"2.3 I have gone through the submission of the appellant and also perused the assessment order. As per the above facts, the first issue agitated by ground I is regarding fresh credits of Rs 39,09,000/- obtained by the assessee during the year. The AO became suspicious as the assessee has received the loans in November 2016 i.e. during demonetisation period. Loan taken from each varies from 2 lakh to 7.5 lakh. Sushila*

Devi has advanced Rs 2.4 lakh by RTGS. As per her ROI for AY 17-18 is 2,06,398/-. Sohan Kanwar has advanced Rs 2.4 lakh by RTGS. His ROI shows income of Rs 2,47,840/-. Abhishek Jain has advanced loan) of Rs 10 lakhs. His income is Rs 323287. Facts are similar in other cases. Loan confirmations were furnished before the AO in respect of all cases. The confirmations carry PAN and address of creditors. AO has not caused any inquiry to be made directly from the creditor. The addition has been made on suspicion. It is fact that the creditors have deposited cash in their bank accounts. However during the period of de-notifaction of currency of Rs 500/- and 1000/- by the government, it compulsion for every citizen to deposit his currency in bank as the same will not only become useless, but was also legally made criminal offence. Therefore, if a person has made cash deposit immediately prior to advancing loan to the assessee, then assessee cannot be held responsible. This is all the moretrue for the de-notification period when evey person was legally bound to deposit the currency. The jurisdictional ITAT has deleted addition made by AO in similar case of Amit Kumar Bansal Prop. M/s Shri Krishna Minerals vs ITO -1 Raigarh ITA No. 130/Rpr/2013. The relevant paras are as under-

3. He observed that all the three loan creditos had made cash deposit in their ban kaccount prior to issue of cheques of the same amount to the assessee as loan. Therefore, he held that the unsecured loan shown by the assessee is not genuine and the loan creditors did not have the capacity to advance laon to the assessee.

10. We find that the argument of Ld AR of the assessee is that the loan from all the loan creditors has been received by cheque through banking channel. All the three loan creditors are income tax assessee. They have filed their income tax returns, profit and loss account and balance sheet before the assessing officer. The assessing officer has dobuted the creditworthiness of the loan creditors on the ground that they have deposited cash prior to issue of cheque to the assessee.

……The assessing officer as well as CIT(A) has drawn adverse inference regarding creditworthiness of the loan

creditors merely on the basis of suspicion alone. It is not the case of the assessee that the loan creditors had advanced the money out of the income of the year alone and no positive material has been brought on record to show that loan creditors could not have any other source like his capital i.e. saving of earlier years or receipts from any other perons from which the loan creditor could not have advanced the loan.

11. In view of above discussion, we set aside the orders of lower authorities and delete the addition of Rs 12,00,000/- made by the Assessing Officer u/s 68 of the Act as unexplained cash credit. Thus, the ground of appeal of the assessee is allowed.

In fine, there is no positive material to infer that the laons were not advanced by these creditors and the creditors are not creditworthy. Therefore, the addition of Rs 39,09,000/- is hereby deleted.

Next issue agitated by ground 2 is regarding addition of Rs 2,90,00,000/- deposited by the assessee in bank.

AO has presumed that sale of Rs 2.9 cr is bogus and therefore cash deposit of Rs 2.9 cr is unexplained. Assessee has stated that he had made cash sale of Rs 92.62 cr in FY 2015-16 and Rs 18.29 in FY 2016-17. No questions were asked regarding cash sales of Rs 92.62 er in FY 2015-16. The cash sale made in this year is much less that cash sale in last year. Total cash deposit in FY 2016-17 was Rs 19.22 cr which was part of cash sales of Rs 19.13 cr. Therefore there is no reason to hold that cash sale made during this year was bogus. No facts have been brought on record in this regard to conclude that the cash sale made by the assessee was bogus. He has given too much credence to the observation that there was little cash sale between 1.4.2016 to 4.11.2016. Assessee trades in bullions and customers buying the bullion pay in cheque as well as in cash. Total turnover of assessee is Rs 105.18 cr. On a turnover of 105.18 cr a sale of Rs 18.29 cr in cash can not be said to be unusual looking to the fact that in last year, out of turnover of Rs 200.53 cr, cash sale was Rs 92.62 cr which was accepted. Another point which should go in assessee's favour is that

purchases made by the assesee are almost all in cheque and have not been questioned by the AO. Out of total purchases of Rs 105.29 cr, only the purchases of Rs 25.46 lakh are in cash. AO has not doubted the purchases. When puirchase s have accepted, the respective sales cannot be doubtful. Addition u/s 68 cannot be made in respect of amount which were found tobe cash receipts from the customers against which delivery of goods were made to them. The credit on account of sales are not unexplained when sales details are available. [Smt Harshila Chordia vs ITO 298 ITR 349 Raj].

The ITAT in this case held that addition u/s 68 cannot be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them.

Where all the records relating to purchase and sales including quantitative details are maintained there no addition u/s 68 in call for treating the sale proceeds as cash credits [ACIT vs Dewas Soya Ltd ITA 336/IND/2012].

In the judgment dt. 31/10/2012, wherein so many other decisions were relied upon and referred and it has been held where all the records relating to purchases and sales including quantitative details are maintained, then no addition u/s 68 is called for treating the sale proceeds as cash credits. In present case all the details like purchase and sales statement including quantitative details of Gold Fine were furnished before the AO which was not disputed by him.

When assessee had regular cash sales and deposit of cash in bank account and if nothing incriminationg is found, then the addition u/s 68 would tantamount to double taxation and hence is not called for.

In view of the above facts and interpretation of similar facts in the decision of Rajasthan ITAT, the addition is hereby deleted, and the ground is allowed.

3.0 The appeal is allowed."

5. Now, aggrieved by and against the order of Ld CIT(A) the revenue is in appeal before the Tribunal. We are adjudicating the grounds of the appeal of the revenue in the following paras:

Ground 1 : - Deleting the addition of Rs. 39,09,000/- on account of unexplained cash credits u/s 68

6. Regarding Ground No. 1, at the outset, the ld. DR on deletion of addition of Rs. 39,09,000/- made by the AO as unexplained cash credit u/s 68 of the Act has submitted that the ld. CIT(A) was in error while allowing the appeal of the assessee without appreciating the facts of the case that the amount received by the assessee in the garb of unsecured loan from 9 parties wherein the AO has investigated and has produced the details of all 9 loan creditors who have extended the loan to the assessee after depositing cash during the period of demoralization and such lenders, who have extended the loan were not having substantial worth or substantial balance in their bank account before the said cash deposit. Therefore, the deposited amount as unsecured loan were considered as unexplained, not allowed by the AO and added back to the income of the assessee, treating the same has bogus unsecured loan in the nature of cash credit covered under the provisions of section 68 of the Act. It was therefore the prayer of ld. CIT-DR that the findings of the observations of ld. CIT(A) deleting the addition was bad , erroneous, against the facts and needs to be reversed and the findings of the ld. AO deserves to be restored.

7. In defence, ld. AR of the assessee submitted that the assessee has furnished confirmations, copy of ITR and bank statements for all the 9 persons and has discharged its primary owns to prove the identity credit worthiness and genuineness of the transaction as required under provisions of section 68. The ld. AO did not bother to make any sort of inquiry in respect of these loans. He has made the addition based on surmises and presumption which were also entirely against the facts on the records, thus, the allegation of AO were absolutely baseless. In this respect, the ld. AR of the assessee relied upon the judgment the case of CIT VS. ORISSA CORPORATION PVT LTD. 159 ITR 78 (SC), in the case of ROHINI BUILDERS' CASE, GUJ HC [256 ITR 360 wherein it has been held that no additions u/s 68 can be made if the primary owns is discharged by the assessee by providing confirmations, ITRs and bank statement of the loan creditors. Ld AR also relied upon the case of Pawan Kumar Agarwal vs. ITO, Ward 2(2), Bilaspur (Hon'ble Jurisdictional High Court of Chhattisgarh, Bilaspur in Tax case No. 24 of 2011), wherein it has been held as under:-

> *"6. Section 68 of the Act provides a process by which the Assessing Authority has to reach at transactions of those persons with whom the Assessee had entered into transactions in which the particular assessee is involved, to conclude the assessment on the basis of the transactions referable to those persons. Such concluded assessments will have a bearing on the acceptability or otherwise the plea set up by the Assessee In the course of proceeding under Section 68 of the Act. So much so, notwithstanding, the finality attained by the assessment proceeding in relation to the lender, the borrower is entitled to say that the contents of the returns of the lender and the matters emanating therefrom have to be looked into, In that view of the matter, the First Appellate Authority was justified,*

also on the basis of the Judicial precedents referred by it, in entering the finding that the Assessee had discharged his primary onus under Section 68 of the Act. That having been done, the First Appellate Authority was fully justified in taking the view that it was open to the department to take recourse of Section 131 or Section 133(6) of the Act If they were to further proceed. That not having done so, the First Appellate Authority was within its jurisdiction to conclude on facts and law, in favour of the Assessee. The Appellate Tribunal, in the Appeal at the instance of the Revenue, has not rendered the decision holding the finding of the First Appellant Authority regarding applicability of Sections 131 and 133(6) of the Act, as the case may be, is erroneous in law. So much so, the Impugned decision of the Tribunal stands faulted on a substantial question of law referable to the contents of Section 68 of the Act and the failure of the Revenue to take recourse to Sections 131 and 133(6) of the Act, In the case of the Assessee, where the primary onus under Section 68 of the Act stood discharged by the Assessee."

8. It was also submission of the ld. AR that as per the Instruction No. 3/2017 of CBDT regarding SOP for verification of cash transactions relating to demoralization. It was the instruction to department that if the amount deposited by the assessee is less than 2,50,000/- then no verification is required. Referring to the present case, the ld. AR of the assessee that since there were 7 out of 9 renders have given the loan for less than Rs. 2,50,000/- also the amount in different demoralization currency deposited by them in their account was below Rs. 2,50,000/-. Therefore, any inquiry in those cases would be against the instructions of CBDT. The addition made by the AO were only on the basis of suspicions without enquiries and therefore, rightly deleted by the ld. CIT(A) and therefore, the same needs to be upheld.

9. The ld. AR further submitted that out of 9 loan creditors, 3 have repaid the loans in the same year and remaining creditors have also repaid their loans in subsequent years. Therefore, the transactions are of the genuine loans and repayment, the same cannot be considered as bogus on which the provisions of section 68 of the Act could be invoked.

10. We have considered the rival contentions and perused the orders of the authorities below along with the relevant documents placed on record and also analysed to the case laws relied upon by the ld. AR of the assessee in support of the assessee contentions. On perusal of judgment in the case of CIT VS. ORISSA CORPORATION PVT LTD. 159 ITR 78 (SC) wherein the Hon'ble Supreme Court of India has held that

> *"the assessee has given the name and address of the alleged creditors. It was in the knowledge of the revenue that the said creditors were income tax assessee's. Their index number were in filed of the revenue. The revenue apart from issuing notices u/s 131 at the instance of the assessee, did not pursue the matter, further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance alleged loan. There was no effort made to pursue so called alleged creditors. In those circumstances, the assessee could not do anything further. In the premise, if the tribunal come to the conclusion that the assessee has discharged the burden that lay on*

him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence".

11. We have also gone through the judgement in the case of ROHINI BUILDERS' CASE, GUJ HC [256 ITR 360 wherein the Hon'ble Gujarat High Court held that the tribunal having deleted the addition u/s 68 accept the genuineness of the loan which were received and repaid by the assessee by account payee cheques. The assessee having established the identity of creditors by giving their complete address GIR No./PAN No. as well as confirmation along with the copies of their assessment orders wherever readily available, no substantial question of law arise.

12. In back drop of the aforesaid facts, observations, circumstances and judicial pronouncements. We are of the considered opinion that since the assessee has discharged the primary onus cast upon it under the provisions of section 68 of the Act, whereas, no further inquiry based on the information or documents submitted by the assessee were conducted by the ld. AO, to arrive at a conclusion that unsecured loan received by the assessee during the year were bogus and are subject to addition by invoking the provisions of section 68 of the Act was bad in law, based on presumptions, suspect and therefore, the additions u/s 68 of the Act is liable to be deleted. The ld. CIT(A) has discussed the issue and decided the same lawfully. We, therefore, are in agreement with the decisions of the ld. CIT(A) on this issue and do not have any different view on the same. Thus, we

refrain ourselves to interfere with the findings recorded by the ld. CIT(A) and, thus uphold the same. Accordingly, Ground number 1 of the appeal of the revenue is dismissed.

Ground no 2 to 7 : Regarding deletion of addition of Rs. 2,90,00,000/- on account of bogus sale, treating the cash deposit during demonetization period as unexplained cash credit.

13. Apropos, unexplained cash credit on account of cash deposit during the demonetization period by the assessee of its sale which was considered as bogus and unexplained by the ld. AO. At the outset, ld. CIT-DR draw our attention to para 5 of the assessment order wherein the ld. AO has observed that the assessee was confronted on the issue and was asked to furnish cash book for the previous year and current year. The assessee was also asked to furnish his stock position for verification of assessee cash sales. It is observed that the assessee has not made any cash sales during the period 1st April 2016 to 4th November, 2016. The cash sale was made on 5.11.2016 for an amount of Rs. 31,92,901/- with opening balance of cash of Rs. 31,42,146/-. The assessee has made sale of Rs. 2,61,80,430/- till 08.11.2016. Thereafter, the assessee deposited old high denomination currency to the tune of Rs. 2.90 Crs. Thus, it was the observations of the ld. AO that the modus operandi adopted by assessee was for adjusting old demonetized notes of various customers by way of booking of substantial sales. It is further stated by the ld. AO that the assessee was not having

enough and sufficient gold stock as on 1st April, 2016 which stood at 1468.981 gram, therefore, stock of gold was generated artificially as an afterthought, so as to cater the need of booking sales during the demonetisation period. With these observations, the ld. AO has treated the deposit of Rs. 2.90 crs as undisclosed income of the assessee u/s 68 of the Income Tax Act. The ld. CITDR further drew our attention to the order of the ld. CIT(A) on the issue wherein ld. CIT(A) has decided the issue by observing that the ld. AO has made the assumption that the sales was bogus, however, ld. CIT(A) have not appreciated the fact that there was no sale between 1st April, 2016 to 4th November, 2016. The ld. CIT(A) has erred in not appreciating the fact that it was the modus operandi of the assessee to deposit the demonetized notes by way of booking of bogus sales in its books of accounts and to take advantage of the situation. It is therefore the request of the ld. CIT-DR that the finding of the ld. CIT(A) on the issue was erroneous both in law and on facts and therefore, needs to be set aside. The ld. CIT-DR further stated that the AO has correctly identified the misuse of demonetization circumstances by the assessee as a tax evasion tool, has rightly pointed out the unexplained income of the assessee, which the assessee was failed to substantiate with the material evidence. The ld. CIT-DR placed reliance on recent case decided in favour of the revenue by the Co-ordinate Bench by this Tribunal, Hyderabad reported in TS-914-ITAT-2022 (Hyderabad) in the case of Vaishnavi Bullion Private Ltd. wherein it has been held as under:-

*"**Conclusion***
Hyderabad ITAT upholds the addition of about Rs.100 Cr. as unexplained credit in the batch of appeals involving two jewellery and bullion dealers in the context of post-demonetisation cash deposits; Rejects Assessee's submission of receiving cash from thousands of customers immediately after announcement of demonetisation based on the report furnished by Central Forensic Science Laboratory (CFSL) on Assessee's computer system; ITAT remarks, "The assessee either deposited its undisclosed amount or otherwise helped undisclosed, unanimous and unidentifiable persons to convert their undisclosed prohibited currency into bullion after notification of demonetization. In both circumstances, the action of the assessee was not permissible in the eyes of the law"; Holds the addition to be sustainable under Section 68, relies on SC ruling in Apex Labs to reject Assessee's submission that even though the transactions are held illegal by the Revenue only the income can be taxed under the Act which does not differentiate between legal and illegal incomes; Also holds that demonetised currency was received by the Assessee and was wrongfully deposited with the bank, thus, upholds the assessment order by concluding that the Assessee mischievously and unscrupulously brought the demonetised currency into the network; Discards Assessee's claim that money was received from the customers and upholds Revenue's stand that no legal sale of gold could be made with use of prohibited currency; ITAT takes a stern view on Assessee's conduct, observes, "...The persons like assessee have given a setback to well-intended and well-thought policy of Government of India and they have used this as an opportunity to convert their or others' ill-gotten money into bullions....The above said act of the assessee is not only against the law but also against the interests of the nation.": :ITAT HYD"

The ld. CIT-DR thus has vehemently supported the order by the ld. Assessing Officer and has made the submissions to restore the same.

14. In defence, the ld. AR of the assessee has placed before us the written submissions which reads as under:-

"GROUND NO. 2 [Addition of Rs. 2.90 crore, u/s 68, treating the sales as bogus]

Facts

a. Assessee used to sell goods in cash and has been depositing that cash in the bank accounts.

b. AO has made the addition of Rs. 2.90 crore which the assessee had deposited in his bank accounts and that is out of sale proceeds of goods sold by the assessee. Reasons given by the AO to support the addition is furnished in page no. 5 of CIT(A)'s order- at the top.

Our submission

a. Refer our submission before CIT(A)- at page no. 5 and 6-chart showing cash sales and cash deposited in the bank in FY 2016-17 and FY 2015-16. Our submissions also thereafter, page 5 and 6 of CIT(A)'s order.
b. It is regular feature of the business of the assessee that he is doing cash sales and he has been depositing sale proceeds i.e. cash sale, in the bank accounts. The same trend is continued even after demonetisation.
c. Assessee has maintained regular books of accounts, all the quantitative details of his stock and entries in the cash book relating to cash sales have been accepted by the dept.
d. AO has rejected the explanation given by the assessee that cash deposits are out of opening cash balance and cash sales. The assessee has explained the nature and source of the credits. But AO has rejected it on presumption and assumptions only, without bringing any material on record.
e. It is not a case of the department that the cash deposited in the bank account during demonetization period was in excess of what was available in the cash book.
f. The allegation of the AO that the assessee is NOT having sufficient gold stock as on 01/04/2016 which stood at 1468.981 gms. Submitted that the assessee has not only sold stock of opening balance but he has made purchases also during the year. Entire purchases have been accepted by the dept.
g. There is sheer contradiction in order passed by the AO. Assessee has affected cash sales even after demonetization. page no. 70-71 of PB and deposited cash in the bank accounts. How sale of only old notes are bogus and new notes are genuine.
h. AO has accepted cash sales of post demonetization period, i.e., January to March 2017. AO is blowing heat and cold in the same breath according to his convenience.
i. Assessee has given a reasonable explanation according to his trade practice and therefore, it cannot be rejected unless AO brings on record something contrary to it.
j. Here it appears that the whole purpose of the department is to single out the cash deposits in the bank during demonetization period as arising out of unexplained source and to tax it u/s 68 so as to attract the provision of section 115BBE for levy of higher rate of tax. It is not the intention of the Legislature while introducing section 115BBE in the Finance Act, 2012. Kindly refer Explanatory Memorandum to Finance Bill, 2012 in which the reason and purpose of the provision of section 115BBE has been explained. Refer page no.152 of PB for Memorandum to Finance Bill, 2012.

k. It is "unexplained credits, money, investment etc." and NOT "duly explained credits" in consonance with the fact of the case, for which section 115BBE has been inserted in the I. T. Act, 1961.

Judicial pronouncement

1. SMT. HARSHIL CHORDIA VS. ITO [298 ITR 0349 (RAJSTHAN HC)] [Page 153-160 of PB]

"Addition u/s 68 cannot be made in respect of the amount which was found to cash receipts from customers against which delivery of goods was made to them."
2. ACIT VS. DEWAS SOYA LTD [ITA NO 336/INDORE/2012, INDORE BENCH OF ITAT]
"Where all records relating to purchase and sales including quantitative details are maintained, no addition u/s 68 is called for treating the sale proceeds as cash credits."

15. The ld. AR further drew our attention to page Nos. 7 and 8 of its paper book wherein the details of deposit of old demonetized notes of Rs. 50,00,000/- on 10.11.2016 in Bank of Maharashtra and Rs. 2,40,00,000/- on 10.11.2016 and 11.11.2016 which was deposited in the State Bank of India were furnished. The ld. AR of the assessee further drew our attention to page Nos. 73 to 76 of their paper book which was the abstract of cash sales by M/s Navkar Bullion ie., the assessee proprietorship firm showing cash sales of Rs. 92,62,49,032/- in the F.Y 2015-16 relevant to .A.Y 2016-17 i.e., previous assessment year to the A.Y 2017-18 the year under consideration. The contention of the ld. AR of the assessee by showing this abstract of cash sales was that the assessee is regular in making cash sales in the previous year also and also subsequent years and therefore, doubt of the ld. AO that the cash sales was for adjustment of the demonetized notes under the modus operandi by the assessee was just an

assumption and baseless. The ld. AR of the assessee also drew our attention to page No. 5 of the paper book wherein at point No. 2. It was mentioned that all the bank accounts statement for the F.Ys 2014-15, 2015-16 & 2016-17 were produced before ld. AO. The next information brought to our attention by the ld. AR of the assessee was details regarding turnover gross profit etc. in the previous year and preceding previous years for the present case which was available at page No. 171 of paper book.

16 The ld. AR of the assessee drew our attention to page No. 86 of paper book and have shown the details of gold fine purchase during the year under consideration and has also shown us the details of gold fine stock showing inward, outward, and closing balance during A.Y 2017-18 available on page Nos. 43 to 66 of the paper book dated 06.02.2023 on a particular query by the Bench VAT returns of the F.Y 2016-17 were also submitted by the ld. AR of the assessee. The assessee contention of the ld. AR that cash sales is the regular feature of the business of the assessee and from the records. It is the desirable that the same trend is continued even after the demonetized notes. The assessee has maintained the regular books of accounts, quantitative stock details, cash book and all such documents were fully furnished before the AO. According to the ld. AO has rejected the explanation given by the assessee that the cash deposits are out of the opening cash balance and cash sales. The assessee has explained the nature and source of credit, but AO has rejected it on presumption and his on assumption without bringing any

material available on record. The allegations of the AO that the assessee has not sufficient called stock as on 1st April, 2016 was without any basis since the assessee has not only sold its opening stock but also has made purchase during the year and all such purchases were duly accepted by the department.

17. It was the submission of Ld AR that, The AO has accepted the cash sales by the assessee was demonetized and his blowing hot and cold in the same breath according to his convenience. The assessee has offered all the reasonable explanations. The cash sale were according to his trade practices and therefore, without bringing anything contrary, the AO was unjustified in making the addition u/s 68 of the Act. The ld. AR of the assessee has placed before us the following case laws in support of the contentions of the assessee stated hereinbelow.

- **DCIT vs. Kandaswamy Annathurai in ITA No. 79/Chny/2021 dated May 19, 2023 is as under:-**

  "On appeal before the CIT(A), the assessee has produced all the details including audited books of accounts as was produced before the Assessing Officer. From the cash book of the assessee, the CIT(A) has noted that the cash in hand and balance available with the assessee has increased slowly but steadily from 01.04.2016 till 08.11.2016 and the assessee had maximum cash in hand of Rs.427.19 lakhs as on 12.10.2016 much before the announcement of demonetization of SBN on 08.11.2016. Moreover, the assessee has shown particular stream of income in his books of account and the inflow/receipts have been recorded in the books of account as income, Assessing Officer cannot treat it as unexplained credits. From the records, the CIT(A) has noted that the assessee has shown the receipts as being payment received from the debtors an also these debtors were all emanating from the sales made and recorded in the books and these facts were not disputed by the Revenue. When the demonetization was announced by the Government, there was heavy tension among the public for depositing the SBN. Therefore,

cannot be question as to why the deposits were not made in single day. From the point of Revenue, if the assessee has to make deposit on single day, why the Assessing Officer has allowed the deposits made on 10.11.2016 & 12.11.2016 to the extent of f.53,40,000/-. In fact, it was announced that the Reserve Bank of India would allow all the banks to receive old currency from 08.11.2016 to 31.12.2016 and the assessee made deposit before the end date announced by the Government. Under these facts and circumstances and once the cash in hand was not disputed, CIT(A) has considered all aspects and rightly allowed the appeal of the assessee. There is no reason to interfere with the order passed by the CIT(A). Revenue's appeal dismissed."

- **ACIT vs. M/s Hirapanna Jewellers in ITA No. 253/Viz/2020 dated May 12, 2021 is as under:-**

"9. In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the 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 (Supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra),Hence, we do not see any reason to interfere with the order of the Ld. CIT(A) and the same is upheld."

- **Rahul Cold Storage vs .ITO in ITA No. 123/RPR/2022 dated 29.11.2022 is as under:-**

"12. Having given a thoughtful consideration to the issue in hand, I find certain peculiar facts attending to the case of the present assessee before me. As observed hereinabove, it was the claim of the assessee that the cash deposits of Rs.46.55 lacs (supra) made in its bank accounts during the demonetization period were sourced out of its business receipts, i.e., cold storage rentals that were duly recorded in its books of account. On the contrary, the A.O for the aforesaid reasons had rejected the claim of the assessee and had held the entire amount of Rs.46.55 lacs (supra) as an unexplained cash credit u/s.68 of the Act. Ostensibly, the A.O had though rejected the assessee's claim that the cash deposit of Rs.46.55 lacs (supra) was sourced out of its business receipts, but on the other hand he had accepted its returned income, and thus without rejecting the books of account of the assessee had framed the assessment vide his order passed u/s.143(3), dated 16.12.2019. In sum and

substance, the A.O though had rejected the assessee's claim that the cash deposits of Rs.46.55 lacs (supra) were sourced out of the cold storage rental receipts for the year under consideration, but acting contrary to his aforesaid observation had at the same time accepted its book results, which, in fact, supports the assessee's claim. On the basis of the aforesaid facts, I am unable to comprehend that now when the assessee's explanation that the cash deposits of Rs.46.55 lac (supra) were sourced out of its duly accounted cold storage rent receipts was not accepted by the A.O, then, on what basis he had accepted its book results and framed the assessment. In case, the view taken by the A.O is approved, then the same would lead to an incongruous situation, wherein the A.O while framing assessment had rejected the assessee's claim that the cash deposits of Rs.46.55 lacs (supra) in its duly accounted bank accounts was made out of the cash in hand as was available with it out of the cold storage rent receipts, but to the contrary, while framing the assessment had simultaneously subscribed to its claim by accepting the disclosed cold storage rent receipts out of which the cash deposits in question were claimed by the assessee to have been sourced. The A.O could not be allowed to blow hot and cold at the same time. If the assessee's claim that the cash deposits in question were made out of its duly disclosed cold storage rent receipts was not to be accepted, then, the A.O was obligated to have rejected the books of account of the assessee, for the reason, that by not doing so he had on the one hand held the cash deposits to have been sourced out of an unexplained source, while for at the same time by accepting its books of account had accepted its claim that the cash deposits in duly accounted bank accounts were sourced out of the duly disclosed source of the assessee firm. At this stage, it may be observed that the fact that the bank accounts in question in which the cash deposits were made by the assessee during the demonetization period formed part of its books of account can safely be gathered from a perusal of the assessee's balance sheet, Page 20 to 22 of APB. Considering the aforesaid facts, I am of a strong conviction that now when the bank accounts in question, viz.(i) A/c. No.910020017065122 with Axis Bank Ltd.; and (ii) A/c. No.13460200011173 with the Bank of Baroda had both duly been accounted for by the assessee in its books of account for the year under consideration, therefore, the A.O by not rejecting the said books of account had clearly accepted that the cash deposited by the assessee firm during the year under consideration in the said bank accounts was out of its disclosed sources.

13. Considering the aforesaid facts, I am of the view that as the treating of the cash deposit of Rs.46.55 lac (supra) as an unexplained cash credit u/s.68 of the Act by the A.O in itself militates against the acceptance of the book results of the assessee by him, therefore, there can be no justification in upholding the addition so made by him. I, thus, on the basis of my aforesaid observations vacate the addition of Rs.46.55 lac (supra) made by the A.O u/s.68 of the Act. Thus, the Ground of appeal No. 1 raised by the assessee is allowed in terms

of the aforesaid observations."

- **Manisha Punshi vs. ITO in ITA No. 112/RPR/2021 dated 21.11.2022 is as under:**

"9. After having given a thoughtful consideration to the very basis for making of the addition by the AO u/s 69A of the Act, I am unable to persuade myself to subscribe to the same. In case, as observed by the A.O, the assessee had in guise of sales deposited her unaccounted money in his bank account, then, the A.O was obligated to have rejected the books of account of the assessee before recharacterizing the corresponding sales as the latters unaccounted money u/s.69A of the Act, which, I find, had not been so done. I, say so, for the reason that while for the A.O had observed that the assessee in the guise of sales had deposited her unaccounted money in the bank account, but despite so observing he had while framing the assessment vide his order passed u/s.143(3), dated 30.11.2019 accepted the sales as were disclosed by the assessee in his books of account. Accordingly, the very first basis for treating the amount of Rs.6.86 lacs (supra) as the unexplained money of the assessee u/s.69A of the Act fails. Adverting to the observation of the A.O that the assessee might have received the sales proceeds in the demonetized currency even after the specified time period allowed by the Central Government, the same in my considered view would by no means justify the treating of the amount in question as the assessee's unexplained money u/s.69A of the Act. Assuming that the assessee had continued with receiving of the sale proceeds in the form of demonetized currency even after lapse of the specified time period as provided by the Central Government, i.e., 24.11.2016 (for Rs.1000/- denomination notes) and 02.12.2016 (for Rs.500/- denomination notes), even then the same would by no means justify treating of the said amount as the unexplained money of the assessee u/s.69A of the Act.

10. Although, as observed by me hereinabove, the deposit in tranches of the demonetized currency notes by the assessee in her bank account, i.e, after lapse of the specified time period allowed by the Central Government though raises serious doubts, but the same in my considered view would by no means suffice for stamping the same as the assessee's unexplained money u/s.69A of the Act. I, thus, not being able to concur with the view taken by the lower authorities who had failed to come forth with any cogent reason for treating the amount in question as the assessee's unexplained money u/s.69A of the Act, thus, set-aside the order of the CIT(Appeals) and vacate the addition of Rs.6.86 lacs made by the A.O. Thus, the Ground of appeal No. (s) 1 & 2 raised by the assessee is allowed in terms of the aforesaid observations."

- **ACIT vs. Sh. Chandra Surana in ITA No. 166/JP/2022 dated 15.12.2022 is as under:-**

"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 ld. CIT(A) at para 4.1 wherein the ld. 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 Wingh 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 ld. 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 ld. 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 ld. CIT(A) and we concur with his findings. Thus, the appeal of the Revenue is dismissed."

18. In terms of aforesaid judgments, the ld., AR of the assessee submitted that the addition made by the ld. AO was based on his on assumption without bringing our on any opposing material against the assessee and therefore, the same needs to be reversed which has rightly deleted by the ld. CIT(A) and therefore, the order of the ld. CIT(A) on the issue is worth upholding.

19. With respect to in the case of Vaishnavi Bullion Private Limited (supra) relied upon by the Ld CITDR which has decided by the Hyderabad ITAT against the assessee, the ld. AR of the assessee rebutted that the circumstances and facts of the issue in the case of Vaishnavi Bullion Private

Limited are different than the circumstances of the present case. In the case of Vaishnavi Bullion Private Limited(supra), there was a report furnished by Central Forensic Science Laboratory (CFSL) and in that case, it was held that demonetized currency was received by the assessee and was wrongly deposited with the Bank. The assessee mischievously and unscrupulously brought the demonetized currency into the network. No such facts or observations were found in the case of the assessee and therefore, the ratio decided in the case law relied upon by the department in the case of Vaishnavi Bullion Private Limited (supra) has no bearing on the present case.

20. We have considered the rival contentions and perused the orders of the authorities below along with the relevant documents placed on record. The judicial pronouncement placed before ITAT to substantiate the contentions by the other parties. The factual matrix of the present case shows that there was a deposit of Rs. 2.90 Crs of old demonetized notes by the assessee after announcement of demonetization on 08.11.2016. It is an admitted fact that the assessee has opening balance of more than Rs. 2.90 crs when the demonetisation was pronounced, and this fact is not disputed by the department. The ld. AO has observed that there was no cash sales between 1st April, 2016 to 4th November, 2016. However, the assessee is in a trade wherein cash sales is a regular feature which is demonstrated by placing necessary evidence before us. Like, the abstract of cash sales of previous year and for the current year. It was also the fact

that total turnover of the assessment year under consideration was Rs. 105.18 crs out of which Rs. 18.21 crs was in cash and it was the observations of the ld. CIT(A) that the same cannot be considered as unusual which is further substantiated by the figures of the sale in the previous year wherein the total turnover of the assessee was 200.53 cr and cash sales was Rs. 92.62 crs. It is also admitted fact that books of accounts of the assessee were accepted by the revenue, thereby they have accepted the purchase sales, stock, bank accounts etc. of the assessee. The ld. AO on one hand has accepted the books of accounts of the assessee on the other hand treated the sale of the assessee has bogus, shows that ld. AO is blowing hot and cold at the same time which is unacceptable. The ld. CIT(A) has observed that when the purchases were accepted, the respective sale cannot be doubted. The addition u/s 68 of the Act cannot be made in respect of the amount which were found to be properly recorded into the books of accounts and no negative inference towards such transactions in the books of accounts were drawn by the revenue. We are drawing guidance from the case laws referred to hereinabove wherein it is clearly held that any addition on account of treating the sale of the assessee as bogus without rejecting the books of accounts is unjust, unfair and bad in law. Respectfully following decisions relied upon, we are of the considered opinion that in the circumstances when the assessee has sufficient opening cash balance at the time of pronouncement of demonetization which was not disputed by the department, if the same is being deposited by the assessee in its bank accounts, the same cannot be

treated as unexplained or bogus unless any contrary observations borne from available records or otherwise brought on by the revenue against the assessee. Ld CIT(A) has appreciated the facts of the case, considered all the aspects correctly and has appropriately allowed the appeal of the assessee. The case of the Vaishnavi Bullion (supra), since has distinguishing facts and circumstances not comparable with the present case, the same cannot be applied to rescue the contention of the revenue. The department was unable to brought before us anything which inspires us to agree with the contentions of the department to substantiate their claim that the deposits made by the assessee out of its cash sales were not explained or are bogus, we therefore having no distinguished view then the view taken by ld. CIT(A), upheld the finding of the ld. CIT(A) and therefore, decided this issue against the revenue. In the result, grounds no 2 to 7 on this single issue of the appeal of the revenue are dismissed.

Ground Nos. 8 and 9 are general, needs no separate adjudication.

In the result appeal of the revenue is dismissed.

Order pronounced in the court on 08/06/2023.

Sd/- Sd/-

(RAVISH SOOD)
न्यायिक सदस्य / JUDICIAL MEMBER

(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 08/06/2023

Ganesh Kumar, P.S(on tour)

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur