

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1035/Mum/2022
(A.Y: 2017-18)

DCIT, Circle – 2(1)(1) Room No. 561, 5 th Floor Aayakar Bhavan, MK Road, Mumbai – 400 020	Vs.	M/s. Kundan Jewellers Pvt Ltd 223, SM Patil Bldg, SV Road, Andheri (W), Mumbai – 400058.
PAN/GIR No. : AABCK5770H		
Appellant	..	Respondent

Appellant by :	Mr.Nihar Ranjan Samal.DR
Respondent by :	Mr.Siddharth Kothari.AR

Date of Hearing	19.05.2023
Date of Pronouncement	29 .05.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the National Faceless Appeal Centre (NFAC)/CIT(A), Delhi passed u/s 143(3) and 250 of the Act. The revenue has raised the following grounds of appeal:

1. *"Whether on the facts and circumstances of the case and law the Ld. CIT(A) has erred in deleting the addition of Rs. 13,29,50,000/- made on account of cash deposits during the demonetization period in SBNs without appreciating the fact that the assessee could not*

substantiate the source being the cash sales with necessary corroborative evidences?"

ii) "Whether on the facts and circumstances of the case and the law the Ld. CIT(A) has erred in considering the ratio of total cash sales vis-a-vis the total turnover of the F. Ys.2015-16 and 2016- 17 without appreciating the fact that the ratio of such cash sales is very abnormal when compared to similar sales claimed to have been made during the period of October 2015 to November 2015 to October 2016 to 8h November 2016 (being the date of announcement of demonetization)?"

iii "Whether on the facts and circumstances of the case and the law the Ld.CIT(A) has erred in considering the assessee's submission that no KYC is required for sales below the limit of Rs.2 lakhs by referring the Rule 114B r.w.s.139A(5)(c) of the Act without appreciating the fact that the said rule is relating to quoting of PAN for carrying out specified transaction and not maintaining basic details i.e., name, address, contact details etc.?"

2. The brief facts of the case are that the assessee company is engaged in the business of wholesale and retail trade of all kind of gold, diamond jewellery, silver articles and other precious stones. The assessee has filed the return of income for the A.Y 2017-18 on 01.01.2017 disclosing a total income of Rs.3,88,87,990/- under normal provisions of the Act and book profits u/s 115JB of the Act of Rs.3,78,90,828/- and the return of income was

processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to the notice, the assessee has furnished information online from time to time and explained the nature of business and income. On perusal of the financial statements, the Assessing Officer (AO) found that during the demonetization period there are cash deposits in the bank accounts and therefore in order to verify these facts the AO has issued notice u/s 142(1) of the Act to explain the sources. Whereas the assessee has filed the submissions along with the bank statements and reconciliation of cash deposits made during the demonetization period.

3. The AO on perusal of the information found that the assessee has made cash deposits in the bank accounts held with Saraswt Coop Bank Ltd., Canara Bank, State Bank of India and Bank of Maharashtra all aggregating to Rs.13,29,50,000/-.The assessee was called to explain the nexus of cash sales and cash deposits by notice dated 09.11.2019. The assessee has filed the detailed submissions on 18.12.2019 and

also submitted the details of month wise cash sales and cash deposits. Whereas the AO observed that, the month wise cash sales and cash deposits on comparing to F.Y 2015-16 has significantly increased, especially during the month of October 2016 to November 2016 and the assessee was issued show cause notice as to why the cash deposited during the demonetization period should not be treated as unexplained cash receipts u/s 68 of the Act. Whereas the assessee has filed the detailed explanations on 20.12.2019 referred at Para 5.5 of the order as under:

5.5 In response, the assessee vide letter dtd.20.12.2019 submitted its content, the gist of the same is as under:

- 1. Turnover of sales during F.Y. 2016-17 of the first three month was decreased due to strike by jewelers association to protest against levy of excise duty on jewellery.*
- 2. The company had also celebrated its 78 years of establishment and on this occasion the company had given free gifts*
- 3. Demonetization period immediately preceded by diwali sales on 30th October 2016 which is the main season of sales for all kinds of jewellery*

4. The Hon.Prime Minister of India announced on 8th November 2016 at 8.00 PM that the currency having denomination of Rs.500 and Rs.1000/- would cease to be legal tender after 12.00 pm due to which the customers have turned out in large.

The AO was not satisfied with the explanations and observed that the assessee has neither furnished the details of parties / customers with names, address, party wise cash sales and the A.O. is of the opinion to treat the cash deposits as unexplained cash credits u/s 68 of the Act. Further the assessee has furnished the form -1 form of declaration u/s 199C of the Finance Act, 2016 in respect of taxation and investment regime for Pradhan Mantri Garib Kalyan yojana Rules, 2016 and on record no other facts were filed regarding the disclosure of income under the scheme and finally assessed the total income of Rs. 17,18,37,993/- and computed the book profit u/s 115JB of the Act of Rs. 3,78,90,828/- and passed the order u/s 143(3) of the Act on 23.12.2019.

4. Aggrieved by the order, the assessee has filed the appeal with the CIT(A). The CIT(A) considered the grounds of appeal submissions of the assessee, in the appellate proceedings and the assessee has filed the

details substantiating the claim referred at page 2
Para 4.0 of the order as under:

4. Appellants submissions: During these appeal proceedings, a written submission was uploaded on 18.11.2021. Later, before conclusion of these appeal proceedings, another written submission dated 28.01.2022 was uploaded. The second submission was exactly the same as was the earlier one. The same is being reproduced as under, for ready reference:

"Ground of Appeal 1

1. On the facts and under the circumstances of the case and in law the learned AO erred in making addition of Rs, 13,29,50,000/- u/s 68 by treating it as Cash credits which is bad in law.

2. On the facts and under the circumstances of the case and in law the learned AO erred in making addition of Rs.13,29,50,000/- u/s 68 without appreciating the fact that the appellant had submitted all the documentary evidences such as sale register, cash sale memos, Stock statement, audited cashbook and bank statement Indicating the source of Cash Deposited. Hence all the condition relating to section 68 was satisfied.

3. On the facts and under the circumstances of the case and in law the learned AO erred in making addition of Rs. 13,29,50,000/- u/s 68 without appreciating the fact that the appellant had offered the said deposit as its business income, thereby such addition u/s 68 results in Double addition. Hence it is not a case of unexplained cash deposit.

4. On the facts and under the circumstances of the case and in law the learned AO erred in making addition of Rs. 13,29,50,000/- u/s 68 without appreciating the fact that the appellant had accounted the deposits in its books of accounts and had also paid Value Added Tax on the same.

Background:

The company is wholesaler as well as retail trader of all kind of Gold Jewellery, Diamond Jewellery, Silver Articles and other precious stones.

The company has three outlets in Andheri area of Mumbai, from where the sales take place and all the three showrooms altogether are having 45 sales counter and well trained staff.

Appellant being a company having turnover in crores and maintaining regular books of accounts such as ledger, stock register, bank book, cash book etc. are maintained and audited by the statutory auditor of the company.

Appellant received notice u/s 143(2) dated 09.08.2018 for scrutiny assessment under CASS category for cash deposit during the Demonetisation Period and subsequently notices were received u/s 142(1) wherein appellant has made the required submissions on timely basis.

Most important fact is that immediately on deposit of cash after demonetization, the email/notice was received from the income tax department and source was asked to which the appellant had replied that same is arising out of the cash sales and list of sales alongwith details of parties were given.

Further during the course of assessment proceeding appellant had submitted the following documents:

Appellant had uploaded following documents on 20,12,2019:

1. Cash Summary for FY 2015-16

2 Cash Summary for FY 2016-17

3 Branchwise Cashbook

4 VAT Tax Return

5 Pamplet of Promotion Scheme

6 Reply in response to Notice u/s 131

7 Reply in response to Notice u/s 133(6)

8 Quantity details of Stock

9 Bank account Statements

10 Form 1 (Pradhan MantriGaribKalyan Yojana), 2016

We are re-submitting the same in paper book format for your ready reference.

In the above mentioned cash summary and cash book appellant had submitted the Month-wise details. In respect of opening cash, cash received, cash deposited in bank and cash utilised for purchases and expenses and closing balance for FY 2015-16 and 2016- 17 along with Month wise details of purchases, Cash and credit sales and other relevant details as called by the AO.

In addition to above the sales being subject to Value Added Tax has also been offered to Tax and shown in the

VAT returns of the year under consideration and also the Sales and Labour Charges have been credited to Profit & Loss Account and correspondingly expenses have been claimed. Hence appellant had offered the said deposit as its business income.

Assessment order u/s 143(3) was passed against the appellant dated 23.12.2019 wherein addition was made of Rs. 13,29,50,000/- u/s 68 of the IT Act read with section 115BBE of the Income Tax Act, 1961.

The AO just made two observation while passing the order:

1. Assessee has neither furnished the details of the parties, name and address

2. Assessee has not carried out any cash sales and the assessee was in possession of unexplained cash credits and since the demonetisation of notes were brought in, assessee has deposited the same in bank account.

Assessing officer just compared the cash deposit of October and November 2016 with the previous year and completed the assessment.

We wish to explain the summary from the Cash Book as follows:

(Detailed Branch wise summary attached for your ready reference)

<i>Particulars</i>	<i>Amount</i>
<i>Opening Cash Balance on 01.04.2016</i>	<i>21,58,729</i>
<i>Add;</i>	
<i>Cash received from cash sales, debtors, others</i>	<i>25,64,27,788</i>

<i>Less</i>	
<i>Total expenses and others</i>	1,88,29,325
<i>Cash Deposited in Bank</i>	23,73,03,000
<i>Closing cash in Hand</i>	24,54,192

Thus Cashbook adequately explains the flow of cash and the amount of cash deposit did not appear to be unusual as compared to collection made during the year.

In view of above there is no unaccounted cash as contemplated by the AO, We further wish to analyse the pattern of cash deposit of the appellant:

<i>Sr.</i>	<i>Particulars</i>	<i>Amount</i>	<i>Amount</i>
1	<i>Cash deposited in the whole of the last financial year - 2015-16</i>		17,35,09,500
2	<i>Cash deposited in the whole of the last F.Y 2016-17</i>		23,73,03,000
3	<i>Cash deposited from April 1 to Nov 8, 2016 A.Y 2016-17</i>	8,63,48,000	
4	<i>Cash deposited from November 9 to December 31 2016 (F.Y 2016-17)</i>	13,27,50,000	
5	<i>Cash deposited from January 1 to March 31, 2017 (FY 2016-17)</i>	1,82,05,000	
6	<i>Cash deposited from April 17 to March 2018 (F.Y 2017-18)</i>		13,52,95,500
7	<i>Cash deposit from April 18 to March</i>		13,55,00,000+

	2019 F.Y 2018-19		
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Below mentioned table depicts the total turnover, cash received, cash deposit for financial year 2015-16 and financial year 2016-17:

<i>F.Y</i>	<i>Total Turnover</i>	<i>Cash sales</i>	<i>% of total sales</i>	<i>Cash deposited in bank</i>
<i>2015-16</i>	<i>59 Cr</i>	<i>18.55</i>	<i>31.44</i>	<i>17.35</i>
<i>2016-17</i>	<i>82 Cr</i>	<i>25.64</i>	<i>31.27</i>	<i>23.73</i>

The above statistics clearly prove that in this country, the majority of the people prefer to purchase jewellery in cash.

It is not the case that the appellant has the unaccounted cash which is deposited.

The appellant has submitted all the details of cash receipt and party wise details of purchases above Rs.2,00,000/-. The income Tax Rules per se requires details party wise only above Rs.2,00,000/-, Hence for sales below Rs.2,00,000/-, income tax rules also does not require the party wise details to be maintained.

As per section 139(A)(5)(c) read with rule 1148 of Income Tax Rules no KYC is required for gold sales upto Rs.2,00,000/-.

Requirement for KYC for purchases above Rs 10 lakh are part of India's commitments to the Financial Action Task Force (FATF), of which it has been a member since 2010.

This is a requirement of FATF (Financial Action Task Force) - the global money laundering and terrorist financing overseer they said.

FATF is an inter-governmental body that sets international standards aimed to prevent illegal activities on terror funding and money laundering.

Since in India, cash purchase of jewellery above Rs 2 lakh is not allowed without KYC, so no new category is created under this notification. Read more at:

[https://economictimes.indiatimes.com/news/economy/po](https://economictimes.indiatimes.com/news/economy/policy/cash-purchase-of-jewellery-)

[ly/cash-purchase-of-jewellery-](https://economictimes.indiatimes.com/news/economy/policy/cash-purchase-of-jewellery-above-rs-10-lakh-will-need-kyo-savs-government-note/articleshow/80173127.cms?utm)

[above-rs-10-lakh-will-need-kyo-savs-government-](https://economictimes.indiatimes.com/news/economy/policy/cash-purchase-of-jewellery-above-rs-10-lakh-will-need-kyo-savs-government-note/articleshow/80173127.cms?utm)

[note/articleshow/80173127.cms?utm](https://economictimes.indiatimes.com/news/economy/policy/cash-purchase-of-jewellery-above-rs-10-lakh-will-need-kyo-savs-government-note/articleshow/80173127.cms?utm)

[source=contentofinterest&utmmedium=text&utm](https://economictimes.indiatimes.com/news/economy/policy/cash-purchase-of-jewellery-above-rs-10-lakh-will-need-kyo-savs-government-note/articleshow/80173127.cms?utm)

[campaign=cppst](https://economictimes.indiatimes.com/news/economy/policy/cash-purchase-of-jewellery-above-rs-10-lakh-will-need-kyo-savs-government-note/articleshow/80173127.cms?utm)

STOCK REGISTER

The company is maintaining the stock of value equivalent to Rs.68,07,89,002/-during financial year 2015-16 and Rs.65,38,81,469/- during financial year 2016-17 and

hence it is not an afterthought that cash deposit was shown as cash sales.

Secondly the stock of the company has come down to the extent of sales of gold, hence the interpretation of that cash was deposited which the appellant had is also unwarranted.

In view of the above we can analyze as follows:-

- Sources:-Appellant have explained the source of cash deposit as cash sale and cash on hand as entire cashbook was submitted during the assessment proceedings,*

- Documentation: Sale Invoices. Stock Register and other relevant documentary evidences for verification by the AO.*

Genuinely of the transaction: Appellant has paid Value Added Tax on such cash sale and the same has been offered for taxation while filing Income Tax Return.

AO has made the addition under section 68.

The requirement of section 68 are as follows:-

Section 68 considers any sum credited in the books of taxpayer in any financial year and not already offered to tax, as income of taxpayer during such financial year if the following conditions are satisfied:

Taxpayer offers no explanation about the nature and source of such credit; or Explanation offered by taxpayer about the nature and source of such credit is not satisfactory in the opinion of assessing officer.

Such credit is referred to as unexplained cash credit.

1. CIT v. KAILASH JEWELLERY HOUSE in Appeal No. ITA 613/2010 (Delhi High Court)

The Commissioner of Income-tax (Appeals) had returned a finding that the stock and cash found at the time of search had been examined by the Assessing Officer and was compared with the stock and cash position as per books. The stock and cash position as per the books had been arrived at after the effect of the aforesaid cash sales. The stock position as well as the cash position as per the said books had been accepted by the Assessing Officer, The Commissioner of Income-tax (Appeals) also noted that the appellant had furnished the complete set of books of accounts and the cash books and no discrepancy had been pointed out. The Assessing Officer had doubled the aforesaid sales as bogus and had made the aforesaid addition. However, the Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal returned findings of fact to the contrary. The Tribunal also noted that the departmental representative could not challenge the factual finding recorded by the Commissioner of Income-tax (Appeals). Nor could he advance any substantive argument in support of his appeal. The Tribunal also observed that it is not in dispute that the 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. It is in these circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The findings of the Commissioner of Income-tax (Appeals) and the Tribunal, which are purely in the nature of the factual findings, do not require any interference and, in

any event, no substantial question of law arises for our consideration. The appeal is dismissed.

2. Principal Commissioner of Income Tax, 20, Delhi v. Akshit Kumar HIGH COURT OF DELHI (2021) 124 taxmann.com 123 (Delhi)

Section 56, read with sections 68 and 133, of the Income-tax Act, 1961- Income from other sources (Sale of opening stock) - Assessment year 2014-15 - Assessee was engaged in business of textiles - All sales undertaken by assessee were in cash only - Noting such peculiarities, Revenue decided for spot verification at place from where assessee purportedly carried on business - Survey revealed that business premises was abandoned and that there was no proof of any business undertaken by assessee - Based on survey report, Assessing Officer concluded that entire cash deposit found in assessee's bank account was unexplained income and not sale proceeds Additions were thus made towards unexplained income - On appeal, Tribunal recorded that assessee had closed business in July, 2015 and survey was carried out in November, 2016. It was also noted that entire opening stock, sales and closing stock of assessee was accepted during scrutiny assessment of previous year Based on such findings, Tribunal deleted additions made Whether where quantum figure and opening stock was accepted in previous years during scrutiny assessments, receipt from sales made by assessee proprietary concern out of its opening stock could not be treated as unexplained income to be taxed as Income from other sources'- Held, yes [Para 11] [In favour of assessee]

3. J.M. Wire Inds v, CIT (High Court Of Delhi) Income Tax Reference No. 96 of 1989

In this case the assessee had made sales of Rs. 3.00 Lakh to one M/s Sandeep Wire Industries and the same was included in sales. On making enquiries it was gathered that no such entity M/s Sandeep Wire Industries existed hence sale was not accepted as genuine and the said amount was treated as undisclosed income. On appeal before CIT(A) it was demonstrated that even if the said sale was treated as undisclosed income there can't be any addition in undisclosed income, since the said amount has already been included in sales and hence in total Income. The honorable Delhi High Court accepted the contention of assessee.

4.Salem Sreeramavilas Chit Company (P.) Ltd. v. Deputy Commissioner of Income Tax, Circle 1(1)

HIGH COURT OF MADRAS [2020] 114 taxmann.com 492 (Madras)

Section 69A, read with section 153, of the Income-tax Act, 1961 Unexplained moneys (Demonitization Cash deposits) - Assessment year 2017-18- Government of India demonetized Rs. 500 and Rs. 1000 notes on 8-11-2016- Between 1-11-2016 and 8-11-2016, assessee had collected a sum of Rs. 57.86 lakhs from its chit fund business - Deputy Commissioner concluded that amount collected by assessee during said period was huge and remained unexplained and therefore, treated same as unaccounted money in hands of assessee under section 69A However, amount did not appear to be unusual as compared to collection made during previous year 2015 and amount deposited out of total collection was also not in variance with cash deposits made by assessee during Proceeding financial year Collection of monthly subscription/dues by assessee appeared to be reasonable as compared to same period during 2015 It

was found that electronic assessment proceeding had been introduced, but that could lead to erroneous assessment if officers were not able to understand transactions/statement of accounts of an assessee in absence of personal hearing Whether therefore, Assessing Officer without calling for an explanation in writing, could not have concluded that cash collected and deposited. during demonetization was unaccounted money in hands of assessee Held, yes [Paras 15 to 18] [In favour of assessee/Matter remanded]

5. Shree Sanand Textiles Industries Ltd. V. DCIT vide ITA No. 1166/AHD/2014.

It was held that the provisions of section 68 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. It was also accepted that there is not even 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 the order of CIT(A) was set aside and Assessing Officer was asked to delete the additions.

6. Assistant Commissioner of Income Tax, Central Circle - 1, Visakhapatnam v. Hirapanna Jewellers

In The ITAT Visakhapatnam Bench (2021)

128 taxmann.com 291 (Visakhapatnam Trib.)

Section 68 of the Income-tax Act, 1961 Cash credit (Bank deposits post demonetization) - Assessment year 2017-18- Assessee firm was engaged in business of jewellery

trading A survey under section 133A was conducted at business premises of assessee by Deputy Director (Investigation) in which he found that assessee deposited huge sum in high denominations of specified bank notes post demonetization - Assessee had explained source of cash deposits as cash sales and advances received against sales - However, Assessing Officer held that said amount was unexplained cash credits representing unaccounted money brought in to business in guise of jewellery sales, and, accordingly, made addition under section 68 on account of said cashdeposit - It was noted that assessee had explained source of said amount in question as sales, produced sale bills and admitted same as revenue receipt as well as offered it to There was no defect in purchases and sales and same were matching with Inflow and outflow of stock - Audit report under section 44AB and financial statements clearly showed reduction of stock position matching with sales which clearly showed that cash generated represented sales Assessing officer accepted sales and stocks He had not disturbed closing stock which had direct nexus with sales Both Assessing Officer and DDIT (Inv.) did not find any defects in books of account, trading account, P&L account and financial statements of assessee Whether, on facts, Impugned addition made under section 68 was to be deleted-Held, yes [Paras 7, 7.2 and 9] [In favour of assessee).

Ground of Appeal 2

On the facts and under the circumstances of the case and in law the learned AO erred in concluding that cash sales has increased drastically upto 10 times as compared to the previous year without appreciating the facts:

1. The total sales has increased during the year on the account that appellant company had celebrated 78 years of establishment and on the occasion company had given free gifts on purchase of all kind of jewellery, silver bar, loose diamond etc. hence there were many walk-in-clients during the year.

2. The cash sale during the entire year has been increased only two times and not ten times as mentioned by the learned AO. He has only compared two months of cash deposits with the previous year and has failed to investigate the cash proceeds during the entire year.

3. Turnover of sales during F.Y.2016-17 of the first 3 month was decreased due to strike by Jewellers association to protest against levy of excise duty on Jewellery therefore the customers could not buy Jewellery and they had bought Jewellery during Navratri to Diwall festival (October 2016) and therefore there was sufficient reason for increase In Sales during that period.

Appellant had celebrated its 78 years of establishment and on this occasion the company had given free gifts on purchase of all kind of Jewellery, silver Bar, Loose Diamond the scheme was only for the period from the period 12/10/2016 to 14/11/2016 at H.O. and branches.

Appellant's customers have purchased the jewellery during festival period and availed the benefit of the said scheme. This was also one of the reason for increase in sales during that period.

The copy of the pamphlet of promotion scheme is attached for your reference. Below mentioned table depicts the

total turnover, cash received, cash deposit for financial year 2015-16 and financial year 2016-17:

Cash sales includes cash sales for which cash is received on the same day as well as cash received after few days against the same invoice and amount received in advance for cash sales to be made later on.

While going through it is seen that the total turnover is 82 Cr in F.Y 2016-17 & 59 Cr in F.Y. 2015-16 therefore there is increase in total turnover by Rs. 23.04 Cr (increased by 39%) and out of the total turnover of Rs. 82 Cr in F.Y. 2016-17 there was cash sales of Rs.25.64 Cr (31.27% cash sales out of total sales) and out of the total sales of 59 Cr in F.Y. 2015-16 cash sales was Rs.18.55 Cr (31.44% cash sales out of total sales) therefore on proportionate basis compared to the total sales there is no increase in the cash sales as compared to the previous financial year.

The percentage of cash sales to total sales is 31.44% in FY 2015-16 when there was no demonetization.

The percentage of cash sales to total sales is 31.27% in FY 2016-17 when there was demonetization.

Considering the above facts and figures we also submit the following reasons for increase in turnover of Cash sales and Cash deposited during the F.Y: 2016-17 (A.Y: 2017-18) as compared to P.Y 2015-16 (AY 2016-17).

1. Turnover of sales during F.Y.2016-17 of the first 3 month was decreased due to strike by Jewellers association to protest against levy of excise duty on Jewellery therefore the customers could not buy Jewellery

and they had bought Jewellery during Navratri to Diwali festival (October 2016) and therefore there was sufficient reason for increase in Sales during that period.

2. The company had also celebrated its 78 years of establishment and on this occasion the company had given free gifts on purchase of all kind of Jewellery, Silver Bar, Loose Diamond the scheme was only for the period from the period 12/10/2016 to 14/11/2016 at all three outlets.

Customers have purchased the jewellery during festival period and availed the benefit of the said scheme. This was also one of the reason for increase in sales during that period.

3. Demonetization was on 08.11.2016 i.e immediately proceeded by Diwali sales on 30th October 2016 which is the main season of sales for all kinds of jewellery. The same trend existed in past years as well.

4. The Hon. Prime Minister of India had announced on 8th November, 2016 at 8:00 PM that the Currency having denomination of Rs.500/- and Rs.1000/- would ceased to be legal tender after 12.00 P.M.

Due to the said announcement customers have turned out in large numbers at our three branches to buy jewellery in exchange of Currency having denomination of Rs. 500/- and Rs. 1000/-. MS. 500/-and Rs. 100 The total cash sale made on that day was Rs.3,84,64,580/-

Therefore during the time 8:00 PM to 12:00 PM of 8th November, 2016, the cash turnovers of sales were also increased at our three outlets.

Ground of Appeal 3.

On the facts and under the circumstances of the case and in law the learned AO erred in completely ignoring the fact the appellant in order to attain peace to be free from being harassed by income tax department it had declared income of Rs.1,00,00,000 under Pradhan MantriGaribKalyan Yojna and had also filed Form 1, The Scheme clearly stated that assessee will be granted immunity from any further assessment from Income Tax Department.

The company has made declaration under Prime Minister GaribKalyan Yojna amounting to One Crore and hence same cannot be taxed again.

Further the company has made a payment of Rs. 49,90,000/- under the said scheme in form of tax, surcharge and penalty.

In addition to above company deposited Rs.25,00,000/- as prescribed in the scheme.

Thus the company has complied with the scheme therefore this amount shouldn't have been brought to tax again.

We are attaching herewith Form 1 generated under the said scheme which mentions the amount paid and amount deposited as The scheme clearly stated that appellant will be granted immunity from assessment and will be not harassed by the department,

Ground of Appeal 4

On the facts and under the circumstances of the case and in law, the Learned Assessing Officer erred in charging interest u/s 234B & 234C."

Finally the CIT(A) has considered the facts, submissions and the judicial decisions and found that the assessee has substantiated the claim with the details in the assessee and appellate proceedings and deleted the addition and allowed the appeal for statistical purposes. Aggrieved by the CIT(A) order, the revenue has filed the appeal with the Hon'ble Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A) erred in deleting the addition overlooking various facts, evidences and findings of the AO, where the assessee could not explain completely the cash deposits during the demonetization period and were not substantiated and the assessee has not maintained the proper books of accounts books and The Ld.DR prayed for allowing the revenue appeal.

6. Contra, the Ld. AR submitted that the assessee has filed the summary of cash book, invoices, stock register and also the comparison of the sales from earlier years and names, PAN of the customers in the assessee proceedings and were overlooked. Whereas, the CIT(A) has considered the primary and

secondary evidences filed and relied on the judicial decisions and granted the relief. The Ld.AR substantiated the submissions relying on the order of the CIT(A), factual paper book, charts and judicial decisions.

7. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld. DR that the CIT(A) has erred in granting relief to the assessee overlooking the various facts and evidences and also the transactions are not to the satisfaction of the AO. The Ld.AR has submitted that the assessee has substantiated the submissions with the facts, evidences and supported the transactions with the summary of cash available during the F.Y 2016-17 and also emphasized that the assessee has maintained branch wise cash book and VAT returns were filed and referred to the submissions made in the appellate proceedings. Further the Ld.AR has referred to the summary of cash available and demonstrated the comparison of availability of balances in F.Y. 2015-16 and F.Y 2016-17 placed at page 22 to 24 of the paper book. The Ld. AR submitted that the turnover of the assessee in

F.Y.2016-17 was accepted by the authorities and also substantiated the submissions with the copies of the VAT returns placed at page No. 116 to 120 of the paper book. Further in response to the notice issued u/s131 of the Act, the assessee has filed the detailed reply referred at page 122 to 123 of the paper book. The A,O has issued notice U/sec133(6) of the act and due compliance was made by letter dated 20-3-17. The assessee has substantiated the quantitative stock and the transactions are totally supported with the material details placed at page 126 to 129 of the paper book. The assessee has submitted the various bank account statements and the Ld. AR has referred to the Form No. 1 Pradhan Mantri Garib Kalyan Yojana, 2016 placed at page 166 to 167 of the paper book. The contentions of the Ld. AR that all this information was filed on record and the assessee also substantiated the submissions in response to the notice issued under 142(1) of the Act.

8. The Ld.AR emphasized that the detailed explanations with the evidences filed in lieu of notice issued u/s 142(1) of the Act dated 01.02.2019 & 04.10.2019 and the submissions were filed on

04.12.2019 placed at 245 to 251 of the paper book. Further in response to the show cause notice dated 09.11.2019 u/s 142(1) of the Act, the assessee has filed the additional voluminous details on 20.12.2019 placed at page 272 to 433 of the paper book and the audited financial statements for the F.Y 2015-16 and F.Y.2016-17. The A.O has sought more clarifications through notice dated 18-12-2019 and the assessee has filed the explanations on 20-12-2019 & 23-12-2019 placed at page 436 to 444 of the paper book. The Ld.AR emphasized that substantial details were filed on record and the AO has not considered these facts and made unilateral addition overlooking these material evidences. At this juncture, we considered it appropriate to refer to the observations of the CIT(A) in granting the relief dealt at Para 5 of the order, read as under:

5.0 Decision on Grounds of appeal and reasons thereof:- In this appeal, as many as 5 Grounds were raised. Ground no. 5, being residual ground and in the entire appeal proceedings no ground having been amended or added during hearing is worth dismissal and therefore, Ground no. 5 is dismissed. Ground no. 4 challenges the levy of interest u/s 234B/ 234C of the Act. This being consequential in nature, Ground no. 4 is worth dismissal, and is dismissed. Ground no.1,2 & 3 are related to one

another and challenge the one & single addition of Rs. 13,29,50,000 on account of unexplained cash credit u/s 68 of the Act.

5.1 Ground no. 1,2&3 challenge the addition of Rs. 13,29,50,000 u/s 68 of the Act. These grounds are now adjudicated as under: -

5.1.1 The Ld. AO discussed the related addition in Para no. 5 of the impugned order dated 23.12.2019. The discussion is as under:

"5. Cash Deposit:

5.1 The case of the assessee has been selected under scrutiny for verification of cash deposits during the demonetization period. In this regard, during the course of assessment proceedings, the assessee was requested to file details as called for vide notices issued u/s 142(1) of the Act. In response, the assessee filed bank statement and reconciliation of cash deposits made during the demonetization period. The details filed were perused and considered. The same are dealt herein under.

5.2 Perusal of the details reveal that the assessee had made cash deposits various bank accounts held with Saraswat Coop Bank Ltd, Canara Bank, State Bank of India and Bank of Maharashtra aggregating to Rs. 13,29,50,000. The assessee was requested to explain the nexus of cash sales and subsequent cash deposits in its bank account vide notice dtd. 09.11.2019.

5.3 In response the assessee filed its submission on 18.12.2019. The details of the assessee were analysed. It was observed from the month wise cash sales and cash

deposits that as compared to FY 2015-16 the cash sales of FY 2016- 17 has significantly increased, especially during the month of October 2016 and November 2016. The cash sales has increased drastically to 10 times as compared to the previous year 2015-16 i.e. from Rs. 70,72,251 in October, 2015 to Rs. 6,18,91,922 in October, 2016 and from Rs. 1,57,55,033 in November, 2015 to Rs. 10,44,01,386 in November, 2016.

5.4 In view of the above, the assessee vide notice dtd. 18.12.2018 was asked to explain and show caused as to why the cash deposited during demonetization period in SBNs amounting to Rs. 13,29,50,000 should not be treated as unexplained cash receipts and be added u/s 68 of the Income Tax Act, 1961.

5.5 In response, the assessee vide letter dtd. 20.12.2019 submitted its content; the gist of the same is as under:

- 1. Turnover of sales during F.Y.2016-17 of the first three month was decreased due to strike by jewelers association to protest against levy of excise duty on jeweler.*
- 2. The company had also celebrated the 78 years of establishment and on this occasion the company had given free gifts.*
- 3. Demonetization period immediately preceded by diwali sales on 30th October 2016 which is the main season of sales for all kinds of jewellery.*
- 4. The Hon. Prime Minister of India announced on 8th November 2016 at 8:00PM that the currency having denomination of Rs. 500 and Rs. 1000 would cease to be*

legal tender after 12:00 PM due to which the customers have turned out in large.

5.6 The assessee's submission is carefully perused but the same is not found tenable. During demonetization period the assessee has deposited amount of Rs. 13,29,50,000 in SBNs. In order to justify the cash deposits in SBNs assessee has afterthought taken the plea of cash sales during the month of October & November 2016. Further, perusal of the details reveals that there are (sic is) multifold increase in cash sales. Further, the assessee had neither furnished the details of the parties/customers with respect to names, address, party wise cash sales etc.

In view of the above, this clearly evident that the assessee has not carried out any cash sales and the assessee was in possession of unexplained cash credits and that since the demonetization of notes were brought in the assessee had deposited all its unexplained cash credits into its bank account.

In view of the above, amount of Rs. 13,29,50,000 is treated as unexplained cash credits u/s 68 of the IT Act, 1961 and added to the total income of the assessee. Since, the income of Rs. 13,29,50,000 has been determined under section 68 of the Income Tax Act, 1961 and tax is payable under section 115BBE of income Tax Act.

Section 271AAC is reproduced below.

Penalty in respect of certain income "Section 271AAC. (1) The Assessing Officer may, not with standing anything contained in the Act other than the provisions of section 271AAB, direct that in a case where the income determined includes any income referred to in section 68,

section 69, section 69A, section 698, Section 690 for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE a sum computed at the rate of thirty per cent of the tax payable under clause () of sub-section (1) of section 115BBE.

In view of the above, penalty proceedings under section 274 r.w.s. 271AAC of the Income Tax Act, 1961 initiated separately.

5.7 As per the provisions of section 115BBE (2) of the I.T.Act no deduction in respect of any expenditure or allowance or set off any loss shall be allowed to the assessee under any provisions of the Act with respect to income determined u/s 68 to 690 of the ITAct.

5.8 Further, assessee has furnished form 1. Form of declaration under section 199C of the Finance Act 2016. In respect of the Taxation And Investment Regime for Pradhan Mantra GaribKalyan Yojana Rules, 2016. However, on record there are no other facts regarding disclosure of Income under the subject scheme. (Emphasis Supplied)

5.1.2 In this regard, out of submission of the appellant company, reproduced entirely in para no. 4 supra ,following points being relevant for adjudication of the impugned addition of Rs.13, 29,50,000 are as under:

1. That, turnover of sales of the first three months during F.Y. 2016-17 (pertaining to A.Y. 2017-18 i.e. A.Y. under consideration)were decreased due to strike by jewelers association to protest against levy of excise duty on jewelers.

2. That, the appellant company had celebrated its 78 years of establishment during the year under

consideration and on this occasion the company had given free gifts.

3. That, demonetization period was immediately preceded by Diwali sales on 30th October 2016 which is the main season of sales for all kinds of jewellery.

4. That, it was further submitted that due to declaration of demonetization by Hon. Prime Minister of India announced on 8th November 2016 at 8:00PM, customers turned out in large number to jewelry shops for purchasing jewellery items and other related items. The shop of the appellant company was also no exception to this general rule. It was furthermore submitted that this was one of the reasons for increase in sales in the corresponding period i.e. October & November, 2016.

5.1.3 All the facts and circumstances of relation addition of 13,29,50,000 are duly considered. Also, the arguments of Ld. A/R and facts in the Written Submission submitted/uploaded on 18.11.2021 on ITBA and the facts and to why circumstances as to why the Ld. AO had to make the addition, as discussed in the impugned assessment order dated 23.12.2019 have been given a thoughtful consideration. As a result, following points are found/noted: -

i. That, the appellant company had submitted all the details of cash receipts and party wise details of sales above Rs. 2,00,000 each.

ii. That, for sales below Rs. 2,00,000 each, Rule 114B of I.T. Rules, 1962 r.w.s. 139 (A) (5) (c) of the Act provide that no KYC (Know Your Customer) is required. This argument is also being taken by Ld. A/R.

iii. That, the chart given by Ld. A/R on the page no. 4 of the Written Submission dated 18.11.2021 clearly shows that the percentage of cash sales out of total sales is almost the same i.e. 31.27% during the FY under consideration i.e. FY 2016-17 (A.Y.-2017-18) as well as even in the immediately preceding FY i.e. FY 2015-16 (A.Y. 2016-17) which was 31.44%.

iv. That, the summary of the cash book showing the cash flow, clearly exhibited in the Written Submission, shows that there was no unusual cash deposit vis-à-vis the collection out of cash sales during the year.

v. That, the appellant company was maintaining the stock almost constantly the same [stock of Rs. 68.07 cr. during F.Y. 2015-16 and of Rs. 65.38 cr. during F.Y. 2016-17] and therefore, there is nothing to conclude that there was after thought and cash deposit was shown as cash sales.

5.1.4 In light of above discussion, the facts are found to be in favour of appellant company. It is also found that the Ld. AO did not point out a single mistake in the stock position as well as the cash position. It was none of the case of the Ld. AO that there was/ were any such mistake/s in the books of account of the appellant company. There was no whisper in the entire impugned Assessment Order dated 23.12.2019 pointing out any such discrepancy. Ld. AO also failed to make any enquiry whatsoever in relation the cash sales even when the appellant had submitted the details of the customers

making purchases of Rs. 2,00,000 and more than that amount each Further, all the cash sales were accounted for and profit thereon was also shown in the final results of the appellant company. It is also notable that the appellant had shown Total Income of approx. Rs. 3.78 cr. during the year.

5.1.5 Besides the above discussion of fact, it is also found that one of the many case laws quoted by the Ld. A/R in the Written Submission, can be gainfully relied on to adjudicate the issue and to do the required justice. In this case of ACIT Central Circle- Visakhapatnam vs. Heera Panna Jewellers decided by Ld. ITAT, Bench Visakhapatnam it was held

".....that assessee had explained source of said amount in question as sales, produced sale bills and admitted same as revenue receipt as well as offered it to - There was no defect in purchases and sales and same were matching with inflow and outflow of stock - Audit report under section 44AB and financial statements clearly showed reduction of stock position matching with sales which clearly showed that cash generated represented sales - Assessee officer accepted sales and stocks - He had not disturbed closing stock which had direct nexus with sales - Both Assessing Officer and DDIT(Inv.) did not find any defects in books of account, trading account, P&L account and financial statements of assessee - Whether, on facts, impugned addition made under section 68 was to be deleted - Held, yes".

5.1.6 In pursuance to the above discussion, the appellant gets the relief for which it is entitled to. The Ld. AO is directed to delete the impugned addition of Rs. 13, 29, 50,000. Ground no.1, 2 &3 are, therefore, allowed.

6.0 As a result, this appeal is allowed for the statistical purposes.

9. We found that the CIT(A) has relied on the information, evidences and findings of the AO and the judicial decisions. Further in the course of hearing, the Ld. DR has filed the information received from the AO by letter dated 23-11-2022 that the cash deposits in the bank accounts are specified bank notes during the demonetization period. The Ld. DR emphasized that no doubt the assessee has made the cash deposits in the old currency but the sources are not satisfactory. The Ld. AR submitted that that the assessee has filed the details of purchase of the jewellery by the customers during the demonetization period. The Ld. AR referred to page 125 of the paper book where notice u/s 133(6) of the Act is placed and the reply was filed with the details of quantitative purchases, sales & stock in F.Y.2016-17 and the Ld.AR highlighted that the VAT returns were filed within the limitation period and are not revised. The assessee has submitted the details of cash sales reflected in the books of accounts and the comparative statement of F.Y.2015-16 &F.Y.2016-17.

The Assessee has made cash deposits in all the bank accounts aggregating to Rs.23.73 crs in the F.Y. 2016-17 and out of which Rs.13.27 crs pertaining to demonetization period. The assessee has obtained the PAN of customers and was filed on record or in other cases, where PAN is not available, the assessee has obtained Form No.60 and uploaded in the ITBA. The CIT(A) has considered the tax audit report and strike by the jewellers association to protest against levy of excise duty and effect of turnover in the first three months of F.Y.2016-17 and the fact of 78 th years of establishment and the schemes and gifts was referred in pamphlet at page 121 of the paper book. The Ld. AR further submitted that the demonetization period preceded by the Diwali sales on 30th October 2016 and increase in sale of jewellery. The assessee had filed the details of quantum of sales below Rs.2 Lacs in the F.Y.2015-16 and A.Y.2016-17 as under:

<i>F.Y 2016-17 (A.Y 2017-18)</i>	<i>Sales below 2L</i>	<i>Sales more than / Equal to 2L</i>	<i>Total</i>
<i>01.04.2016 to 08.11.2016</i>	<i>26,27,11,937</i>	<i>14,48,42,106</i>	<i>40,75,54,043</i>
<i>09.11.2016 to 31.12.2016</i>	<i>3,72,64,816</i>	<i>8,33,39,251</i>	<i>12,06,04,067</i>
<i>01.01.2017 to</i>	<i>6,67,80,805</i>	<i>22,50,32,881</i>	<i>29,18,13,686</i>

31.03.2017			
Sub total	36,67,57,558	45,32,14,237	81,99,71,796
F.Y 2015-16 (A.Y 2016-17)	Sales below 2L	Sales more than / Equal to 2L	Total
01.04.2015 to 08.11.2015	12,97,99,252	22,00,69,894	34,98,69,146
09.11.2015 to 31.12.2015	4,98,70,422	4,51,46,540	9,50,16,962
01.01.2016 to 31.03.2016	4,10,04,143	10,36,74,751	14,46,78,894
Sub total	22,06,73,817	36,88,91,184	58,95,65,001

10. The Ld. AR relied on the following judicial decisions

i. *Pr. CIT Vs Akshit Kumar, [2021] 124 taxmann.com 123 (Del) held as under:*

Section 56, read with sections 68 and 133, of the Income-tax Act, 1961 - Income from other sources (Sale of opening stock) - Assessment year 2014-15 Assessee was engaged in business of textiles - All sales undertaken by assessee were in cash only. Noting such peculiarities, Revenue decided for spot verification at place from where assessee purportedly carried on business - Survey revealed that business premises was abandoned and that there was no proof of any business undertaken by assessee - Based on survey report, Assessing Officer concluded that entire cash deposit found in assessee's bank account was unexplained income and not sale proceeds - Additions were thus made towards unexplained income - On appeal, Tribunal recorded that assessee had closed business in July, 2015 and survey was carried out in November, 2016 - It was also noted that entire opening stock, sales and closing stock of assessee was accepted during scrutiny

assessment of previous year - Based on such findings, Tribunal deleted additions made - Whether where quantum figure and opening stock was accepted in previous years during scrutiny assessments, receipt from sales made by assessee proprietary concern out of its opening stock could not be treated as unexplained income to be taxed as 'income from other sources' - Held, yes [Para 11] [In favour of assessee]

ii. *JM Wire Inds. Vs. CIT, [2012] 18 taxmann.com 297 (Del)*

The Assessing Officer took the view that 'S' was not traceable and a non-existing entity, therefore, no sale was made to the said firm. No doubt, the Assessing Officer could consider the aforesaid receipt as income from undisclosed sources. It was also necessary for the Assessing Officer to reduce the total sale figure. This is more so, when there was no dispute about the figures of opening balance and closing balance disclosed by the assessee as those figures were accepted by the Assessing Officer. [Para 3] The assessee had taken this specific plea, in the alternative, i.e., without prejudice to its contention that the sales were actually made and the receipt should not have been treated as income from undisclosed sources. However, the said plea was rejected by the authorities observing that in order to accept this plea further evidence was required to be produced which was in the knowledge of the assessee. One fails to understand any rationale behind such a reasoning. It is stated at the cost of repetition that when there is no dispute about the opening balance and closing balance, there is no further evidence which could be produced by the assessee. This is more so, when it is the Assessing Officer who disbelieved the version of the assessee,

though the assessee was maintaining that it had actually made the sales.

Moreover, the Assessing Officer did not deal with the issue from this angle at all and such a reasoning adopted by the Commissioner (Appeals) and Tribunal was based on surmises and imagination. [Para 4] In the result, order passed by the authorities below was to be set aside and ground raised by assessee was to be allowed.

iii. Salem Sree Ramavilas Chit Company (P.) Ltd., Vs. DCIT, [2020] 114 taxmann.com 492 (Madras)

After the returns were filed by the assessee-chit fund company, proceedings were taken up and notice for completing the assessment was issued under section 143(2) followed by notices under section 142(1) to which the assessee responded, pursuant to which the impugned assessment order was passed.

The assessee submitted that in the impugned order, the respondent Deputy Commissioner had erroneously come to a conclusion that the assessee had not properly explained the deposit of cash amounting to Rs. 67.38 lakhs collected during the demonetization period into their account and that the assessee had claimed the source of cash deposit during demonetization as the accumulated cash balance as on 8-11-2016 wrongly. The Deputy Commissioner had also concluded that the assessee had not properly explained the source and the purpose of huge cash along with party wise break-up as was requested vide notice under section 142(1).

iv. ACIT Vs. Hirapanna Jewellers, [2021] 128 taxmann.com 291 (Visakhapatnam - Trib)

Section 68 of the Income-tax Act, 1961 Cash credit (Bank deposits post demonetization) - Assessment year 2017-18-Asseesse firm was engaged in business of jewellery trading - A survey under section 133A was conducted at business premises of assessee by Deputy Director (Investigation) in which he found that assessee deposited huge sum in high denominations of specified bank notes post demonetization. Assessee had explained source of cash deposits as cash sales and advances received against sales - However, Assessing Officer held that said amount was unexplained cash credits representing unaccounted money brought in to business in guise of jewellery sales, and, accordingly, made addition under section 68 on account of said cash deposit - It was noted that assessee had explained source of said amount in question as sales, produced sale bills and admitted same as revenue receipt as well as offered it to - There was no defect in purchases and sales and same were matching with inflow and outflow of stock Audit report under section 44AB and financial statements clearly showed reduction of stock position matching with sales which clearly showed that cash generated represented sales - Assessing officer accepted sales and stocks He had not disturbed closing stock which had direct nexus with sales Both Assessing Officer and DDIT (Inv.) did not find any defects in books of account, trading account, P&L account and financial statements of assessee - Whether, on facts, impugned addition made under section 68 was to be deleted Held, yes [Paras 7, 7.2 and 9] [In favour of assessee]

v. Amitbhai Munubhai Kachadiay Vs. DCIT, [2021] 131 taxmann.com 318 (Surat Trib)

A search action under section 132 was carried out on premises of assessee and his group and assessee filed

return and computation of income, the assessee had shown commission income and also claimed certain expenses. During the assessment, the Assessing Officer asked the assessee to file details regarding commission income. The assessee submitted that he was maintaining all regular books of account and other books for commission income and the various expenses incurred and to substantiate his commission income, he furnished ledger accounts of commission income showing therein party-wise purchaser and seller with their available address and the amount of commission.

However, the Assessing Officer noted that assessee failed to submit details regarding commission income and that assessee failed to prove with supporting evidences from whom the commission was received and concluded that assessee received commission income from unknown source and treated the same as cash credit under section 68. On appeal before the Commissioner (Appeals), the action of the Assessing Officer was upheld. On appeal:

11. The Honble Tribunal in the case of Anantpur Kalpana Vs. ITO, [2022] 138 taxmann.com 141 (Bangalore Trib), dated 13-12-2021 has observed at Para 6 of the order read as under:

6. I have heard the rival submissions. Learned Counsel for the assessee submitted that both the AO and CIT(A) accepted the fact. that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. He submitted that the sale proceeds for which cash was received from the customers

was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It was also submitted that the assessee was having only one source of income from beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. It was also submitted that the government permitted all to deposit old demonetized notes upto 31-12-2016. Since the amounts deposited were sale proceeds of business and the income from the business have already been taxed, the impugned addition should be deleted. Our attention was also drawn to section 26(2) of the RBI Act, 1934 which provides that government can specify certain notes as not legal tender. It was argued that if there is any violation of the statutory provisions, the consequences will be only under the relevant provisions of RBI Act, 1934 and those violations cannot lead to any addition under section 68 of the Act. The learned Counsel also placed reliance on the following judicial pronouncements rendered on identical facts of the case as that of the assessee. Hon'ble Kolkata Tribunal in the case of CIT v. Associated Transport (P) Ltd. [1996] 84 Taxman 146/[1995] 212 ITR 417 wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, therefore, held that there was no reason to treat this amount as income from undisclosed sources and it was not a fit case for treating the said amount as concealed income of the assessee. The revenue moved to Hon'ble Calcutta High Court against the order of the Hon'ble Tribunal and the Hon'ble High Court has confirmed the order of the Tribunal while deleting the penalty; the Hon'ble High Court of Calcutta held as under:

"8. The Tribunal was of the view that the assessee had sufficient cash in hand. In the books of account of the assessee, cash balance was usually more than Rs. 81,000/-. There is no reason to treat this amount as income from undisclosed sources. It is not a fit case for treating the amount of Rs. 81,000/- as concealed income of the assessee and consequently imposition of penalty was also not justified in this case."

Further reliance is placed on the decision of the Hon'ble Vishakapatnam Tribunal in the case of Asstt. CIT v. Hirapanna Jewellers [2021] 128 taxmann.com 291/189 ITD 608 wherein, the Hon'ble Tribunal while considering the issue of implication of sec. 68 of the Act during demonetization held 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.

10. The assessee filed cross objections supporting the order of the Id. CIT(A). Since, the appeal of the revenue is

dismissed, the cross objection filed by the assessee becomes infructuous, hence, dismissed.

11. In the result, appeal of the revenue as well as the cross objection of the assessee are dismissed." 8. Learned DR reiterated the stand of the Revenue as reflected in the order of the CIT(A).

9. I have carefully considered the rival submissions. Both the AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It is also on record that the assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of Associated Transport (P) Ltd. (supra) on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon'ble Vishakapatnam Tribunal in the case of Hirapanna Jewellers (supra) on identical facts held that when cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the

sales and when no defects are pointed out in the books of account, it was held that when Assessee 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. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted.

10. In the result, appeal of the assessee is allowed,

12. Similarly the Hon'ble High Court of Delhi in the case of Pr.CIT Vs. Agson Global P Ltd., 134 taxmann.com 256 (Delhi) 19 January 2022 has observed as under:

Section 68, read with section 69C, of the Income-tax Act, 1961 - Cash credits (Share capital money) years 2012-13 to 2017-18 - - Assessment Assessee-company received share capital and share premium money from several investors - Assessing Officer made addition in respect of same on account of unaccounted income under section 68 on basis of recorded statement of managing director of assessee-company Whether since placed sufficient documentary evidence to establish that money which assessee had paid to investors was routed back to it in form of share capital/share premium and identity, creditworthiness and genuiness of investors was proved, there was no justification to make addition under section 68 Held, yes [Paras 11.4, 11.5 and 14.4] [In favour of - assessee]

II. Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus sales/purchases) - Assessment years 2012-13 to 2014-15 Assessee-company was engaged in

business of selling dry fruits - Assessing Officer on basis of statement of director of assessee-company which was recorded during search held that assessee booked bogus purchases in its books of account to inflate expenses and to reduce its taxable profits, and made an addition at rate of 25 per cent of such purchases - It was noted that said additions were made without conducting any enquiry - Furthermore, entire purchase and sale transactions were duly recorded in regular books of account of all parties concerned and were channels - routed through regular banking Also, in original assessments, all these details were verified and assessments were framed under section 143(3) Whether, in view of above facts, since no - incriminating evidences were found, impugned addition was to be deleted - Held, yes [Para 15.1] [In favour of assessee]

III. Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment years 2015-16 to 2017-18 - Assessee-company was engaged in business of selling dry fruits Assessing Officer made addition on - account of bogus purchases at rate of 25 per cent of purchases made by assessee from certain parties but sales made to these parties were completely ignored It was - found that purchases and sales with alleged bogus parties were supported by bills and vouchers as well as stock register was maintained in Tally accounting software by - Also, payment of purchase consideration and receipt of sale consideration from these parties were made through account payee cheque Whether thus, if - purchases were to be removed then corresponding sales were also required to be removed from regular books of account, which would lead to assessee's income falling below income declared/returned by it - Held, yes - Whether thus, impugned addition made on account of

*bogus purchases was to be deleted Held, yes [Paras 15.9]
[In - favour of assessee]*

IV. Section 68 of the Income-tax Act, 1961 - Cash credit (Bank deposits) - Assessment year 2017-18 - Assessee-company was engaged in business of selling dry fruits Post-demonetization, assessee deposited cash amounting to Rs. 180.53 crore in its bank accounts - Assessing Officer held that cash deposits made by assessee represented unaccounted income and accordingly, made additions Tribunal analysed data pertaining to cash sales and cash deposits made in relevant assessment year as against two earlier assessment years and noted that in year of demonetization percentage increase in sales was less than earlier year - He, thus, held that growth in sales compared to earlier two years showed similar trend, and it could not be said that assessee had booked non-existing sales in its books post-demonetization - Furthermore, revenue made no allegation that assessee had backdated its entries Whether since assessee placed material on record that cash deposits made with banks more or less corresponded with cash sales, it could only be concluded that there was growth in assessee's business and impugned addition was to be deleted - Held, yes [Paras 16.9 and 17.6] [In favour of assessee]

13. We find the coordinate bench of Hon'ble Tribunal on the similar/identical issue in the case of M/s RS Diamond India Vs. ACIT, [2022] 145 taxmann.com 545 (Mum Trib) dated 26 July 2022 has observed and granted the relief at Para 4 of the order read as under:

4. I have heard the parties and perused the record. The facts that the deposit made into the bank account is from out of the books of accounts and the said deposits have been duly recorded in the books of account are not disputed. It is the submission of the assessee that it had received advance money from walk in customers for sale of jewellery over the counter and the amount so received was duly recorded in the books of account. The said amount alongwith other cash balance available with the assessee was deposited into the bank account after announcement of demonetization by the Government of India. He also submitted that the assessee has raised sale bills against the said advances in the name of respective customers. Since the transaction was less than Rs. 2.00 lakhs, it was stated that the assessee did not collect complete details of the customers. Thus, it is seen that the advance amount collected from customers, the sales bill raised against them etc., have been duly recorded in the books of account. The impugned deposits have been made from cash balance available with books of account. I also notice that the Assessing Officer has not rejected the books of account. When cash deposits have been made from the cash balance available in the books of account, in my view, there is no question of treating the said deposits as unexplained cash deposit as opined by the Assessing Officer.

5. The Ld A.R relied on certain case laws which are relevant to the issue under consideration. In the case of *Lakshmi Rice Mills v. CIT [1974] 97 ITR 258 (Patna)*, it has been held that, when books of account of the assessee were accepted by the revenue as genuine and cash balance shown therein was sufficient to cover high denomination notes held by the assessee, then the assessee was not required to prove source of receipt of

said high denomination notes which were legal tender at that time. In the case of Asstt. CIT v. Hirapanna Jewellers [2021] 128 taxmann.com 291/189 ITD 608 (Visakhapatnam Trib.), it was held that when the cash receipts represented the sales which has been duly offered for taxation, there is no scope for making any addition under section 68 of the Act in respect of deposits made into the bank account.

14. The CIT(A) has considered the details of sales, the stock register and the turnover is consistently maintained. The assessee has submitted the details of cash sales/receipts and party wise details of sales above Rs.2 lakhs and when a query was raised to Ld.AR on submissions of details were the cash sales are below Rs.2 Lakhs. The Ld.AR mentioned that the assessee has submitted details of sales below Rs2 lakhs and highlighted rule 114B of the I T Rules r.w.s139(a)(5)(c) of the Act and there was no KYC required. Further the Ld.AR demonstrated the sample Tax Invoice below Rs.2 lakhs in the demonetization period and the invoice contains, name and address etc. Further there is no significant increase in the cash sales out of total sales, whereas for F.Y.2016-17 it is @ 31.27% and in comparison to F.Y. 2015-16 @ 31.44%, the Ld.AR

referred to the cash flow statement, cash book and demonstrated the details of deposits made out of the cash sales and the assessee has been consistently maintaining the stock of Rs.68.07 crs for the F.Y 2015-16 and for F.Y 2016-17 it was maintained at Rs.65.38crs and the cash sales are part of the stocks maintained which is not disputed. Further the addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the cash sales proceeds/receipts received from the customers are reflected in the Audited Profit & Loss account as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. The AO has not pointed out any specific adversity but made a generalize addition without considering the factual aspects and primary evidences. The A.O has failed to make further enquiries on the information filed and the assessee has discharged the initial burden placed by submitting the information and details. We find the CIT(A) has dealt on the facts,

provisions of law, notes and judicial decisions. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information on the disputed issues to take different view. We considered the facts, circumstances, submissions and ratio of judicial decisions as discussed above are of the view that the CIT(A) has passed a reasoned and conclusive order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

15. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 29.05.2023

Sd/-
(PRASHANTH MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 29 .05.2023

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)

4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//()

1.

(Asst. Registrar)
ITAT, Mumbai