आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)

श्री एन के चौधरी,न्यायिक सदस्यएवं श्री डि.एस .लेखा सदस्य के समक्ष
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.No.253/Viz/2020**
(निर्धारण वर्ष**/Assessment Year:2017-18)**

Asst.Commissioner of Income Tax, Central Circle-1 Visakhapatnam	Vs.	M/s Hirapanna Jewellers D.No.48-19-5, Opp:APSRTC Commercial Complex, Dwaraka Nagar Visakhapatnam **[PAN : AAIFH2606M]**
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

Cross Objection No.02/Viz/2021
(Arising out of I.T.A. No.253/Viz/2020)
(निर्धारण वर्ष**/Assessment Year:2017-18)**

M/s Hirapanna Jewellers D.No.48-19-5, Opp:APSRTC Commercial Complex, Dwaraka Nagar Visakhapatnam **[PAN : AAIFH2606M]**	Vs.	Asst.Commissioner of Income Tax, Central Circle-1 Visakhapatnam
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

राजस्व की ओर से /Revenue by	:	Shri D.K. Sonowal, CIT DR
निर्धारिती की ओर से / Assessee by	:	Shri G.V.N. Hari, Advocate.

सुनवाई की तारीख / Date of Hearing	:	30/03/2021
घोषणा कीतारीख/Date of Pronouncement	:	12/05/2021

आदेश /O R D E R

Per D.S.Sunder Singh, Accountant Member :

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-3, Visakhapatnam in Appeal No.603/2019-20/10540/CIT(A)-3/VSP/2020-21 dated 19.10.2020 and cross objection is filed by the assessee.

2. All the grounds of appeal are related to deleting the addition of Rs.4,71,35,500/- made u/s 68 r.w.s 115BBE of the Income Tax Act, 1961 (in short 'Act'). Brief facts of the case are that the assessee is a firm with two partners i.e. Sri Mahendra Kumar Jain and his son Sri Rajendra Kumar Jain engaged in the business of jewellery trading has filed it's return of income on 04.11.2017, admitting total income of Rs.95,59,210/-. A survey u/s 133A of the act, was conducted in the business premises of the assessee on 27.03.2017 by the Deputy Director of Income Tax (Investigation) [DDIT(Inv)], Unit-III(2), Visakhapatnam and found that the assessee had deposited the sum of Rs.5,72,00,000/- in high denominations of specified bank notes (SBNs) post demonetization. The assessee has explained the sources of cash deposits as cash sales and the advances received on 08.11.2016 against the sales. In support of it's explanation, the assessee

also produced the sale bills and books of accounts before the DDIT(Inv.). However, the DDIT was not satisfied with the assessee's explanation of sales, since, the assessee could not furnish proper KYC documents of the buyers during the course of survey, the average sales of the firm was not matching with peak and non-peak season. Even on special occasions like Akshaya Tritiya, Dhanteras, Ugadi etc. the average sales were Rs. 1.5 to 2.0 crores and whereas on 08.11.2016, on a single day, the sales were increased by Rs.4.72 crores during 7.50 P.M to 12 A.M consisting of 270 bills and the cash was received only in high denomination notes which were hitherto banned by Govt. of India from 09.11.2016. Further, there were no details of the customers like phone number, address etc. and no signatures were obtained in sale acknowledgements of the ornaments. There were no tag number details for some bills and CCTV footage was also not available to support the entry of large number of customers on 08.11.2016. Since, the Managing Partner was unable to produce the above details to support the sales of Rs.4.72 crores increase, the DDIT(Inv.) viewed that the assessee has taken shelter of sales to divert the black money of the assessee as well as his friends.

3. During the assessment proceedings, the AO has conducted one more survey on 16.09.2019 and examined Sri M.K.Jain who had explained that the sale of jewellery on 08.11.2016 was Rs.5.50 crores and business was done till midnight and the shop was closed at 1.00A.M and made separate counters to meet the increased demand of customers. He stated that the CCTV camera footage automatically gets deleted after 15 days, therefore, not possible to supply the CCTV footage of 08.11.2016. With regard to KYC and mobile numbers, Managing Partner stated that they do not insist for mobile numbers or addresses of customers, since, it was not mandatory in the case of sales below Rs.2 lakhs and all the sales that were made on 08.11.10216 was below Rs.2 lakhs only. He further explained to a question that the sales after 8.00 P.M to 12 A.M on 08/11/2016 were extraordinary due to the announcement of demonetization. Since, the assessee failed to furnish the evidences of CCTV footage, KYC documents etc. for abnormal sales on 08.11.2016 the AO believed that the sales stated to have been made between 8.15 p.m. to 11.58 p.m. amounting to Rs.4.71 crores consisting of 270 bills are nothing but unexplained cash credits representing unaccounted money brought in to the business in the guise of jewellery sales and the paper work was done, merely to give the colour of

authenticity of sales and accordingly made the addition of Rs.4,71,31,500/- u/s 68 r.w.s.115BBE of the Act and taxed the same @60%. The AO also relied on the decision of Durga Prasad More 82 ITR 540, wherein, Hon'ble apex court held that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. The AO also relied on the decision of Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC).

4. Against the order of the AO, the assessee went on appeal before the CIT(A) and made written submissions and submitted that there was huge rush on 08.11.2016 for sale of jewellery not only in the assessee's shop, but also in all the shops in Visakhapatnam as well as throughout the country, since, the citizens intended to liquidate the old notes in view of the demonetization and made invalid from the mid night of 08.11.2016 i.e. 09.11.2016. The assessee further submitted before the Ld.CIT(A) that the assessee has made the sales and the same was offered as revenue receipt in the return of income. The Ld.A.R argued that since, the sale proceeds were offered and admitted as income, hence the AO is not permitted to make the same amount as addition u/s 68 of the Act, which amount to double addition once as sales and secondly as unexplained cash credit. The assessee further argued that since the assessee is engaged in the jewellery

business and having no other source of income, the AO is not permitted to tax the same u/s 115BBE of the Act as income from other sources. The assessee relied on the decision of Hon'ble Gujarat High Court in ITA No.2471 of 2009 dated 03.07.2012 in CIT Vs. Vishal Exports Overseas Ltd and in the case of CIT Vs.Kailash Jewellery House in ITA No.613/2010. The assessee also submitted that the day 08.11.2016 is an exceptional day in view of demonetization of old notes, therefore, the public were in fanatic move and were anxious to convert the SBNs into some other form and felt wiser to make investment in jewellery. The assessee being one of the reputed shops having long time presence, the customers have stepped into their show room in large numbers. Since large number of customers have stepped into the showroom within a short span of time of 4 to 5 hours, the assessee made necessary arrangements in cannot but conditions for attending the customers for sale of gold jewellery, however, could not take the details which were not mandatory in respect of the sales below Rs.2 lakhs. In support of the argument that there was huge rush for sales, the assessee placed certain newspaper clippings before the CIT(A).

4.1. The Ld.CIT(A) after having considered the submissions of the Ld.A.R found merit in the arguments of the assessee and agreed with the

assessee's argument that due to unexpected announcement of demonetization on the night of 08.11.2016 the public largely purchased the the jewellery as alternative for exchange of currency, and held since, the sales were credited in the assessee's books of accounts as revenue receipt and offered for taxation, the same amount cannot be taxed again u/s 68 of the Act as unexplained cash credit. The Ld.CIT(A) relied on the decisions of Vishal Exports Overseas Ltd (supra) of Hon'ble Gujarat High Court. The Ld.CIT(A) further observed that the decisions of Hon'ble Supreme Court in the case of SumatiDayal Vs. CIT and Durga Prasad More's case (supra) has no application in assessee's case. The ld. CIT(A) also observed that there was ample evidence to show that there were large number of public thronged the jewellery shops on 08/11/2016, and thus held that there is no justification for the AO to treat the sum of Rs.4,71,35,000/- as unexplained cash credit and accordingly deleted the addition and allowed the appeal of the assessee.

5. Against the order of the Ld.CIT(A), the department is in appeal before us. During the appeal hearing, the Ld.DR heavily placed reliance on the findings of the AO and the DDIT (Inv) which was discussed in detail in the assessment order and also discussed in this order in the earlier paragraphs.

The Ld.DR argued that it is impossible to believe that the assessee had prepared 270 bills in short span of time and made the sales to the extent of Rs.4.71 crores when the daily sales of the assessee was Rs.10 – 16 lakhs in normal period and Rs.40-50 lakhs per day in the peak time and Rs.1.5 to 3 cores on specific occasions like Dhanteras etc. The Ld.DR further argued that in the absence of CCTV footage, details of KYC of customers, non availability of details of tag numbers of the jewellery, non identification of the customers, the AO rightly held that the sum of Rs.4.72 crores was nothing but sham transaction to bring unaccounted money in the guise of jewellery, sales and paper work is nothing but a device. Therefore, argued that the AO rightly made the addition and the deletion of addition by the Ld.CIT(A) is bad in law. The Ld.DR relied on the decisions of Naresh Kumar Tulshan Vs. 5th ITO, ITAT Bombay reported in [1985] 11 ITD 537 (Bombay), the decision of coordinate bench of ITAT in J.M.J. Essential Oil Company Vs. ITO, the decision of Hon'ble Supreme Court of India in the case of Kale Khan Mohammad Hanif [1963] 50 ITR 1 (SC), CIT Vs. P.Mohanakala, 161 Taxman 169 (SC), CIT Vs. Devi Prasad Vishwanath Prasad, 72 ITR 194 SC,, the decision of Hon'ble High Court of Bombay & Goa in CIT Karnataka (Central), Bangalore Vs. Sadiq Sheikh, Tax Appeal No.18 of

2014, the decision of High Court of Kerala in Oceanic Products Exporting Co. Vs. CIT, 241 ITR 495 (Kerala), Anil Kumar Singh Vs. CIT [1972] 84 ITR 307 (Calcutta).

6. On the other hand, the Ld.AR heavily placed reliance on the order of the Ld.CIT(A) and argued that in the instant case, the assessee has made the sales of Rs.5.5 crores on 08.11.2016 which included Rs.4.72 crores treated by the AO as unexplained cash credits. The entire sum of Rs.5.5 crores sales made on 08.11.2016 was credited in the books of accounts and offered for taxation. The AO had accepted the books of accounts and also the sales, hence, the AO cannot make the addition of the same amount u/s 68 which amounts to double addition. The assessee produced the newspaper clippings of The Hindu, The Tribune and demonstrated that there was huge rush of buying the jewellery in the cities consequent to declaration of demonetization of Rs.1000 and Rs.500 notes on 08.11.2016. The Ld.AR also distinguished the case laws relied upon by the Ld.DR stating that facts are not identical and none of the case laws relied upon by the DR are applicable in the assessee's case. In none of the cases, sales that were offered for taxation, was brought to tax again u/s 68 and hence argued that

the Ld.CIT(A) has rightly deleted the addition and no interference is called for in the order of the Ld.CIT(A)..

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

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

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

Purchases, sales and the Stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/ stocks. Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. The assessing officer accepted the sales and the stocks. He has not disturbed the closing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales. Audit report u/s 44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. The assessee has furnished the trading account, P& L account in page No.7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared the exorbitant profits. Though certain suspicious features were noticed by the AO as well as the DDIT (Inv.), both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the assessee. Suspicion however

strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence.

7.1. In the case of CIT v. Associated Transport (P.) Ltd. [1996] 84 Taxman 146 (Cal.) the 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 Calcutta High Court against the order of the tribunal and the Hon'ble High Court has confirmed the order of the Tribunal while deleting the penalty, Hon'ble Calcutta high court 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."*

In the case of Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC), the Hon'ble Apex Court decided the matter in favour of assessee of the ground that it was clear on the record that the assessee maintained the books of accounts according to the mercantile system and there was sufficient cash balance in its cash books and the books of account of the

assessee were not challenged by the Assessing officer. If the entries in the books of accounts are genuine and the balance in cash is matching with the books, it can be said that the assessee has explained the nature and source of such deposit.

In the case of Lakshmi Rice Mills v. CIT [1974] 97 ITR 258 (Pat.) Hon'ble Patna High court held as under:

> *"It is, in my view, a fundamental principle governing the taxation of any undisclosed income or secreted profits that the income or the profits as such must find sufficient explanation at the hands of the assessee. If the balance at hand on the relevant date is sufficient to cover the value of the high denomination notes subsequently demonetised and even more, in the absence of any finding that the books of account of the assessee were not genuine, the source of income is well disclosed and it cannot amount to any secreted profits within the meaning of the law."*

All the decisions cited supra suggest that once, the assessing officer accepts the books of accounts and the entries in the books of accounts are matched, there is no case for making the addition as unexplained. Hon'ble Delhi High court considered the issue of taxing the opening stocks in the case of Principal Commissioner of Income Tax, 20, Delhi. *v.* Akshit Kumar, [2021] 124 taxmann.com 123 (Delhi),and upheld the order of the ITAT in deleting the addition related to sales. The Hon'ble High Court has extracted the relevant part of the order of the ITAT which reads as under:

> *"17. Thus, in our opinion the sale made by the assessee out of his opening stock cannot be treated as unexplained income to be taxed as 'income from other sources'; firstly, the stock was available with the asssessee in his books of*

account and trading in such stock including purchase, sale, opening and closing stock (quantity wise and value wise) has been accepted by the department year after year and in some years under scrutiny proceedings, therefore, non existence of stock or business cannot be upheld; secondly, the sale of stock in the earlier years and the sale of balance left out stock in subsequent years has been accepted or has not been disturbed, then to hold that no stock was sold in this year and remained with the assessee will be difficult proposition; thirdly, inquiry and inspection by the AO done much after the closure of business may not be persuasive for the past events especially in wake of facts as discussed above; and lastly, once neither any item in the trading account, nor gross profit has been rejected, then one part of credit side of the trading account, that is, sales cannot be discarded completely so as to hold that it is unexplained money."

7.2. In the instant case the assessee has established the sales with the bills and representing outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. In spite of conducting the survey the AO did not find any defects in sales and the stock. Therefore we do not find any reason to suspect the sales merely because of some routine observation of suspicious nature such as making sales of 270 bills in the span of 4 hours, non availability of KYC documents for sales, non writing of tag of the jewellery to the sale bills, non-availability of CCTV footage for huge rush of public etc. The contention of the assessee that due to demonetization, the public became panic and the cash available with them in old denomination notes becomes illegal from 09.11.2016 and made the investment in jewellery, thereby thronged the jewellery shops appear to be reasonable and supported by the newspaper clippings such

as The Tribune, The Hindu etc. It is observed from the newspaper clippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through the country.

8. The Ld.DR placed reliance on various decisions. In the case of Sumati Dayal Vs. CIT (supra), CIT vs Durga Prasad More 82 ITR 540) both the cases are related to the circumstantial evidences in the absence of direct evidence. In the instant case, the facts clearly support that the assessee has made the sales and there were sufficient stocks to meet the sales. Thus, the facts of the assessee's case are clearly distinguishable. The Ld.DR further relied on the decisions of Kale Khan Mohammad Hanif, 50 ITR1 (SC), wherein, the Hon'ble Supreme Court held that the AO is permitted to make addition of unexplained cash credits even though the income is estimated on sales. In the instant case, the AO had accepted the sales and no unexplained cash credits were found, thus, the case law relied upon by the Ld.DR is also distinguishable on the facts of the case. The Ld.DR relied on the decision of CIT Vs P.MohanaKala, 161 Taxmann 169, CIT vs Devi Prasad Vishwanath Prasad 72 ITR 194(SC) both the cases refer to the sums found credited in the books of account but not offered as income, whereas in the instant case the assessee admitted the same as sales and offered for

taxation, hence, the case laws has no application in the assessee's case. The Ld.DR also relied on the decision in Naresh Kumar Tulshanvs. 5th ITO, ITAT Bombay (supra), the decision was related to the addition u/s 69A representing huge deposit of cash in bank for which the initial source was declared as past profits and subsequently explained as withdrawal from partnership firm without relevant matching entries in the banks, therefore, the coordinate bench of ITAT held that withdrawal of such huge amount in high denomination was not practicable. The Ld.DR also relied on the decision of J.M.J.Essential Oil Company Vs. ITO, 100 taxmann.com 181 in the cited case, the assessee effected large sales in one month of each year continuously for two years and the assessee is eligible for deduction u/s 80IC and the AO observed that the assessee was inflating the sales and claiming the huge deductions. No such cash inflow is involved due to demonetization. Whereas in the assessee's case there were no such deduction or the exempt income and the profits were also not abnormal. The assessee explained the reason for huge sales with evidence and thus the case law relied up on by the DR is distinguishable. The Ld.DR relied on various case laws and all the case laws more or less are related to the additions made u/s 68 as unexplained cash credit and in none of the

cases the assessees have admitted the same as income. Therefore, we find that the case laws relied up on by the Ld.DR has no application in the instant case and the same are distinguishable.

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 ld. 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.

Order pronounced in the open court on 12th May, 2021.

Sd/-	Sd/-
(एन के चौधरी)	**(डि.एस .सुन्दरसिंह)**
(N.K.CHOUDHRY)	**(D.S.SUNDER SINGH)**
न्यायिक सदस्य/ JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

Dated : 12.05.2021
L.Rama, SPS

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

1. राजस्व/The Revenue –The Asst.Commissioner of Income Tax, Central Circle-1, Visakhapatnam
2. निर्धारिती/ The Assessee–M/s Hirapanna Jewellers, D.No.48-19-5, Opp:APSRTC Commercial Complex, Dwarakanagar, Visakhapatnam
3. The Pr.Commissioner of Income Tax (Central), Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-3, Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6.गार्डफ़ाईल / Guard file

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Sr. Private Secretary
ITAT, Visakhapatnam