

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1600/Mum/2023
(Assessment Year :2017-18)**

ACIT-3(1)(1) Mumbai	Vs.	M/s. Ramlal Jewellers Private Limited 10, Jalaram Estate M.G. Road Mulund (W) Mumbai - 400 080
PAN/GIR No.AACCR9512K		
(Appellant)	..	(Respondent)

**CO No.63/Mum/2023
(Arising out of ITA No.1600/Mum/2023)
(Assessment Year :2017-18)**

M/s. Ramlal Jewellers Private Limited 10, Jalaram Estate M.G. Road Mulund (W) Mumbai - 400 080	Vs.	ACIT-3(1)(1) Mumbai
PAN/GIR No.AACCR9512K		
(Appellant)	..	(Respondent)

Assessee by	Shri Rahul Hakani
Revenue by	Smt. Mahita Nair
Date of Hearing	24/07/2023
Date of Pronouncement	26/07/2023

आदेश / O R D E R

PER AMIT SHUKLA:

The aforesaid appeal has been filed by the Revenue and Cross Objection by the assessee against order dated 13/03/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2017-18.

2. The Revenue in its appeal has taken following grounds:-

1. "On the facts and circumstances of the case and in law, the LA CIT(A) erred in deleting the addition of Rs. 2,57,59,680/- u/s 68 of the Act without appreciation that the assessee self admitted that out of cash deposited during demonetization period cash of Rs. 2,02,31,678/- was received from unidentified persons and further cash of Rs. 1,05,20,302/- was received from identifiable persons without PAN as pointed out by the AO. Therefore, the Ld.CIT(A) erred in not appreciating that much cash deposited during the said period was not proved to be received against regular sales"

2. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in not taking note of the fact that there was an extraordinary jump in regular sales immediately before demonetization period and assessee was unable to substantiate such jump in sales during this period. In such circumstances, the Ld. CIT(A) ought to have called for a remand report from AO for further verification of the reasons shown by the assessee with reference to documentary evidences.

3. "On the facts and circumstances of the case and in law, the Ld. CIT(A) ought not to have relied on sales declared in the VAT returns to conclude that cash deposited in the bank account during demonetization period corresponds to the sales since VAT returns by themselves cannot stand as evidence for genuineness of sales"

4. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) ought not to have deleted the addition made u/s 68 of the Act in spite of the assessee's failure to prove the genuineness of transactions of sales and receipt of cash against these sales immediately before the demonetization period."*

5. *The Appellant craves leave to add, amend and/or vary the grounds of Appeal before or during the course of hearing.*

3. In cross objection assessee has raised following ground:-

1. *"The Learned Commissioner Appeals failed to appreciate the AO erred in imposing tax @60% u/s.115BBE instead of 30% as the cash deposits had taken place prior to Taxation Laws (Second Amendment) Act, 2016 coming into force."*

4. The brief facts are that Assessee Company is engaged in jewellery business, selling jewellery items to its retail customers. The return of income filed was on 01/11/2017 declaring total income of Rs.80,12,140/-. The case was selected for scrutiny for cash deposits in bank and accordingly, AO required the assessee to justify the deposits of cash in the bank accounts with Dena Bank, HDFC Bank and Thane Bharat Sahakari Bank during the period of demonetization. The ld. AO issued notice u/s. 133(6) to all the three banks asking for pay-in-slip rendered by the assessee for deposit of cash during the period from 09/11/2016 to 31/12/2016. Thereafter, the ld. AO issued notices u/s. 133(6) on 13/12/2019 to various parties who have purchased jewellery from assessee to verify cash sales during the month of October and November 2016 on test check basis. In response, some of the parties have submitted their replies, the detail of which has been incorporated in the assessment order at page 2 & 3. The ld.

AO also noted that some of the parties have not given the response. The ld. AO further noted that assessee has deposited total cash of Rs.7,63,10,100/- from sales during the year, out of this Rs.3,64,50,000/- has been deposited in the month of November 2016 itself. He further observed that the average monthly deposit for other 11 months was only Rs.36,23,636/- and therefore, he concluded that there was unusual and abnormal deposit in the month of November 2016. In response assessee filed detailed explanation alongwith all the books of accounts, sale and purchase vouchers, stock statement, etc. and also has given the reasons for the cash deposits alongwith cash book. The ld. AO based on the details of sales furnished by the assessee noted the cash sales made during the F.Y.2014-15, 2015-16, 2016-17 & 2017-18 which is incorporated at page 4 & 5 of the assessment order and also noted the details of cash deposited in banks for these four financial years, which were as under:-

<u>FY</u>	<u>Amount (in Rs.)</u>
2014-15	4,32,78,000
2015-16	4,43,75,000
2016-17	7,63,10,000
2017-18	7,71,00,000

5. Further, AO also noted that specifically in F.Y.2016-17, the cash deposit in the month of November 2016 was very high, i.e. ,Rs.3,64,50,000/- as compared to the less cash sales in the

earlier years. From the cash book produced for F.Y.2016-17 he noted the following facts:-

1. From April, 2018 to Sept 2016, the average cash balance is hovering around Rs.15 Lakh to Rs. 40 Lakh and it is never above Rs. 40 Lakhs.

2. Suddenly in the month of Oct. 2016, there is a huge increase in cash sales, and balance at the month end goes upto Rs. 2 crore. In the next 8 more days, there is further speedy increase in cash sales and the balance goes upto Rs.3.36 crore at the end of November 8, 2016.

3. Again after deposit of the cash, the balance cash in hand is reduced substantially to the pre-September level. From 20th November onwards, again it hovers around Rs.15 lakhs to Rs.40 lakhs in the similar fashion as happened from April to Sept, 2016.

6. He also analysed the replies from the persons to whom notices u/s. 133(6) were issued which have been received and his office which was as under:-

Sr. No.	Name of Person	PAN No.	Amount Received	Remark
1	Mayank Trivedi	AAAPT8235A	4,10,000	Reply Received
2	Mrs. Hegde	ABIPH8227M	3,00,000	Reply Received
3	Krishnaben Bhanushali	No PAN	1,78,000	Reply Received
4	Sheron Eliza	No PAN	1,55,200	

5	Sanjay Kolekar	AEJPK0519F	20,000	Reply Received
6	Pushpa Madanlal	AIAPK0769L	4,87,000	Reply Received
7	Manuju Satish Dhawan	BQFPD1992L	3,11,220	Reply Received
8	Shakil Abdul Razak Khan	AWYPK6349L	4,90,500	Reply Received
9	R. Chaturvedi	No PAN	1,55,000	Reply Received
10	Baburav Suma N Madhavi	No PAN	1,59,300	Reply Received

7. AO noted that alongwith these replies, these persons have confirmed the purchases and also including the copy of bill but they could not furnish source of funds from which they have purchased jewellery. Thus, he further noted that assessee itself had admitted that cash received form unidentifiable person was Rs.2,02,31,678/- and cash received from persons without PAN was Rs.1,05,20,302/-. Accordingly, he made the addition of Rs.2,57,59,680/- u/s.68 after holding as under:-

“From the discussions in earlier paras it can be seen that there is unusual jump in cash sales immediately before the demonetization period which is not explained and the cash sales recorded are not genuine. However, as the persons having and quoting PAN during the time of purchase and confirming the transaction, the cash sales to these parties with PAN are

considered as genuine sales. Balance cash sales to identifiable person (without quoting PAN during purchase) Rs. 1,05,20,302/- and cash sales to unidentifiable person Rs. 2,02,31,678/- are considered non genuine.

However it is seen from the records that during the pre and post demonetization period also the cash sales were there. During the proceedings two parties without PAN have also replied to notice U/s. 133(6). The cash sales to these three parties amount to Rs. 4,92,300/-. It is seen from the details furnished that during the year under consideration there has been cash deposits in the banks of Rs 7,63, 10,000/-. Out of this, Rs.3,64,50,000/- has been deposited in the month of November, 2016 itself. For the balance 11 months the average monthly deposit works out to Rs.36,23,636/-. Considering the above facts, and also that it was a festive season, the admissible cash deposit for the month of November, 2016 is taken at Rs.45,00,000/-. Accordingly, the assessee is given benefit of Rs 49,92,300/- (45,00,000+ 4,92,300) (on the basis of Average cash sales / cash sales to identifiable person without PAN). Thus balance cash sales of Rs 2,57,59,680/- (1,05,20,302 + 2,02,31,678 49,92,300) is considered as not explained Therefore, the sum of Rs. 2,57,59,680/- is added to the total income of the assessee u/s 68 of the IT Act under the head income from Other Sources. The total income assessed is taxed u/s 115BEE of the Act at the rate 60%. Penalty proceedings are separately initiated u/s 271AAC of the Act in respect of unexplained income.

8. The ld. CIT(A) deleted the addition by making the following observations:-

“7.5 The appellant has maintained regular books of accounts which are duly audited a Chartered Account and the said books of accounts are not rejected by the AO, which imply that though the AO has accepted the sales to such retail customers as

genuine but the realisation of sales proceeds as non-genuine. Further, the appellant has produced contemporaneous documentation such as its books of accounts, availability of stock, details of sales etc. to demonstrate that the sales made to such retail customers were genuine sales. The appellant had also demonstrated that there was a direct correlation of cash outflow from the books of accounts with cash deposit in the bank accounts. Further, the appellant had also submitted day wise stock report, wherein the outflow of stock against sales was clearly reflected. Also, the appellant had produced documentation to demonstrate that its sales clearly matched with the sales declared for the purpose of Maharashtra Value Added Tax Act. in Smt Charu Aggarwal v DCIT [2022] 140 taxmann.com 588 (Chandigarh -Trib.)/[2022] 96 ITR(T) 66 (Chandigarh Trib.) [25-03-2022] it was held that where cash deposited post-demonetization by assessee was out of cash sales which had been accepted by Sales Tax/VAT Department and not doubted by Assessing Officer then cash deposits could not have been treated as undisclosed income of assessee.

7.6 The AO has not pointed out any discrepancies in the sales bill, sales register etc. Purchases, sales and the Stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock The AO has not pointed out any provision of Income Tax, Act 1961 or any other law on account of sales transactions carried out by it in cash. The appellant has duly filed the Cash Compliance report with respect to cash sales. The appellant has submitted Form 61A giving all details with respect to cash sales. To disbelieve the sales either the appellant 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 by the appellant clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales.

7.7 The AO 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 appellant. Suspicion however strong it may be, it should not be decided against the appellant without disproving the sales with tangible evidence. The additions cannot be made in the demonetization cases by the assessing authorities on the basis of deviation/variance in cash deposits and cash sales ratio of the demonetization period with that of the earlier periods since the appellant has established the authenticity and genuineness of the cash sales. There can't be a fixed sales pattern in any business. In-fact appellant has explained the reasons for such high sales being Diwali period, marriage season etc. which reasons are not rebutted by the Assessing Officer The Hon'ble Delhi Tribunal in the case of AGSONS GLOBAL P LTD v. Asstt. CIT [2020] 115 taxmann.com 342 (Delhi - Trib.) has held that the addition being made on the sole ground of deviation in ratio of cash sales and cash deposits during the demonetization period with that of earlier period, is not proper and lawful.”

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7.15 It is also discernible from records that the size of sample to test check the correctness of claim of cash sales was decided by the AO himself and the parties to whom the summons were issued were also selected by the AO himself As evident from the

assessment order as well as from the show-cause notice issued by the AO that summons under section 133(6) of the Act were issued to 10 parties. It is worth mentioning here that all the 10 parties have confirmed the purchase of jewelry in cash. The AO has by mistakenly not considered the reply submitted by one party namely Ms. Sheron Eliza, however the same has been submitted by the concerned party and Appellant also submitted the said reply online as copy of reply filed by Ms. Sheron Eliza was also provided to the Appellant by the said party Since all the parties to whom summons were issued u/s 133(6) of the Act have replied to the AO and have also confirmed the purchase of jewellery in cash, the AO should have formed a positive opinion on the correctness of the cash sales made by the appellant. On this account also the conduct of the AO is incorrect.

7.16 Further, the appellant has also contended that provisions of section 68 of the Act cannot be stretched to 'source' of 'source of amount credited in the books of accounts' of the appellant. In this regard, it is a well settled position that the AO has to satisfy himself about the nature of amount credited and source of amount so credited in the books of the accounts of the appellant for the purpose of applying section 68 of the Act and that the appellant cannot be asked to prove the source of source of credit, when the appellant has provided detailed documentary evidences about the parties involved. It may be noted that at paragraph 8.1 of the impugned assessment order the AO has himself confirmed that parties to whom summons were issued have confirmed the purchase. Further, from the said para it is also clear that the AO has not relied on the replies giving reason that they were asked to furnish source of fund from which they purchased jewelry, whether they had cash in hand on the date of purchase of these jewelry items, but the said details are not provided in replies. This clearly reflects that AO has not doubted the 'source of funds but has doubted the 'source' of 'source of amount credited in the books of accounts, which is not permissible under the provisions of the Act.

9. Thereafter, the Id. CIT(A) held that in the present case already entire sales have been offered for taxation and same cannot be taxed again. Finally, he concluded as under:-

“7.19 As regards the addition of Rs. 2,57,59,680/- u/s 68 invoking the provisions of Section 115BBE is concerned, the order of the AO and the detailed submissions of the appellant has been thoroughly considered. The contention of the appellant had been that, it is not a case of unexplained deposits having been deposited in the bank account of the appellant and it is the sale of gold ornaments/jewellery which have deposited in the bank account and such entries have duly been recorded in the audited books of accounts. I have also considered the submissions of the appellant about the sales declared in the VAT returns and the remand of VAT through banking channel and the assessment for the year under consideration by the VAT Department. Whatever turnover has been disclosed by the appellant in the audited books of accounts are found to be in order. Hence, cash realised on account of sales of the stock cannot be held to be unexplained deposits and as such the addition of Rs.2,57,59,680/- is without valid ground. No case has been made out that the appellant is found to be owner of the money which is not recorded in the books of accounts rather the appellant has valid explanation that these were proceeds of the sales of the jewellery I am of the considered opinion that invoking the provisions of section 68 rws 1158BE by the AO is not correct. Further, I am also in agreement with the facts and circumstances in the case of the appellant are very similar to the decision in the case of the Hon'ble Gujarat High Court in the case of CIT vs. President Industries & Others, 258 ITR 654, wherein it was held that, when sales have already been recorded on credit side of the sales account in the audited books of accounts, making further addition of same sales would

amount to double addition and such additions thus both on merits and otherwise not called for

7.20 The appellant has also further argued that rate of tax u/s 115BBE will be 30% and not 60%. The Taxation Laws (Second Amendment) Act, 2016 received the assent of the president on 15/12/2016. Hence, same cannot apply to transactions that have taken place prior to 15/12/2016. It was contended that the rate of tax cannot apply retrospectively. It i further stated that the cash deposits have to be taxed as business income and not as income from other sources. Since the addition u/s 68 is deleted, the additional arguments by the appellant has become infructuous.

7.21 In view of the aforesaid findings, I hold that the present case is not a fit case applying the provisions of section 68 of the Act and consequently, the appeal filed by the Appellant is allowed.

10. We have heard both the parties at length and also perused the relevant finding given in the impugned orders as well as the documents submitted in the paper book. The case of the ld. DR is that, here in this case it is clearly evident that immediately after the demonetization assessee had shown inflated cash sales and also made deposits in the bank account which is completely abnormal compared to the earlier year and also subsequent year. Apart from that, assessee could not substantiate cash sales made to different parties and some of them could not be identified. Even those persons who responded to notice u/s. 133(6) could not substantiate the source of funds. Therefore, the cash sales made during the demonetization period cannot be accepted and ld. AO has rightly taxed the cash deposits u/s.68.

11. On the other hand, Id. Counsel for the assessee submitted that, firstly, nowhere the Id. AO has rejected the sales or the quantity of purchase stock and the quantity of sales. Once the purchase and sales are verifiable, then such cash sales deposited in the bank account cannot be treated as undisclosed income. He thus, completely relied upon the order of the Id. CIT (A).

12. We find that the only reason given by the Id. AO for treating the entire cash deposited in the bank account is that, there was abnormal growth on the cash sales in the month of November 2016 and corresponding cash deposits from the month of November to December, which alone cannot be the ground when deposits are directly linked with sale duly disclosed in the books. Another point raised by him was that, some of the cash sales made to different parties cannot be identified and the parties who responded were unable to explain the source of their funds. From the perusal of the material placed on record and also the explanation given by the assessee before the Id. AO, it is seen that assessee has maintained regular books of accounts which was subject to audit and has produced the entire sale bills, stock register and purchases and also quantitative tally of sales and corresponding stock. The assessee has also demonstrated that there was a direct correlation of cash outflow from the books of accounts with cash deposit in the bank accounts and also produced day wise stock report, wherein the outflow of stock against sales has been clearly reflected. Apart from that, sales declared under the Maharashtra VAT Act and the VAT return

completely tallied with the sales of the assessee shown in the books of accounts. Even the ld. AO before whom all these documents were furnished has not pointed out any discrepancy in the sales bills, sales register, purchases and stock. Neither has he admitted the quantity of purchases at the stock with assessee and the corresponding quantity of sales made by the assessee during the year.

13. Another important fact is that assessee has duly filed cash compliance report with respect to cash sales in Form 61A giving all the details with respect to cash sales. Nowhere, the ld. AO has pointed out that assessee did not have sufficient stocks in its possession or otherwise found any defect in the stock register. If that finding has not been given and no discrepancy has been pointed out, then how the corresponding sales of same stock and quantity can be treated as 'undisclosed income' of the assessee. Once, AO has accepted the sales and there is direct nexus with the closing stock and the sales alongwith movement of stock linked to purchases then such credit on account of sales cannot be added u/s.68. If the cash sales have been accepted, then deposit of the same cash in the bank account which is tallying with the entries in regular cash book, cannot be treated as deposits made out of any undisclosed income.

14. Addition u/s.68 on account of cash deposits cannot be made simply on the reason that during the demonetization period, cash deposits vis-a-vis cash sales ratio is higher. If the

parties during the period of demonetization has purchased huge quantity of jewellery on cash which has been duly recorded in the books of accounts of the assessee and also tallying with the quantity of stock, then simply because there was a huge cash sales in that particular month cannot be the reason for treating it as undisclosed income from undisclosed sources. Here in this case the parties to whom notices u/s. 133(6) were issued have confirmed the purchases but also filed the purchase bills. The ld. AO cannot disbelieve the purchases made from the assessee simply on the ground that those parties could not submit the source of their funds which is not the requirement of the assessee to prove specifically when assessee is a retail seller of jewellery and even law does not prohibit any cash sales or there is any requirement to seek any further detail. For this compliance assessee has also filed Form 61A before the ld. AO. Once, it has been established that sales representing outflow of stocks is duly accounted in the books of accounts and there are no abnormal profits during the year, then there is no justification why AO should treat the deposits made in the bank account out of cash sales to be income from undisclosed sources. Thus, aforesaid finding recorded by the ld. CIT(A) which is based on correct appreciation of facts on record and there is no adverse finding by the ld. AO with regard to the availability of stock and quantity of items shown in the stock register and the corresponding sales, no addition can be made. Accordingly, order of the ld. CIT (A) is confirmed and the grounds raised by the Revenue is dismissed.

15. Once, the entire addition u/s.68 is deleted then the issue of invoking provisions to Section 115BBE is purely infructuous and we agree with the finding given by the ld. CIT (A) in this regard as incorporated above.

16. In the result, appeal of the Revenue is dismissed as well as Cross Objection of the assessee is dismissed as infructuous.

Order pronounced on 26th July, 2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai; Dated 26/07/2023
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/P S
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		