

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial Member

ITA No. 1965/Del/2021 : Asstt. Year : 2017-18

ACIT, Central Circle-14, New Delhi-110055	Vs	Delhi Spot Bullion Trading Co. Pvt. Ltd., 137, 2 nd Floor, Near Moti Bazar, Main Road, Chandni Chowk, New Delhi-110006
(APPELLANT)		(RESPONDENT)
PAN No. AADCD2014M		

Assessee by : Sh. Anuj Jain, CA

Revenue by : Sh. Amit Katoch, Sr. DR

Date of Hearing: 15.02.2024

Date of Pronouncement: 23.04.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-26, New Delhi dated 15.06.2021.

2. Following grounds have been raised by the Revenue

"i. The Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs.2,43,37,500/- made by the AO on account of unexplained money being cash deposited in the form of demonetized currency despite the fact that during assessment proceedings the assessee had failed to offer any valid explanation with supporting documentary evidences about the nature and source of cash deposits in the manner required by the A.O.

ii. The Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs.2,43,37,500/- overlooking the facts of the case that during the month of October and November, 2016 huge amount of cash sales running into crores of rupees has been shown by the assessee in the book of accounts in contrast to the fact that during the month of April to September 2016, there was no cash sales.

iii. The Ld. CIT(A) has erred on facts and in law in deleting the addition overlooking the facts of the case that the assessee has

claimed to deposit the cash in the demonetized currency of Rs.2,43,37,500/- out of cash balance as on 09.11.2016 which was dramatically increased from the average cash balance during last six months of about 10-15 lacs only.

iv. The Ld. CIT(A) was not justify in law in overlooking the modus operandi adopted by the assessee to take benefit of the situation and circumstances arised due to demonetization wherein the assessee just managed artificial entries of cash sales which is nothing but part of a colorable device, as held by Hon'ble Supreme Court in the case of Mc Dowell & Co. Ltd. Vs CTO 154 ITR 148(SC), to bring the unaccounted cash into the books of account."

3. The assessee is in the business of trading of Gold/silver jewellery, Gold/Silver bullion and precious stones. The case was selected for scrutiny u/s 143(3) of the Income Tax Act, 1961 on the reason of cash deposits of Rs. 78,50,000/-made by it in its bank accounts.

4. During the scrutiny assessment, the Assessing Officer observed that the assessee had made cash deposits amounting to Rs. 2,43,37,500/- in its bank accounts between the period 9.11.2016 to 30.12.2016. The Assessing Officer held that,

- The assessee has submitted that cash deposited during demonetization period was from opening cash balance as on 09.11.2016.*
- The assessee has claimed to deposit the cash in the demonetized currency of Rs. 2.43 crores out of cash balance as on 09.11.2016 which was increased from the average cash balance during last six months of about 10-15 lacs.*
- During the current financial year up to the month of September, 2016 no cash sale was made by the assessee but in the month of October and November cash sale of about Rs. 10.85 crore and Rs.4.22 crores respectively has been made. It appears that as the VAT returns for the October month have not been filed and therefore bogus cash sales were shown in the books of accounts from*

unidentifiable persons in the month of October and upto 8th November, 2016.

- *The assessee has failed to provide details of the persons to whom the cash sales were made.*

5. The Id. CIT(A) deleted the addition after going through the availability of the cash and the cash balance at hand.

6. Aggrieved, the Revenue filed appeal before the Tribunal.

7. Before us, the Id. DR relied on the Assessment Order and the Id. AR supported the order of the Id. CIT(A).

8. Heard the arguments of both the parties and perused the material available on record.

9. The comparative details of sales/purchases/stock/cash deposited in bank as per the submissions of the assessee is collated as under:

Month	FY 2014-15			F.Y 2015-16			FY 2016-17			FY 2017-18		
	Total sales	Cash sales	Cash deposited	Total sales	Cash sales	Cash deposited	Total sales	Cash sales	Cash deposited	Total sales	Cash sales	Cash deposited
April	378186712	240939555	249550000	237511801	139258503	143450000	89550348	-	6500000	578597036	55740224	46700000
May	329169289	228072420	227750000	168448944	92307789	72300000	109426382	-	-	43173053	86892475	95249000
June	371643799	297052313	281150000	184836159	96574883	116200000	163251489	-	-	302110158	71826061	65750000
July	38530697	19760650	35600000	230048887	140588442	139800000	51327076	-	-	154234822	188780	6940000
August	134011180	112996128	111650000	149202583	84071412	79000000	53445437	-	-	18282420	-	-
Sept	448463441	211295975	212450200	169563593	57206171	60850000	54091768	-	-	145002010	-	-
Oct	246401998	140244904	139750000	208332906	34537849	36450000	277431931	108525237	105800000	225676046	20000	40000
Nov	375071843	164326234	164000000	240751143	92470893	32600000	26647563	42203791	45587500	353323155	-	-
Dec	229045359	169815539	169750000	202565520	36955013	36900000	138259562	-	-	260640327	-	-
Jan	361357456	106508587	106344000	150698222	47767374	47700000	195990220	-	-	132606767	-	-
Feb	370063494	153632756	153550000	349429259	17367219	12295000	280565286	382514	-	187044422	-	-
Mar	327063104	101813324	97550000	149365916	-	-	541856762	59494609	59250000	164282088	752493	-
Total	3609008372	1946458403	1949094200	2440754933	839105548	837545000	2221671875	210606151	217137500	3118071566	215420033	214679000
cash sales as percentage of total sales	53.9				34.4			9.48			6.9	
Cash deposited as percentage of cash sales (%)	100				99.81			103.1			99.7	
Cash deposit to turnover ratio	54				34.31			9.8			6.9	

10. The Id. CIT(A) has also considered the fact that 1% excise duty and 1% VAT was also charged and deposited by the appellant company. The VAT original returns for the quarters up to 30.9.2016 had been filed before demonetization and for the period 1.10.2016 to 31.12.2016 it had been filed on 22.01.2017 and these returns for the period up to 31.12.2016 have not been revised by the appellant and held that the cash sales made during these periods were bonafide and has a nexus with sales effected by the assessee.

11. The details of cash sales and cash deposits in the month of Oct/Nov 2016 are as under:

Cash Book Day wise 1.10.2016 to 31.10.2016 (all figs in Rs)						
Date	Opening Balance	Cash Sale	Cash receipt (others)	Cash Deposited in Bank	Cash Expenses	Closing Balance
1.10.2016	1178665	-	-	-	940.00	1177725
2.10.2016	1177725	-	-	-	-	1177725
3.10.2016	1177725	-	-	-	498.00	1177227
4.10.2016	1177227	-	-	-	-	1177227
5.10.2016	1177227	7028549	-	-	250.00	8205526
6.10.2016	8205526	6094139	-	7000000	-	7299665
7.10.2016	7299665	11358589	-	5000000	-	13658254
8.10.2016	13658254	6145987	-	-	1020.00	19803221
9.10.2016	19803221	-	-	-	-	19803221
10.10.2016	19803221	4774563	-	18400000	-	6177784
11.10.2016	6177784	-	-	-	-	6177784
12.10.2016	6177784	6223497	-	-	-	12401281
13.10.2016	12401281	13003092	-	11000000	-	14404373
14.10.2016	14404373	-	-	13000000	-	1404373
15.10.2016	1404373	-	-	-	1080.00	1403293
16.10.2016	1403293	-	-	-	-	1403293
17.10.2016	1403293	-	-	-	-	1403293
18.10.2016	1403293	5500009	-	-	-	6903302
19.10.2016	6903302	5750309	-	5500000	-	7153611
20.10.2016	7153611	2806726	-	5750000	2300.00	4208037
21.10.2016	4208037	2683371	-	2750000	-	4141408
22.10.2016	4141408	5516623	-	-	1055.00	9656976

23.10.2016	9656976	-	-	-	-	9656976
24.10.2016	9656976	5999986	-	8200000	-	7456962
25.10.2016	7456962	2599684	-	6000000	-	4056646
26.10.2016	4056646	7001363	-	2600000	1245.00	8456764
27.10.2016	8456764	4000288	-	7000000	-	5457052
28.10.2016	5457052	9599724	-	4000000	-	11056776
29.10.2016	11056776	2438738	-	9600000	1040.00	3894474
30.10.2016	3894474	-	-	-	53000.00	3841474
31.10.2016	3841474	-	-	-	-	3841474
Total		108525237		105800000	62428.00	

Cash Book for the period 1.11.2016 to 15.11.2016 (all figs in Rs)						
Date	opening cash in hand as on	cash sales	cash receipt (others)	cash deposited in bank	cash expenses	closing cash in hand
3841474			2350000			1491474
1491474	960524					2451998
			1000000	345		1451653
1451653	6073967			3420		7522200
7522200	17494730		6000000			19016930
19016930	17674570		11900000			24791500
		1000				24792500
24792500			10842500			13950000
13950000				950		13949050
13949050			8995000			4954050
4954050			4500000			454050
	42203791		45587500			

[illegible]

Nov	367890470	14210419.89	234126230	7700074.49	259531284	13619580.65	358999517.00	9239557.29
Dec	217970053	4069432.93	218805833	2455720.42	136018088	11231756.71	255473947.00	4816464.99
Jan	372853031	16143769.8	140827728	15377059.46	189791318	5544036.55	135652448.00	8041350.37
Feb	372861075	18337677.1	371733245	39469990.41	285710573	11666879.58	197427144.00	18433212.93
Mar	308862348		108349469	-	532135636		145241922.00	
Total	3600268764		2432937079		2217243921		3109909984.01	

12. We have examined the analysis and the ratio of the Id. CIT(A). The same is as under:

"5.4 The following observations are made from the above data:

- i) The appellant had been making regular huge cash sales in proceeding as well as succeeding assessment years, apart from the year under consideration. The trend of cash sales as percentage of total sales had been declining which was at 53.9 % in FY 2014-15 to 34.4% in FY 2015-16 to 9.5% in FY 2016-17 to 6.9% in FY 2017-18. The absolute value of cash sales had also declined substantially from Rs.194.64 Cr. in FY 2014-15 to Rs. 83.91 Cr. in FY 2015-16 to Rs. 21.06 Cr. in FY 2016-17 to Rs. 21.04 Cr. in FY 2017-18. This data proves that the appellant had sufficient items below Rs. 2 Lakhs, which are being sold in cash regularly.
- ii) The appellant is depositing all these cash sales in its regular bank accounts only. In some years, the cash deposits are more than the cash sales, which may be due to opening cash in hand and other cash receipts (as is evident from the data of Oct/Nov2016 reproduced above).
- iii) The figures of cash sales of the appellant for the month of Nov. for FYs 2014-15 to 2016-17 do not show any abnormal trend. It is observed that the appellant had made cash sales in the month of Nov 2016 upto 8.11.2016 only and the figures of cash sales corresponding to the preceding year are @ 45.6% (Rs.42203791*100/92470893) only. It is observed from the various media news that there was great rush in the markets to convert the demonetized SBN's into some tangible assets, therefore there was

spurt in sales in the evening of 8th Nov 2016 till late night after the announcement was made. Considering these facts and figures, there appears to be no comparative abnormality in the cash sales of the appellant in the month of Nov 2016. Infact the cash sales are at much lower figures compared to corresponding figures of Nov. 2015 or even Oct. 2016, coupled with extraordinary event leading to spike in sales on 8.11.2016.

iv) From the data of Oct/Nov 2016 of cash deposits in banks, it is observed that the appellant had deposited Rs. 10.58 Cr. of cash in Oct 2016. It had deposited cash of more than Rs.1 Cr. on three occasions i.e. Rs. 1.84 Cr. on 10.10.2016, Rs.1 Cr. on 13.10.2016 & Rs.1.34 Cr. on 14.10.2016. It had also deposited cash of Rs 50 lakhs or more on 7 occasions. In the month of Nov 2016, the appellant had made cash deposits of Rs. 2,12,50,000/- from 1.11.2016 to 8.11.2016 against the cash sales of Rs. 2,45,29,221/- made by it. The appellant had made cash sales of Rs.1,76,74,570/- on 8.11.2016, which was not deposited on 8.11.2016, however there was deposit of Rs.1,19,00,000/- on 8.11.2016 out of sales proceeds of 7.11.2016 and cash in hand of earlier days. There was available cash in hand with the appellant on 8.11.2016 and there were further cash sales of Rs. 1,76,74,570/- on 8.11.2016, most of which were claimed to be after closing hours of the bank. From the trend of cash sales and cash deposits, it is observed that the appellant is depositing the cash sales within 1-3 days of the sales. It is generally not deposited on the date of sale. The appellant had deposited the amounts of cash in hand on subsequent three dates of 10th, 13th and 15th Nov 2016. The appellant had taken the plea that banks were not accepting the huge cash on a single day due to heavy rush of such deposits. However, it could deposit all the cash in hand within 5 days (on three occasions) due to continued good relations and regular cash deposits with the bank. He further contended that due to demonetization, all the regularly kept cash in hand in demonetized SBN's was also required to be deposited.

v) The data of cash deposits is collated in the following table:

<i>Table: Data on relative figures of cash deposits</i>								
<i>FY</i>	<i>Cash deposited upto Oct</i>	<i>cash deposited upto Nov</i>	<i>Total cash deposited in Nov</i>	<i>cash deposited between 1.11.2016 to 8.11.2016</i>	<i>cash deposited between 8.11.2016 to before demon</i>	<i>Percentage of cash deposits after demon to before demon</i>	<i>Total cash deposited In the year</i>	<i>Percentage of cash deposits after demon to total cash</i>
	(1)	(2)	(3)	(4)	(5)	(6)=5/(1+4)*100	(7)	(8)=5*100/7
2015-16	6445450	7370159	9247089					
2016-17	1123000	1507290	4558750	21250000	2433750	18.22	21060615	11.56

The cash deposited by the appellant after demonetization is just 18.22% of the cash deposited before demonetization. The appellant had made cash sales even after demonetization and deposited huge cash in new currency of Rs 5.94 Cr in the month of March 2016. The cash deposited in demonetized currency during the year is just 11.56% of total regular cash deposited by the appellant. It also proves that cash sales is regular business affairs of the appellant and the cash in hand deposited of demonetized currency is as per the cash book of the appellant and it does not represent an abnormal figure observing the complete business affairs of the appellant.

Objections raised by the assessee are as under:

- a) There was nothing wrong in making cash sales and the appellant had been regularly doing it. However the appellant had reduced trend of cash sales from FY 2014-15 onwards.*
- b) Cash sales are supported by the audited books of account, invoices, suffered from VAT, VAT returns, Quantitative Stock tally and therefore, cannot be disregarded.*
- c) Treatment of sales as unexplained cash credit tantamount to disregarding the audited accounts, if sales is disregarded, it must be followed by rejection of the books of account under section 145(3) of the Act.*
- d) As sales was duly recorded in books, profit earned on it was already offered for tax while filing return of income, addition.*
- e) In the present appeal the entire action of treating cash sales as unexplained is invalid as the books of account have not been rejected.*
- f) There is no necessity whatsoever for assessee to maintain addresses of cash customers below Rs. 2 lakhs of sales. There is no law which*

mandates the assessee to keep its money in bank account. Even in case of cash sales prior to 8th November 2016, the assessee could have retained the sales realization in cash.

- g) Trading receipt cannot be added under section 68 of the Act and the Burden of proof under deeming provisions of Act is on the revenue after explanation with credible evidences had been offered by the appellant.*

Objection of the AO are under:

- i) The appellant's cash in hand increased dramatically to Rs.2.43 Cr. on 8.11.2016 against average cash in hand of Rs. 10-15 lakhs.*
- ii) There were no cash sales till the month of Sept 2016 but the cash sales jumped to Rs. 10.85 Cr. in Oct 2016 & Rs. 4.22 cr. in Nov 2016. As VAT returns for this quarter were to be filed, the appellant manipulated the cash sales in the books in the months of Oct 2016 and upto 8th Nov 2016.*

The observation of the AO that the VAT return for the quarter 1.10.2016 to 31.12.2016 was not filed till Nov 2016 is correct. However, it is observed that the VAT return for earlier quarters have been filed by the appellant before demonetization, which were not revised and the VAT return for the quarter 1.10.2016 to 31.12.2016 of FY 2016-17 was due only in January 2017, which had been filed by the appellant and had not been revised after that. In the absence of any mandatory provision to file the VAT return for the period 1.10.2016 to 8.11.2016 after demonetization at an early date than the prescribed date, there was no way the appellant could have filed the VAT return of this quarter before end of the quarter. This observation of the AO is based on the suspicion that there was possibility to show bogus cash sales and file these cash sales in subsequent VAT returns. However, the analysis of other data and evidences needs to be brought on record to substantiate the allegation. The appellant had filed original VAT returns till the quarter ending on 31.12.2016 and had not revised these returns. Thus this observation of the AO, based just on suspicion, has no consequences.

6.2.2 The other observation of the AO that there were no cash sales till the month of Sept 2016 but there were cash sales of Rs. 10.85 Cr. in Oct 2016 & Rs. 4.22 cr. in Nov 2016 (till 8th Nov) is factually correct. However, the AO had not mentioned in the assessment order the cash sales made of Rs. 3.82 lakhs in Feb 2017 & of Rs. 5.95 cr. in March 2017 of the year under consideration. It is further observed that the cash sales of the appellant are not consistent in pattern over the years (which have been accepted in for other periods than Nov 2016).

- In the FY2014-15 the cash sales varied from minimum Rs.1.97 Cr. in the month of July 2014 to maximum of Rs.29.70 cr. in the month of June 2014.
- In the FY 2015-16 the cash sales varied from minimum Rs Nil in the month of March 2016 to maximum of Rs. 14.05 cr. in the month of July 2014.
- In the FY 2016-17 the cash sales varied from minimum Rs Nil in various months to maximum of Rs.10-85 cr. in the month of Oct 2016.
- In the FY 2017-18 the cash sales varied from minimum Rs Nil in various months to maximum of Rs.8.68 cr. in the month of April 2017.
- There were cash sales, in all the months in FY 2014-15, in all the months except march in FY 2015-16. Whereas in FY 2016-17 the cash sales were only in the months of Oct/Nov/Feb/March and in FY 2017-18 only in the months of April/May/June/July/Oct/March.
- There were no cash sales from March 2016 till Sept 2016 and there were continuously cash sales above Rs. 5 Cr. from March 2017 to June 2017.

Thus there is no consistent pattern of cash sales from year to year as well as from month to month, however the appellant is making huge cash sales in all these years, which are showing declining trend over the years. Therefore, the observation of AO that there were no cash sales till Sept 2016 and suddenly the sales had increased in Oct/Nov due to manipulation is not supported by the analysis of data particularly due to following observations:

(i) *The cash sales of Rs10.85 Cr made by the appellant and consequent deposit of cash of Rs 10.58 Cr in the month of Oct 2016 cannot be questioned for manipulation as the appellant was not aware in October 2016 that demonetization of SBNs will be announced in future. These transactions have been made in the regular course of business and even had not been questioned by the AO in the final assessment made.*

(ii) *Out of the total cash sales of Rs. 4.22 Cr. made in Nov 2016, till 8.11.2016, the cash deposits of Rs. 2.12 cr. made in the bank accounts upto 8.11.2016 had been accepted by the AO. It is observed from the data that the appellant had cash in hand of Rs. 38,41,474/- as on 1.11.2016 out of which Rs.23,50,000/- were deposited on 1.11.2016. Further as per the cash book data of Oct/Nov. 2016, the appellant had been depositing the appropriate amounts from cash in hand from time to time within 1-3 days of sales generally. The appellant had made cash sales of Rs. 60.73 lakhs on 10.11.2016 and amount of Rs. 60 lakhs was deposited on 7.11.2016. It had made cash sales of Rs. 1.74 cr. on 7.11.2016 and deposited an amount of Rs.1.19 Cr. on 8.11.2016. The appellant is always keeping reasonably good figures of cash in hand. Thus, against sales of Rs.1.75 Cr. on 7.11.2016, a substantial portion had been deposited on 8.11.2016 only, which had been accepted by the AO. The appellant could get chance to deposit the part sales proceeds of 7.11.2016 and sales proceeds of 8.11.2016 only on (next bank working day) and the appellant had deposited substantial amount of Rs.1.84 Cr. on that day. The appellant had contended that the banks were not accepting huge cash due to heavy rush of cash after demonetization, so it had to deposit the cash in hand of Rs.2.43 Cr. of demonetized SCB's in three installments. The contention of the appellant appears to be correct and even many leading newspaper reported such reports of huge rush in banks after demonetization. It is further observed that there is no substantial lag in deposits made by the appellant after demonetization. It had made all the deposits on three occasions within 5 days of opening of banks after demonetization, which further dilutes the suspicion of manipulation of cash sales on 7th/8th Nov 2016. Out of total sales of Rs.1.75 Cr. made on 7.11.2016, the AO had accepted part sales corresponding to the bank deposits of Rs1.19Cr made on 8.11.2016. There is no difference in billing*

pattern of bills issued in cash on 5th/7th/8th Nov 2016. The AO had accepted the cash deposits made against these immediate comparable cash bills, but suspected manipulation in part bills of 7th and bills of 8th Nov 2016, as the corresponding cash was lying with the appellant as cash in hand. In my opinion the suspicion of the AO is not backed by any logic or data to substantiate it further.

(iii) The AO had not pointed any specific defect in the audited books of accounts of the appellant. The AO had not pointed any defects in the available cash in hand of the appellant as per books of accounts. There is availability of stock against which these sales in Nov 2016 had been made. The appellant had reduced the stock of sales quantity shown on 7th/8th Nov 2016 from the available stock and there in no negative stock on these dates. The purchases of the appellant also do not show any abnormal pattern on the yearly basis, monthly basis or in the months of Oct/Nov 2016. The AO had not even given the credit of average cash in hand mentioned in the assessment order against the bank deposits made between 10.11.2106 to 15.11.2016. The AO had even not given working of average cash in hand commented by him in the assessment order. It is submitted that the cash in hand on monthly closing basis or yearly opening/closing basis may not be true indicator of cash in hand on a particular date. It all depends on the cash Sales on consecutive dates and the logistics to deposit the available cash in hand with the bank. There may be days when more cash in hand is accumulated. As per the figures of monthly closing cash in hand submitted by the appellant there are huge variations between maximum & minimum balances even on monthly basis and cannot form a reference point of availability of cash in hand of a particular day.

FY	2014-15	2015-16	2016-17*	2017-18
Opening cash in Hand	10554397	7165485	8055403	821281
Maxm. Cash in Hand at end of any month	17960043	22876347	24791500**	9851694
Min cash in Hand at end of any month	1851603	2920428	1178665	696134
Average Monthly closing cash in hand				
*upto 8.11.2016 only ** as on 8.11.2016				

Further as per the cash book of Oct 2016, the appellant had held cash in hand of Rs.1.36 cr. on 7.10.2016, of Rs.1.98 Cr. on 8th & 9th Oct 2016, of Rs.1.24 Cr. on 12th Oct 2016, of Rs.1.44 Cr. on 13th Oct 2016 and of Rs.1.10 cr. on 28th Oct 2016, whereas the opening & closing balances of Oct 2016 were at Rs.11.77 lakhs & Rs.38.41 lakhs respectively. The average monthly closing cash in hand commented by the AO is not true reflection of daily cash in hand and cannot be used as benchmark in these facts & circumstances of the case. There may be compelling circumstances for huge variations of cash in hand on various dates. The specific defects should be brought on record to challenge the cash in hand of the appellant as per the books of accounts. The appellant had huge cash in hand due to spurt in sales on two consecutive dates of 7th & 8th Nov 2016. The appellant had explained that it had cash in hand as on 8th of Rs.1.9 cr. out of which Rs.1.19 Cr. was deposited on 8th Nov 2016 and cash in hand of Rs 69 lakhs was maintained on 8th Nov 2016, which was comparable to the available cash in hand on 5th & 6th Nov 2016 (Rs.75 lakhs). However, on 8th Nov 2016, after A.Y. 2017-18 the demonetization of SBN's was announced, there was great rush of cash sales. Thus, the cash in hand on 9th Nov 2016 was more, which included opening cash in hand and cash sales made on 8th Nov 2016.

(iv) Further, the AO had not pointed any defects in purchase, sales and stock of the appellant as per books of accounts. In the absence of any defects like negative stock or unexplained credit purchases leading to positive stock etc., the corresponding sales from the stock cannot be questioned just on the basis of suspicion. Therefore, from the above, it is noted that neither the A.O pointed out any shortage in the closing stock vis-a-vis the sales affected, nor any discrepancy in the information submitted before the income tax and the VAT authorities in this regard. The appellant has brought out that the total cash sales for the year and the percentage of cash sales to the total turnover has no abnormality with the corresponding previous financial year as well as cash sales made upto 7.11.2016. The cash sales made on 8th Nov 2016 are also comparable to the cash sales made on 7th Nov 2016. The cash sales and cash deposits in the immediate preceding month were much higher. It has justified the cash sales for the current year on the basis of cash deposits made before

8.11.2016 and consistency of transactions with preceding years and within the year to prove that these alleged transactions were regular in nature and are not outliers. Other important fact in this context is that the entire sales have been recorded in the books of the appellant, which has not been disputed by the AO.

6.3 It is observed that the AO had accepted the sales shown by the appellant in its books of accounts against the cash deposits of Rs.2.43 Cr. and also added this amount of cash sales u/s 68 r.w.s. 115BBE of the I. T. Act 1961 also. In the context of the above facts, it would be appropriate to analyze various judicial pronouncements on this subject, having a bearing on the facts of the case.

6.3.1 The Hon'ble ITAT Delhi in the case of Singhal Exim Pvt. Ltd. vs. ITO (ITA No. 6520/Del/2018) in its order dated 12.4.2019, had an occasion to examine similar facts. The relevant observations of the Hon'ble Tribunal are reproduced as under:

"8. In the first paragraph above, the Assessing Officer mentioned "the amount of Rs.59,11,29,517/- is hereby disallowed u/s 68 of the Act and added back to the total income of the assessee company". It seems that the Assessing Officer has probably not understood the scope of Section 68. Section 68 is not for the purpose of allowability or disallowability of any deduction and moreover, the question of disallowance may arise in respect of any expenditure or allowance claimed by the assessee. In respect of a sale consideration, there cannot be any question of any disallowance. In the second paragraph above, the Assessing Officer has alternatively applied Section 69C. Section 69C is also for unexplained expenditure. Admittedly, there is no question of any unexplained expenditure in the case under appeal before us and therefore, Section 69C is also not applicable.

9. Further, we find the stand of the Assessing Officer to be contradictory. On one hand, he mentioned the high sea sales to be not genuine and on the other, he has accepted the business income disclosed by the assessee. Admittedly, the business income disclosed by the assessee has been worked out after considering the purchases and

sales of mobile phones. The sales included the high sea sales also. Once the Assessing Officer has accepted the trading results, he has accepted the sales including high sea sales. Therefore, his stand while making the addition under Section 68 or 69C is contradictory to his stand taken while accepting the business income which is not permissible in law.

12. Coming to the cash payment of sale consideration, we are of the opinion that it certainly raises the doubt but again, when there are documentary evidences from the government agencies like custom authorities, the genuineness of sales cannot be doubted. Moreover, at the relevant time, there was no law which prohibited receipt of sale consideration in cash.

15. In view of the above, we hold that the Assessing Officer was not right in concluding that the high sea sales are not genuine. Moreover, Section 68 would also not be applicable in respect of recovery of sales consideration. Once the assessee sold the goods, the buyer of the goods becomes the debtor of the assessee and any receipt of money from him is the realisation of such debt and therefore, we are of the opinion that in respect of recovery of sale consideration, Section 68 cannot be applied. In view of the above, we find no justification for upholding the addition of '59,51,29,517/-. The same is deleted."

The Hon'ble ITAT has held that,

(a) On one hand, the AO has accepted the sales as genuine by accepting the trading result disclosed by the assessee, and on the other hand, has held the high-sea sales to be 'not genuine'. There is an inherent contradiction in the same. It is observed that the assessment order of the A.O in the present case also suffers from the above stated contradictions.

(b) On the issue, as to the whether Section 68 will be made applicable to the facts of the present case. It is not in dispute that the sales have been duly recorded in the books of account. The same was also reflected in the audited report, ITR and also in the VAT return. The VAT returns of the relevant period originally filed have not been revised. The A.O has not questioned the quantum of sales reflected by the appellant. The A.O had

just considered the cash deposited after 8.11.2016 from 10.11.2016 to 15.11.2016 as unexplained cash considering to have been generated out of bogus cash sales without considering the cash in hand of the appellant and specifically identifying the sales considered bogus by him. There was no bar on making cash sales below Rs. 2 lakhs without KYC of the customers. The ratio of the decision is applicable to the facts so far as sales effected in cash is concerned. In these circumstances, addition of these amounts cannot be made u/s 68 of the IT act 1961.

6.3.2 In the case of *Kishore Bhai Kanhaiya* (ITA No. 1220/Del/2011), the Hon'ble ITAT Delhi was examining the issue of cash sales had held as under:

*"5. It is further relevant to note that the assessee was maintaining stock register in respect of the items dealt with by him. A copy of the relevant parts of the stock register is available on pages 44 to 49 of the paper book. This stock tally was admittedly before the Assessing Officer, who has not pointed out any deficiency in them. There is no law which prohibits a trader or a manufacturer in making cash sales. The Hon'ble Bombay High Court in *R.B. Jessaram Fatehchand (Sugar Deptt.) Vs. CIT (1970) 75 ITR 33 (Bom.)* has held that sales can be in cash and it is hardly necessary for the seller to bother about the name and address of the purchaser. We find that so long as the availability of stock is there and there is nothing adverse against the cash memos issued by the assessee, such cash sales cannot be doubted. Here it is pertinent to note that the volume of such cash sales at Rs. 22.06 is to be seen in the light of the assessee's total turnover of Rs. 10.29 crore. It is but natural that if a customer makes cash in ITA No. 980, 1220 /Del/2011 & CO No. 89/Del/2011 *Kishore Jeram Bhai Khaniya* purchase and lifts the goods, there is no duty cast upon the seller to insist for the address of the purchaser. In the light of the fact that the stock record was available with the assessee, which evidenced the making of sale, we fail to appreciate as to how any addition can be made by treating cash sales as bogus.*

6. *There is another dimension to this issue. The Assessing Officer made addition of Rs. 22.06 lacs u/s 68 of the Act, which contemplates*

the making of addition where any sum found credited in the books of the assessee is not proved to the satisfaction of the A.O. It is only when such a sum is not proved that the Assessing Officer proceeds to make addition u/s 68 of the Act. We are dealing with a situation in which the assessee has himself offered the amount of cash sales as his income by duty including it in his total sales. Once a particular amount is already offered for taxation, the same cannot be again considered u/s 68 of the Act. In fact, such addition has resulted into double addition.

7. In view of the foregoing discussion, we are of the considered opinion that the id. CIT(A) was not justified in sustaining this addition. The impugned order is overturned on this issue and the addition is directed to be deleted. This ground is allowed."

6.3.3 The Hon'ble Delhi High Court in the case of CIT vs. Kailash Jewellery House [ITA No. 613/2010], decided the appeal of the revenue, which had appealed against the order of the CIT(A) and ITAT, on the grounds that the amount of Rs.24,58,400/- received in cash in the bank account, the assessee failed to establish any nexus of such deposit to any source of income. It had held as under:

"3 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 doubted 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.

4. 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.

5. 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."

6.3.4 The Hon'ble Gujarat High Court had approved the ITAT order in the case of Vishal Exports Overseas Ltd. ITA No. 2471/2009 holding that where the A.O has accepted the sales realization as income, addition on the same account u/s 68 of the Act would be tantamount to double taxation of the same income. Similarly, the ratio of decision of Hon'ble ITAT, Hyderabad in the case of S.B. Steel Industries (ITA No. 264/Hyd/2011), has held that it is an established fact that only cash credits can be considered u/s 68, but, not trade receipts. The Hon'ble Tribunal took into consideration the decision of the coordinate bench of ITAT in the case of ITO vs. Rajender Kumar Kataria (106 TTJ 712) (Jodhpur) that held the amount received by the assessee were cash credits but recovery from the dates which were available in the books of account. Since the assessee has furnished details debtors and also entries made in the books of account, the invocation of Section 68 was held to be not applicable to trade recovery made by the assessee during the year. In the present case, the cash deposited in the bank is nothing but in the nature of trade-receipts only .The Hon'ble ITAT, Ahmadabad in the case of Shree Sanand Textile Ltd. ITA No. 995/Ahm./2014, the Hon'ble ITAT noted that the provision of Section 68 of the Act can be attracted where there is a credit found in the books of accounts and the assessee failed to offer any explanation or the offer made by the assessee is not satisfactory in the opinion of the assessing officer. The assessee has explained to the authorities below that the impugned amount represents the sale which has not been doubted by the authorities below. Thus, in the considered view of the Hon'ble ITAT, the impugned amount cannot be treated as unexplained cash credit under section 68 of the Act, merely on the grounds that the assessee failed to furnish the details of the existence of the parties. Further, the Hon'ble Tribunal also 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. The Hon'ble Tribunal also held that there was no iota of evidence having any adverse remark on the purchase shown by the assessee in the books of account. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/finding. Hon'ble Delhi High Court in the case of Akshit Kumar vs. ACIT [ITA No. 6527/Del/2017] has held that neither any item in the trading account, nor gross profit has been rejected, sales cannot be discarded completely to hold that is unexplained money. In a similar case pertaining to CIT vs. Jindal Dyechem Industries Pvt. Ltd. it was held that the AO has not proved that the assessee received something over and above what was entered in the books of accounts maintained. No specific defect was pointed out in the audited accounts. In such circumstances, it was not upto him to add back assessee is return of fictional income.

6.3.5 The Hon'ble IT AT, Delhi in the case of Agson Global Pvt. Ltd. vs. ACIT [ITA No. 3741 to 3746/Del/2019] and [ITA No. 5264 to 5269/Del/2019], in its order dated 31.10.2019 have allowed the appeal of the appellant, which was based on an issue emerging out of demonetization event. The principles laid down also have a bearing on the facts of the present case. The assessee (Agson Global) was engaged in the trading of dry fruits and kirana items. The cash received against sales is subsequently deposited into banks from time to time. Cash sales and corresponding cash deposits into the bank accounts of the assessee have been a regular feature of the assessee's business. The nature and source of cash deposited between 09.11.2016 to 30.12.2016 was matter of investigation. The following observations have been made by the Hon'ble Tribunal before allowing the appeal on the issue of demonetization:

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•.....Growth in sales compared to earlier two years in case of the assessee shows similar trend. Thus, it cannot be said that assessee has booked non-existing sales in its books post demonetization.

-*There is no higher booking of sales by the assessee compared to earlier years which can justify the stand of the revenue that assessee has booked non existing sales in November 2016.*
-*Thus compared to earlier years there is substantial down fall in sales of December 2016 (Post demonetization). Thus, it cannot be said that trend of sales in this year post demonetization, assessee has booked higher sales.*
-*On analyses of cash sales to cash deposit ratio Thus, it is apparent that whatever cash sales recorded by the assessee for the year is deposited equal amount of cash in its bank account.*
-*On analysis of the month wise sales it is apparent that in the month of May, June and October there is a substantial jump in the sales compared to earlier year. However, the revenue has not questioned it. It is also not the case of the revenue that by backdating the entries in its accounting software it has increased the sales fictitiously.*
-*Further jump in sales in the month of March 2017 compared to same month in earlier year shows phenomenal jump of more than thousand percent. It has been accepted by the revenue. Therefore, it clearly suggests that there is a growth in the business of the assessee beyond pre demonetization and post demonetization.*
-*The assessee has maintained the complete stock tally in its accounting software. Such books of accounts are audited, quantitative records produced before the tax auditor, such quantitative records are certified by tax audit and no questions have been raised by the assessing officer. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details.*
-*Therefore, it was submitted that there is neither substantial downfall of substantial increase in the gross profit and net profit compared to earlier years.*
-*Thus, on reading of these proceedings it, it is amply clear that the AO did not make any enquiry on the material submitted by the*

assessee. He merely proceeded on statistical analysis, which is also partial as stated by us in earlier paragraph, to make the addition on account of cash deposits. He neither found any back dating of the entries, evidence of bogus sales, evidence of bogus purchases, and non-existing cash in the books of account.

•.....With respect to the deposit of the cash on hand with the various bank, the explanation of the assessee that no such bank was accepting such a huge cash at one go and therefore assessee had to deposit the cash in various banks. The assessee also submitted that that in the same bank assessee has deposited cash in its 2 different branches which itself proves that the banks were not accepting such a huge deposit. Even otherwise, it was submitted correctly that merely because the cash holding as on 8/11/2016 was not deposited immediately cannot lead to conclusion that assessee did not have that cash. It can merely lead to a suspicion but based on this addition cannot be made without making further enquiry and conclusively proving that assessee did not have that kind of cash available with it. Even otherwise, if the assessee had to introduce his unaccounted money he would have deposited it at the first instance.

•.....Assessee also filed its VAT returns, which are not found to be in variance with the accounting and tax records. Therefore, it cannot be substantiated that the assessee has backdated the transactions of the sale.

6.3.6 In a recent judgement in the case of Asst. Commissioner of Income Tax, Central Circle-1 Vs. M/s Hirapanna Jeweller, Visakhapatnam I.T.A. No.253/Viz/2020 for AY 2017-18 on the issue of cash deposits of demonetized currency, the ITAT Visakhapatnam Bench in its order dated 12.5.2021 had held as under:

"4. Against the order of the AO, the assessee went on appeal before the CTT(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 CTT Vs. Ka Hash 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 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 Sumati Dayal vs. CIT and Durga Prasad More's case (supra) has no application in assessee's case. The Id. CTT(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.

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, 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 dosing 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 on 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 1TR 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 demonetized 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 assessee in his books of account and trading in such stock including purchase, sale, opening and dosing 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 safe 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 dippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through the country.

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 Vishai 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."

7. *From the above discussion, with respect to the facts on record and judicial pronouncements on the subject, the following observation and conclusions can be drawn:*

i) The AO had accepted the sales figures, quantitative stock, cash book, purchases and books of accounts. The appellant has filed VAT returns, which matches with turnover shown in Income Tax Return and the appellant has established existence of adequate stock to effect sales. There is no adverse finding by the AO on any of these facts.

(ii) The appellant maintains regular books of account, which are audited by independent Auditor. The cash sales and the corresponding cash deposits in banks are duly reflected in books of the appellant in the respective years. The books of account and the entries pertaining to cash sales and cash deposits have been accepted by the Department in the assessments framed in the past years. The audited financial statements form part of the regular returns filed by the appellant.

(iii) The fact that cash sales and cash deposits in banks are regular features of the appellant's business (in the pre-demonetization, demonetization and post demonetization period) has not been controverted by the AO and is clearly explicit from the data on record.

(iv) There is no mandatory requirement of obtaining KYC of customers to whom cash sales below Rs. 2 lakhs had been made. The appellant had made cash sales of Rs. 60 lakhs on 5th Nov 2016 which had been accepted. It had made cash sales of Rs. 175 lakhs on 7.11.2016, out of which deposits made in bank on 8th of Rs. 119 lakhs had been accepted by the AO. The sales bills of 5th, 7th & 8th Nov 2016 are of similar nature below Rs. 2 lakhs, without any KYC of the customer. The AO chose to accept the cash bills against which the cash have been deposited till 8th Nov 2016, but alleged remaining sales bills to be bogus as these were to unidentifiable persons. This action of the AO, without bringing any evidence on record, just on the ground that the cash was deposited after demonetization is not sustainable.

(v) *It is observed that the cash sales of Rs. 10.49 cr. made in the month of Oct 2016 and cash sales of Rs. 2.15 Cr. made from 1.11.2016 to 7.11.2016 had been accepted by the AO. He had accepted the part of total cash sales of Rs. 1.75 Cr. made on 7.11.2016, but alleges that cash sales made on 8th Nov 2016 in the same range as on 7.11.2016 are bogus. It is reiterated that there was spurt in cash sales on 8th due to panic amongst public for replacing the demonetized SBN's with some tangible assets and gold/jewellery was most preferred. However, the cash sales of the appellant on 8th were in same range as on 7.11.2016. It does not show any extraordinary abnormality. There was no occasion for the appellant to deposit the cash in hand arising out of cash sales on 8.11.2016 & earlier available cash in hand to deposit earlier than 10.11.2016. There is no evidence that the cash sales made on 7th (partly) and 8th fully are backdated cash sales entries. There is no abrupt spurt in cash sales reported by the appellant. The data of cash sales & cash deposits have clear co-relation in the case of the appellant and it is a regular feature. The AO accepted the Cash deposited in banks during the F.Y. 2016-17 in the pre- demonetization upto 8.11.2016, post-demonetization period from January to March 2017, but has refused to accept the same modus operandi with respect to the cash deposited during the period 09.11.2016 to 15.11.2016 merely on the pretext that the same was deposited during the demonetization period and hence was suspicious in nature.*

(vi) *Pursuant to demonetization announced by the Government of India on 08.11.2016, the RBI stipulated that the demonetized old currency notes of ₹ 1000 & ₹ 500 could be deposited into the banks only between 10th November 2016 until the closing of banking hours on 30th December 2016. The appellant claimed that it advised by the banks to deposit the said amount in tranches. In consonance with the advice received from the banks, the appellant had deposited the said amount in 3 tranches within a period of 5 days (10.11.2016 to 15.11.2016). Hence, it cannot be inferred against the appellant for backdating the sales bills.*

(vii) It is also not the case of the AO that the cash deposited in the banks during the demonetization period was in excess of what was available in the cashbook duly audited by the auditor. The AO had disregarded the fact that there would have been cash sales on 8th Nov, even before the demonetization was announced at 8PM on 8th Nov 2016 and there would have been cash in hand from cash sales of earlier days of cash sales also. The AO had considered whole of cash deposits made by the appellant between 10.11.2016 to 15.11.2016 on account of bogus cash sales without even identifying any specific bogus cash sales or cash in hand available on 8th Nov 2016. The AO had acted on suspicion without bringing any reliable data of facts on record, just assuming & presuming that the all amounts deposited in the period 8.11.2016 to 30.12.2016 represent tainted money.

(viii) In the absence of any adverse finding with respect to the acceptability/veracity of books of account, the action of AO cannot be sustained. Making an addition u/s 68 of an amount, which is already accounted for as sales would tantamount to double addition. The facts of the case of the appellant are supported by various judicial decisions cited above on this issue.

7.1 On the basis above, it is observed that the AO did not make any enquiry on the material submitted by the appellant. The AO had not found any back dating of the cash sales entries or evidence of bogus sales/purchases or evidences of unavailability of stock and non-existing cash in the books of accounts particularly in the month of Nov 2016. There is no statistical analysis of data given in the assessment order, to prove any alleged irregular features of cash sales effected by the appellant. The AO merely proceeded on presumption that the cash deposits made by the appellant after 8.11.2016 represented tainted unaccounted money ploughed in the bank through route of bogus sales even without considering the factual position and surrounding circumstances. Thus, the AO while making the addition u/s 68 and rejecting the explanation offered by the appellant with respect to the nature & source of the cash deposited in various bank accounts during the demonetization period (i.e. 09.11.2016 to 15.11.2016) have acted merely on surmises, conjectures,

suspicion, presumptions and assumptions. The contention of the appellant is backed by the data analyzed in various para above and the legal position cited above in various judicial pronouncements on this issue. The action of the AO in arriving at the conclusion that the appellant failed to discharge the onus of proving the genuineness of the cash deposited in the bank account amounting to Rs.2,43,37,500/- u/s 68 of the Act is erroneous. In these facts & circumstances of the case, it is held that the cash sales had been a regular feature of the business of the appellant and the cash of Rs.2,43,37,500/- deposited by it in the period 10.11.2016 to 15.11.2016 was out of the cash in hand as per the cash book of the appellant. The cash represented mainly the cash in hand available on 8.11.2016 (after making cash deposit of Rs.19Cr on 8.11.2016) and cash sales effected on 8.11.2016. There is no abnormality observed in the cash sales effected in Nov 2016 (particularly on 7th/8th Nov 2016) vis-a-vis other proceeding month of Oct 2016 or preceding years cash sales data. The cash deposits of Rs.2,43,37,500/- made by the appellant between the period 10.11.2016 to 15.11.2016 are out of regular cash in hand of the business of the appellant. Thus, the appellant had explained satisfactorily the source of cash deposits of Rs.2,43,37,500/- made by it, in its bank account after demonetization. Accordingly, the addition of Rs.2,43,37,500/- made by the AO u/s 68 r.w.s. 115BBE is not sustainable and is hereby deleted. These grounds of appeal are allowed."

13. The Id. CIT(A) has duly analyzed the sales & purchases, stock, cash and compared it with F.Y. 2014-15, F.Y. 2015-16 and also F.Y. 2016-17. The day wise cash book has been examined, the same have been incorporated in this order. The comparative data of purchase and stock for four years to determine the regularity of the cash sales has been examined. No defects have been pointed in purchase, sale and stock. There have been substantial cash sales in all the four years and the AO has accepted sales in cash for all the years except for the period between 11.11.2016 to 15.11.2016. In the other years, about 88% of the stock has been sold in cash and the same

cash has been deposited in the bank for which the revenue has no objection. No discrepancy in the VAT return has been found out. No specific defects in the books of accounts of the assessee have been found out and there was no negative stock on any of the dates which only goes to prove that the cash sales have been made against the available stock. Further, the Assessing Officer has accepted the sales and hence the proceeds of the sales cannot be considered u/s 68 of the Income Tax Act, 1961. The Id. CIT(A) has rightly placed reliance in the comparable judgments of the Tribunal in the case of Agson Global Pvt. Ltd. vs. ACIT (supra) and ACIT, Central Circle Vs. Hirapanna Jewellers, Vishakhapatnam (supra).

14. Having gone through the entire record viz., Assessment Order, submissions of the assessee before the AO, submissions of the assessee before the Id. CIT(A), arguments of the Id. DR, arguments of the Id. AR and the order of the Id. CIT(A), we find no reason to interfere with the analysis, logic, ratio and reasonableness of the order of the Id. CIT(A).

15. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 23/04/2024.

Sd/-

(Astha Chandra)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 23/04/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR