

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and**

SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

**ITA No.2255/DEL/2024
(Assessment Year: 2017-18)**

Sanjay Malhotra,
HS – 23, Second Floor, Kailash Colony,
New Delhi – 122 002.

vs. ITO, Ward 29 (3),
Delhi.

(PAN : AAIPM0514F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K. Sampath, Advocate
Shri V. Rajkumar, Advocate
REVENUE BY : Shri Manish Gupta, Sr. DR

Date of Hearing : 17.07.2025
Date of Order : 13.10.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. This appeal is filed by the assessee against the order of the ld. Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [for short 'ld. CIT (A)'] for the Assessment Year 2017-18.
2. Brief facts of the case are, assessee filed its return of income for Assessment Year 2017-18 on 27.10.2017 declaring an income of Rs.15,06,840/-. The case was selected for complete scrutiny under CASS. Notices under section 143(2) and 142(1) of the Income-tax Act,

1961 (for short 'the Act') were issued and served on the assessee through ITBA portal. During assessment proceedings, Assessing Officer observed that during demonetization period from 09.11.2016 to 30.12.2016, the assessee had deposited cash of Rs.1,29,47,000/- in HDFC Bank. The assessee was asked to furnish the source of cash deposits. Further assessee was asked to furnish comparison of cash deposits vis-à-vis cash sales made during the corresponding preceding year. In response, assessee submitted as under :-

S.N.	Particulars	Cash in hand
1	31.03.2016	4,71,936.52
2	31.03.2017	75,589.10

Statement of cash deposit in HDFC bank

S.N.	Dated	Particulars	Deposit amount
1.	18.11.2016	Amount of cash deposit in bank	Rs.1,26,98,900.00
2.	29.11.2016	Minor daughter deposit cash	<u>Rs. 2,49,000.00</u>
			<u>Rs.1,29,47,000.00</u>

Sources of cash deposit in HDFC bank

Period	Particulars	Cash in hand
1.11.2016	Lahore Jewellers	Rs. 4,56,221.95
1.11.2016 to 8.11.2016	Sales during the period	<u>Rs.1,28,33,321.48</u>
		<u>Rs.1,32,89,543.43</u>

3. After analysing the sales ledger of the assessee submitted before the Assessing Officer, the Assessing Officer prepared the chart as under :-

Average monthly sale during F.Y. 2016-17	Rs.18,49,871
Average daily sale during F.Y. 2016-17	Rs.60,817
Average monthly sale during Apr to Oct 2016	Rs.8,83,967
Average daily sale from 01.04.16 to 30.10.16	Rs.29,465
Average daily sale from 03.11.2016 to 08.11.2016	Rs.21,48,881
Cash sale on 03.11.2016	Rs.16,25,647
Cash sale on 04.11.2016	Rs.20,21,183

Cash sale on 05.11.2016	Rs.22,83,415
Cash sale on 06.11.2016	Rs.29,20,599
Cash sale on 07.11.2016	Rs.19,24,099
Cash sale on 08.11.2016	Rs.21,18,345

4. With the above analysis, the Assessing Officer observed that average daily sales from 03.11.2016 to 08.11.2016 is higher than the average monthly sales of pre-demonetization period and further observed that majority of the sales made by the assessee during 03.11.2016 to 08.11.2016 is between Rs.1.8 lakhs to Rs.2 lakhs in cash. There were no details about the parties and there were no sales between 09.11.2016 to 28.11.2016. He observed that the cash sales recorded by the assessee between 03.11.2016 to 08.11.2016 are actually sales made during demonetization period and accordingly assessee made the cash deposited in its account on 18.11.2016. Further after analysing the purchase ledger, Assessing Officer observed that major purchases made by the assessee from M/s. Manikaran International P. Ltd. and on analysis of bank statement of the assessee, it was observed that assessee has made following payments to M/s. Manikaran International P. Ltd.

Date	Payment
30.05.2016	10,00,000
04.06.2016	10,39,286
20.09.2016	10,00,000
04.10.2016	10,00,000
05.10.2016	4,01,000
05.11.2016	10,00,000
22.11.2016	16,09,766
04.01.2017	10,00,000
07.02.2017	10,00,000
Total	90,50,052

5. He further observed that on perusal of sale ledger, it is noted that total sales till 31.10.2019 amounts to Rs.61,94,670/- which is commensurate to the payment made against purchase till 05.11.2019 (marked as bold in the above table) totaling to Rs.5,40,286/-. No payment in the bank account of the assessee is reflecting against purchase which can justify the abnormal cash sale during 01-08 November 2016.
6. With the above observation, a notice was issued to the assessee and further details were asked from the assessee to submit party-wise details of purchases made, statement of bank account reflecting payment against purchases, stock register and VAT returns (original and revised).

Subsequently, assessee furnished a reply on 20.12.2019 as under :-

"Kindly refer to your notice under section 142(1) dated 11.12.2019, following further submission is made:

It is submitted in this connection as under:

(1) That the assessee is dealing in purchase/sales of jewellery at Kailash Colony Market, New Delhi-110048. It is retail market. The assessee is maintaining computerized books of accounts consisting of cash book, ledger, purchase & sale bills, vouchers, bank account and day to day stock book of each and every items of sales and purchase. All the purchases are on credit basis. The payment of purchases were made by either account payee cheque or RTGS. No cash purchases of gold or diamond was made.

(2) That the books of accounts of the assessee is subjected to audit and was audited during the year. Audit report under section 44AB was filed. No discrepancy was recorded in the audit report.

(3) Trading results of the assessee of last three years shows following results :

Assessment Year	Sales (Rs.)	Gross Profit (Rs.)	Rate (Rs)	Net Profit	Rate
2015-16	1,15,50,535	37,17,906	33%	8,79,143	7.61%
2016-17	1,24,48,484	38,46,244	31%	9,06,384	7.28%
2017-18	2,20,15,954	48,86,100	22.19%	15,89,701	7.22%

(4) That the trading account is supported by day to day stock book consolidated copy of stock register has already been filed item-wise and value wise. The 83.5% purchases are from M/s Manikaran International Pvt. Ltd, assessed in company circle at PAN: AAFCM1783N. No payment of purchases was made in cash. All the payment are of purchases were by account payee cheques. Confirmed copy of account of the party has already been filed.

(5) Cash deposit of Rs. 1,26,98,000:

That the assessee has made sales during the period from 01/04/2016 to 08/11/2016 at Rs.1,90,21,092 out of the said sales the assessee was having cash in hand on 08/11/2016 at Rs.1,27,50,818. Out of said cash the assessee had deposited cash of Rs.1,26,98,000 on 18/11/2016 in HDFC Bank Ltd. The part of the cash used in expenses. So the cash deposit in bank account is out of all the sales recorded in the books of account which was audited under section 44AB. Audit report of the same has already been filed. The assessee is subject to Vat. No Vat return was revised either earlier or subsequent to demonetization period. All the documents in support of purchases/sales and cash deposit in HOFC Bank earlier and during demonetization period and subsequent to the same has already been filed. There is no unexplained cash deposit in bank account. It is from regular audited books of accounts.

(6) That the assessee firm has already filed summarized details of showing opening cash in hand on 01/04/2016 along with details of cash sales and cash in hand as on 08/11/2016. From the chart it is evident that no cash was withdrawn by the assessee from bank during the period 01/04/2016 to 08/11/2016. The assessee had sufficient cash in hand built out of cash sales.

(7) That as explained in earlier written submissions, the assessee firm is engaged in the business jewellery. Mostly the sales are on cash basis. Cash sales take place on a day to day basis in the regular course of business. The assessee firm has already filed summarized detail of showing opening cash in hand as on 01/04/2016 alongwith details of cash sales, other cash receipt from sundry debtors, cash deposit in bank and expenses incurred in cash and the closing balance of cash in hand as on 08/11/2016. From the chart it is evident that no cash was withdrawn by the assessee from bank during the 01/04/2016 to 08/11/2016 as the assessee had sufficient cash in hand built out of cash sales. It is further evident that cash deposit in bank is out of this cash in hand as on 08/11/2016. The cash deposit of old & new currency was made during the demonetization period in various bank account of the firm. The detail has already been filed.

(8) The cash sales made by the assessee firm from 01/04/2016 to 08/11/2016 are duly verified from the regular books of accounts maintained in

the course of day to day business which also includes stock records. All the sales made by the assessee firm are duly reflected in the stock records maintained by the firm. The assessee firm has already filed a comparative chart for the last year showing the retail sales, etc. between the period 01/04/2015 to 08/11/2015 also and it is evident that the cash sales is an inherent feature in the trade of the assessee. It is also stated that the cash sales made during the year are all reflected in the stock records of the assessee as would be evident from the perusal of the detail field. The quantitative tally of stock has also been filed. The sales bills are available. All the number of sale bills has been given in cash book and sale account.

(9) In view of above it is evident that cash deposited by the assessee in banks account between 09/11/2016 to 30/12/2016 as per detail already filed is fully explained and accounted for in the hand of the firm. It is duly verifiable from books of account maintained in the regular course of business which were audited by the auditor. No error was reported in the audit report under section 44AB of IT Act. The entire income is on account of sales including the cash sales made is disclosed and accounted for in the audited accounts of the assessee firm. The assessee has disclosed total sales of Rs. 2.20 crores in its audited accounts for the instant year. The assessee is subjected VAT+GST. No Vat return was revised earlier or subsequent to the demonetization period. All the sales have accounted in Vat assessment.

(10) It is further stated that it is a case of a retail trade where majority of the sales is on cash only and it is an inherent nature of the business of the assessee firm. The sales made are duly verifiable from the day to day accounts maintained by the assessee firm and are also reflected in the stock records. It may thus be evident that no adverse inference is required to be drawn as the cash deposited in demonetization period is out of regular audited books of account. The assessee has already paid tax on profit of the turnover. The same may be accepted.

7. Not convinced with the submission of the assessee, Assessing Officer observed that sales have been abnormally increased during 03.11.2016 to 08.11.2016 wherein average daily sales was shown as Rs.21,48,881/- as compared to Rs.60,817/- (average daily sale of the year). Accordingly, he proceeded to make the addition of Rs.1,29,47,000/- under section 68 of the Act.

8. Aggrieved with the above order, assessee preferred an appeal before NFAC, Delhi and filed detailed submissions. After considering the submissions and assessment order on record, ld. CIT(A) dismissed the appeal preferred by the assessee and sustained the addition made by the Assessing Officer. However, ld. CIT (A) sustained the addition u/s 69 of the Act instead of section 68 of the Act as made by the Assessing Officer.
9. At the time of hearing, ld. AR of the assessee submitted as under :-

“4.1 Ground No. 1 is against the addition made in a sum of Rs.1,26,98,000/- in respect of cash deposits into the bank by treating the same as ‘unexplained income’. The AO has misread the facts in the table as extracted in the assessment order on page 3 and in the instant written submissions in para 3.1, it will be noticed that the sales during the period 03.11.2016 to 08.11.2016 are in the vicinity of Rs. 16 lacs to 29 lacs per day. On the day of demonetization i.e. on 08.11.2016 the sale was in a sum of Rs.21,00,000/-+ which was marginally higher than the sale of Rs.19,00,000/-+ the previous day and much lesser than the Rs.29,00,000/-+ on 06.11.2016. In this way there was nothing extraordinary by way of sales on 08.11.2016. That being the case, the sales were as per the normal pattern of the business and so the AO was wrong in misreading the trend as one occasioned due to demonetisation.

4.2 The basic principle of law is that primary evidence would have precedence over secondary evidence. That fundamental principle has been given a go-by by the AO. The primary evidence in this case is in the form of entries in the books of accounts. Those entries in the books of accounts, constituting primary evidence, has not been rejected by the AO. Being so, the secondary evidence in the form of averages based on past results is completely alien to the task of verification or authentication of the book results. The AO seriously erred in ignoring the primary evidence without citing any anomaly therein. Such act of the AO cannot be countenanced either on the basis of facts or on the authority of any law.

4.3 The books of accounts of the Assessee are supported by a quantitative tally of stock. Purchases and sales are fully vouched. In that event the cash generation as emanating out of sales in the books of accounts is beyond denial. That is particularly so when the stock register is maintained on a day to day basis and also on an item by item basis. Also there is no payment for any purchase at any time made in cash by the Assessee. That reinforces the fact of genuineness of the purchase transactions. Besides the books are audited and are certified without any qualification. They have been accepted in

assessment. Thereafter the AO could not have proposed any addition under any pretext.

4.4 The items dealt with by the Assessee were VAT bound. VAT returns have been filed with the concerned Authorities. Those returns stand accepted by the concerned authorities. In such a scenario, and with one statutory authority accepting the accounting version, the AO in this case could not have acted adversely to the interests of the assessee.

4.5 It is a well-known and well-accepted business practice, particularly in the case of jewellers, to carry adequate cash so as to be able to make payment to customers who bring in old jewellery for sale. Since the transactions of jewellery are always in high denominations, any jeweller is constrained to retain adequate cash balances which are generally in the form of high denomination notes to get over storage-space constraints. It is those high denomination notes, which in the wake of demonetization, were scrapped by the Government. Naturally as a consequence it will be those high denomination notes only which would go for exchange to the bank for new currency. The AO has miserably failed to appreciate this aspect of the matter.

4.6 The essential features of cash deposits during the demonetization period have been lucidly and succinctly dealt with by the Vishakapatnam Bench of the Tribunal in ACIT vs. Hira Panna Jewellers (2021) 189 ITD 608. Being on similar facts this order is relied upon for relief in the subject case also.

4.7 According to the AO the deposits were to be added to the income of the Assessee u/s. 68 of the Act. The AO erred in failing to appreciate that Sec.68 of the Act applied to cash credits. It does not apply to sales receipts. Besides Sec.68 of the Act deems a certain cash credit as income. The need to deem income arises exclusively in a situation where the amount in question is not disclosed by the Assessee as his income. In the subject case the entirety of the sales have been declared as income. That fact is not denied by the AO. The AO has also accepted the books of accounts. The deeming of the amount as income by the AO of a sum already returned by the Assessee by way of sales is a mere duplication. Despite after accepting the books of accounts, to do so, would be compounding the error. The Gujarat High Court has ruled against such an act in CIT vs. Vishal Exports in TA Nos. 2471, 2473, 2475 & 2476/2009 dated 03.07.2012. That apart at the level of the apex Court it is settled that documented evidence regarding purchases and payments therefor through bank would establish the genuineness of the transaction in Pr.CIT vs. Tejua Rohitkumar Kapadia (2018) 98 Taxmann.com 325.

4.8 While deciding the case, the NFAC has changed the head of addition from Sec.68 of the Act proposed by the AO to Sec.69 of the Act. Sec.69 of the Act envisages investments made by the Assessee during the financial year to which the Assessee offers no explanation about the nature and source or the explanations as offered by the Assessee is unsatisfactory in the opinion of the AO. In the subject case, the investments made by the Assessee remains

unnamed and unstated by the NFAC. That has been done by the NFAC even after there are a catena of decisions to the effect that the provision itself can be invoked only in the event of the investment being identified and named by the Authorities. The NFAC does not identify or name any investment by the Assessee at all. The consideration received on the sale of jewellery is not an investment with the Assessee. It is relatable to the Assessee's stock-in-trade. Being so, the alteration of the section by the NFAC to Sec.69 is apparently erroneous and unacceptable on facts and in law. Further, the nature and source of the generation of cash is directly relatable to the sale made by the Assessee in respect of which irrefutable evidences by way of sale invoices have been furnished by the Assessee. No fault has been found by any of the Authorities therein. In such circumstances, Sec.69 of the Act would have no application to the facts of the case for there was neither any investment nor did the nature and source of the amount ever remained unexplained by the Assessee. Thus both the Authorities seriously erred in applying section 68 and section 69 to the subject case.

4.9 Ground No. 2 is with regard to an addition made u/s. 68 of the Act on account of the cash deposited in the account of the minor daughter in a sum of Rs. 2,49,000/-. There is no separate discussion either by the AO or the NFAC on this issue except by way of a perfunctory mention on page 2 by the AO where the sums deposited in the bank on 18.11.2016 and 29.11.2016 in amounts of Rs. 1,26,98,000/- and Rs. 2,49,000/- have been summed up to Rs.1,29,47,000/-. While concluding the assessment after stating the addition has to be in a sum of Rs.1,28,93,388/-, the AO adopted the figure of Rs. 1,29,47,000/- for addition. Both the Authorities have treated this sum of Rs. 2,49,000/- taken as per Ground No.2 as part of the main addition of Rs. 1,29,47,000/-. In the circumstances the addition as proposed separately in a sum of Rs. 2,49,000/- emerges, as it apparently does, out of the deposit of sale consideration into the bank is required to be treated and dealt with in the same manner as the addition of Rs. 1,26,98,000/- is treated. Consequently, therefore, the same arguments as to the main amount of Rs. 1,26,98,000/- applying to the subject addition too and on the same grounds, it is prayed that this addition must also be quashed.

4.10 Grounds Nos. 3 and 4 are consequential.”

10. On the other hand, Id. DR of the Revenue relied on the findings of the lower authorities and brought to our notice page 31 of the appellate order.
11. Considered the rival submissions and material available on record. We observe that the Assessing Officer made assumption that the sale pattern will remain same for whole of the year. Accordingly, he proceeded to

determine the sale for the period based on the average sale. He also not considered the available cash in hand at the time of demonetization i.e. on 08.11.2016. Further, he has not found any issue with regard to movement of stock. Assessing Officer proceeded to make addition on the basis that the cash sales declared during demonetization are more than the average cash sales in the past. It is fact on record that the sales declared by the assessee are during festive period and also during demonetization, huge sale of gold and jewellery were recorded. This fact cannot be denied.

12. Further we observe that the assessee had already declared the sales and offered to tax. The cash sales cannot be subjected to addition u/s 68 or 69 of the Act. It leads to the situation wherein the same income is subjected to tax twice. Therefore, we are inclined to allow the grounds raised by the assessee as the Assessing Officer has not brought any cogent material to make addition, merely on the basis of assumptions. The assessee has demonstrated that the stock movement and sales are matching the books results.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 13TH day of October, 2025.

SD/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

SD/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 13.10.2025
TS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI