

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1426/DEL/2021 [A.Y. 2017-18]

Harisons Diamonds Pvt Ltd Shop No. 101, Building No. 2606/4 Solitare Plaza, Gurudwara Road Karol Bagh, New Delhi	Vs.	The A.C.I.T Central Circle - 1 Delhi
---	------------	--

PAN: AACCH 1163 N

ITA No. 2012/DEL/2021 [A.Y. 2017-18]

The A C.I.T Central Circle -1 New Delhi	Vs.	Harisons Diamonds Pvt Ltd Shop No. 101, Building No. 2606/4 Solitare Plaza, Gurudwara Road Karol Bagh, New Delhi
---	------------	---

PAN: AACCH 1163 N

(Applicant)

(Respondent)

**Assessee By : Shri GautamJain, Adv
Shri Lalit Mohan, CA**

Department By : Shri Sapna Bhatia, CIT-DR

**Date of Hearing : 20.02.2024
Date of Pronouncement : 23.02.2024**

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned cross appeals by the assessee and the Revenue are preferred against the order of the Id. CIT(A) - 23, New Delhi dated 13.08.2021 pertaining to Assessment Year 2017-18.

2. Since the underlying facts are common in the cross appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

ITA No. 1426/DEL/2021 [Assessee's Appeal]

3. The grievances of the assessee read as under:

"1 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in determining the income of the appellant company at Rs. 3.46.99,653/- as against declared income at Rs. 15,07,573/- in an appellate order passed dated 13.08.2021 us 250 of the Act.

2(i) That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the addition of cash sales to the extent of Rs. 3,25,52.833/-made during the period 1.10.2016 to 8.11.2016 and erroneously held to be unexplained credit u/s 68 of the Act read with section 115BBE of the Act.

(ii) That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the approach adopted to assume and hold that some part of the cash sales for the period 01.10.2016 to 08.11.2016 represent unexplained cash credits is illegal, invalid and untenable.

(iii) That while making the above addition, the learned Commissioner of Income (Appeals) has failed to appreciate the factual substratum of the case, statutory provisions of law and as such, addition so made is highly misconceived, totally arbitrary, wholly unjustified and therefore, unsustainable

(iv) That the entire addition is based on whimsical assumptions, arbitrary inferences and overlooks the factual position on record and therefore, the same is invalid, illegal and hence unsustainable.

(v) That furthermore the learned Commissioner of Income Tax (Appeals) has proceeded to make the addition on mere speculation, theoretical assumptions and allegations and assertions, without there being any supporting evidence and is therefore not in accordance with law.

vi) That once the learned Commissioner of Income Tax (Appeals) has not disputed that sales made were duly disclosed in VAT return and also in books of accounts maintained by the appellant audited under the Companies Act, 2013 and also under section 44AB of the Act, no adverse inference could be drawn in respect of the declared sales by the appellant company.

(vii) That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in not appreciating that once the purchases declared in the books of accounts were duly accepted then no subjective assumption and presumption could be made a basis to assume, allege and conclude that sales made out of such purchases were unexplained cash credits taxable under section 68 of the Act.

(viii) That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that having accepted books of accounts, sales made could not be regarded as unexplained credits.

(ix) That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that aforesaid sales as made by the appellant were supported by availability of stock in the books of accounts whose availability is not disputed and denied and is otherwise too supported by genuineness of creditors and also sales bills maintained in accordance with law and as such, there was neither any legal justification nor any valid basis to assume or presume that such genuine cash sales by the appellant in the instant year were not sales made by the appellant.

(x) That the learned Commissioner of Income Tax (Appeals) has even otherwise failed to appreciate that cash sales since have already been offered as income by the appellant could not presumptively be rejected and held as unexplained money so as to tax the same under section 68 of the Act, when the section 68 of the Act itself is wholly inapplicable to the income already offered as income by the appellant in the return of income.

3(i) That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the disallowance of conveyance expenses to the extent of Rs. 1,54,671/- being expenditure incurred wholly and exclusively for the business of the appellant company.

(ii) That the aforesaid disallowance has been confirmed without adjudicating the same and without giving any findings on its merits which is not a valid course of action in law.

4 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the disallowance of car running & maintenance expenses to the extent of Rs. 4,04,656/- being expenditure incurred wholly and exclusively for the business of the appellant company.

5 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the disallowance of Rs. 72,000 out of salary paid to the following persons:

Sr. No.	Name of Director	Salary
(i)	Deepak Jain	25,000
(ii)	Ravi Aggarwal	23,000
(iii)	Parvinder Kaur	24,000
	Total	72,000

That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the disallowance of a sum of Rs. 7,920/- representing expenditure incurred on mobile phone on account of persona nature wholly and exclusively for the business of the appellant company.

(i) Without prejudice to the above and in the alternative, even assuming for the sake of an argument, additions were warranted under section 68 of the Act then too, demand computed in accordance with rate specified in section 115BBE of the Act as amended by Taxation Laws (Second Amendment) Act, 2016 is wholly misconceived.

(ii) That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the amendment made by the Taxation Laws (Second Amendment) Act, 2016 was w.e.f. 1.4.2017 and thus applicable from financial year 2017-18 onwards and not from the financial year 2016-17 relevant to assessment year 2017-18 and therefore, demand computed was not only arbitrary but highly excessive.

iii) That the learned Commissioner of Income Tax (Appeals) ought to have therefore applied the income tax at best @ 30% of the

income determined under section 68 of the Act and not at the rate of 60% as specified in section 115BBE of the Act as amended by Taxation Laws (Second Amendment) Act, 2016.

(iv) That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that substitution of provisions by Taxation Laws (Second Amendment) Act, 2016 w.e.f. 1.4.2017 was not retrospective in nature but was prospective and only application from financial year 2017-18 relevant to A.Y 2018-19.

8 That the impugned order of assessment and appeal has been framed without granting fair and meaningful opportunity and, as such, the same is contrary to principles of natural justice, apart from being without jurisdiction.

9 That the learned Commissioner of Income Tax (Appeals) has further erred in levying interest u/s 234B and 234C of the Act which are not leviable on the facts of the instant case.

10 That the appellant craves leave to reserve itself to add, delete, amend and forgo any ground at or before the time of hearing.

It is therefore, prayed that the additions/disallowances confirmed by the learned Commissioner of Income Tax (Appeals) alongwith interest levied may kindly be deleted and appeal of the appellant company be allowed."

4. Substantive grievance of the assessee relates to the addition on account of cash sales amounting to Rs. 3,25,52,833/- made during the period 01.10.2016 to 08.11.2016 held to be unexplained credit u/s 68 r.w.s 115BBE of the Income-tax Act, 1961 [the Act, for short]

5. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in the light of Rule 18(6) of the ITAT Rules.

6. Briefly stated, the facts of the case are that the assessee is into the business of trading and manufacturing of jewelry like gold and diamond, etc. Return for the year was electronically filed on 30.10.2017 declaring income of Rs. 15,07,573/-. Return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee.

7. During the course of assessment proceedings, the assessee was asked to provide month-wise comparative chart of cash/credit sales of current year and previous two years.

8. Details sought by the Assessing Officer were furnished and on perusal of the same, the Assessing Officer observed that in F.Ys. 2014-15 and 2015-16, cash sales in comparison to total sale was less than 5%, which, in F.Y. 2016-17, increased to 10% on total sale of the year. The assessee was asked to justify the increase.

09. The Assessing Officer further pointed out that in every cash sale entry, name of the purchaser and PAN is not mentioned.

10. The assessee filed detailed reply. Reply of the assessee was duly considered but did not find any favour with the Assessing Officer who formed a belief that cash sales during the demonetization period has been inflated to cover up unaccounted money in the form of demonetized currency, which were deposited in the bank account.

11. The Assessing Officer was of the firm belief that there was an abnormal increase in the percentage of cash sales during the period 01.10.2016 to 08.11 2016. Further, sales did not have the name of the purchaser and PAN. Cash sales from 01.10.2016 to 08.11.2016 amounting to Rs. 4,73,58,629/- was added as unexplained cash credit

u/s 68 of the Act and accordingly, added to the income of the assessee.

12. The assessee challenged the addition before the Id. CIT(A) and vehemently contended that no defect has been pointed out in the books of account maintained by the assessee in its regular course of business.

13. After considering the submissions of the assessee and after perusing the sales register of F.Ys. 2014-15 to 2016-17, as well as cash book, VAT returns, the Id. CIT(A) was partly convinced with the contention of the assessee and directed the Assessing Officer to restrict the addition to Rs. 3,25,52,833/-.

14. On such finding, both the assessee and the Revenue are in appeal before us.

15. We have given thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee was maintaining proper books of account which were produced before the Assessing Officer during the assessment proceedings. Month-wise

details of cash deposited out of cash sale submitted during the assessment proceedings is as under:

Sr. No.	Month wise	Opening cash in hand (Rs.)	Cash sales (Rs.)	Deposits in bank (Rs.)	Cash withdrawal from bank	Cash expenses	Closing cash in hand (Rs.)
i)	April' 2016	15,00,946	----	9,05,000	----	88,371	5,07,575
ii)	May' 2016	5,07,575	14,73,478	3,35,000	----	1,35,434	15,10,619
iii)	June' 2016	15,10,619	----	----	----	82,341	14,28,278
iv)	July' 2016	14,28,278	----	50,000	----	85,300	12,92,278
v)	August' 2016	12,92,978	2,41,885	3,75,000	----	66,430	10,93,433
vi)	September' 2016	10,93,433	---	50,000	----	84,595	9,58,838
vii)	October' 2016	9,59,838	3,38,11,665	39,80,150	----	2,44,635	3,04,45,718
viii)	November' 2016	3,04,45,718	1,35,46,934	4,40,00,000	57,000	53,460	96,192
ix)	December' 2016	96,192	----	----	50,000	896	1,45,296
x)	January' 2017	1,45,296	1,89,150	----	----	21,100	3,13,346
xi)	February' 2017	3,13,346	----	----	----	32,745	2,80,601
xii)	March' 2017	2,80,601	7,64,806	5,50,130	----	1,50,070	3,45,207
	Total		5,00,27,918				

16. Break-up of total sales is as under:

Sr. No.	Month wise	Credit Sales	Cash Sales	Total (Rs.)
i)	April' 2016	2,36,07,083	----	2,36,07,083
ii)	May' 2016	5,83,57,443	14,73,478	5,98,30,921
iii)	June' 2016	93,00,247	----	93,00,247
iv)	July' 2016	29,81,612	----	29,81,612
v)	August' 2016	41,99,099	2,41,885	44,40,984
vi)	September' 2016	3,32,19,407	---	3,32,19,407
vii)	October' 2016	46,29,546	3,38,11,665	3,84,41,211
viii)	November' 2016	12,46,53,252	1,35,46,934	13,82,00,186
ix)	December' 2016	3,21,40,903	----	3,21,40,903
x)	January' 2017	1,92,37,859	1,89,150	1,94,27,009
xi)	February' 2017	8,75,81,633	----	8,75,81,633
xii)	March' 2017	9,65,07,845	7,64,806	9,72,72,651
	Total	49,64,15,930	5,00,27,918	54,64,43,848

17. The entire quarrel revolves around the period 01.10.2016 to 08.11.2016 and cash sales during this period have been held to be unexplained credit u/s 68 of the Act. We fail to understand how the cash sales for the period 01.10.2016 to 07.11.2016 be treated as inflated sales pursuant to demonetization, as not a single soul was aware that on 08.11.2016, the higher currencies will be demonetized. It was only on 08.11.2016 the Hon'ble Prime Minister announced the demonetization.

18. Sales return filed with VAT Department is as under:

Sr. No.	Period		Sale (Page of Paper Book) (I)	Sales Returns (if any) (II)	Job work against F Forms (if any) (III)	Net Sales (IV=I-II-III) (page of Paper Book)	VAT (Local Sale+ Inter Sale) (Page of Paper Book)	Page of Paper Book
i)	1.4.2016 to 30.6.2016	Original Return	10,09,49,390 (55)	-	82,11,137 (57)	9,27,38,253	9,27,384 (9,22,412+4,972) (56 and 57)	55-73
ii)	1.7.2016 to 30.9.2016	Revised Return	4,06,42,005 (74)	-	-	4,06,42,005	4,06,420 (4,06,420) (74)	74-90
iii)	1.7.2016 to 30.9.2016	Original Return	4,06,42,005 (91)	-	-	4,06,42,005	4,06,420 (4,06,420) (91)	91-109
iv)	1.10.2016 to 31.12.2016	Original Return	20,99,33,942 (110)	-	3,85,632 (112)	20,95,48,310	20,95,484 (20,74,440+ 21,044) (111 and 112)	110-128
v)	1.1.2017 to 31.3.2017	Original Return	23,77,36,497 (129)	1,72,01,158 (134)	1,61,29,522 (131)	20,44,05,817	20,44,058 (19,67,725 +76,333) (130 and,131)	129-148
	Total			1,72,01,158	24726291	54,73,34,385		

19. The only return which was revised was for the period 01.07.2016 to 30.09.2016 in which period there was no question of anybody being aware of demonetization.

20. The most peculiar fact is that on 23.12.2016, a survey operation u/s 133A of the Act was carried out at the business premises of the assessee company and not a single defect/discrepancy was found in the physical stock vis a vis book stock of the assessee.

21. If the allegation of the Assessing Officer is accepted that the assessee has inflated its sales during 01.10.2016 to 08.11.2016, then there has to be some discrepancy in the book stock vis a vis physical stock, but no such discrepancy was found because no such sales were inflated by the assessee.

22. Merely because there was a minor variation in the cash sales during the alleged period compared to previous year would not mean that the assessee has inflated its sales to cover up demonetized currency.

23. During the year under consideration, diwali was on 31.10.2016 and it is common knowledge that in our society, festival runs 15 days after diwali and it is also a common fact that once the demonization was declared by the Hon'ble Prime Minister, there was frenzy in the market and people were purchasing goods they never intended to purchase just to get rid of demonetized currency.

24. For the sake of repetition, the assessee had furnished month-wise purchases, month-wise details, stock register, valuation of closing stock, month wise details of cash sales, copies of VAT returns and not a single defect has been pointed out by the Assessing Officer in these clinching evidences.

25. The most important fact is that since the cash sales have already been offered as income, the same cannot be taxed in the garb of inflation sales to cover up demonetization currency.

26. In so far as the allegation of non-mentioning of names of the purchasers is concerned, it is not only baseless but without any backing of law as the assessee is not required to keep the names of purchasers for cash sales less than Rs. 2 lakhs and not even one instance has been

pointed out by the Assessing Officer where cash sales were more than Rs. 2 lakhs.

27. Considering the vortex of evidences, we do not find any merit in the impugned addition made by the Assessing Officer and also we do not find any merit in the part relief given by the ld. CIT(A). Therefore, considering the totality of facts, we direct the Assessing Officer to delete the addition of Rs. 4,73,58,629/-. Accordingly, Ground No. 2 with all its sub-grounds is allowed.

28. Ground Nos. 3 to 6 are in respect of petty additions made by the Assessing Officer and confirmed by the ld. CIT(A).

29. We have given thoughtful consideration to the assessment order qua the additions. We do not find any error or infirmity in the impugned additions made by the Assessing Officer. Therefore, Ground Nos 3 to 6 are dismissed.

30. The other grounds are consequential and need no separate adjudication.

31. As a result, the appeal of the assessee is partly allowed.

ITA No. 2012/DEL/2021 [Revenue's Appeal]

32. The grievances of the Revenue read as under:

- “1. The order of LA CIT(A) is not correct in law and facts.
2. Whether the Ld. CIT(A) was correct in holding that cash deposits to the extent of Rs. 1,48,05,796 out of total cash deposits of Rs. 4,73,58,629 during the period of one month preceding demonetization represent genuine cash sales, when the Assessee did not furnish any evidence whatsoever such as name or address of buyers, thereby thwarting any verification of genuineness of such sales.
3. That on the facts and circumstances of the case, LL. CIT(A) has erred in deleting disallowance of Rs. 1,62,347/- on account of business promotion expenses.
4. That on the facts and circumstances of the case, Ld. CIT(A) has erred in deleting disallowance of depreciation claimed on car under Income tax of Rs. 2,52,360/- and car running expenses of Rs. 2,09,747/
5. That on the facts and circumstances of the case, Ld. CIT(A) has erred in deleting addition of Rs. 28,13,95,024/- on

account of unaccounted stock due to difference in valuation of closing stock.

6. The appellant craves for leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.”

33. The underlying facts in the issue raised vide Ground No 2 are identical to facts considered by us in assessee’s appeal hereinabove in ITA No. 1426/DEL/2021 qua Ground No. 2 with all its sub grounds. For our detailed discussion therein, this ground is dismissed.

34. Next ground relates to deletion of disallowance of Rs. 1,62,347/- on account of business promotion.

35. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed business promotion expenses of Rs. 1,62,347/-. The Assessing Officer was of the opinion that such expenses were not necessary and added the same.

36. Before the ld. CIT(A), it was strongly contended that the Assessing Officer cannot sit into the armchair of the assessee company to determine which expense was commercially expedient or not.

37. The ld. CIT(A) was convinced with the contention of the assessee and deleted the addition.

38. Before us, the ld. DR strongly supported the findings of the Assessing Officer.

39. Per contra, counsel for the assessee reiterated what has been stated before the lower authorities.

40. On perusal of record, we find that business promotion expenses include amount incurred on providing free gifts to customers on purchase of large amount of jewellery items as it is general practice in this line of trade. It is a settled proposition of law that the Assessing Officer should not decide how a business man should do his business.

41. Moreover, all the expenses are supported by bills and vouchers, duly recorded in the books of account. We, therefore, do not find any reason to interfere with the findings of the Id. CIT(A). Ground No. 3 is dismissed.

42. Ground No. 4 relates to the deletion of addition on account of depreciation and car running expenses.

43. After considering the facts, we are of the considered opinion that depreciation is a statutory allowance available to the assessee and this is not the first year of claim. Therefore, we do not find any merit in the disallowance of depreciation.

44. Car running expenses are fully supported by bills and vouchers and are incurred towards petrol and regular repair and maintenance of the cars used including insurance premium. We do not find any merit in the disallowance and the Id. CIT(A) has rightly deleted the same, which calls for no interference.

45. Ground No. 5 relates to deletion of addition of Rs. 28,13,95,024/- on account of unaccounted stock due to difference in valuation of closing stock.

46. We have given thoughtful consideration to the underlying facts in this issue and we find that it is a typographical error which resulted into this huge addition by the Assessing Officer. The typographical error occurred in the figure of stock details of gold bar as mentioned in the tax audit report which was without decimal point. The quantitative figures of purchases, consumption and sales of gold bars were mentioned without the decimal point in the tax audit report, due to which the quantity of closing stock of gold bars differed from the actual quantity of closing stock of gold bars appearing in the books of account.

47. The same can be understood from the following chart:

Gold Bars	Figures as appearing in Stock Register [Gms.]	Figures as appearing in Tax audit report [Gms.]
Opening Stock	1848627	1848
Add: Purchases	74115118	74115118
Less: Consumption	25038569	25038569
Less : Sales	39194889	39194889
Closing Stock	11730287	9883508

48. This non-mentioning of decimal value of gold was determined at Rs. 2813.95 crores, which has resulted into an absurd figure. The ld. CIT(A), after appreciating typographical error and after considering reconciliation, deleted the impugned addition. We do not find any error or infirmity in the factual findings of the ld. CIT(A). Accordingly, Ground No. 5 raised by the Revenue stands dismissed.

49. As a result, the appeal of the Revenue stands dismissed.

50. To sum up, in the result, the appeal of the assessee in ITA No. 1426/DEL/2021 is partly allowed whereas the appeal of the Revenue in ITA No. 2012/DEL/2021 is dismissed.

The order is pronounced in the open court on 23.02.2024 in the presence of both the rival representatives.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 23rd FEBRUARY, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

