

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.195/Asr/2022
Assessment Year: 2017-18**

Raj Kumar (M/s Radhika Sales Corp) Dhab Wasti Ram, Amritsar, 143001. [PAN:AAX[L4922E] (Appellant)	Vs.	ITO, Ward 3(3), Amritsar. (Respondent)
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Appellant by	Sh. Rohit Kapoor, CA
Respondent by	Sh. S. R. Kaushik, CIT. DR

Date of Hearing	02.03.2023
Date of Pronouncement	11.04.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals) NFAC, Delhi,[in brevity the 'CIT (A)'] order passed u/s 250of the Income Tax Act 1961, for A.Y. 2017-18.The impugned

order was emanated from the order of the Income Tax Officer, Ward 3(3), Amritsar order dated 31.12.2019.

The assessee has taken the following grounds:

- “1. The CIT(A) NFAC has erred in law and in facts in confirming the assessment order passed by the AO assessing the total income at Rs. 2,82,17,200/- as against returned income of Rs. 8,17,200.*
- 2. That the CIT(A) NFAC has erred in deciding the appeal without considering the request for adjournment filed by the appellant on 11.08.2022.*
- 3. That the CIT(A) NFAC has erred in deciding the appeal without calling/ downloading the replies submitted by the appellant during assessment proceedings and thus ignoring the vital documents such as, cash book, purchase bills, ledger and VAT returns and thus the order of CIT(A) NFAC is against the principles of natural justice.*
- 4. That the CIT(A) NFAC has erred in passing a non-speaking order which is against the law even if the assessee was not represented before it.*
- 5. That the CIT(A) NFAC has erred in confirming the action of the AO in rejecting the books of accounts by invoking the provisions of sec. 145(3) without even looking at the documents on record and without appreciating that no specific defect in the books of account was pointed out by the AO which is not even part of the assessment order.*

6. *That the CIT(A) NFAC erred in confirming the action of the AO based upon surmises and conjecture without there being any evidence contrary to the contention of the assessee which is duly supported by documents.*
7. *That the CIT(A) NFAC has erred in confirming the addition of Rs. 28217200/- being cash deposited in bank accounts without appreciating that the said cash was part of the cash account submitted with the submissions made and was sourced from sales duly accepted by VAT department, out of cash withdrawals, etc.*
8. *That the CIT(A) NFAC has erred in ignoring the past history of the appellant since, the cash deposit was not against the past history of the appellant.*
9. *That the CIT(A) NFAC has erred in confirming the order of the AO ignoring the position of law that provisions of section 68 cannot be applied in respect of income from a source which has already been taxed which would amount to double taxation.*
10. *That the CIT(A) NFAS has erred in confirming the order of the AO ignoring the position of law that no addition u/s 68 can be made where books of account had been rejected by the AO u/s 145(3) and again relying upon the same books of accounts for the purpose of section 68.*
11. *That the learned assessing Officer has erred in rejecting the books of accounts u/s145(3), without serving the show cause notice as embedded in Sec 144 read with Sec145(3).*

12. That the appellant craves leave to add, amend any ground of appeal.”

2. Brief facts of the case are that the assessee deposited cash in bank account amount to Rs 4,09,50,000/- during demonetization. The assessee is a proprietor of M/s Radhika Sales Corporation, Dhab Wasti Ram, Amritsar and is engaged in the business of the business of wholesale/retail of sugar, refined oil, ghee and other allied karyana items. The assessee is registered under Punjab VAT Act in 2005. During the assessment year the assessee's turnover Rs.10,38,81,637/-. The ld. AO completed the assessment under section 143(3) making addition of Rs 2,74,000,00/- out of total cash deposited during demonetization period at Rs 4,09,50,000/-. The addition has been made by the ld. AO alleging that the appellant had inflated the sales to cover unaccounted money and assessed the total income at Rs. 2,82,17,200/-. As per assessee the amount deposited in bank on account out of his turnover which was declared in the P & L a/c during filing of the return. So, the same amount will be doubled tax. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) passed an order in *ex parte* and upheld the decision of the ld. AO. Being aggrieved assessee filed an appeal before us.

3. During hearing, the ld. Counsel for the assessee filed written submissions which are kept in the record. In the argument assessee has placed that:

The book of accounts of the assessee is subject to audit on year to year basis and is maintaining proper quantitative records. That the assessee had filed the return of income for the year under consideration amount to Rs 967203/-and had declared total turnover of Rs 10,38,81,637/-. The Copy of audited balance sheet, trading and profit and loss account is enclosed at **page no 15-28 of APB.**

3.1. The Id. Counsel argued that the case of the appellant was selected for scrutiny under CASS by issuing jurisdiction notice u/s 143(2) dated 09.08.2018. The copy of same is enclosed at **page no 1-4 of APB.** The case was selected for scrutiny for the primary reason of large cash deposit during demonetization. Pursuant to the same, the appellant was issued various notices u/s 142(1) requiring the appellant to provide necessary information and documents in respect of source of such cash deposit amounting to Rs 4,09,50,000/- during demonetization. The appellant during the course of assessment proceedings explained that he was in the business of sale / purchase of sugar, refined oil and other allied items and the said cash was deposited out of sale proceeds, cash withdrawal and out amount realized from debtors during the year consideration.

3.2. In argument the Id. Counsel placed that the appellant was also asked to submit the month wise total sales and purchases and corresponding cash sales made in every month for the year under consideration and for the last year. It was also explained that the total cash deposit during FY 2015-16 is to the tune of Rs 4,31,25,914 against the cash deposit in FY 2016-17 of Rs 5,98,60,500/-. The assessee vide reply dated 20.11.2019 submitted the desired information and the copy of the same is enclosed at **page no 45& 61 of APB.**

Furthermore the Ld. AO also requested to segregate the cash deposit between the period 01.04.2015 to 08.11.2015 vis-a-visa cash deposit between the period 01.04.2016 to 08.11.2016. The appellant vide reply dated 20.11.2019 submitted the same and the summary of same is tabulated form which is placed before the bench and reproduced as under:-

<i>“A.Y 2016-17</i>			<i>A.Y 2017-18</i>		
<i>Cash deposited between 01.04.15 to 08.11.15</i>	<i>Cash deposited between 09.11.15 to 31.03.16</i>	<i>Total Sale</i>	<i>Cash deposited between 01.04.2016 to 08.11.2016</i>	<i>Cash deposited between 09.11.2016 to 31.03.2017</i>	<i>Total Sale</i>
<i>1,70,20,053</i>	<i>2,61,05,861</i>	<i>5,31,35,242</i>	<i>1,55,79,144</i>	<i>4,42,81,356</i>	<i>10,38,81,637</i>

3.3. That the appellant during assessment proceedings submitted that the appellant has started dealing in various new commodities as compared to last financial year i.e. sugar, cotton seed oil, Vanaspati Tin and Soya DO. It was also explained that month to month comparison is not possible in the present case as the appellant has engaged in trading of various new commodities as stated above. The assessee has submitted various other documents during assessment proceedings which are placed **in page 75-154 of APB** before the bench as under:-

- a) **Copy of VAT returns** for the period 01.04.2016 to 31.03.2017 submitted before AO vide reply in response to notice u/s 142(1) dated 25.12.2019, copy of the VAT return on **page no 85-91 of the APB**

- b) **Copy of purchase bills** in respect of all the parties from the purchases were made for the period 01.04.2016 to 31.03.2017 submitted before AO vide reply in response to notice u/s 142(1) dated 25.12.2019, copy of the purchase invoices **on page no 92-148 of the APB**
- c) **Quantitative tally** for the period 01.04.2016 to 31.03.2017 submitted before AO vide reply in response to notice u/s 142(1) dated 25.12.2019 and the copy of same is placed at **page no 75-82 of APB.**
- d) **Copy of transport bills along with DharmKanda receipts** in respect of purchases made for the period 01.04.2016 to 31.03.2017 submitted before AO vide reply in response to notice u/s 142(1) dated 25.12.2019 and the copy of Dharm Kanda receipts duly submitted before the AO in the reply dated 25.12.2019 relevant **page no. 79 of APB**
- e) **Complete books of accounts along with sale & purchase register for the period 01.04.2016 to 31.03.2017** was submitted before AO vide reply in response to notice u/s 142(1) dated 27.12.2019 and the copy of same is placed at **page no 157 of APB.**
- f) **Copy of cash book for the period 01.04.2016 to 31.03.2017** submitted before AO vide reply in response to notice u/s 142(1) dated 27.12.2019 and the copy of same is placed at **page no 157 of APB.**
- g) **Complete Postal address of debtors and creditors** to/from whom sale/purchases submitted before AO vide reply in response to notice 142(1) dated 11.11.2019 and the copy of same is placed at **page no 64-68 of APB.**

- h) **Copy of month wise stock statement** submitted to the AO vide reply in response to notice 142(1) dated 11.11.2019 and the copy of same is placed at **page no 63 of APB.**

- i) **Copy of account of debtors and creditors** exceeding Rs 5 lakhs vide reply in response to notice u/s 142(1) dated 25.12.2019 and the copy of same is placed at **page no 75-154 of APB.**

3.4. The Id. Counsel placed that during assessment proceedings it was also brought to the knowledge of the assessing officer that the case for assessment year 12-13 has been opened under section 148 for cash deposit of Rs 3,02,06,000/- in HDFC Ltd. That the department has completed the assessment under section 147 at returned income. Furthermore, the department had accepted that the assessee was regularly depositing cash out of sales proceeds. It is pertinent to mention here that the assessment for AY 12-13 was completed by the same jurisdictional AO. Meaning there by, the stand of AO is contradictory to AY 2017-18 where the AO has alleged that the assessee has inflated sales for AY 2017-18. It is pertinent to bring to consideration that the AO has not considered the said fact while passing the order for AY 2017-18 in spite of the fact that the re-assessment order for AY 2012-13 was passed on 14.12.2019.

3.5. In argument the Id. Counsel placed that the Ld. AO completed the assessment under section 143(3) making addition of Rs 2,74,000,00/- out of total cash deposited during demonetization period at Rs 4,09,50,000/-.The addition has been made by the AO alleging that the appellant had inflated the sales to cover unaccounted money and assessed the total income at Rs. 28217200/-. That the Ld. AO has rejected the books of accounts under section 145(3) on the ground that the

assessee has not furnished the sales bills. That the addition of Rs 2,74,00,000/- was made u/s 68 of the Act on account of unexplained cash deposit and the same is taxed u/s 115BBE of the Act at the rate of 60%.

That the Ld. AO has accepted partial cash deposit of Rs 1,35,00,000/- out of total cash deposit of Rs 4,09,50,000/- made during demonetization period. The said benefit has been given by accepting cash collection from debtors at Rs 97,29,777/- and estimating the cash sales for the month of October at Rs 28,06,536/- and for the November (8 days i.e 01.11.2016 to 8.11.16) at Rs 9,63,687/- against the actual cash sales of Rs 1,58,06,636/- and Rs 1,53,63,687/-. The said action of the AO is based on surmises and conjectures ignoring the fact that the assessee has duly paid VAT on sales declared in the VAT return for the period 01.04.2016 to 31.03.2017.

3.6. That the CIT(A) confirmed the action of AO by passing the order *ex parte* without considering the request for adjournment filed by the appellant on 11.08.2022. The copy of adjournment letter as submitted before NFAC on 11.08.2022 on the online portal is enclosed at **page no 48 of APB** reply dated 22.02.2023.

4. The Id. Counsel for assessee has made ground wise submission which is reproduced as below:-

Ground No- 2,3 &7.

The Id. Counsel for assessee invited our attention in written submission duly filed before the bench. The relevant paragraphs are reproduce as below: -

“12. Submissions in respect of ground No 2, 3 and 7

- a) There has been no dispute in respect of assessments of the earlier years and the assessee's book result have been accepted year after year on the basis of 'stock tally' of different items of and said stock register have been maintained right from the date of start of business. During the earlier years, there has been no dispute of any nature, whatsoever, and the book results of the assessee have been accepted by the department.
- b) For the year under consideration, the return of income was filed an income of ₹ 9,67,203/- and the assessment have been framed by the Assessing Officer by making the addition of Rs. 2,74,00,000/- which have been challenged by us and the income have been assessed by the Assessing Officer at ₹ 28217200/- vide order, dated 31.12.2019 [**Refer page no 158-167**].
- c) We have attached the statement of facts along with Form No. 35 before your goodself and while ground No. 1 is general in nature and ground No. 2,3,& 7 relate to the addition of ₹ 27400000/- on account of cash deposit during demonetization , presuming the same as 'inflated cash in hand' from 'inflated sales' and such addition is based on conjectures and surmises and hence the addition made is against the facts and circumstances of the case.
- d) It is submitted that year after year, the assessee has been filing the returns by drawing year-wise **trading account duly supported by quantitative tally**. The same record has been maintained since the inception of the business and in this year also, same type of record has been maintained and no defects at all have been pointed out by the Assessing Officer on such quantitative tally. Even in the assessment proceedings the quantitative summary each item have been given by mentioning the opening stock, purchases and sales during the year under consideration and closing stock. Besides the above the assessee has submitted month wise availability of stock and no defects or any other omission with regard to the purchases and sales have been pointed out in such detailed 'stock register' maintained on day to day basis. **Copy of such reply in which the stock register has been produced is enclosed at page no 63 & 76-77 of the Paper Book.**
- e) **All the purchases are from identifiable parties and majorly all the payments for the purchases have been made through normal banking channels and nothing has been**

doubted about such purchases. Thus, all the purchases are fully vouched. The sales are also fully vouched but majorly, the sales are made in cash, due to the nature of trade and some of the sales are on account of cheques/RTGS . In every bill of purchase and sale, quantity and description of the item purchased or sold has been given in full form.

- f) *It is beyond doubt that the Assessee was having sufficient stock and the same was duly accounted for in the books of accounts for the year under consideration. The entire sales were made from the regular stock in hand of the Assessee. So, under such circumstance, the sales cannot be doubted. The items are sold and from which cash has been received by the Assessee and the same stands deposited in the Bank accounts of the Assessee itself during the demonetization period. In other words, it is only a case, wherein the existing stock in hand as available with the Assessee is sold for cash. Hence, it is a case, wherein the stock is out and in return is cash is in, which stands deposited in the bank account and the same is disclosed in the books of accounts of the Assessee. The books of accounts of the Assessee are further duly audited by a Chartered Accountant. Thus, there is no scope of any default on the part of the Assessee. **It is pertinent to mention here that the appellant had made purchase to the tune of Rs. 3,09,69,406/-in October 2016 on which the assessee has duly paid the VAT [please refer page 63 of the PB].** The Ld. AO has not doubted the purchases, opening stock and quantitative tally. It is a matter of record The purchase & sale have duly been reflected in the VAT return filed before the Punjab VAT Authorities.*
- g) *As regard AO's objection regarding increase in sales in the month of October 2016 and November 2016. In this regard it is very humbly submitted that the appellant is engaged in whole sale/ retail trading of sugar, refined oil, ghee and other allied karyana items. The major sales take place around Diwali as demand of Ghee/oil/ sugar increases near festive season. It is pertinent to mention here that the 'Diwali' festival in the year 2016 was on 30th October 2016 and increase in sales as stated by the assessee in comparison the earlier months was justified. **Furthermore it was also brought to the knowledge of AO that the assessee has started dealing in new commodities i.e.sugar, cotton seed oil(loose), Vanaspati Tin and Soya DO.** However, the assessing officer while estimating the sales has not considered the festival season and new commodities added by the appellant to its product line. Therefore, the cash deposited in bank was as per books of accounts and same can be*

verifiable from cash book where all the sales were reflected. The Ld. AO has failed to appreciate that the sales for the AY 2016-17 and 2017-18 have almost doubled. Moreover, the appellant is registered with VAT authorities and all the purchases were made from identified parties registered with VAT authorities. The appellant has paid VAT of Rs. 5026724/- on total purchases made during the year. The Ld. AO has not pointed out any defects in the purchases. **The Ld. AO while raising the doubt in respect of sales made in October & November has failed to appreciate that the applicant has made purchase to the tune of Rs. 3,09,69,406/- in the month of October 2016 which is much before the date of announcement of demonetization by the Hon'ble Prime Minister.** The summary of comparison of sale is as under: -

Particulars	AY 2016-17	AY 2017-18
Sale	5,31,35,242	10,38,81,637
Cash Deposit	4,31,25,914	5,98,60,500
Percentage of cash sales	81.16%	57.62%

h) It is further submitted that the A.O. has invoked the provisions of Section 68 of the Income Tax Act 1961, in the absence of any corroborative evidence even when the assessee had explained the nature and source of cash deposits in the bank account and that nowhere in the assessment order, the A.O. had mentioned that he was not satisfied with the explanation offered to him since no deficiency was raised by him with regard to the said deposited cash. It is also submitted that the assessee deposited cash amounting to Rs.4,09,50,000/- during the demonetization period out of cash sale proceeds, cash withdrawals to the tune of Rs. 46,05,000/- and cash received from debtors and the same stands reconciled from the cash books, PVAT Returns filed with the Trade

& Taxes Department along with the P&L Account for the relevant assessment year. The copy of vat 20 is enclosed at page no 85-91 of the paper book.”

5. The Id. Counsel for the assessee further respectfully relied on the orders of the Hon’ble Courts & ITAT which are extracted as below:

i. Smt. Charu Aggarwal Vs. Deputy Commissioner of Income-tax [2022] 140 taxmann.com 588 (Chandigarh - Trib.).

“I. Section 68, read with section 153A, of the Income-tax Act, 1961 - Cash credit (Unexplained cash deposits) -Assessment year 2017-18 - Certain cash was deposited during post-demonetization in account of assessee, engaged in resale of jewellery, diamond etc. -Assessing Officer observed that there were two sets of books of account, i.e., one in computer of accountant and another in pen drive of accountant with different sales figures for October 2016 and assessee having failed to furnish documentary evidence regarding source of cash deposits in its bank accounts, addition was made to income of assessee - However, it was found that assessee was maintaining complete stock tally, sales were recorded in regular books of account and amounts were deposited in bank account out of sale proceeds - Nothing was brought on record to substantiate that cash obtained by

assessee from sales which reduced stock of assessee was utilized elsewhere - Cash sales made during month of October, 2016 were in line of cash sales in earlier years and equal to sales in month of July, 2016 - Opening stock, purchases and sales and closing stock, declared by assessee were not doubted-Cash deposited post-demonetization by assessee was out of cash sales which had been accepted by Sales Tax/VAT Department and not doubted by Assessing Officer - There was sufficient stock available with assessee to make cash sales -Whether therefore, sales made by assessee out of existing stock were sufficient to explain deposit of cash (obtained from realization of sales) in bank account and could not have been treated as undisclosed income of assessee and accordingly, impugned addition made by Assessing Officer was not justified.”

ii. R.B. Jessaram Fatehchand (Sugar Dept.) v. Commissioner of Income- tax [1970] 75 ITR 33 (Bombay) HIGH COURT OF BOMBAY

“Section 145 of the Income-tax Act, 1961 [Corresponding to section 13 of the Indian Income-Tax Act, 1922] - Method of accounting - Rejection of accounts - On assessee's inability to supply addresses of purchasers who purchased goods on cash, ITO rejected assessee 's books of account showing result in respect of cash sale transactions, and made addition -AAC deleted additions but Tribunal restored

ITO's orders - Whether there was no necessity whatsoever for assessee to maintain addresses of cash customers -Held. yes - Whether, therefore, rejection of book results of assessee was unjustified.”

iii. **Commissioner of Income-tax, Ludhiana v. Ludhiana Steel Rolling Mills Ltd [2008] 166 Taxman 20 (Punjab & Haryana).**

“Section 145 of the Income-tax Act, 1961 - Method of accounting - Rejection of accounts - Assessment year 1999-2000 - Assessing Officer on examination of books of account of assessee allegedly found various discrepancies which when confronted to assessee, no satisfactory explanation was filed by it - Further as trading results declared by assessee were much variable, by applying provisions of section 145(3), Assessing Officer rejected books of account and by applying GP rate of 8.5 per cent on enhanced sale, made an addition - Commissioner (Appeals) as well as Tribunal deleted additions - Whether since Commissioner (Appeals) as well as Tribunal had gone into detail in discussing evidence and recording conclusion after appreciating same, and on basis of evidence, they concluded that no discrepancy could be found in maintenance of accounts and even Assessing

Officer who was present before Commissioner (Appeals) could not point out any such discrepancy, conclusion reached by Commissioner (Appeals) and Tribunal was correct”.

iv. Principal Commissioner of Income-tax v. Agson Global (P.) Ltd. [2022] 134 taxmann.com 256 (Delhi).

“IV. Section 68 of the Income-tax Act, 1961 - Cash credit (Bank deposits) - Assessment year 2017-18 -Assessee-company was engaged in business of selling dry fruits - post-demonetization, assessee deposited cash amounting to Rs. 180.53 crore in its bank accounts - Assessing Officer held that cash deposits made by assessee represented unaccounted income and accordingly, made additions - Tribunal analysed data pertaining to cash sales and cash deposits made in relevant assessment year as against two earlier assessment years and noted that in year of demonetization percentage increase in sales was less than earlier year - He, thus, held that growth in sales compared to earlier two years showed similar trend, and it could not be said that assessee had booked non-existing sales in its books post-demonetization -Furthermore, revenue made no allegation that assessee had backdated its entries - Whether since assessee placed material on record that cash deposits made with banks more or less corresponded with cash

sales, it could only be concluded that there was growth in asses see's business and impugned addition was to be deleted.”

v. Jet Freight Logistics Ltd. v. Commissioner of Income-tax Appeal (NFAC) [2023] 146 taxmann.com 349 (Mumbai - Trib.)

“I. Section 68, read with section 115BBE, of the Income-tax Act, 1961 - Cash credit (Tax on income) -Assessment year 2017-18 - Assessee-company had deposited certain sum in specified bank notes during period of demonetization and explained in detail complete modus operandi of its operations and submitted cash book, bank statements and details of persons from whom cash was received together with their name, address, PAN, ledger confirmation etc. -However, Assessing Officer observed that assessee merely submitted copy of confirmations from parties but had not proved creditworthiness of availability of cash with those persons by documentary evidences, and he proceeded to tax entire cash deposits as unexplained cash credit under section 68 - As per business model adopted by assessee, it was in continuous need for payment of cash at various points of time and hence, it had to withdraw cash in order to satisfy its business requirements - Assessee had furnished entire details of cash received from customers containing name and address of customers, PAN, and invoice amount - Further, Assessing

Officer had not brought any cogent evidence on record to disbelieve details furnished by parties and assessee -Whether, on facts, no addition could be made under section 68”.

vi. ACIT, Central Circle - 1, Visakhapatnam v. Hirapanna Jewellers

[2021] 128 taxmann.com 291 (Visakhapatnam -Trib.)

INCOME TAX: Where AO made addition under section 68 on account of huge cash amount deposited by assessee-jeweller in its bank account post demonetization, since assessee had explained source of said cash deposits as sales of jewellery, produced sale bills and admitted same as revenue receipt as well as offered it to tax and assessee also represented outgo of stocks which was matching with sales, impugned addition was to be deleted.

[Emphasis supplied]

6. The Id. counsel for the assessee further placed argument in **ground no. 5** and filed a submission which is extracted as below: -

<i>Reason for rejection</i>	<i>Explanation</i>
<i>(i) Cash sales for October 2016 [Rs. 15806536] and November 2016 [Rs.</i>	<i>1.It is pertinent to mention here that the appellant has given detailed explanation for increase in sales due to festival season and addition in product line. The same has duly been submitted before the AO in reply enclosed at page no 80. That the</i>

<p>15363687] are abnormally high as compared to cash sales in October 2015 [Rs. 527717] and November 2015 [Rs. 520020]. [Para No 4.1 of the order enclosed at page no 4-5 of the paper book]</p>	<p>applicant is regulating depositing cash in accounts which is evident from the fact that the case for A.Y. 12-13 has been selected based on cash deposit of Rs 3,02,06,000/- in HDFC limit. The same has been accepted by the department by accepting the returned income by passing order under section 147 on 14th December 2019. The copy of same is enclosed at page no 173 to 177.</p> <p>2. That the Ld. AO while drawing the allegation has failed to appreciate that the appellant has made purchases to the tune of Rs. 3,09,69,406/- in the month of October, 2016. The said purchases were made much before demonetization period and the assessee has duly paid VAT on such purchase. Therefore, the sale made by the appellant in the month of October & November 2016 duly stands justified.</p>
<p>(i.i) Despite having huge cash in hand, the assessee deposited small parts of cash before and after demonetization in the bank account [Para No 4.2 of the order enclosed at page no 162 of the paper book]</p>	<p>That the Ld AO has alleged that despite having huge cash in hand, the appellant deposited the same in small amounts. However, the Ld. AO failed to appreciate that the entire cash ultimately got deposited in bank even though gradually in parts. That the bank has to renew the limit every year and the limit of the appellant was pending for renewal. The bank was asking for a few formalities and in these circumstances, there was minor delay in deposit of the cash. Even otherwise, the AO cannot sit on the chair of the assessee to decide as to how the business is to be carried.</p>

<p><i>(iii) Failure to furnish sale bills [Para No 5 of the order enclosed at page no 164 of the paper book]</i></p>	<p><i>As regard the allegation of the Ld. AO that the appellant has failed to furnish the sale bills, in this regard it is most respectfully submitted that the appellant had duly furnished complete books of accounts during the course of assessment proceedings, which includes the copy of sale register. The said copy of sale register includes sale bill no, quantity, name of buyer, the copy of sale register is enclosed at page 1 to 46 of this reply.</i></p> <p><i>2. The Ld. AO has failed to appreciate that there are 50 sale bills and as such it was not possible to upload such voluminous sale bills on the online portal, therefore, the assessee has submitted sale register which contains party name, bill number, item name, quantity, price, taxable amount, sale tax and grand total, therefore, the observations of the AO that the sale bills were not uploaded seems to be incorrect.</i></p> <p><i>3. Furthermore, the appellant had also furnished the copy of VAT returns which duly substantiate the sales made during the year under consideration. The copy of VAT return is enclosed at page no 85-91 of the paper book.</i></p>
<p><i>(iv) Assessee does not have too much space to stock a huge quantity of stock [Para No 5.1 of the order enclosed at</i></p>	<p><i>1. As regard the allegation in respect of space to accommodate huge quantity of stock, it is pertinent to bring to your kind attention that during the year under consideration the appellant had taken a godown [located on Tarn Taran Road, Kochhar rice Mill near Shani Dev Mandir] on rent. The rent expenses incurred during the year are duly reflecting in the audited profit and loss account enclosed at page no 26-27 of the paper book.</i></p>

<p><i>page no 164-165 of the paper book]</i></p>	<p>This clearly shows that the AO has made the addition on the basis of surmises and conjectures even without going through the Audit Report.</p> <p>2. Besides the above, we are also enclosing herewith the ledger account of electricity expenses from which your goodself will find that the electricity expenses for the godown are duly debited in the profit and loss account. Refer Page no 50 of reply dated 22.02.2023.</p> <p>3. It is pertinent to mention here that the same godown address has been mentioned in the copy of account duly submitted before the AO along with the copy of account of creditors. Refer Page No 68 to 72 of the PB.</p> <p>4. Furthermore, we are also enclosing herewith the ledger account of rent paid of godown from which your goodself will find that the part of the payment of godown was made from banking channels and which proves that the Ld. AO has failed to go through the bank statement.</p>
<p><i>(v) Assessee was maintaining bank overdraft facility and was also paying a large amount of interest to the bank [Para No 5.2 of the order enclosed at page no 165 of the paper book]</i></p>	<p>The said allegation of the AO does not find any force as the total interest debited on account of CC limit is to the tune of Rs. 1233236/-. The Ld. AO has failed to appreciate that the assessee has also received interest to the tune of Rs. 323500/- and as such, the net amount debited in the profit and loss account works out to Rs. 909736/-.</p>

b) On perusal of the aforesaid, your Honor will find that the Ld. AO failed to point out any defect in the documents submitted by the appellant. As such, the action of the Ld. CIT(A) confirming the addition made by the AO is bad in law particularly in view of the fact that the cash deposited by the appellant was duly part of the cash book furnished during the course of assessment proceedings. Furthermore, the appellant had duly explained the source of the cash deposited during the year under consideration. As such, the mere action of the AO to reject the books of accounts is bad in law in view of the following case laws: -

“i. Shri Jeen Mata Buildcon (P.) Ltd. V. Income-tax Officer [2022] 142 taxmann.com 544 (Jaipur - Trib.).

Section 145, read with sections 68 and 133, of the Income-tax Act, 1961 - Method of accounting - Estimation of income (Discrepancy in receipts as shown in 26AS) - Assessment year 2013-14 - Case of assessee-contractor was selected for scrutiny through CASS due to difference in turnover between Form 26AS and books of account - Assessing Officer completed assessment in case of assessee company by making various additions based on difference between declared amount and that in terms of Form 26AS - Commissioner (Appeals) confirmed findings of Assessing Officer - However, Assessing Officer had not found a single defect in assessee's books of account and enquiry made by him under section 133(6), had been properly explained by assessee - Assessing Officer's contention that other party had booked expenses could not be reason to make additions since contract receipt was reflected in subsequent year in terms of assessee's regular method of

accounting - An addition based on amount in Form 26AS and that shown in books indicated that additions were made by following a pick and choose method - Further, information as per data base of revenue could not, by itself, be a legally sustainable basis for making addition to assessee's income -Grievance of revenue that assessee had not offered correct income was fully explained by assessee and not rejected by Assessing Officer - Whether therefore, Assessing Officer as well as Commissioner (Appeals) had erred in law in confirming disallowance.

ii. Paramount Impex v. AC IT, Circle-J, Ludhiana [2020] 117 taxmann.com 802 (Chandigarh Trib.)

Section 145 of the Income-Tax Act, 1961 - Method of accounting - Rejection of Account (Non-maintenance of stock register) - Assessment year 2013-14 - Whether where assessee was dealing in a large number of small items and it was consistently following method of determining stock at end of year by physically verifying same, in view of fact that all purchase and sale vouchers and other records had been found to be in order, mere fact of non-maintenance of stock register could not be basis for rejection of books of account if Revenue had found no other defect in books of assessee and there was no hindrance in determining true and correct profits earned by assessee.

iii. PCIT-3v. Swananda Properties (P.) Ltd. [2019] 111 taxmann.com 94 High Court of Bombay

“Section 145 of the Income-tax Act, 1961 - Method of accounting (Rejection of accounts) - Assessment year 2005-06 -Whether where revenue was not able to

show an defect in assessee's records or in books of account maintained by assessee, section 145 could not be invoked for rejecting books of account.”

iv. Agarwal Transport Service vs. DCIT [2017] 88 taxmann.com 660 (Jodhpur - Trib.)

Section 145 of the Income-tax Act, 1961 - Method of accounting - Rejection of accounts (Others) - Assessment year 2012-13 - Where Assessing Officer rejected books of account of assessee on ground that assessee had not submitted name and addresses of owner of trucks and their PAN, since assessee had submitted registration number of trucks along with all details of expenses and no defect as such had been pointed out in books of account maintained by assessee, AO was not Justified in invoking provision of section 145(3) [In favour of assessee.

v. Commissioner of Income Tax, Karnal vs. Om Overseas [2008] 173 Taxman 185 (Punjab & Haryana)

Section 145 of the Income-tax Act, 1961 - Method of accounting - Rejection of accounts - Assessment year 2001-02 -For relevant assessment year, assessee-firm declared gross profit rate (GPR) of 25.38 per cent as against 29.5 per cent declared in immediate preceding year - Assessing Officer was not satisfied with assessee's explanation regarding decline in GPR and, therefore, he rejected its books of account and applied GPR at 27per cent which resulted in certain addition - On appeal, Commissioner (Appeals) deleted addition holding that Assessing Officer made addition without pointing out any specific defect in books of account

- Tribunal upheld finding of Commissioner (Appeals) - Whether there was any perversity in order of Tribunal - Held, no”.

7. The Id. counsel further argued in respect of **ground no. 6** and placed the broad submission which are extracted as below:-

“ Submissions in respect of Ground No. 6

<i>Ground No 6</i>	<i>6. That the CIT(A) NFAC erred in confirming the action of the AO based upon surmises and conjecture without there being any evidence contrary to the contention of the assessee which is duly supported by documents.</i>
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a) As already stated, that the Ld. AO has not referred to any documentary evidence to prove anything contrary to the submissions of the appellant. In such a case where there is no corroborative material. Addition made is mere suspicion and no reasonable belief can be formed and as such the same is liable to be deleted. In this regard, Reliance is being placed upon the following case laws: -

Sr. No	Citation	Brief
	<i>Hon’ble Supreme Court of India in the case of Omar Salay Mohamed Sait vs. Commissioner of Income-tax reported at [1959] 37 ITR 151 (SC)[05-03-1959]</i>	<i>“Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Order of - Assessment year 1948-49 - Whether Tribunal should not base its findings on suspicions, conjectures, or surmises nor should it act on evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of that sort, its findings, even though on questions of fact, will be liable to be set aside by Supreme Court - Held, yes”</i>
	<i>[2022] 145 taxmann.com 549</i>	<i>Section 145 of the Income-tax Act, 1961 - Method of accounting -</i>

	<p><i>(Delhi)</i></p> <p>HIGH COURT OF DELHI</p> <p>Principal Commissioner of Income-tax</p> <p>v.</p> <p>ConwoodMedipharma (P.) Ltd.</p>	<p><i>Rejection of accounts (Concurrent findings of fact) - Assessee, engaged in business of equity trading, derivatives trading and real estate investment, filed Income-tax Returns ('ITR') declaring an income of Rs. 42.43 crores - On scrutiny, assessment order was passed making an addition of Rs. 10.21 crores on ground that there was difference between funds received and source of income as per books of account which was not disclosed by assessee in its return - Assessing Officer rejected books of account declared by assessee on ground that they were not reliable - Commissioner (Appeals) allowed appeal of assessee, holding that addition was not sustainable in view of documentary evidences already available on record - It was further held that Assessing Officer failed to make any sincere effort regarding aforesaid addition and same was made only on basis of doubt, suspicion, conjecture or surmises without affording proper opportunity of being heard to assessee which was in violation of principles of natural justice - Tribunal concurred with findings in order of Commissioner (Appeals) - On appeal, it was found that Tribunal and Commissioner (Appeals) had returned concurrent findings of fact and deleted addition made by Assessing Officer on account of difference in receipts shown in financial statements of assessee and credit entries appearing in bank account of assessee - Further, revenue had not placed any material on record to contradict aforesaid concurrent finding of facts returned by Tribunal and Commissioner (Appeals) - Whether therefore, said concurrent findings could not be interfered with - Held, yes [Paras 3, 4 and 5] [In favour of assessee]</i></p>
	<p>Hon'ble Bench in the case of ACIT vs Joginder paul in ITA No. 734/Chd/2014/ reported at 38 ITR 0486.</p>	<p><i>The discretion of not depositing the said cash in hand anytime earlier than these had been actually deposited in bank was with the appellant and mere suspicion on this account could not obliterate the fact of assessee having such cash in hand as on 31.03.2009. In the circumstances, there is no</i></p>

	<i>reason to hold that the said cash deposits were from some other accounted income of the appellant and not from available cash in hand. The addition made is merely on suspicion ignoring all factual evidence in this regard and is therefore directed to be deleted.”</i>
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The Assessing Officer has doubted the sales as made by the Assessee, merely on the basis of the higher number of sales bills as issued by the Assessee in span of few days. The said exercise as done by the Assessing Officer is merely on doubts/suspicion and it is a settled law that doubt and suspicion, howsoever, strong it may be, cannot take the shape of evidence. Reliance is being placed on the following judgments:-

- i. Commissioner of Income Tax Vs. Ram Narain 224 ITR 180 (P&H)*
- ii. JCIT Vs. Gramophone Company of India Ltd. 265 ITR (Kol-Trib) 46 (AT)*
- iii. DCIT Vs. D.N. Kamani (HUF) 70 ITD (Patna-Trib) 77*
- iv. Elite Developers Vs.. Dy. Commissioner of Income Tax 73 ITD (Nagpur-Trib) 379*
- v. Monga Metals Pvt. Ltd. Vs. ACIT 67 TTJ (All) 247*
- vi. Daulat Ram Rawatmull 87 ITR 349 (SC)”*

8. The ld. counsel further argued in respect of **ground no. 8** and placed the submission which is extracted as below:

“ Submissions in respect of Ground No. 8

<i>Ground No 8</i>	<i>That the CIT(A) NFAC has erred in ignoring the past history of the appellant since, the cash deposit was not against the past history of the appellant.</i>
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It is pertinent to mention here that the case of the appellant for Assessment Year 2012-13 was reopened by the Department u/s 147 on the basis of cash deposits to the tune of Rs. 3,02,06,000/- in HDFC Limit Account. The said case was assessed

as returned income and it was held that the cash was deposited out of sale proceeds. The copy of reasons recorded along with the closure order is enclosed at page 173 to 177 of the PB. This proves that the assessee was regularly depositing the cash in the bank account. Furthermore, during the last Financial Year i.e. FY 2015-16 also the assessee has deposited cash to the tune of Rs. 4,31,25,914/- Therefore, considering the nature of business of the assessee, it is established fact that the assessee was depositing cash out of proceeds realized in cash out of cash sales.

1.	<i>Pr. CIT v. Akshit Kumar [2021] 124 taxmann.com 123/277 Taxman 423 (Delhi)</i>	<i>"Enquiry under section 133B which has been strongly relied upon by Revenue, was conducted in Financial Year 2016-17 i.e. post closure of the business. The ITAT has juxtaposed the same against the other relevant material on record. The crucial factor that prevailed upon the ITAT to decide the case in favour of the Assessee was the history of the case. The ITAT went by the trading account in the earlier years viz. opening stock, purchase and sales, closing stock, gross profits and assessment made by the Department in AY 2007-08 when assessment was framed under section 143(3)/147. The ITAT observed that since the entire books of account had been scrutinized and the Assessee's income had been accepted, it also means that the entire opening stock, sales and closing stock made during the year stood accepted. Additionally, in respect of AY 2012-13 also, Assessee's trading activities were</i>
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		<p><i>subjected to detailed scrutiny under section 143(3). In the said year, the AO had rejected the trading result and even enhanced the GP rate and made an addition in the trading account. The ITAT thus held that in respect of AY 2012-13 the opening and closing stock and trading accounts including sales has not been disturbed. In these circumstances, the ITAT observed that in the impugned AY 2014-15, the audited balance-sheet reflected an opening stock of Rs. 19,53,29,660/- which stood accepted by the Department either under the scrutiny proceedings or by not selecting the return for scrutiny or by not taking any action to disturb such returned income. In these circumstances, it was held that the quantum figure and the opening stock which stood accepted in the earlier years had to be taken as actual stock available with the Assessee. In view of these facts, the sales made by the Assessee out of its opening stock were not treated as unexplained income, to be taxed as income from other sources. It thus manifests that the ITAT has taken into consideration the entire material placed on record including the report of the AO. The ITAT has applied the rule of consistency and rejected the enquiry made by the AO in the relevant assessment year. No doubt principles of res judicata are not applicable to the Income-Tax proceedings however, it is equally well</i></p>
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		<p><i>settled law that rule of consistency is a well- established and recognised principle applicable to the Income-Tax proceedings. Pertinently, the Assessee had closed his business in July, 2015 after selling all the stocks and the survey carried out at a later stage would not have strong evidentiary value. Besides, all these aspects are completely factual in nature and we are unable to find any perversity in the impugned order. The factual findings recorded by the Income-Tax authorities, have been examined by the last fact-finding authority i.e. the IT AT. In absence of any perversity in the impugned order, court is not inclined to entertain the present appeal, which urges questions of law that are entirely resting on findings of fact. Therefore no question of law, much less substantial question of law, arises for consideration. Accordingly, the appeal stands dismissed."</i></p>
2.	<p><i>NEENA PRAFUL SAWLANI VERSUS I.T.O., WARD 1 (3) (8) , SURAT 2022 (11) TMI 465 - ITAT SURAT</i></p>	<p><i>Unexplained investment u/s 69A - cash deposit by appellant in her two bank account - cash deposit in bank account during demonetization year - HELD THAT:- Keeping in view that despite furnishing complete details for previous and subsequent period of demonetization year, the assessee has discharged his onus by showing the magnitude of cash deposit, during demonetisation period was not at much variance, comparative to previous and subsequent period, therefore, the addition made by AO does not stand in judicial scrutiny and we direct to delete the addition made. Appeal of assessee is allowed.</i></p>

9. The ld. counsel further argued in respect of **ground no. 9** and placed the submission which is extracted as below:

“6. Submissions in respect of Ground No. 9

Ground No 9	<i>9. That the CIT(A) NFAC has erred in confirming the order of the AO ignoring the position of law that provisions of section 68 cannot be applied in respect of income from a source which has already been taxed which would amount to double taxation.</i>
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a) To begin with, your Honor’s kind attention is drawn towards section 68 f the income tax act 1961 which is reproduced hereunder: -

Cash credits.

47 68. 48Where any sum is found credited in the books49of an assessee maintained for any previous year, and the assessee offers no explanation49 about the nature and source thereof or the explanation offered by him is not, in the opinion of the 50[Assessing] Officer, satisfactory, the sum so credited may49 be charged to income-tax as the income of the assessee of that previous year :

51[51a[Provided that] where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a)the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

51b[Provided further] that nothing contained in the first proviso 51c[or second proviso] shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]

b) On perusal of the text of section 68, it is evident that section 68 can only be invoked if the assessee is unable to explain the source of any sum found credited in the books of accounts. However, in the present case, the appellant had duly explained that the cash was deposited out of business receipts which were part of the audited results for the AY 2017-18. It is further pertinent to mention here that since the cash forms part of revenue receipts, as such, the appellant has duly paid tax on the same and any addition made in respect of such cash deposited would amount to double taxation which is against the principles of law. In this regard we are relying upon the following case laws: -

Sr. No	Citation	Brief
1.	[2022] 138 taxmann.com 141 (Bangalore - Trib) Anantpur Kalpana vs ITO	<i>INCOME TAX : Where Assessing Officer made addition under section 68 on account of cash deposited by assessee in its two bank account post demonetization, since said cash deposit was towards assessee's sale proceeds which was already offered to tax by assessee and admitted by revenue as revenue receipt, impugned addition made under section 68, resulting in double taxation, were liable to be deleted</i>
	[1996] 84 TAXMAN 146 (CAL.) HIGH COURT OF CALCUTTA CIT v. Associated	<i>Section 69A of the Income-tax Act, 1961 - Unexplained moneys - Assessment year 1979-80 - Assessing Officer treated high denomination notes worth Rs. 81,000 as unexplained money, disbelieving assessee's explanation as to how he came into possession of same and added same in income of assessee and also imposed penalty - Tribunal found that assessee had sufficient cash in hand and in books of account of assessee cash balance was usually more than</i>

	Transport (P.) Ltd.	<i>Rs. 81,000 - It, deleted addition and cancelled penalty - Whether finding of Tribunal being on basis of appreciation of facts against which no question of perversity had been raised, Tribunal was right in deleting addition and consequent penalty - Held, yes</i>
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10. The ld. counsel further argued in respect of **ground no. 10** and placed the submission which is extracted as below:

“7. Submissions in respect of Ground No. 10

<i>Ground No 10</i>	<i>10. That the CIT(A) NFAS has erred in confirming the order of the AO ignoring the position of law that no addition u/s 68 can be made where books of account had been rejected by the AO u/s 145(3) and again relying upon the same books of accounts for the purpose of section 68.</i>
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a) Alternatively, it is humbly submitted that when the A.O. has rejected the books of account under section 145(3) of the Act then the addition under section 68 of the Act was totally unjustified. That due to this addition the A.O. has resulted in unrealistic net profit rate i.e; 28%. That even if the AO was not satisfied about the correctness or completeness of the account then the assessment could have been framed in the manner provided under section 144 of the Act. It is also submitted that the A.O has rejected the books of account under section 145(3) of the Act only on the basis of surmises and conjectures and no defect were pointed out in purchase and sales, opening stock, closing stock, expenses as debited in the books

of account. Therefore, the making of addition on account of deposit of cash which was duly accounted for in the books of account was against the facts and circumstances of the case. The reliance was placed on the following case laws:

<i>Sr. No</i>	<i>Citation</i>	<i>Brief</i>
1.	<i>[2016] 73 taxmann.com 100 (Karnataka) CIT, Belgaum v. Bahubali NeminathMuttin</i>	<i>Section 69B, read with section 145, of the Income-tax Act, 1961 - Undisclosed investments (Stocks) - Whether where books of account of assessee had been rejected by assessing authority, same books of account could not be relied upon in an addition on account of trade creditors and also for arriving at closing stock - Held, yes [Para 15] [In favour of assessee]</i>
2.	<i>[2014] 42 taxmann. com 349 (Punjab & Haryana) CIT, Patiala v. Dulla Ram, Labour Contractor, Kotkapura</i>	<i>Section 68 of the Income-tax Act, 1961 - Cash credits [Rejection of books of account, effect of] - Whether where books of account are rejected in their entirety, Assessing Officer cannot rely upon any entry in those books of account for making an addition to assessee's taxable income under section 68 - Held, yes [In favor of assessee]</i>

11. The ld. CIT DR vehemently argued and relied on the order of the ld. AO.

Copy of the said order of para 6.1 is extracted as below:

“6.1 The above discussion clearly shows that the assessee had shown inflated cash sales to cover his unaccounted money. Total sale shown

by the assessee in October, 2016 is Rs.1,58,06,636/-, out of this the credit was allowed to the assessee by considering the maximum sale shown of June, 2016 i.e Rs.23,28,355/- and also after considering gross profit shown @ 4.84% by the assessee in his trading account on these inflated cash sales, benefit of Rs.28,06,536/- is allowed for Oct, 2016 and balance Rs.1,30,00,000/- is treated as unexplained cash deposited in the bank and is assessed u/s 68 of the Income Tax, Act,1961. On the same analogy, out of cash sale of Rs.1,53,63,687/- shown for 8 days of Nov, 2016, benefit of Rs.9,63,687/- as allowed on account of sale and G.P, balance of Rs.1,44,00,000/- has been treated as unexplained cash deposit in the bank and assessed u/s 68 of the I.T. Act, 1961. Hence total addition on account of unexplained cash deposit is made amounting to Rs. 2,74,00,000/- u/s 68 of the Income Tax Act, 1961 and the same is taxed u/s 115BBE of the Act at the rate of 60%. Further, penalty proceedings u/s 271AAC(1) of the Income Tax Act, 1961 are also initiated on this issue.”

11.1 The ld. CIT DR further relied on the order of the ld. CIT(A)'s para nos. 4 to 4.1 are extracted as below:

“4. Decision:-

The AO in its order u/s 143(3) of the Act has noted that the assessee has made large cash deposit in his bank account during the demonetization period i.e., during 9.11.2016 to 31.12.2016. The AO asked the reasons for this increase in the cash sales i.e., of Rs. 40950000/-. After examining the submission of the assessee, the AO as

per Para 6.1 had added Rs. 27400000/- u/s 68 r.w.s 115BBE of the Act after allowing the credit of the sales made up-to October 2016 and the profit margin as worked out from the submission of the assessee.

4.1 The assessee filed its appeal and challenged the additions made by the AO. During the appeal proceedings the appellant did not file any submissions to support its grounds of appeal. As discussed above, the appellant has not complied with various notices issued in the course of appeal proceedings and also did not make any compliance during assessment proceedings. Therefore, it appears the appellant is not interested in prosecuting the appeal. In view of the above the various additions and disallowances made by the AO are upheld. The Grounds of appeal are dismissed.”

12. We heard the rival submission and relied on the documents available in the record. That the Id. A.O. had not disputed, the purchases, quantitative stock and sales for the entire period except October & November. It is pertinent to mention here that the assessee has duly submitted books of accounts, sale & purchase register, confirmations, bank statements, expenses, parties from whom the purchase and to whom sales were made. However, the Ld. AO has alleged that the appellant has inflated sales for the month of October & November, 2016. The total sales declared by the assessee was to be tune of Rs. 1,58,06,636/- and Rs.

1,53,63,687/- respectively. However, the Id. Assessing Officer has computed the sales for the month of October & November 2016 at Rs. 28,06,536/- and Rs. 9,63,687/- respectively. The Ld. AO while doing such exercise has ignored the fact as to why a prudent businessman will make purchases to the tune of Rs. 3,09,69,406/- in the month of October, 2016 much before the date of demonetization in order to execute such meagre sale as computed by the AO. The assumption drawn by the AO in respect of estimating the sales is merely on assumption or presumption or surmises or conjectures. Therefore, the Ld. AO has made addition of Rs. 2,74,00,000/- in the hands of the assessee by reducing the actual sales for the month of October, & November 2016. The basis of rejection of books was not acceptable here. We respectfully relied on the order of jurisdictional High Court in the case of **Ludhiana Steel Rolling Mills Ltd**, *supra*. The Ld. AO has made such addition without discharging the burden of prove the correctness of addition. It is a settled law that once the adequate evidence/material has been provided which prima facie discharge the burden of the assessee in that case, the burden shifts on the revenue and the revenue has not discharged its onus in these circumstances. Here, no addition can be called for. In this regard, the respectfully reliance is placed on the following case laws:

- K.P. Varghese vs ITO (1981) 7 Taxman 13 (SC)
- A.S. Sivan Pillai vs. CIT (1958) 34 ITR 328 (Madras)
- Roshan Di Hatti vs CIT 107 ITR 938 (SC),
- CIT, Faridabad v. Lul Transport Corporation, [2009] 180 Taxman 185 (Punjab & Haryana)

12.1 We also considered that the amount deposited in the bank account was out of sale of various items which had been held by the assessee as stock in trade and since the deposits in the bank account were out of sale of stock therefore the stock of the assessee has depleted and the cash has come in respect of stock, such sales had been disclosed in the trading account against the purchase which had not been doubted, neither the opening and closing stock had been doubted. Therefore, nothing could have been doubted when the source of cash was well explained and was shown in the bank account. However the addition was made only on the basis of surmises without establishing any motive on the part of the assessee and without disturbing the closing stock as on 31/03/2017 which had been arrived at after reducing the sale in quantity of stock in trade.

12.2 Further, in our considered view, the AO has no right to calculate sales on hypothetical basis ignoring the evidence submitted during the course of assessment

proceedings in the form of VAT return, purchase bills and quantitative details. Once the amount is declared as turn over cannot be called concealed income and be taxed doubly on same amount. We further relied on order of ITAT, Mumbai **Jet Freight Logistics Ltd. v. Commissioner of Income-tax Appeal (NFAC)**. The addition U/s 68 is beyond jurisdiction of the Id. AO as the turnover is already reflected in the books of the assessee. So, the addition amount of Rs 2,74,00,000/- is quashed.

13. In the result, the appeal of the assessee bearing **ITA No. 195/Asr/2022** is allowed.

Order pronounced in the open court on 11.04.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order