

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.6351/Del/2025
(Assessment Year: 2017-18)**

M/s KP Diamonds (P) Ltd. Shop No. 201-A, 2 nd Floor, Gold Plaza Building, Gurudwara Road, Karol Bagh, New Delhi – 110005	Vs.	Income Tax Officer Ward-14(1) Delhi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAECK0247J		
Appellant	..	Respondent

Appellant by :	Sh. Lalit Mohan, CA Sh. Ankit Kumar, Adv
Respondent by :	Sh. Ajay Kumar Arora, Sr. DR

Date of Hearing	16.02.2026
Date of Pronouncement	26.02.2026

ORDER

PER ANUBHAV SHARMA, JM:

This appeal preferred by the assessee against the order dated 18.08.2025 of Ld. National Faceless Appeal Centre (NFAC)

Delhi(hereinafter referred to as the First Appellate Authority or ‘the Id. FAA’ for short) in DIN & Order No : ITBA/NFAC/S/250/2025-26/1079680832(1) arising out of the assessment order dated 17.12.2019 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) passed by ITO, Ward-1Katni, for AY: 2017-18.

2. Heard and perused the records. The assessee is engaged in the business of trading of diamonds and gold jewellery. The case of the assessee was selected for scrutiny for the reason of large value of cash deposited during demonetization period and accordingly the Assessing Officer issued mandatory notices under the Act calling assessee to respond to the deposit of Rs.3,58,29,000/- in its bank account in old currency notes. As a matter of fact, the assessee had 7 accounts in Bank of Maharashtra. The Assessment Order shows that Deputy Director Income Tax (Investigation Wing-8) New Delhi had issued summons and assessee had provided sales data of Financial Year 2016-17, 2015-16 & 2014-15 to investigation wing. Assessee had furnished that the cash deposited is out of cash sales and furnished cash books and sales and purchase invoices. It was observed from the submissions of the assessee that assessee has made only 9 sales in the month of October,

2016 only and 4 sales in the month of December, 2016. However, in the month of November, 2016 assessee has made 226 sales out of which 223 are cash sales and that too in just 8 days from 01.11.2016 to 08.11.2016 and not even single sale is made from 09.11.2016 to 30.11.2016. The sales data of assessee for Financial Year 2015-16, 2014-15 was also analyzed and from it also was found that not more than 30 bills have been raised in any particular month. It was further found that sales invoices in the month of October, 2016, December 2016 have the details (Name and address) of the buyer. However, in the month of November 2016, only 3 sales invoices have details of buyers and all these bills are above Rs. 2,00,000/- Rest all 223 sales invoices are cash sales of less Rs.2,00,000/- not having name, PAN and address of the buyer. The unusual trend of cash sales during the period 01.11.2016 to 08.11.2016 was not observed either before this period or afterwards. Thus, based on the probabilities arising out of these circumstances addition u/s 68 was made which has been sustained by Id. CIT(A) by following relevant findings:

“6. In the previous year, during demonetisation the appellant deposited cash of Rs.3,58,29,000 in bank account number 60126341827 with Bank of Maharashtra. The appellant claims that the deposit was made from the cash available in the books as on 08.11.2016. The AO held that the cash shown in the books was out of proportion to the

normal business of the appellant and treated the amount deposited as unexplained cash deposit u/s 68.

6.1 The cash balance in the books as on 30.10.2016 was 21,41,835. However closing cash balance as on 08.11.2016, i.e. on the eve of demonetisation it became 3,57,36,271. In one week the appellant booked cash sales of Rs. 3,51,94,491 whereas there were NIL cash sales prior to 01.11.2016 and after 08.11.2016. The details as furnished by the appellant are shown below.

Month wise	Opening cash in hand(Rs.)	Cash Sales(Rs.)	Receipts in cash (Rs.)	Cash Withdrawal from bank(Rs.)	Deposits in bank(Rs.)	Payments in cash(Rs.)	Closing cash in hand(Rs.)
April' 2016	3,245	0	1,55,800	0	10,000	252	1,48,793
May' 2016	1,48,793	0	1,92,500	4,50,000	0	3,10,922	4,80,371
June' 2016	4,80,371	0	1,36,000	6,00,000	4,50,000	3,737	7,62,634
July' 2016	7,62,634	0	1,74,800	16,15,000	25,50,000	660	1,774
August' 2016	1,774	0	1,36,500	15,30,000	0	20,159	16,48,115
September' 2016	16,48,115	0	0	11,00,000	0	5,10,630	22,37,485
October' 2016	22,37,485	0	0	0	0	95,650	21,41,835
November' 2016	21,41,835	3,51,94,491	0	1,44,000	3,74,00,000	20,075	60,251
December' 2016	60,251	0	0	1,30,000	29,000	1,59,850	1,401
January' 2017	1,401	0	0	3,80,000	0	2,38,000	1,43,401
February' 2017	1,43,401	0	759	2,00,000	0	2,05,802	1,38,358
March' 2017	1,38,358	0	0	4,75,000	0	1,75,955	4,37,403

6.2 By booking cash sales of Rs.3,51,94,491 between 01.11.2016 and 08.11.2016, the appellant could explain the cash deposit of Rs.3,58,29,000 in bank account between 10.11.2016 and 13.12.2016 as shown below:

Sr.No.	Date of deposit Amount deposited (₹)	Amount deposited (Rs.)
i)	Bank of Maharashtra CC Account no.60126341827	
	10.11.2016	40,00,000
	15.11.2016	1,08,000
	15.11.2016	95,00,000
	19.11.2016	60,00,000
	29.11.2016	19,00,000
	30.11.2016	36,00,000
	13.12.2016	29,000
	Total(A)	3,58,29,000

6.3 However it appears strange that the appellant who did not record any cash sales before 1st November and after 8th November managed to make cash sales of Rs.3,51,94,491 between 01.11.2016 and 08.11.2016. Almost 30% of the entire turnover for the year was booked in one week. The explanation of the appellant is not credible. This appears to be a case of introducing unaccounted money into the books by camouflaging the same as cash sales, in view of demonetisation.

6.4 In this case, apparently the cash deposit is through the books. However the principle of human probability suggests that unaccounted cash was introduced in the books to explain the cash deposits during demonetisation. In this context, the observations of the

Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad More 82 ITR 540 (SC) are pertinent, wherein the Hon. Supreme Court has observed:-

“It is true that an apparent must be considered to be real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on recitals in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him are executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.”

6.5 In *Sumati Dayal vs CIT* [1995] 80 Taxman 89 (SC), the Hon Supreme court held that taxing authorities can invoke the principle of human probability to decide whether a transaction is genuine or not.

Apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities.

6.6 The investigation conducted by the AO in the course of assessment lends further credence to the above conclusion. The IT attached to the AO conducted a spot verification of the premises of the appellant and it was reported that appellant occupied the upper floor of a building and was not easily accessible to customers. It was difficult for the appellant to make 226 large cash sales in matter of 8 days when only 1-2 customers could be accommodated at a time.

6.7 The AO has also pointed out that the closing cash in financial years 2016-17, 2015-16 and 2014-15 was much lower than cash in hand as on 08.11.2016. This is shown below. It can be seen that the cash balance shown by the appellant as on 08.11.2016 has no relation to the usual pattern of cash holding in the business.

FY	
2014-15	8,55,818
2015-16	3,245
2016-17	43,404
08.11.2016	3,57,36,271

6.8 The AO treated the cash deposited during demonetisation in bank account (Rs.3,58,29,000) as unexplained credit u/s 68. The appellant argues that the cash deposits in bank account are explainable from the cash generated in the business. The appellant also argues that what has already been offered as sales cannot be again taxed under section 68.

6.9 In my view the AO made an error in taxing cash deposits in bank account under section 68. It is trite law that bank account does not form part of the books of the appellant and hence section 68 does not apply to deposits in bank account. However this is only a venial mistake. The foregoing discussion shows that the amount shown as cash sales from 01.11.2016 to 08.11.2016 is not really cash sales. The appellant has not established that these credits are on account of sales. The only argument of the appellant is that the appellant remitted VAT on these sales. This is not a convincing explanation. In order to make unaccounted cash appear as sales, the appellant can easily remit VAT liability if any. As elaborately discussed the cash credits in the books from 1.11.2016 to 08.11.2016 have not been satisfactorily explained. Therefore cash credits in the books amounting to Rs. 3,51,94,491 is liable to be assessed u/s 68. A further addition on account of cash deposit in bank account is unnecessary.

6.10 The appellant argues that Rs. 3,51,94,491 has already been offered for tax as sales and cannot be taxed again. This is a valid claim. The business income has to re-computed by excluding Rs. 3,51,94,491 from sales. This amount should be separately taxed under section 68.

6.11 The appellant argues that before making an addition under section 68, books of account ought to have been rejected. This argument is not tenable. Section 68 does not insist that books need to be rejected before making an addition. Also in this case, there is no estimation of income. In Davinder Singh VS ACIT [2007] 104 ITD 325 (ASR.), ITAT Amritsar bench observed as under:

“Therefore, the question of rejection of book results does not arise in the present case. Moreover, there is nothing in section 68 of the Act that books of account must be rejected before making an addition under this section. This is an independent and deeming provision and will apply if the assessee fails to offer an explanation of the source of particular receipt credit appearing in the books of account or if the explanation given by the assessee is found to be not satisfactory by the Assessing Officer.”

6.12 The appellant argues that section 115BBE was amended by Taxation Second Amendment Act 2016 with effect from 01.04.2017 to raise the tax rate under this section to 60% from 30%. According to the appellant, this enhanced rate applies only from FY 2017-18 onwards only.

6.13 This matter has been settled conclusively by the decision of the Hon. Kerala High Court in Maruti Babu Rao Jadhav vs ACIT [2025] 171 taxmann.com 463 (Kerala-HC). The relevant parts of the judgment of the High Court is reproduced below:

Section 115BBE was inserted by Finance Act 2012 with effect from 1-4-2013. As on 1-4-2016 the financial year in which the subject seizures occurred section 155BBE provided for 30 percent tax on income referred to in sections 68, 69, 69A, 69B, 69C and 69D. The same was amended by the 2nd Amendment Act; with effect from 1-4-2017, enhancing the rate to 60 per cent. Hence there was no new liability created and the rate of tax merely stood enhanced which is applicable to the assessments carried on in that year. The enhanced rate applies from the commencement of the assessment year, which relates to the previous financial year. [Para 13]

Likewise it was by Chapter II, heading 'Rates of Income Tax', as provided in the Finance Act 2016, that a surcharge was introduced by way of the 3rd proviso of section 2(9) of that Finance Act. This comes into effect from the Financial Year 2016- 2017; which is the year in which the subject seizures were occasioned. The proviso refers to various provisions where the advanced tax computed under the first proviso stands increased by a surcharge for the purpose of the Union. Section 115BBE is one of the provisions referred to in the 3rd proviso and in the case of individuals the surcharge was at the rate of 15 percent where the total income exceeds one crore, as on 1-4-2016. By the 2nd Amendment Act section 2 of the Finance Act, 2016 stood amended by which section 115BBE was omitted from the 3rd proviso. After the 6th proviso yet another proviso was inserted which provided for the 'advance tax' computed under the first proviso, in respect of any income chargeable to tax under section 115BBE(1)(i), to be increased by a surcharge for the purposes of the Union, calculated at the rate of 25 percent. Hence there is no new liability of surcharge created and it is a mere enhancement of the rate of surcharge. [Para 14] In the financial year 2016-17 itself the tax as provided under section 115BBE and the surcharge on advance tax was available as discernible from the IT Act and Finance Act, 2016 as it stood on 1-4-2016 itself. A major misdemeanour leading to assessment of income as accrued under section 69A invites the consequences of section 115BBE and surcharge provided under section 2(9) of the Finance Act, 2016. When it stands enhanced from 1-4-2017, for every assessment carried out in that year, related to the previous year, the rates as applicable on 1-4-2017 has to be applied. There being no new liability created or obligation imposed, the arguments raised by the assessee fails. The assessee cannot have a contention that he committed the misconduct on the expectation that if he were caught he would have to shell out only lesser amounts as tax and surcharge. There is no right accrued on the assessee to commit an offence on the expectation of a lesser penalty. [Para 15]

6.14 In the light of the foregoing discussion, grounds 2 and 3 are partly allowed. Ground 1, 4 and 5 are general/consequential. These grounds are not separately adjudicated.”

3 On hearing both sides we find that primarily the contention of the Ld. Counsel is that the entire cash sales of Rs.11.69 crores for the period under consideration including cash sales is subject to VAT which has not been doubted. It was submitted that all the necessary documents were filed before the assessing officer but same have not been commented upon.

3.1 Ld. Counsel submitted that sales in the year is rather less as compared to transaction 2015-16 & 2016-17 and the net profit is higher. Ld. Counsel contended that without invoking rejection of books and accepting the profits declared, the cash sales could not have been doubted.

4. On the contrary ld. DR has submitted that Assessing Officer and ld. CIT(A) have both examined the issue on the basis of relevant figures and the facts of sales during demonetization period being of not properly documented established that the invoicing is not genuine.

5. We have given a thoughtful consideration the facts and circumstances and the first thing that we intend to observe is that appellant has placed following evidences on record, during the course of assessment proceedings in support of cash sales made by appellant from 1st to 8th of November' 2016:

- i. Copy of the cash book of KP Diamonds for the period 1.4.2016 to 31.3.2016 (pages 352-389 of Paper Book)
- ii. Details of cash deposits (92)
- iii. Details of purchases made during the financial year 2016-17 (60-62)
- iv. Details of party transactions covered u/s 40(A)(2)(b) made during the financial year 2016-17 (63)
- v. Copy of sales register (344-351)
- vi. Copy of the VAT return (275-343)
- vii. Copy of stock audit report (212-221)
- viii. Copy of ledger account of 22ct gold jewellery for the period 1.4.2016 to 31.3.2017 (272)
- ix) Copy of ledger account of 995ct gold jewellery for the period 1.4.2016 to 31.3.2017 (271)
- x. Stock summary from 1.04.2016 to 31.03.2017 (265)
- xi. Copy of sales invoices (pages 422-647 of Paper Book II)
- xii. copy of stock statement (228-264)

6. It further comes up that the total sales during the year is certainly less than the previous years and the tabulation provided by the assessee in this regard needs to be reproduced below:

Sr. No.	Assessment Year	Total Sales	Gross Profit	Net Profit	NP%
i)	2015-16	29,39,25,792	5526736	520040	0.18
ii)	2016-17	26,70,95,860	5692670	526559	0.2
iii)	2017-18	11,58,05,830	4079675	310114	0.27

7. Now what is relevant is that appellant during the course of assessment proceedings had placed sales invoice issued in cash which are placed at pages 322-347 of Paper Book, sale receipt from the same is deposited in bank accounts of appellant. It come up from perusal of cash sale invoices that VAT is duly paid on each cash sale and sales were duly reflected in books of accounts and VAT return has also been filed by appellant are placed at pages 243-319 of Paper Book. It is undisputed that sales as made by the appellant are duly reflected in the sale register and stock register maintained by the appellant. It is also undisputed that aforesaid cash sales are supported by sale bills issued by the appellant.

7.1 It is further not denied that appellant has maintained all records as an appellant is obliged to maintain in accordance with law. It is also matter of

record and not disputed that books of accounts as maintained are duly audited under section 44AB of the Act. In such circumstances, it is not just to hold that cash generated out of cash sales as reflected in the books of accounts and audited financial results are unaccounted cash. In the absence of any defect in the books of accounts maintained in accordance with law which are duly audited under section 44AB of the Act, it would be highly unjustified to allege that cash generated by the appellant out of cash sales in the ordinary course of business is unaccounted cash and therefore, taxable under section 68 of the Act.

7.2 There is substance in the claim of assessee that appellant is a jeweller and October, November is festive season and the cash has been deposited out of cash sales to the customers which is recorded in the books of accounts.

7.3 Once the sales made by appellant are supported by stock register, sale bills, and sale duly disclosed in vat returns which is verified and accepted by vat department no addition can be made. Reliance is rightly placed by Id.

Counsel on the following judicial pronouncements:

- i. 441 ITR 550 (Del) (HC) PCIT Vs. Agson Global (P) Ltd. (extracted at pages 406-408 of Paper Book)
- ii. 277 Taxman 423 (Del) Pr. CIT v. Akshit Kumar (extracted at pages 408-409 of Paper Book)

- iii. 424 ITR 195 (Bom) Pr CIT vs Sunshine Import & Export Pvt Ltd.(extracted at pages 409-410 of Paper Book)
- iv. 224 TTJ 705 (Del) DCIT vs. BawaJewellers Pvt. Ltd. (extracted at pages 410-411 of Paper Book)
 - (i) 189 ITD 608 ACIT vs. HirapannaJewellers (extracted at page 411 of Paper Book)
 - (ii) 140 taxmann.com 588 Smt. Charu Aggarwal vs. CIT (extracted at pages 411-412 of Paper Book)
 - (iii) 30 taxmann.com 141 (ITAT - Bangalore) AnantpurKalpana vs.ITO (extracted at page 412 of Paper Book)
- v. ITA No. 1011/Del/2022 DCIT Vs. Manuvel Malabar Jewellers Pvt.Ltd
- vi. 161 taxmann.com 669 (Del-Trib.) ACIT vs. Harison Diamonds Pvt.Ltd. (extracted at pages 414-415 of Paper Book)
- vii. ITA 3748/Del/2023 ITO vs. Aditi Gems N. Jewellery (extracted at page 415 of Paper Book)
- viii. 112 ITR (Trib.) 12 (Del) DiwanSaheb Fashions Pvt. Ltd. vs. ACIT (extracted at page 415-416 of Paper Book)
- ix) TA 2224/Del/2023 Brijwasi Diamonds vs. ITO (extracted at page 416 of Paper Book)
- ix. DCIT vS.AkshardhamJewellers Pvt. Ltd. ITA 263/Del/2022 (extracted at pages 417-418 of Paper Book)
- x. ITA 3170/Del/2023 Dharampal vs. ITO”

8. The coordinate in aforesaid cases have consistently taken a view that where qualitative details like opening and closing stock and purchaser quantity are accepted then on the basis of human probabilities alone the documentary evidences cannot be brushed aside as an exceptional efforts and there is quite a possibility that due to demonetization period and a festive season there were customers in the market wanted to buy jewellery and invest

instead of depositing the cash in their bank account. Since, there were no mandate of law requiring necessary to keep details of cash sales below Rs.2,00,000/-it would be unjust to doubt the cash sales when otherwise the books of have been duly kept.

9. More particularly in the case of assessee it is pertinent to observe that Assessing Officer seems to have made no effort to examine the evidence independently and has primarily relied the investigation wing report to give all the findings.

10. In the light of aforesaid we are inclined to sustain the grounds and **allow the appeal**. The impugned addition stand deleted.

Order pronounced in the open court on 26.02.2026

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

Dated 26.02.2026
Rohit, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI