

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

(Conducted through Virtual Court)

**ITA No.1515/Ahd/2018
Assessment Year: 2015-16**

Zarinaben Rahimbhai Kalavatar, New Bus Stand Mahuva – 364 290 [PAN – CTQPK 5900 C] (Appellant)	vs.	The Asstt. Commissioner of Income Tax, Ward – 2(4), Bhavnagar. (Respondent)
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Appellant by	:	Shri P.B. Parmar, Advocate
Respondent by	:	Shri R.R. Makwana, Sr. D.R.

Date of hearing	:	06.12.2021
Date of pronouncement	:	10.12.2021

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 16.03.2018 passed by the CIT(A)-6, Ahmedabad for the Assessment Year 2015-16.

2. The grounds of appeal raised by the assessee are as under :

- “1. *The learned CIT(A) has erred in law and on facts of the case in confirming the action of the AO of converting the limited scrutiny which was initiated for AY 2017-18 into a complete scrutiny for AY 2015-16. Under the facts and circumstances of the case, the CIT(A) ought to have held that the action of assessing income for the year under consideration is without jurisdiction and is not permissible either in law or on facts.*
2. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of making an addition of Rs.72,728/- by treating opening cash balance as unexplained u/s.68 r.w.s. 115BBE of the Act.*

3. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of making an addition of Rs.4,41,845/- by treating cash sales as bogus u/s.68 r.w.s.115BBE of the Act.*
4. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
5. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s.234A/B/C of the Act.*
6. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.271(1)(c) of the Act.*

The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”

3. The return of income for the Assessment Year 2015-16 was filed by the assessee on 21.03.2017 declaring total income at Rs.2,59,900/-. The same was selected for limited scrutiny. The reason for limited scrutiny selection was mentioned as “cash deposits for demonetisation period (9th November to 30th December)”. Notice under Section 143(2) of the Income Tax Act, 1961 was issued on 18.09.2017 and notice under Section 142(1) was issued on 26.09.2017. The assessee was engaged in the business of trading of chicken. During the year, the assessee deposited Rs.17,90,000/- and Rs.49,000/- in his bank accounts during the demonetization period and has furnished online reply claiming that the source of these deposits were “opening cash balance, past savings and cash sales”. The Assessing Officer observed that the assessee filed her last return of income for the Assessment Year 2012-13 which shows meagre total sales of Rs.2,19,311/- and closing cash balance of Rs.56,015/- in comparison to cash sales of Rs.25,45,570/- and closing cash balance of Rs.7,01,198/- showing in the current year under scrutiny. The return for Assessment Year 2013-14 & 2014-15 were not filed. The due date for filing returns was 31.07.2015 but the return for the Assessment Year 2015-16 was also filed after due date i.e. on 27.03.2017 (post demonetization). The

Assessing Officer made addition of Rs.4,41,845/- under Section 68 read with Section 115BBE of the Act related to bogus cash sales credited in cash book as well as Rs.72,728/- related to opening balance of cash book.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submits that there is delay of 19 days in filing the appeal. Ld. AR submitted that Ground No. 1 is not pressed in respect of the challenge to action of the Assessing Officer as to converting limited scrutiny for Assessment Year 2017-18 into complete scrutiny for Assessment Year 2015-16.

6. As regards ground no.2, the Ld. AR submitted that the Assessing Officer made addition of Rs.72,728/- in respect of opening cash balance under Section 68 read with Section 115BBE of the Act which was confirmed by the CIT(A) as well. The Ld. AR submitted that it is a settled law that opening balance cannot be added under Section 68 of the Act. Ld. AR relied upon the decision of CIT vs. Jagatkumar Satishkumar Patel (Tax Appeal No.324 of 2012, order dated 04.12.2012) passed by the Hon'ble Gujarat High Court. Thus, the Ld. AR submitted that this addition may be deleted.

7. As regards ground no.3 relating to addition of Rs.4,41,845/- which was treated by the Assessing Officer as cash sales being bogus under Section 68 read with Section 115BBE of the Act, the Ld. AR submitted that once the sales realisation has been offered for taxation, addition of such amount cannot be made again under Section 68 of the Act or else it shall tantamount to double taxation. The Ld. AR submitted that the sum recorded as sales in the books were not doubted by the Revenue as well as profit element was already offered to tax by the assessee and the corresponding purchases were accepted by the Assessing Officer. Thus, the addition made under Section 68 of the Act tantamount to double taxation of the same income. The Ld. AR pointed out Balance Sheet, copy of Profit & Loss Account, Capital Account as well as acknowledgment of Income Tax return and STI, relevant extracts of Bank statements, Cash Book and few purchase bills related to the transactions.

8. The Ld. AR submitted that the Assessing Officer failed to appreciate that in the business of assessee there are walk-in-customers who come to the assessee and buy the birds and go away. In such kind of business, it is practically not possible to even maintain record of such customers and hence question of maintaining ledgers and confirmations would not arise at all. Ld. AR made alternative submission that "net income" should have been determined in terms of Section 44AF of the Act. The receipts in question represented sales of the assessee made during the year under consideration. The Assessing Officer has not brought on record any cogent material so as to even remotely demonstrate that the underlying sum is not on account of sales and in such situation net income of the assessee ought to have been determined on the basis of Section 44AF which provides for determination of income at 5% of sales. Since profit declared by the assessee is higher than 5%, no further addition is justified as per the submissions of the Ld. AR.

9. The Ld. DR riled upon the assessment order and the order of the CIT(A).

10. We have heard both the parties and perused all the relevant materials available on record. The delay in filing the present appeal is condoned as the assessee has explained the reason for delay which appears to be genuine.

11. Ground no.1 is not pressed by the assessee, hence ground no.1 is dismissed.

12. As regards ground no.2, from the perusal of the records it is seen that the opening balance of Rs.72,728/- was not confirmed from any closing balance of the earlier period by the assessee before the Revenue Authorities. It is an admitted fact that the assessee has not filed return of income for Assessment Years 2013-14 and 2014-15 and there was no Balance Sheet & Profit & Loss Account before the Assessing Officer who verified the opening balance for the present Assessment Year. From the perusal of the records before us, the Ld. AR submitted that the same can be demonstrated before the Assessing Officer by the assessee. Therefore, we are remanding back this issue to the file of the Assessing Officer for adjudicating the issue afresh. Needless to say the assessee be given opportunity of hearing by

following principles of natural justice. Ground no.2 is partly allowed for statistical purposes.

13. As regards ground no.3, it is pertinent to note that the Assessing Officer has not doubted purchases made by the assessee and simply made the addition of cash sales and accepted rest of the sales but on what basis and on what reason has not been demonstrated clearly in the Assessment Order. In fact the assessee has also not fully established as to how the cash sales are genuine as the records produced before us which were already produced before the Assessing Officer has not been taken into consideration properly by the Assessing Officer. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer for fresh adjudication after verifying the evidences produced before the Assessing Officer. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground no.3 is partly allowed for statistical purposes.

14. Ground nos.4, 5 & 6 are consequential and hence the same are not adjudicated at this juncture.

15. In the result, appeal of the assessee is partly allowed for statistical purposes. Order pronounced in the open Court on this 10th day of December, 2021.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 10th day of December, 2021

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*