

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकर अपीलसं./ITA No.204/SRT/2020
(निर्धारणवर्ष / Assessment Year: (2015-16)
(Physical Court Hearing)

Sarvagana Jitendrakumar Jariwala 7/4442, Khumbhar Sheri, Galemandir, Surat-395003	Vs.	Income Tax Officer, Ward-3(1)(5), 115, Anavil Business Centre, Adajan Hazira Road, Surat- 395009
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AHLPJ 3572 E		
(अपीलार्थी /Assessee)		(प्रत्यर्थी /Respondent)

आयकर अपीलसं./ITA No.205 & 182/SRT/2020

(निर्धारणवर्ष / Assessment Year: (2016-17)

Sarvagana Jitendrakumar Jariwala 7/4442, Khumbhar Sheri, Galemandir, Surat-395003	Vs.	Income Tax Officer, Ward-3(1)(5), 115, Anavil Business Centre, Adajan Hazira Road, Surat-
Income Tax Officer, Ward- 3[2][10], Room No. 115, 1 st Floor, Anavil Business Centre, Adajan Harijra Road, Adjan, Surat-35007		Sarvagana Jitendrabhai Jariwala 7/4442, Khubharsheri, Galemandir, Surat-395003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AHLPJ 3572 E		
(अपीलार्थी /Assessee)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Rasesh Shah, C.A
राजस्व की ओर से /Respondent by : Shri Vinod Kumar, Sr-DR

सुनवाई की तारीख/ Date of Hearing : 22/02/2023
घोषणा की तारीख/Date of Pronouncement : 17/04/2023

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

These are three appeals, out of which first appeal, in ITA No.204/SRT/2020, is filed by the assessee for the assessment year 2015-16 and remaining cross-appeals filed by Assessee as well as Revenue, pertaining to

assessment year 2016-17 (in ITA No.205 & 182), all are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals) [‘CIT(A)’ for short], all dated 02.03.2020, which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’) dated 20.12.2017 and 21.12.2018 respectively.

2. Since the issue involved in all the appeals are common and identical except variance of amount, therefore these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The grounds as well as facts narrated in ITA No.204/SRT/2020 for assessment year 2015-16, have been taken into consideration for deciding the above appeals *en masse*.

3. The ground of raised by the assessee in “**lead**” case ITA No.204/SRT/2020 are as follows:

“1. The learned Commissioner of Income Tax (Appeals), Surat has erred in confirming addition of 25% of total turnover of Rs.1,29,78,500/-, which amounts to Rs.32,44,625/- totally on estimated basis without any base or cogent evidence and without appreciating the facts and circumstances of the case in its right perspective.”

4. The facts necessary for disposal of the appeals are stated in brief. The assessee before us is an individual and filed her return of income for the assessment year (A.Y.) 2015-16, on 21.03.2016, declaring total income to the tune of Rs.4,56,600/- . The case was selected for limited scrutiny under CASS for the reason “cash deposition in saving bank accounts is more than turnover”. Subsequently, a statutory notice u/s 143(2) of the Act was issued on 28.07.2016 and duly served upon the assessee. The notice u/s 142(1) of the Act was issued on 23.01.2017 and 08.08.2017 and duly served upon the assessee. During the assessment proceedings, on verification of records, it was noticed by the assessing officer that the assessee had operated following bank accounts during the financial year 2014-15 relevant to A.Y 2015-16:

Sr.No.	Name of bank	Name of second holder (if any)	Account No.
1	Axis Bank	-	9140100095555876
2	Bank of India	-	2070010110007563
3	State Bank of India	-	20057759304
4	Central Bank of India	Mr. Hardik Jariwala	3156584054

After going through the statement of the above-mentioned bank accounts it was noticed by assessing officer that some amount has been credited in the said accounts by cheque as well as by cash deposition. Details of the credit entries in the accounts are as under:

Sr.No.	Name of Bank	Account No.	Total credit (Rs)
1	Central Bank of India	3156584054	74,18,006/-
2	State Bank of India	20057759304	22,24,673/-
3	Axis Bank	9140100095555876	23,15,519/-
4	Bank of India	270010110007563	36,32,800/-
TOTAL			Rs.1,55,90,998/-

After coming across above huge and dubious credits in accounts of the assessee, the assessing officer wanted to bring this fact on the record with a view to examine all credits in bank accounts comprehensively to alleviate any factual or potential escapement of income from taxing provisions of the Income Tax Act. Therefore, the case was converted into “complete scrutiny” for purpose of detailed scrutiny of the case after getting due prior approval from the Ld. PCIT-3, Surat vide letter No.SRT/Pr.CIT-3/ITO(Tech)/Complete Scrutiny/SJJ/2017-18/dated 24.11.2017

5. Thereafter a show cause notice u/s 142(1) of the Act was issued to assessee on 05.12.2017, which was duly served upon the assessee on 06.12.2017. In show cause notice some vital details / explanation / information pertaining to assessment of the assessee were called for. The relevant part of the show-cause notices are reproduced as under:

“In connection with the assessment proceedings for the A.Y 2015-16, it is stated that your case has been selected for ‘limited scrutiny’; for verification of following reasons:-

1. *“Cash deposits in saving bank account is more than the turnover”*
2. *Thereafter, due to potential escapement of income in the your case, the case has been converted in “complete scrutiny” for further verification after getting prior approval from the Pr. Commissioner of Income-tax-3, Surat.*

3. In connection to assessment proceeding in your case for A.Y 2015-16 on verification of records and AIR information, it noticed that following banks accounts have been operated by you and disclosed in your books of account during the year under consideration:-

Sr.No.	Name of the Bank	Joint holder	Account No.	Cash deposition (Rs)
1	Sutex Bank		0002480032009138	0
2	State Bank of India	Mr. Haridkjariwala	20057759304	13,51,900/-

- 3.1 During the assessment proceedings, on perusal of bank statement of account No.20057759304 held with State Bank of India, it is noticed that an amount of Rs.13,51,900/- has been deposited by cash in this account and this office asked vide notice dated 23.01.2017 to you to explain/establish the source of cash deposition made by you. But you have totally failed to explain the source of such cash deposition.
- 3.2 In view of the above, you are requested to show cause as to why the total amount of 13,51,900/- deposited in your above mentioned bank account should not be treated as unexplained cash credit for the assessment year 2015-16 (relevant to F.Y 2014-15) and added to your total income for the year under consideration and taxed accordingly.
4. Further, the following bank accounts have also operated by you but not disclosed in your books of account during the F.Y 2014-15 i.e. A.Y 2015-16.

Sr.No.	Name of the Bank	Joint holder	A/c No.	Total credit (in Rs)
1	Axis Bank		9140100095555876	23,15,519/-
2	Bank of India	Mr. Haridkjariwala	270010110007563	36,32,800/-
3	Central Bank of India	Mr. Haridkjariwala	3156584054	74,18,006
		Mr. Jitendra I Jariwala	3157153854	58,00,478/-
Total				1,91,66,803/-

- 4.1 the above bank accounts has not disclosed by you in books of account for the year under consideration therefore, the amount credited (most of entries by cash deposition) in bank accounts above mentioned.
- 4.2 In view of the above, you are requested to show cause as to why the total amount of Rs.1,91,66,803/- credit in your above mentioned should not be treated as unexplained cash credit for the assessment year 2015-16 (relevant to F.Y 2014-15) and added to your total income for the year under consideration and taxed accordingly..."

6. In response to above show cause notice dated 05.12.2017, the assessee submitted her reply before the Assessing Officer on 11.12.2017, which is reproduced below:

1. "It may kindly be noted that I am regularly assessed with Income Tax Department, Surat. During the year under consideration, I had filed my return of income under section 44AD of the Act. I was engaged in the business of jari work and had also derived brokerage income during the year under consideration. A copy of my acknowledgement of return of

income filed along with a copy of my computation of income for A.Y 2015-16 was submitted before your goodself vide my letter dated 03.03.2017 vide point no.03.

2. During the year under consideration, following bank accounts were solely maintained and operated by me:

Sr.No.	Name of the Bank	Account No.
1	State Bank of India	000020057759304
2	Axis Bank	914010009555876
3	Bank of India	270010110007563
4	Central Bank of India	000003156584054

A copy of bank statements of above referred bank accounts were submitted before your goodself vide my letter dated 03.03.2017 vide point no. 04 and letter dated 14.08.2017 vide point no.02.

3. The actual position of total credit summation of my bank accounts for A.Y. 2015-16 is as under:

Sr.No.	Name of Bank	Account No	Total credit summation as per my books of account (Rs)	Total credits as per show cause notice (Rs)
1	State Bank of India	000020057759304	22,03,542/-	13,51,900/-
2	Axis Bank	914010009555876	22,94,500/-	23,15,519/-
3	Bank of India	270010110007563	32,59,800/-	36,32,800/-
4	Central Bank of India	000003156584054	70,29,850/-	74,18,006/-
5	Central Bank of India	000003157153854	0	58,00,478/-
Total			1,47,87,692/-	2,05,18,703/-

- a. From the above table, it may kindly be noted that total credit summation of my saving bank account maintained with State Bank of India vide account no. 000020057759304 was Rs.22,03,542/- and not Rs.13,51,900/- as stated by your goodself in your above referred show cause notice vide point no 04. Further, it is wrongly alleged by your goodself in your above referred show cause notice that no explanation was offered with regards to source of cash deposition. It may kindly be noted that I had duly explained the source of my cash deposited into my savings bank account maintained with the above referred account vide my letter dated 03.03.2017 vide point no. 5.
- b. Further, it may be noted that total credit summation of my saving bank account maintained with Axis bank vide account no. 914010009555876 was Rs.22,94,500/- and not Rs.23,15,519/- as mentioned by you in your show cause notice vide point no. 04.
- c. Further, it may also be total credit summation of my saving bank account maintained with Bank of India vide account no. 270010110007563 was Rs.32,59,800/- and not Rs.36,32,800/- as stated by your goodself in your above referred show cause notice vide point no 04.
- d. Further, it may kindly be noted that total credit summation of my saving bank account maintained with Central bank of India vide account no. 000003156584054 was Rs.70,29,850/- and not Rs.74,18,006/- as stated by your goodself in your above referred show cause notice vide point no 04.

Sarvangana J Jariwala

e. I had already submitted a copy of all my bank statements along with a copy of statements showing month wise total credit summation into each bank accounts vide my letter dated 14.08.2017 vide point no. 03 for your ready reference.

4. It may kindly be noted that while filing my return of income for A.Y 2015-16 my saving bank account maintained with State Bank of India vide account No.000020057759304 was duly considered by me. However, due to oversight, following bank accounts were overlooked which were duly disclosed before your goodself during the course of my assessment proceedings:

Sr.No.	Name of bank	Account No.	Total credit as per my books of account (Rs)
1	Axis Bank	914010009555876	22,94,500/-
2	Bank of India	270010110007563	32,59,800/-
3	Central Bank of India	000003156584054	70,29,850/-
Total			1,25,84,150/-

5. Further, it may kindly be noted that my total turnover from my undisclosed bank accounts is Rs.1,29,78,500/- as evident from my books of account submitted before your goodself. Bifurcation of my above mentioned total turnover is as below:

Sr.No.	Name of bank account	Amount credited (Rs)
1	Axis Bank	22,94,500/-
2	Bank of India	32,59,800/-
3	Central Bank of India	70,29,850/-
4	Cash turnover	3,94,350/-
Total turnover		1,29,78,500/-

6. It may kindly be noted that your goodself has wrongly added credit summation to the tune of Rs.58,00,478/- of Central Bank of India, Lal Darwaja Branch, Surat vide account No.3157153854 in your show cause notice vide point no. 04. The said bank account is jointly held by Mr. Jitendra Jariwala and myself. However, all the business transactions and operations were solely carried out by the first holder, Mr. Jitendra Jariwala and the said bank is duly disclosed in the books of Mr. Jitendra Jariwala. A copy of affidavit of Mr. Jitendra Jariwala confirming and admitting the same was already submitted before your goodself vide my letter dated 20.11.2017 vide point no.01.
7. During the course of assessment proceedings, to substantiate my business activities, I had produced copies of all of my sales invoices. Further, I had also produced a copy of few random purchase bills along with a copy of bank statement highlighting the said purchases for your ready reference and kind perusal. Further, it may kindly be noted that I had received cheques from my sundry debtors which were duly deposited into all my savings bank accounts. I had also made payment to my sundry creditors from all my savings bank accounts. I had already submitted a copy of my savings bank statements highlighting the above referred transactions before your goodself vide my letter dated 14.08.2017 vide point no 01. Hence, considering the above facts, it is evident that I had genuine business activities undertaken during the year under consideration and all my bank accounts have commercial transactions pertaining to my textile line of business.
8. Further, your goodself has only considered the summation of all credits into my bank accounts including cash depositions. You have failed to consider the corresponding cash withdrawals made from the said bank accounts. It is evident from the bank statements submitted before your goodself that I had received payment from sundry debtors and had also made corresponding payments to sundry creditors during normal course of my business activities. I had made cash deposition into all my bank accounts in accordance

with my convenience and the source of my cash depositions was from my business activities and cash withdrawals made by me during the year under consideration.

9. *Further to substantiate my claims, I am submitting a copy of my complete books of account a copy of bank book, a copy of cash book a copy of all ledgers and a copy of quantitative details of stock as maintained by me for A.Y 2015-16 for your kind perusal. As I had made genuine business transactions through my9 above referred bank accounts your goodself is requested to add only my net profit as evident from the books of account submitted before your goodself and not to add the entire credit summation of Rs.2,05,18,703/- of the bank accounts as my income as proposed in your show cause notice. The addition cannot be made capriciously with utter disregard to the relevant material on record.*
10. *Further I would like to bring to the kind notice of your goodself that I had duly taken into consideration my bank accounts maintained with State Bank of India vide account no. 20057759304 along with Sutex Co-op Bank Ltd. vide account no. 0002480032009138 while filing my original return of income. As a matter of fact, the said savings bank account maintained with Sutex Co-op. Bank Ltd. vide account no. 002480032009138 was opened by me on 01.02.2016. Hence, the said savings bank account no.0002480032009138 maintained with Sutex Co.-op. Bank Ltd. has no bearing with financial year 2014-15 and hence should not be considered for the ongoing assessment proceedings. I have enclosed a copy of the said bank statement for your kind perusal and ready reference. In light of the above discussion, I request your goodself to make an addition of only net profit earned by me during the financial year 2014-15 in my undisclosed accounts and not to add the entire credit summation of Rs.2,05,18,703/- as suggested in your show cause notice pertaining to my disclosed as well as undisclosed accounts. I also pray that you verify and consider the books of account and also the supporting evidences enclosed for your perusal that are drawn after lots of pain and efforts.”*

7. However, the Assessing Officer rejected the contention of assessee and held that the assessee was operating four bank accounts (A/c No.3156584054 with Central Bank of India, A/c 9140100095555876 with SBI) and these accounts were not disclosed in her books for A.Y 2015-16 excluding the account No.20057759304 maintained with SBI. Therefore, the AO had made two types of additions, one is total credits of Rs.1,33,66,325/- with undisclosed bank accounts and other is only cash deposits of Rs.13,51,900/- with disclosed bank account with SBI totaling to Rs.1,47,18,225/- (Rs.1,33,66,325 + Rs.13,51,900) on the basis of failure on the part of the assessee by not furnishing source of income.

8. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A) who has partly confirmed the addition made by the Assessing Officer. About the issue of cash deposits of Rs.13,51,900/- in saving bank accounts with SBI, the Ld CIT(A) observed that assessee had duly discharged

her onus of proving to the Assessing Officer that out of all the 4 saving bank accounts which were owned and operated by her during the year under consideration as mentioned by the Assessing Officer in her assessment order, one bank accounts viz State Bank of India vide account no.000020057759304 was duly disclosed by her while filing her original return of income for A.Y 2015-16. The assessee had also submitted two complete set of books of account during the course of assessment proceedings. One set of books of account contained below mentioned bank account and all its business related transactions. The below mentioned accounts were duly disclosed while filing her original return of income for A.Y 2015-16.

Sr.No.	Name of bank	Account No.
A	State Bank of India	000020057759304

The first set of books of account which were submitted before the learned Assessing Officer consisted of total turnover of Rs.31,07,460/- which included business transactions undertaken by the assessee through State Bank of India vide account no. 000020057759304. Further, it was also noted by Id CIT(A) from the submission of the assessee that he had derived total net profit of Rs.2,49,425/- which was more than 8% of turnover as required to be reported under section 44AD of the Income Tax Act, 1961, and the same was duly considered by her while filing her return of income for A.Y 2015-16. Based on the said facts and findings, the Id CIT(A) held that the assessee had duly discharged her onus of proving to the Assessing Officer, that the above mentioned saving bank account was duly disclosed by her while filing her return of income for A.Y 2015-16. Further, when the assessee had duly disclosed all her income from the said bank account, taking the said income again is not justifiable and would lead to double taxation. In the light of these facts, cash deposit made into State Bank of India vide account no.000020057759304 amounting to Rs.13,51,900/- was deleted by Id CIT(A).

9. Further, regarding total credits of Rs.1,33,66,325/- including cash of Rs.1,18,32,150/- in her bank accounts which were not disclosed in her books for the A.Y 2015-16, the Assessing Officer had noticed that claim of the assessee was not in line with the custom, culture and convention of the country that credits were received by her from here debtors in normal textile business and banks do not permit to do business in saving bank accounts as bank allow to do business only in current accounts to avoid paying interest if customers allowed to do business in saving bank accounts. The assessee has contended before Id CIT(A) that the assessee had duly drafted a complete set of books of account from below mentioned 3 savings bank account which were not considered while filing her return of income:

Sr.No.	Name of bank	Account No.
A	Axis Bank of India	914010009555876
B	Bank of India	270010110007563
C	Central Bank of India	000003156584054

The assessee had accepted that she had undertaken business transactions from the said accounts which were not taken into consideration while filing her return of income for A.Y 2015-16. The total turnover from the above referred bank accounts was Rs.1,29,78,500/- The Assessing Officer however have calculated the said turnover from the above mentioned banks to be Rs.1,33,66,325/-.

10. The Id CIT(A) noticed that the turnover declared by the assessee is correct and the same is evident from her books of account submitted before the Assessing Officer during the course of assessment proceedings. Further, it is also observed that the Assessing Officer has nowhere in her assessment order pointed out any defects in the books of account nor has he categorically rejected the books of account of the assessee. The Assessing Officer has without rejecting books of account of the assessee, went on to make an addition of entire turnover amounting to Rs.1,33,66,325/- to the income of the assessee, which is unjustified. The Assessing Officer has also made calculation error while making a summation of

total credits of the assessee in the above mentioned 3 savings bank accounts and the same is evident from the bank a/c submitted by the assessee. The turnover derived by the assessee in her books of account is duly confirmed with the turnover reflected in bank statements of the above referred 3 savings bank accounts for the period 01.04.2015 till 31.03.2016. Therefore, Id CIT(A) was of the opinion that the turnover of the assessee from the above mentioned 3 bank accounts is Rs.1,29,78,500/- and not Rs.1,33,66,325/-. Further, the assessee had duly established her business transactions by submitting necessary documents as mentioned above. The assessee had duly accepted the fact during the course of assessment proceedings that the above mentioned 3 savings bank accounts namely Axis Bank vide account no.91400009555876, Bank of India vide account no.270010110007563 and Central Bank of India, vide account no.3156584054 were not considered while filing her return of income. Due to these facts, Id CIT(A) was of the view that the income of the assessee from the above mentioned 3 savings bank accounts needs to be made on estimation basis by relying on the judgment of Hon'ble Gujarat High Court, in the case of Vijay Protein vs. CIT IT ref no. 139 of 1996 with tax appeal no. 243 of 2002 dated 09.12.2014, 2018 Taxpub 7917 (Guj-HC). Therefore, Id CIT(A) restricted the addition to 25 per cent of the total turnover of Rs.1,29,78,500/-, which amount to Rs.32,44,625/- (25% of Rs.1,29,78,500). This way, Id CIT(A) allowed the appeal of the assessee partly.

11. Aggrieved by the order of Ld. CIT(A) the Revenue as well as assessee are in appeals before this Tribunal.

12. Shri Rasesh Shah, Learned Counsel for the assessee, argued that during the assessment proceedings, the Assessing Officer issued notice to assessee and in response thereto assessee submitted her reply. The Ld. counsel submitted that although assessee has received cash from customers while doing the business but the entire payment was made through cheque / ATM withdrawal from the banks. The assessee is doing her small business since long. Therefore, the assessee used to savings banks account and deposited the amount on account of business transactions. The Ld. Counsel stated that assessee submitted first set books of

accounts and submitted second set of books of account and assessee also submitted undisclosed bank account and bank statements, invoices, purchase bills, profit and loss account and balance-sheet, before the Assessing Officer. The Ld. Counsel submitted that Assessing Officer made addition @ 100%, however, on appeal the Ld. CIT(A) has restricted the addition @ 25% by following the decision of Hon'ble Apex Court in the case of Vijay Protein vs. CIT ITD ref. No.139 of 1996 with Tax Appeal No. 243 of 2002 dated 09.12.2014, 2018 Taxpub 7917 (Guj-HC).

13. The Ld. Counsel argued that in textile business, 25% disallowance restricted by the Ld. CIT(A) is not tenable in the eyes of law. The average net profit in the textile industry is around 5 to 8%. Therefore, Ld Counsel contended that addition should be sustained at the rate of net profit of the assessee or alternatively peak amount of the undisclosed bank account may be added. Therefore, Ld. Counsel prayed before the Bench that either the net profit as per books of account of the assessee may be added to the total income of assessee or peak credit of the bank account may alternative be added to the total income of assessee.

14. On the other hand, Shri Vinod Kumar, Ld. Sr-DR for the Revenue submitted that assessee has not disclosed her four bank accounts in her return of income, however, when the Assessing Officer issued notice to the assessee after that the assessee came forward and disclosed her bank accounts to Assessing Officer. Therefore, Ld. Sr-DR for the Revenue contended that assessee is having a guilty mind, as she has not disclosed her bank accounts in her return of income but when the Assessing Officer informed the assessee about undisclosed bank accounts then after the assessee has take a stand and argued that peak credit or net profit may be added in the hands of the assessee. The Ld. Sr-DR thus submitted that such type of guilty person should not be given relief. Therefore, Ld. Sr-DR submitted that the addition made by the Assessing Officer should be confirmed.

15. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. In our

considered view, it was wholly erroneous on the part of the Id CIT(A) to estimate the income at the rate of 25% in respect of undisclosed transactions in bank accounts. The assessee has admitted that these bank accounts were used by her for her business purposes and also proved that payments were made to creditors from these undisclosed bank accounts. No doubt estimate of the profit can be resorted to in these types of cases but the estimate and that too at a particular percentage or fraction of percentage which Id CIT(A) has adopted has to be based on sound reasoning in comparison with the past results as well as comparable cases. Without this the estimation so made cannot be said to be valid estimation. We note that in the assessee's case under consideration, the Id CIT(A) has not demonstrated comparable cases except to make a general statement and Id CIT(A) has also failed to take into account the average past profits/results of the assessee for the purpose of making profit estimation. It is well settled that in a best judgment assessment there is always a certain degree of guesswork. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment and should not act totally arbitrarily. Department must act judiciously, while estimating net profit and must be guided by judicial consideration and by rule of justice, equity and good conscience. And also that there must be honest and fair estimate of the proper figure of assessment, for which consideration of local knowledge and repute, besides the previous returns an assessment of the assessee concerned, and all other matters must be taken into account for fair and proper estimate which of course, would fall in the category of guesswork, but a honest guesswork. We note that average net profit in the textile industry is around 5 to 8%. In our opinion, the ends of justice would be met, if a net profit rate of 10% is adopted since the same would take care of the other inconsistencies in the books of accounts of the assessee.

16. In the result, appeal filed by the assessee in ITA No.204 and 205/SRT/2020 are partly allowed, whereas ground nos. 2 to 4 of Revenue's appeal in ITA No.182/SRT/2020, are dismissed.

17. Now, we shall take ground No.1 raised by the Revenue in ITA No.182/SRT/2020 for A.Y. 2016-17, which reads as follows:

“1.Whether on facts and circumstances of the case and in law, the ld. CIT(A) was justified in deleting the addition of Rs.60,48,165/- made by the AO on account of cash deposits in the bank account of Central Bank of India, by holding that assessee had derived total net profit of Rs.7,89,694/- which was more than 8% of turnover as required to be reported under section 44AD and the same was duly consider by the assessee while filing his return of income, without appreciating the fact that the assessee has failed to furnish the required details to establish the sources of such cash deposits in her bank account with evidences during the assessment as well as appellate proceedings?”

18. This ground is against the addition on account of unexplained cash deposits of Rs.60,48,165/- in central Bank of India. The brief facts qua the issue are that during the scrutiny proceedings, the assessing officer had noticed that the assessee had made credits entries in cash of Rs.60,48,165/- and in cheque of Rs.61,86,834/- totaling to Rs.1,22,34,999/- in CBI Bank account and as the assessee had totally failed to establish source of fund of cash deposits of Rs.60,48,165/-, hence the AO had made the addition of cash deposit. On appeal by assessee, ld CIT(A) has confirmed the action of the assessing officer.

19. The Ld Counsel argued before us that assessee had duly discharged her onus of proving to the Assessing Officer that out of all the 5 saving bank accounts and one current bank account which were owned and operated by her during the year under consideration, as mentioned by the Assessing Officer in his assessment order, and 2 bank accounts viz Central Bank of India vide account no.3452008800 and Surtex Co-operative Bank vide account no.2480032009138 were duly disclosed by her while filing her original return of income for A.Y 2016-17. The assessee had also submitted two complete set of books of accounts during the course of assessment proceedings. One set of books of accounts contained below mentioned bank accounts and all its business related transactions. The below mentioned accounts were duly disclosed while filing his original return of income for A.Y 2016-17.

Sr.No.	Name of Bank	Account No.
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1	Central Bank of India	3452008800
2	Sutex Co-operative Bank	2480032009138

20. On the other hand, the Ld. Sr-DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

21. We have heard both the parties. During the appellate proceedings, the Id CIT(A) noticed that the first set of books of accounts which were submitted by assessee before the Assessing Officer, which consisted of total turnover of Rs.97,99,865/- which included business transactions undertaken by the assessee through Central Bank of India vide account no.3452008800 and Sutex Co-operative Bank vide account no.2480032009138. Further, Id CIT(A) also noted from the submission of the assessee that assessee had derived total net profit of Rs.7,89,694/- which was more than 8% of turnover as required to be reported under section 44AD of the Income Tax Act, 1961, and the same was duly considered by her while filing his return of income for A.Y. 2016-17. Based on the said facts and findings, the Id CIT(A) was of the opinion that the assessee had duly discharged her onus of proving to the assessing officer, that the above mentioned savings bank accounts were duly disclosed by her while filing her return of income for A.Y. 2016-17. Further, when the assessee had duly disclosed all her income from the said bank accounts, taxing the said income again is not justifiable and would lead to double taxation. In the light of the said facts, cash deposition made into Central Bank of India vide account no.3452008800 amounting to Rs.60,48,165/- was deleted by Id CIT(A). We have gone through the above findings of Id CIT(A) and observed that there is no infirmity in the findings of Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed. This ground No.1 raised by the Revenue in ITA No.182/SRT/2020 for A.Y. 2016-17 is dismissed.

22. In the combined result, assessee's appeals in ITA No.204 & 205/SRT/2020 are partly allowed whereas Revenue's appeal ITA No.182/SRT/2020 is dismissed, as indicated above.

A copy of the instant common order be placed in the respective case file(s)

Order is pronounced on 17/04/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 17/04/2023
Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Senior Private Secretary/Private Secretary/
Assistant Registrar, ITAT, Surat