

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 290/Srt/2023 (Assessment Year 2017-18)  
(Virtual hearing)

Raj Chetankumar Bhajiyawala, 2/4475, Shivdas Zaveri Ni Sheri, Sangrampura, Surat-395002. <b>PAN No. BHSPB 5211 J</b>	Vs.	I.T.O., Ward-1(2)(1), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Manish J. Shah, AR
Department represented by	Shri Vinod Kumar, Sr. DR
Date of institution of appeal	27/04/2023
Date of hearing	03/07/2023
Date of pronouncement	03/07/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 28/02/2023 for the Assessment Year (AY) 2017-18. The assessee has raised following grounds of appeal:

- "1. The Id. CIT(A) order is contradictory to law and facts of the case and therefore, the addition made by the assessing Officer as well; as confirmed by CIT(A) to the extent of Rs. 1,00,500/- may please be deleted.*
- 2. The Id. CIT(A) did not consider the facts that the AO did not bring on record for making addition u/s 68 of the Act. Entire addition had been made on the basis of probability only and still CIT(Appeals) confirmed the addition upto Rs. 1,00,500/-.*
- 3. In view of all these and other grounds which may be produced during the hearing of appeal, the appeal may please be allowed and justice rendered.*

4. *The appellant craves leave to add, to later, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal on or before the final hearing, if necessity so arises.”*

2. Brief facts of the case are that the assessee is individual, filed his return of income for A.Y. 2017-18 on 30/08/2017 declaring income of Rs. 2,23,580/-. The case of assessee was selected for scrutiny to examine the cash deposit in his bank account during demonetization period. During the assessment proceedings, the Assessing Officer noted that the assessee has made cash deposit in Dena Bank of Rs. 2.00 lacs and Rs. 1.50 lacs and Rs.500/- in post office. The assessee was asked to furnish the source of deposit during demonetization period, vide show cause notice dated 16/11/2019, contents of show cause notice is recorded in para 3.1 of assessment order. In response of such show cause notice, the assessee filed his reply on portal of revenue vide reply dated 21/11/2019. In reply, the assessee stated that he has made deposit during demonetization out of his earlier year's savings. He was working in the shop of his father from last four years and was living in a joint family. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer noted that the assessee was receiving salary of Rs. 12,000/- per month from his father's shop. The assessee is a married person and declared income of Rs. 2,23,580/-. The assessee was having bank account from 2010 and post office account from many years. The assessee was maintaining recurring account deposit in the post office and holds various Kishan Vikas Patra in the name of his wife.

Wife was stated to be house wife. The Assessing Officer treated the entire cash deposit in both the accounts as unexplained cash credit and granted set off of current month's salary of Rs. 12,000/- and made addition of Rs. 3,38,500 (3,50,500 – 12,000) and taxed the same under Section 115BBE of the Act.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee submitted that the Assessing Officer wrongly made addition of Rs. 3,38,000/- and not considered the fact that the assessee was regularly filing return of income. The Assessing Officer has not considered the Circular of CBDT. The assessee has shown salary income of Rs. 1,44,000/- and other brokerage income of Rs. 80,000/- (approximately). The assessee has made cash deposit in post office and Rs. 3.50 lacs cash deposit in Dena Bank account. All the details were furnished during the assessment proceedings. The assessee was having sufficient fund in his hand and was filing return of income for several years. The Assessing Officer has not granted relief to the extent of Rs. 2.50 lacs as declared by the Hon'ble Prime Minister and Government of India that there would not be any question up to cash deposit of Rs. 2.50 lacs. The assessee's family consist of four members, he himself, his wife, mother and sister and could deposit up to Rs. 10.00 lacs, though the assessee has deposited only Rs. 3.50 lacs. During the assessment, the assessee furnished details alongwith copy of savings bank account and post office

account and submitted that total withdrawal of his family was around Rs. 3.00 lacs.

4. The Id. CIT(A) after considering the submissions of assessee, deleted Rs. 2.50 lacs out of Rs. 3,50,500/- on the basis of Circular of CBDT and thereby confirmed the addition of Rs. 1,00,500/-. Further aggrieved, the assessee has filed present appeal before the Tribunal.
5. I have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue. The Id. AR of the assessee submits that a very short point is raised in the ground of appeal. The assessee was having joint account in Dena Bank with his wife Mrs. Boskey Raj Bhajiyawala, copy of passbook of such bank account wherein Rs. 2.00 lacs was deposited is filed. The Id. CIT(A) after considering the submission of assessee has granted relief of Rs. 2.50 lacs and remaining amount of Rs. 1,00,500/- was upheld. However, the post office account was assessee's single account. As per CBDT Circular No. 3/2017 dated 21/02/2017 both the account holders are eligible for relief of Rs. 2.50 lacs each. Deposit in bank account was from the savings of last so many years and part of the savings and stridhan of his wife and some the amount received by her as gift on various social occasions. Wife of assessee is not having any bank other account, thus entire deposits in bank account and post officer should have been allowed as explained. The Id. AR of the assessee submits that Surat Bench of Tribunal in Jitesh

Vithalbhai Rashiya Vs ITO in ITA No. 116/Srt/2021 order dated 18/10/2022 granted benefit of deposit wherein the assessee and his wife was having only one savings bank account to the extent of Rs. 5.00 lacs. Thus, the ground of appeal raised by the assessee in the present appeal is covered by the decision of Tribunal in Jitesh Vithalbhai Rashiya Vs ITO (supra). The Id. AR of the assessee submits that he has already filed copy of pass book showing joint account of assessee with his wife, savings bank pass book of post office, copy of CBDT Circular No. 3/2017 and the decision of Surat Bench in Jitesh Vithalbhai Rashiya Vs ITO (supra).

6. On the other hand, the Id. Sr.DR for the revenue supported the orders of lower authorities.
7. I have considered the submissions of both the parties and have perused the record carefully. I find that the Assessing officer made addition of Rs. 3,38,500/- by taking a view that the assessee was having only cash available with him of Rs. 12,000/- being current month salary. The assessee made deposit of Rs. 3,50,500/- in Dena Bank as well as with saving account with post office. The Id. CIT(A) granted relief of Rs. 2.50 lacs only, on the basis of CBDT Circular No. 3/2017. I find that the Division Bench of Surat Tribunal in Jitesh Vithalbhai Rashiya Vs ITO (supra) by considering the similar submission wherein assessee in that case was also having joint account with his wife granted relief to the extent of Rs. 5.00 lacs by passing the following order:

- “8. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. The Id Counsel submitted before us that amount deposited in the bank account represents past withdrawal as well as past savings and it is also contended that a part of the deposit has also come from his wife’s savings and estreedhan given to the assessee’s wife. That is, assessee and his wife, both are using the same saving bank account and assessee’s wife also deposited her lifelong savings in the said saving bank account during demonetization. The Id Counsel also pointed out that assessee’s wife does not have other saving bank account in her name, therefore assessee’s wife deposits her pin money, savings, gift received from father-in-law and estreedhan received from father-in-law etc.*
9. Taking into account, the facts narrated above, we note that Instruction issued by the CBDT should be considered, vide Press Release dated 18.11.2016 and Guidelines for Verification of Cash deposit during demonetization to the AO vide Instruction No. 3/2017[F.NO. 225/100/2017/ITA-II] dated 21.2.2017 and annexure thereof issued under section 119 of Income Tax Act, which are discussing and providing a blanket exemption of Rs. 2,50,000/- per person. In the Press release dated 18.11.2016 also, it was stated that:
- “It was announced by the Government earlier that small deposits made in the banks by artisans, workers, housewives, etc. would not be questioned by the Income Tax Department in view of the fact that present exemption limit for Income Tax is Rs.2.5 lakh”.*
10. The relevant excerpts of Instruction No. 3/2017[F.NO. 225/100/2017/ITA-II] dated 21.02.2017, in Annexure-“Source Specific General Verification Guidelines ” states as follows:

*“1 Cash out of earlier income or savings: In case of an individual (other than minors) not having any business income, no further verification is required to be made if total cash deposit is up to Rs.2.5 lakh. In case of taxpayers above 70 years of age, the limit is Rs.5.0lakh per person. The source of such amount can be either household savings/savings from past income or amounts claimed to have been received from any of the sources mentioned in paras 2 to 6 below. Amounts above this cut-off may require verification to ascertain whether the same is explained or not. The basis for verification can be income earned during past years and its source, filing of ROI and income shown therein, cash withdrawals made from accounts etc.”*

11. *From the above CBDT instruction, it is vivid that In the case of taxpayers above 70 years of age, the limit is Rs. 5.0 Lakh per person and for other person the limit is Rs.2.50 lakh per person. The source of such amount can be either household savings/ savings from past income or amounts claimed to have been received from any of the sources mentioned in Paras 2 to 6 of the CBDT circular. Amounts above this cut-off may require verification to ascertain whether the same is explained or not. It is a settled law that the Circulars issued by CBDT are binding on the Revenue. This position was confirmed by the Apex Court in the case of Commissioner of Customs vs. Indian Oil Corporation Ltd. reported in 267 ITR 272 wherein their Lordships examined the earlier decisions of the Apex Court with regard to binding nature of the Circular and laid down that when a circular issued by the Board remains in operation then the Revenue is bound by it and cannot be allowed to plead that it is not valid or that it is contrary to the terms of the statute.*
12. *Considering the above CBDT Circular, we are of the view that in assessee`s case under consideration, the assessee and his wife is having only one saving bank account wherein both deposits their past savings, therefore assessee should be allowed a blanket exemption of Rs. 5,00,000/- in view of instructions of CBDT, as the*

*wife of the assessee did not have any other operational bank account and hence she has deposited her household savings in the same bank account of Axis bank where she is also a nominee ( Name:Janvi is mentioned in pass book at Pg 37 of the paper Book). The CBDT Instructions also clearly states that only the amount above the cut-off may require verification. Therefore, assessee is entitled to claim a blanket exemption of Rs. 5,00,000/- (Rs.2,50,000/- assessee himself and Rs.2,50,000/- for wife) in view of instructions of CBDT.”*

8. In view of the aforesaid factual discussion and keeping in view the fact that the assessee was having savings bank account with his wife and wife was not maintaining any other account except with joint account with the assessee (her husband) and total deposit in banks were only Rs. 3,50,500/-. Though, out of which, Rs. 2.50 lacs have already been deleted by the Id. CIT(A). Thus, I direct the Assessing Officer delete the entire addition. In the result grounds of appeal raised by the assessee are allowed.
9. In the result, this appeal of assessee is allowed.

Order announced in open court on 03<sup>rd</sup> July, 2023.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 03/07/2023  
*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat