

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No.105/SRT/2023**

**निर्धारण वर्ष/Assessment Year: (2017-18)**

**(Virtual Hearing)**

Jignesh Rajkumar Mehta, 48, Sankalp Society, Ghod Dod Road, Bhatar, Surat – 395007.	<b>Vs.</b>	The DCIT, Circle-2(1)(1), Surat.
<b>(Assessee)</b>		<b>(Respondent)</b>
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: ADBPM2561Q</b>		

<b>Assessee by</b>	Shri Umesh Dalal, AR
<b>Respondent by</b>	Shri Vinod Kumar, Sr. DR
<b>Date of Hearing</b>	22/05/2023
<b>Date of Pronouncement</b>	31/07/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the National Faceless Appeal Centre (in short ‘the NFAC/ld. CIT(A)’), Delhi, which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 29.12.2019.

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

*“1. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming addition of Rs.3507890/- made by the Assessing Officer passed u/s 143(3) vide appellate order dated 27.12.2022.*

*2. On the facts and circumstances of the case, the learned Commissioner of Income tax (Appeal) has erred in invoking special rate of tax u/s section 115BBE.*

*3. On the facts and circumstances of the case, the learned Commissioner of Income tax (Appeal) has erred in confirming the addition of Rs.3507890/- without rejection book result u/s 145.*

4. On the facts and circumstances of the case, the learned Commissioner of Income tax (Appeal) has erred in confirming penalty of Rs.10000/- when it is not in violation of the provision of the Act.

5. On the facts and circumstances of the case, the learned Commissioner of Income tax (Appeal) has erred in confirming addition of Rs.4000/- towards interest debited to P & L Account.

6. On the facts and circumstances of the case, the learned Commissioner of Income tax (Appeal) has erred in charging interest u/s 234B of Rs.80237/-.

7. On the facts and circumstances of the case, the learned Commissioner of Income tax (Appeal) has erred in initiation of penal proceeding u/s 271AAC.

8. The assessee reserves right to add, alter, vary any or all grounds of appeal.”

3. At the outset, Learned Counsel for the assessee, informs the Bench that assessee does not wish to press Ground nos. 4, 5, 6 and 7; therefore, we dismiss ground nos. 4 to 7 raised by the assessee as “not pressed”.

4. Ground nos.1, 2 and 3 raised by the assessee are interlinked and mixed; therefore we shall adjudicate them altogether.

5. The relevant material facts, as culled out from the material on record, are as follows. The assessee filed his return of income for the assessment year 2017-18 on 25.10.2017, declaring total income at Rs.75,68,390/-. The assessee is engaged in the business of petrol pump for providing diesel and spirit. For the year under consideration, the assessee has shown income under the heads Salary, Income from House Property, Profit and Gains from Business and Profession, Short Term Capital Gains and Income from Other Sources. The assessee`s case was manually selected for scrutiny under compulsory criteria through approval of Pr. CIT-2, Surat vide his letter No. SRT/Pr. CIT-2/ITO(HQ)-2/Scrutiny/Manual Selection/2018-19 dated 28.09.2018 and notice u/s 143(2) of the Act was issued and served online on 29.09.2018. Details, documents and explanations relevant to the case have been furnished online by the assessee on 10.10.2019, 29.10.2019, 11.11.2019, 25.11.2019, 28.11.2019, 30.11.2019, 07.12.2019 and 10.12.2019. On perusal of the

details available, it was noticed by the Assessing Officer that the assessee holds A/c. No.05338630000133 in HDFC Bank wherein the assessee has made cash deposits to the tune of Rs.3,04,12,900/- during the demonetization period (9<sup>th</sup> November 2016 to 30<sup>th</sup> December 2016. As per the notices of the assessing officer, the assessee was required to furnish details of the source of the cash deposits during the demonetization period along with supporting documentary evidence.

6. In response to the notices of the Assessing Officer, the assessee submitted reply to the Assessing Officer, (vide assessee's online replies, the assessee has made the submissions regarding the source of the cash deposit). The assessee has stated that source of the cash deposit was sale proceeds received in cash from sale of petrol and diesel in his petrol pump.

7. The above contention of the assessee was not accepted by Assessing Officer. The Assessing Officer examined the details of total cash deposit in the aforesaid bank accounts during the F.Y 2016-17 and earlier F.Y. 2015-16. It was observed by the Assessing Officer that the figures in the chart submitted by assessee spoken for themselves. The fluctuation observed by Assessing Officer, in the assessee's case, in the trend of cash deposit during the demonetization period as compared to the earlier year, was not proportional. The comparative proportion of total/cash deposit for entire F.Y.2016-17, as compared to the earlier F.Y. 2015-16, also depicts sway from normal trend when considered with the other compelling circumstances which may have made the assessee, the deposit the cash during the demonetization period. Similar finding was, observed by the Assessing Officer with respect to the comparative instance of total cash deposit in bank from 09.11.2016 to 31.12.2016 vis-à-vis total cash deposit

in bank from 09.11.2015 to 31.12.2015. In respect of cash sales also the same deviation was noted by Assessing Officer.

8. Therefore, considering the overall facts and circumstance of the case, the Assessing Officer rejected the plea raised by the assessee and observed that for petrol pump owners, the cash deposit is done almost on daily basis. However, just because, vehicle owner has old SBN notes in his possession, he would not keep on filling up the vehicle tank with fuel and drive around aimlessly. The fuel tank in the vehicle has a definite capacity and only that much of fuel can be filled up. The only fact to be noted is that the payment received by the petrol pump owner would include both new notes as well as old notes. In the present circumstances it is being considered adequate to allow at the most 10% increase to the value of notes deposited during the same period in the earlier year and to add the excess cash deposit as unexplained income of the assessee. It was observed from the assessee's submission that during the period from 09.11.2015 to 31.12.2015, assessee had made cash deposits of Rs.2,44,59,100/-. Now, 110% of the amount of Rs.2,44,59,100/- comes to Rs.2,69,05,010/-. In the light of the above discussion the difference between the cash deposit of Rs.3,04,12,900/- made by the assessee during the demonetization period and the amount of Rs.2,69,05,010/- calculated as discussed above, which comes to Rs.35,07,890/- ( $Rs.3,04,12,900 - 2,69,05,010$ ), was added to the total income of the assessee.

9. The assessee has failed to give any satisfactory explanation about the nature and source of excessive cash deposits and hence the unexplained cash deposit of Rs.35,07,890/- was deemed to be unexplained money u/s 69A of the Act. Therefore, the amount of Rs.35,07,890/- was added to the total income of the assessee u/s 69A of the Act and Assessing Officer

stated that the total income assessed should be taxed u/s 115 BBE of the Act @ 60%.

10. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of the Assessing Officer. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before us.

11. Learned Counsel for the assessee argued that assessee is running a petrol pump and cash was deposited out of sale proceeds of the petrol pump, however the Assessing Officer made addition of Rs.35,07,890/- to the returned income of the assessee. The assessee had deposited cash during the demonetization period *i.e.* from 09.11.2016 to 31.12.2016 to the tune of Rs.3,04,72,900/-. The Assessing Officer noted that payment received by petrol pump owner would include both new notes as well as old notes and therefore Assessing Officer disallowed difference, that is, increase in cash. The Assessing Officer compared the cash deposited, with current period, to earlier year's period. That is, the Assessing Officer compared the cash deposit, immediately preceding period from 09.11.2015 to 31.12.2015, wherein the cash deposit was to the tune of Rs.2,44,59,100/-. Therefore, after comparing with previous period, the reasonable difference, (as per AO) was added to the total income u/s 115BBE of the Act. Besides, without rejecting books of account, the Assessing Officer should not have made addition. The Ld. Counsel submitted that whatever the amount was deposited by assessee, during the demonetization period, was out of sale proceeds of the petrol, therefore addition should not be made.

12. The Ld. Counsel also stated that Assessing Officer made addition u/s 115BBE of the Act, which is not tenable. The Ld Counsel stated that

whatever, the amount deposited in the bank account, was out of sale proceeds of business (petrol), therefore it is a normal business income and hence section 115BBE of the Act, would not attract.

13. On the other hand, Leaned Departmental Representative (Ld.DR) for the Revenue submitted that assessee is keeping always with him cash in hand, in cash book, on average basis to the tune of Rs.13,00,000/-.The Ld. DR took us through cash book of assessee and submitted that what was the need to maintain, huge cash in hand. In case of petrol pump business, the assessee deposits cash, next day in the bank account, therefore there is no need to maintain such huge cash balance in the cash book and this raises doubts that assessee might have injected unaccounted cash in the system (cash book). If the assessee needs cash, he can withdraw cash from bank next day or may not deposit the cash collection in the bank account in case of need. Besides, Ld. 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.

14. The ld DR also submitted that assessee has not submitted quantitative details (oil- petrol in liter) which was sold during the demonetization period and during the previous year, therefore, excess amount deposited in the bank is 'on-money' outside the assessee's business, hence it should be taxed u/s 115BBE of the Act.

15. 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 ld. CIT(A) and other material brought on record. We note that the cash deposited in the bank is comparatively more

than what was reasonably and normally being deposited over the period previous year. The Assessing Officer has given a reasonable increase and worked out the cash deposited as compared to the previous year to Rs.2,69,05,010/- thereby, he arrived at that there was an excess cash deposited to the tune of Rs.35,07,890/- which was considered as excessive cash deposit and brought to tax u/s 115BBE of the Act. That is, the difference between the cash deposit of Rs.3,04,12,900/- made by the assessee during the demonetization period and the amount of cash deposited to the tune of Rs.2,69,05,010/- in previous year, which comes to Rs.35,07,890/- ( $Rs.3,04,12,900 - 2,69,05,010$ ), was added to the total income of the assessee. We note that findings were observed by the Assessing Officer with respect to the comparative instance of total cash deposit in bank from 09.11.2016 to 31.12.2016 vis-à-vis total cash deposit in bank from 09.11.2015 to 31.12.2015. In respect of cash sales also the same deviation was noted by Assessing Officer. Therefore, we find merit in the submission of Id DR for the Revenue to the effect that assessee has not submitted quantitative details (oil- petrol in liter) which was sold during the demonetization period and during the previous year, therefore, excess amount deposited in the bank is 'on-money' outside the assessee's business, hence it should be taxed u/s 115BBE of the Act. That is the quantity of oil/material sold during the period from 09.11.2016 to 31.12.2016 (demonetization period) vis-à-vis quantity of oil/material sold and total cash deposit in bank from 09.11.2015 to 31.12.2015 (previous year) have not been explained by the assessee in terms of quantity with reference to opening and closing stock, and that is why, it is not possible to examine the actual excess cash deposited in the bank account. The assessee has submitted before AO that stock details of oil/petrol which was verified by IOC officer and sample stock register of July Month only, which will not serve the purpose for reconciliation of oil quantity, as it is part detail.

Hence Assessing Officer held that excess cash was out of unaccounted money deposited in bank.

16. However, we note that assessee is running petrol pump (business) since 2000 and also is a dealer of IOC, a Government Undertaking Company. The demonetization was effective from 08.11.2016, and the petrol pumps were allowed to accept demonetized notes between 08.11.2016 to 02.12.2016. The Assessing Officer considered cash deposit in bank between 09.11.2016 to 31.12.2016 to the tune of Rs.3,04,12,900/-. The Assessing Officer compared the cash deposit of the immediately preceding period of 09.11.2015 to 31.12.2015 and find abnormal cash deposit in demonetization period. The Id Counsel argued before us that turnover, gross profit (GP), net profit (NP) and taxable income of the assessee remain same and there is no bogus sales and moreover the Assessing Officer has not rejected books of accounts, hence addition should not be made. However, we note that assessee has not submitted complete stock details comprising opening stock of the previous year, closing stock and purchase and same details for current assessment year along with sales. We note that during the demonetization period, the sales were also abnormal which were not reconciled by the assessee with quantitative details of stock and cash deposit in the bank were also abnormal, which were not fully explained by the assessee before the lower authorities. Therefore, considering the facts of the assessee, we are of the view that assessee merits some relief, however at the same time entire relief cannot be permitted to the assessee. In our opinion the ends of justice would be met, if a net profit @ 10% is adopted on the impugned excess cash deposited of Rs.35,07,890/-, during the demonetization period, which comes to Rs.3,50,789/- (@ 10% of Rs.35,07,890), since the same would take care of the inconsistencies in the quantitative details of stock and other

documents and to plug the leak of the Revenue. Therefore, we direct the Assessing Officer to make addition to the tune of Rs.3,50,789/-, in the hands of the assessee.

17. Before parting, we make it clear that unaccounted cash deposit of Rs.35,07,890/- by the assessee, was out of business income, hence we direct the Assessing Officer to tax Rs.3,50,789/-, under the head 'Business Income' and not u/s 115BBE of the Act.

18. In the result, assessee's appeal is partly allowed in above terms.

Order pronounced on 31/07/2023 in the open court.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

सुरत /Surat

दिनांक/ Date: 31/07/2023

SAMANTA

**Copy of the Order forwarded to**

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

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

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat