

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH  
BEFORE SHRI DR. A. L. SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.246/SRT/2022

Assessment Year: (2017-18)

(Physical Hearing)

Ushaben Vinodbhai Beladiya, No.237, Vikram Nagar Society, Near Trikam Nagar, L.H. Road, Surat – 395006.	Vs.	The ITO, Ward – 3(3)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIMPB4673N		
(Assessee)		(Respondent)

Assessee by	Ms. Chatali Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	23/08/2023
Date of Pronouncement	30/10/2023

**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, Delhi (in short ‘the NFAC/Ld.CIT(A)’), Delhi, dated 13.07.2022, which in turn arises out of an assessment order passed by Assessing Officer u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 25.10.2019.

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

*“1. On the facts and circumstances of the case as well as law on the subject, the CIT(A) has erred in confirming the action of assessing officer in passing ex-parte order u/s 144.*

*2. On the facts and circumstances of the case as well as law on the subject, the CIT(A) has erred in confirming the action of assessing officer in making addition of Rs. 17,15,000/- on account of unexplained/unaccounted income u/s. 69A of the I.T. Act, 1961.*

3. *On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in taxing the addition by taking the rate @77.25% by attracting S. 115BBE instead of normal tax rate.*

4. *On the facts and circumstances of the case as well as law on the subject, the assessing officer has erred in taxing the income u/s 115BBE @ 77.25 % in a retroactive manner by applying the duly substituted S.115BBE inserted retrospectively instead of taxing it at 35.54 % as per the old provisions of S. 115BBE.*

5. *It is therefore prayed that addition made by assessing officer and confirmed by CIT (A) may please be deleted.*

6. *Assessee craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. Brief facts *qua* the issue are that assessee has e-filed his return of income for assessment year (A.Y.) 2017-18, declaring total income of Rs.2,99,540/-, on 11/11/2017. The case of the assessee was selected under CASS for Limited scrutiny assessment. The issue involved in the case was “Cash deposit during demonetisation period”. Notice under section 143(2) of the I.T. Act, dated 24/08/2018, was issued and duly served to the assessee. Subsequently, notices u/s 142(1) of the Act, were issued on 12/01/2019 and 30/01/2019 alongwith questionnaire. As per material available on records, it was noticed by the assessing officer that during the year under consideration, the assessee had maintained bank account no.09310010002224 with Saraswat Bank and had made cash deposit of Rs.17,15,000/- during the demonetization period. The assessing officer issued show-cause notice on 15/10/2019, fixing hearing on 21/10/2019. The show cause is re-produced as under:

*“As you are aware that assessment proceeding for the year under consideration before the undersigned. During the course of assessment proceedings following notices have been issued on various dates, wherein you were requested to provide, the details relevant to assessment proceedings. However, till date you have neither replied to any of the above notices nor anyone from your side has attended during the course of assessment proceedings:*

Notice U/s.	Date	Date of service	Date of hearing	Remarks
143(2)	24/08/2018	27/08/2018	10/09/2018	Non Compliance
142(1)	12/01/2019	17/01/2019	21/01/2019	Non Compliance
142(1)r.w.s 129	01/08/2019	05/08/2019	09/08/2019	Non Compliance
142(1)	29/08/2019	02/09/2019	06/09/2019	Non Compliance

*During the year under consideration you have maintained bank account no.09310010002224 with Saraswat Bank wherein you have made cash deposit of Rs.17,15,000/- during the demonetization period. Till date no submission has been made by you to substantiate the source of above said cash deposit, hence it remains unexplained in your hands.*

*You are requested to establish and clearly explain the source of cash deposit of Rs.17,15,000/- which should be duly supported by documentary evidences. In case of non compliance or incomplete submission, the cash deposits of Rs.17,15,000/- in your bank account shall be presumed as your own unexplained income for the year under consideration, consequently addition shall be made to your total income.*

*Please note that you are required to submit the documentary evidence towards all the points mentioned above by 22/10/2019 at 12:00 hrs. Please take note that only part submission will also be treated as non-compliance, as it will not be helpful in completing assessment proceedings. If nothing is heard from your side till the stipulated date and time or in event of part submission, it is construed that you have nothing to say in the matter and assessment will be finalized on ex-parte basis on the merits of the case with facts available on record as per the provision of section 144 of the Act.”*

4. However, no compliance to the above show cause notice was made by the assessee. In view of the above and because of gross negligence and non-compliance of the assessee towards the assessment proceedings, and in absence of the required details/evidences, the Assessing Officer had no other alternative but to finalize the assessment u/s 144 of the Act on the basis of the information available on record. The Assessing Officer observed that assessee failed to give any explanation about the nature and source of cash deposits despite of submission of part details. Hence, the cash deposits, appearing in Saraswat Bank account was deemed to be the income of the assessee and treated as unexplained in the hands of the assessee. Therefore, the cash deposit of Rs.17,15,000/- made by the

assesse in his bank account remain unexplained in his hands. The total deposits in the bank account to the tune of Rs.17,15,000/- was treated as unexplained/unaccounted income of the assessee and the same is taxed u/s 115BBE of the Act.

5. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the addition made by the Assessing Officer. Aggrieved, the assessee is in appeal before this Tribunal.

6. Learned Counsel for the assessee, argued that Assessing Officer did not find any defects in the books of accounts, despite of this, the books of accounts have been rejected by the Assessing Officer. The assessee, during the assessment stage has explained the cash deposit in the bank account by way of cash flow statement, which is reproduced below:

**Before Income Tax Appellate Tribunal, Surat Bench**  
**In case of Ushaben Beladiya**  
**Assessee's Appeal No. 246/SRT/2022 for A.Y. 2017-18**  
**Date of hearing. – 11.05.2023**

<b>Cash Flow Statement (01.04.2016 to 30.11.2016)</b>		
Particulars	Amount (in Rs.)	Amount (in Rs.)
Opening cash balance		16,29,436
Add:-		
Rent Income		3,08,000
Total		
Less:		
Withdrawals		48,730
Municipal Tax		34,088
Cash balance before the bank deposits		18,54,618
Cash Deposits		
Dated: 7.12.2016		(15,000)
	22.12.2016	(17,00,000)
		(17,15,000)

<b>Income as per Return filed</b>	
A.Y.	Gross Total Income
2010-11	182090
2011-12	212092
2012-13	210790
2013-14	253101
2014-15	240202
2015-16	276778
2016-17	276977
Total	1652030

7. The Ld. Counsel further argued that assessee is having only one source of income and the Department has not proved any other source of income. The Ld. Counsel also submitted that assessee, being a woman has habit of savings and she wants to keep some cash for emergency purposes and therefore the same has been deposited during the demonetization period and hence it should not be doubted.

8. The Ld. Counsel also submitted that Assessing Officer has made addition of Rs.17,15,000/- on account of cash credit. Since, the assessee, does not maintain books of accounts, therefore there is no question of cash credit in his books of accounts and addition made by the Assessing Officer under section 69A of the Act, needs to be deleted. The Ld. Counsel also submitted that addition made by the Assessing Officer is not taxable under section 115BBE of the Act. The Ld. Counsel, therefore contended that assessee has explained the source of cash deposit, hence considering the facts and circumstances of the case, the addition made by the assessing officer may be deleted.

9. On the other hand, Learned Departmental Representative (ld. DR) for the Revenue, pleaded that assessee has submitted the details of rental income/ rent agreement which should not be accepted to explain the source of cash deposit. The ld. DR also submitted that assessee submitted the bank statement of husband of the assessee, however such bank statement is available at public domain, therefore it should not be treated as an additional evidence, but the rental details submitted by the assessee may be considered as an additional evidence.

10. On merit, ld. DR for the Revenue submitted that assessee has not explained the source of money deposited in bank account, during the demonetization period. Just to submit cash book and cash flow

statement, are not sufficient to explain the money deposited during demonetization period. Therefore, addition made by the Assessing Officer may be sustained.

11. I have heard both the sides and gone through the relevant material on record. It is seen that during the assessment proceedings, the cash summary and cash flow statements were submitted by the assessee. I find that all the grounds of appeal relate to addition of Rs.17,15,000/- u/s 69A of the Act. The Id Counsel submitted that the cash deposited in her account was out of her earlier year savings and prayed to delete the addition of Rs.17,15,000/- made by the assessing officer u/s 69A and taxed u/s 115BBE in view of her claim that the said amount was already declared by her in her returns of Income for previous years. I note that before me, the assessee has submitted the following documents and evidences, viz:(i) Cash transaction reply 2016 (vide Pb.16), (ii) Acknowledgement of Return of Income along with Computation of Total Income for 2017-18 (vide Pb.17 to 18) (iii) Notice u/s 143(2) issued by assessing officer (vide Pb.19 to 22) (iv) Show cause notices issued by assessing officer (vide Pb.23 to 24), (v) Letter filed before Assessing Officer by assessee but not considered by AO (vide Pb.25 to 26), (vi) Screen shot of Reply dated 25.10.2019 filed on ITD Portal (vide Pb.27), (vii) Acknowledgment of Return of Income along with Computation of Total Income for AY 2010-11 to AY 2016-17 (vide Pb.28 to 43) (viii) Balance sheet, profit and loss account and capital account for FY 2009-10 to 2016-17 (vide Pb.44 to 67) (ix) Bank statement of Saraswat Bank bearing account no.12224 (current account) for the relevant period (vide Pb.68) (x) Bank statement of Saraswat Bank bearing account no.12224 (current account) for the relevant period (vide Pb.69 to 71)

(xi) Cash book for the FY 2016-17 (vide Pb.72 to 82) (xii) Acknowledgment of Return of Income along with computation of total Income (vide Pb.83 to 86) (xiii) Contra confirmation (vide Pb.87) (xiv) Relevant Bank statement of Saraswat bank bearing account no.11350 (vide Pb.88), (xv) Relevant Bank Book of Saraswat Bank bearing account no.11350 (vide Pb.89 to 90).

12. I have gone through the above factual documents and evidences. I find that assessee is regularly assessed to income tax, since last 15 years. The assessee carried out self-employed fabric embroidery job work upto A.Y 2011-12. The assessee regularly maintained her books of accounts. The assessee is the owner of the immovable property at P. No. 19, Saurashtra Society, Varachha Road, Surat, which is fully let out and receives rent income since A.Y 2012-13, including the year under consideration. Out of the income, from the above mentioned sources, the assessee used to make expenditure to earn the said income, and also incurred household expense. Further, the assessee kept the savings with herself in the form of cash in hand. Being a Hindu married lady the assessee used to keep the savings, as shridhan, with herself. In the year relevant to A.Ys. 2010-11 and 2011-12, the assessee was engaged into the business of embroidery job work and thereafter since the year relevant to A.Y. 2012-13, the assessee is earning rent income by letting out the business premises. Owing to the demonetization, assessee was compulsorily required to make the deposit of the high denomination notes. Accordingly, she made cash deposits of Rs.17,00,000/- of high denomination notes as against cash available in the cash book of Rs.18,54,618/-. It is to be noted that assessee filed the reply initially on 04.02.2017, explaining the cash deposits through ITBA portal,

which was not considered by the Assessing Officer. In her explanation, assessee stated that the cash was deposited out of earlier income or savings. In reply to the show cause notice, assessee explained that the cash was deposited out of the rent income of earlier years and this year which was left after making the household withdrawals. In support of the explanation, assessee filed the following details:

- i. Acknowledgement of Return of Income for A.Y. 2016-17 & 2017-18
- ii. Bank Statement for the period from 01.04.2016 to 31.03.2017
- iii. Copy of Bank Book for the period from 01.04.2016 to 31.03.2017
- iv. Copy of Cash Book for the period from 01.04.2016 to 31.03.2017

13. The Assessing Officer without considering the reply filed by the assessee passed the assessment order after making the addition of Rs.17,15,000/- u/s. 69A of the Act. Before NFAC/d CIT(A), the assessee filed written submission on 08.01.2021. Thereafter, assessee filed the details vide acknowledgement dated 27.04.2022. These details include, all the details filed before Assessing Officer and also cash book and other financial statements of the earlier years. The NFAC/ld. CIT(A) thereafter issued notice u/s 250 dated 16.06.2022. In response to this notice, assessee filed further written submission with the contra confirmation from her husband and his details of filing of return of income and bank statement. The assessee filed these details as the assessee advanced loan to her husband out of the cash deposited. The NFAC/ld. CIT(A) confirmed the addition by taxing the income u/s 115BBE of the Act, as per his finding, given at para no.

8.1 to 8.9 of the first appellate order. I find that after declaration of the demonetization, all assessees were required to fill the form of 'cash transactions 2016' through portal. The revenue did not make any further inquiry after assessee filed the explanation. Even otherwise the time given as per all the notices was very short. Accordingly, the best judgment order passed by the Assessing Officer is bad-in-law. The assessee also filed the details of the earlier assessment years in the course of appellate proceedings before NFAC/Ld.CIT(A). After filing these details, the NfAC/ld. CIT(A) made the further inquiry vide notice u/s. 250 dated 16.06.2022. Thereafter, assessee made the further submission. It was explained before the lower authorities that assessee made the cash deposits out of the cash available in her books of accounts. The cash was accumulated out of the rent income of current year and preceding years from A.Ys. 2012-13 to 2016-17 and business income of A.Ys. 2010-11 & 2011-12. Assessee closed the business and thereafter started to earn the income from rent from A.Y. 2012-13 by letting out the business premises. In support of the cash available in the books of accounts, assessee filed the various evidences before lower authorities as under:

- v. Form - Cash Transaction 2016.
- vi. Acknowledgement of Return of Income alongwith Computation of Total Income for A.Y. 2010-11 to 2017-18.
- vii. Balance Sheet, Profit & Loss A/c. and Capital Account for F.Y. 2009-10 to 2016-17.
- viii. Bank Statement of Saraswat Bank bearing account no. 12224 for the period from 01.04.2016 to 31.03.2017.
- ix. Bank Book of Saraswat Bank bearing account no. 12224 for the period from 01.04.2016 to 31.03.2017.

- x. Copy of Cash Book for the period from 01.04.2016 to 31.03.2017.
- xi. Acknowledgement of Return of Income alongwith Computation of Total Income of Vinodbhai Beladiya.
- xii. Contra Confirmation of Vinodbhai Beladiya.
- xiii. Bank Statement of Vinodbhai Beladiya maintained with Saraswat Bank bearing account no. 11350 for the period from 01.04.2016 to 31.03.2017.
- xiv. Bank Statement of Vinodbhai Beladiya maintained with Saraswat Bank bearing account no. 11350 for the period from 01.04.2016 to 31.03.2017.

14. I find that neither NFAC/CIT(A) nor Assessing Officer found any defects in the books of accounts of the assessee and other details filed before them. The addition u/s 69A of the Act, can be made only when the money is not recorded in the books of accounts of the assessee and the assessee offers no explanation about the nature and source of money or such explanation was not found to be satisfactory by the Assessing Officer. There is no finding by the Assessing Officer or NFAC/Ld.CIT(A) that the money was not recorded in the books of accounts of the assessee and the explanation was not satisfactory. Further in Section 69A of the Act, the word used is '*may*' and not '*shall*'. In support of the above submission, assessee relies on the following decisions of the courts and tribunal:

- (i) CIT vs. P.K. Noorjahan [1999] 237 ITR 570 (SC)
- (ii) Narendra G. Goradia vs. CIT [1998] 234 ITR 571 (Bombay)(HC)
- (iii) Lakshmi Rice Mills vs. CIT [1974] 97 ITR 258 (Pat.) (HC)

- (iv) Gur Prasad Hari Das vs. CIT [1957] 32 ITR 56 (All.)(HC)
- (v) Kanpur Steel Co. Ltd. v. CIT [1957] 32 ITR 56 (ALL.) (HC)

It is submitted that the assessee receives rent income and the assessee has not got any other source of income and the assessee has always earned rent income only and has always shown the same in the return of income. Therefore, the amount deposited in the bank account is required to be considered as rent income only and there is no question of presuming to have any other source of income and hence, Section 115BBE cannot be attracted. In this regard the assessee relied on following decisions:

- (i) J.K. Choksi vs. ACIT – Tax Appeal 149 of 2003(Guj.)
- (ii) Green Associates vs. PCIT – Tax Appeal No. 1199 of 2018
- (iii) DCIT vs. Radhe Developers India Ltd. – 329 ITR 1
- (iv) CIT vs. Mhaskar General Hospital – Tax Appeal No. 1474 of 2009

15. Without prejudice to what is stated hereinabove, it is submitted that the amendment to Section 115BBE was made through Taxation Laws (2<sup>nd</sup> amendment Act 2016) which received the assent of the President on 15.12.2016 and was published vide gazette dt. 15.12.2016. The law is well settled that the Income Tax Act as it stands amended on the 1st day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the 1st day of April of financial year would not apply to the assessment to that year, even if the assessment is actually made after the amendments came into force. The Press Release dated 16.12.2016, issued by the CBDT states that “*The*

***Taxation Laws (Second Amendment) Act, 2016 has come into force on 15<sup>th</sup> December, 2016***". The assessee had made the deposits in its bank account, before 15.12.2016, on 14.11.2016 immediately after the announcement of demonetisation with effect from 09.11.2016. The reliance is placed on the under mentioned decisions of various courts.

- (i) Karimtharuvi Tea Estate Ltd. Vs State of Kerala as reported in [1966] 60 ITR 262 (SC)
- (ii) CIT Vs S.A. Wahab as reported in [1990] 48 Taxman 362 (Kerala)
- (iii) Avani Exports Vs CIT as reported in [2012] 23 taxmann.com 62 (Guj.)
- (iv) CIT v. Vatika Township (P.) Ltd. [2014] 367 ITR 466/227 Taxman 121/49 taxmann.com 249 (SC).
- (v) Sedco Forex International Drill Inc. v. CIT [2005] 279 ITR 310/149 Taxman 352 (SC)
- (vi) DCIT vs. Punjab Retail Pvt. Ltd. – [ITA No. 677/Ind/2019]
- (vii) Samir Shantilal Mehta vs. ACIT – [ITA No. 42/SRT/2022]
- (viii) ACIT vs Sandesh Kumar Jain – [ITA No. 41/JAB/2020]
- (ix) Rajendrabhai Ramanlal Desai vs. ITO – [ITA No. 293/SRT/2022]

16. I note that in the facts of the present case, both the nature and source of the cash was fully explained by the assessee. The assessee had discharged its onus to prove the creditworthiness and genuineness of the cash deposit in bank account. The PAN details, bank account statements, financial statements, fund flow statements and Income Tax acknowledgments were placed on AO's record therefore now the onus shifted to AO to disprove the materials placed before him.

Hence, I have no hesitation to conclude that Assessing Officer did not carry out any further investigation in the matter and whole addition was based on mere guess work, conjunctures and surmises in a perfunctory manner which has no place in tax jurisprudence. In sum and substance, action of the Assessing Officer is neither sustainable on facts nor in law. Further, I note that since the assessee has explained the source of cash deposit hence it is not taxable u/s 115BBE of the Act. However, to protect the interest of Revenue, I direct the Assessing Officer to make disallowance at 10% of Rs.17,15,000/-, which comes to Rs.1,71,500/- by applying normal rate of Income Tax (not u/s 115BBE of the Act). Thus, appeal of the assessee is partly allowed.

17. In the result, the appeal filed by the assessee is partly allowed in above terms.

Order is pronounced on 30/10/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 30/10/2023

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

By Order

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Assistant Registrar/Sr. PS/PS  
ITAT, Surat