

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

ITA No. 188/Srt/2022 (Assessment Year 2017-18)
(Hybrid hearing)

Krishna Hiren Gujarati, C-24, Krishna Park Society, Opp. Bhagat Nagar, Ved Gurukul Road, Surat-4 (Gujarat) PAN No. ACUPK 0294 Q	Vs.	I.T.O., Ward-3(2)(4), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Ms. Chaitali Shah, C.A.
Department represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	13/10/2023
Date of pronouncement	07/11/2023

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 28/04/2022 for the Assessment Year (AY) 2017-18. The assessee has raised following grounds of appeal:

- “1. That on the facts and circumstances of the case and in law, the Id. CIT(A)/NFAC has grossly erred in confirming addition of Rs. 10,90,000/- as unexplained cash deposit from undisclosed sources u/s 69A r.w.s. 115BBE of the IT Act, 1961, therefore resulting the higher tax liability which is erroneous and therefore the addition of Rs. 10,90,000/- confirmed by the Id. CIT(A)/NFAC needs to be deleted being erroneous and bad in law.*
- 2. The appellant craves leave to add, amend, alter, substitute, modify above grounds of appeal, if necessary, on the basis of submissions to be made at the time of hearing.”*

2. Brief facts of the case are that the assessee is an individual, filed her return of income for A.Y. 2017-18 on 16/03/2018 declaring income of Rs. 9,95,440/-. In the computation of income, the assessee has shown profit from business under Section 44AD of the Income Tax Act, 1961 (in short, the Act) of Rs.9,94,282/- and other sources of Rs. 11,162/-. The return of income was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has made cash deposit during demonetization period in her bank account in The Surat Peoples Cooperative Bank Ltd. of Rs. 10.90 lacs. During the assessment, the assessee was asked to substantiate cash deposit during demonetization period. The Assessing Officer in para 3 of assessment order recorded that the assessee furnished only copy of cash flow statement showing cash in hand of Rs. 13,84,872/- as on 01/04/2016. The Assessing Officer issued final show cause notice dated 04/12/2019 asking the assessee to furnish source of cash in hand of Rs. 13,84,872/- alongwith documentary evidence, contra confirmation and purchases made by assessee and also mentioned in the show cause notice that no further opportunity will be granted to the assessee. The assessee was directed to furnish explanation/reply on or before 09th December, 2019. The Assessing Officer recorded that the assessee filed reply on 09/12/2019, wherein it was stated that she has have given her submission on 29/04/2019, 23/08/2019 and 19/11/2019 and furnished full details of cash in hand,

income earned during the year and deposits made in the bank account. The assessee also stated that she has given five years' cash flow statement, return of income and cash in hand. The assessee submitted that she was having cash in hand as on 09/11/2016 of Rs. 16,98,668/- and the opening cash balance as on 01/04/2016 was Rs. 13,84,827/-. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer noted that in the return of A.Y. 2015-16, the assessee shown gross receipt of Rs. 3,78,000/- and profit of Rs. 3,62,780/- and under the column of cash balance mentioned at Zero. Thus, during Financial Year (FY) 2014-15, there is no closing cash on hand. However, after demonetization period, the assessee has filed return of income for A.Y. 2016-17 on 24/12/2016 wherein the assessee has shown gross receipt under Section 44AD of the Act of Rs. 12,45,600/- and net income of Rs. 10,00,180/-. The assessee also claimed deduction under Chapter VIA of Rs. 1,75,560/- and paid tax of Rs. 96,130/-. Thus, out of total Rs. 10,00,180/-, the assessee incurred Rs. 2,71,690/- as per return of income and considering the household expenses of assessee at Rs. 1.00 lacs, the assessee was having cash balance of Rs. 6.00 lacs. Thus, it was impossible for assessee to have a cash balance of Rs. 13,84,827/- as on 31/03/2016. During the assessment, the assessee was asked to prove the gross receipt, but the assessee failed to prove the said receipts with documentary evidence. The return of income filed after demonetization

does not prove the return invalid or not reliable. The Assessing Officer on the basis of such observation, treated Rs. 10,90,000/- on account of Specified Bank Note (SBN) as unexplained from undisclosed sources and brought the same for taxation 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 filed detailed written submissions as recorded in para 4 of order of Id. CIT(A). The assessee in his submission submitted that he has deposited SBN in bank account with The Surat People's Cooperative Bank of Rs. 10.90 lacs between 09/11/2016 to 30/12/2016, the assessee categorically stated during the assessment that these SBN were deposited out of opening cash balance as on 01/04/2016 of Rs. 13,84,827/- and receipt of embroidery income during the current year up to 08/11/2016 of Rs. 5,34,900/-. The assessee has cash balance of Rs. 16,98,668/- as on 30/12/2016 as per cash book furnished with Income tax Department. The Assessing Officer disregarded the submission of assessee and made addition of Rs. 10,90,000/-. The assessee during the assessment, received various show cause notices, all such notices were duly replied. The assessee further stated that language of Section 69A provides that where in any financial year, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money and such money, bullion, jewellery or other valuable article is not recorded in

the books of account, if any maintained by him for any source of income and assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of Assessing Officer, satisfactory, the money and value of bullion, jewellery or other valuable article may deem to be income of assessee for such financial year. Further, Section 12A provides that books of account includes ledger, day books, cash book, account book and other books, whether kept in the written form or in a print out of data stored in a floppy, discs, tape or any other form of electro-magnetic data storage device. Thus, as per language of Section 69A, it could be invoked only when the assessee has not recorded any money in the books of account and offered no explanation. On the basis of such assertion, the assessee stated that Section 69A of the Act is not application on the assessee. The assessee recorded that the deposits of money in cash book, which was provided to the Assessing Officer. Maintenance of cash book is a books of account. The assessee is filing return of income under Section 44AB and is not required to maintain books of account. No trading account, profit and loss account or balance sheet was prepaid. The assessee is maintaining cash book and bank book. The assessee while explaining the cash balance of last five years furnished the details in tabulated form showing the date of return of income, return of income shown by assessee and

acknowledgement number thereof and cash in hand on the last date of financial year. Such details of cash in hand was furnished. The assessee submitted that the Assessing Officer has not accepted the submission of assessee. The cash book of assessee was not accepted by Assessing Officer. The assessee also objected against the application of amended Section 115BBE of the Act. To support his submission, the assessee also relied on certain case laws as recorded by Id. CIT(A) on the application of Section 115BBE as well as on the addition.

4. The Id. CIT(A) after considering the submission of assessee, noted that he found no force in the submission of assessee. The assessee was declared income just about the minimum income not chargeable to tax till A.Y. 2015-16 and suddenly income jumped in A.Y. 2016-17 and 2017-18. Return of income for A.Y. 2016-17 was filed on 24/12/2016 after demonetization instance. The assessee has not given basic detail of his business. The assessee declared that she does not maintain any books of account but realized on the cash book and cash flow statement. The assessee failed to produce the source of cash deposit either before the Assessing Officer or before him. The case laws relied by assessee are not applicable on the facts of her case. The Id. CIT(A) on such observation, upheld the addition made by Assessing Officer. Further aggrieved, the assessee has filed present appeal before this Tribunal.

5. I have heard the submission of the learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and have perused the orders of the lower authorities carefully. The Id. AR of the assessee submits that the Assessing Officer made addition of Rs. 10,90,000/- on account of unexplained cash deposit. The Assessing Officer failed to appreciate the opening cash balance with assessee as on 31/03/2016 of Rs. 13,84,827/- . The assessee was working as a sole proprietor and earning income by doing embroidery job work. For the said assessment year, the assessee has shown a good profit and declared income of approximately rs. 10.00 lacs (Rs. 9.95 lacs). During demonetization period, the assessee made cash deposit on two times, Rs. 1.90 lacs and Rs. 9.00 lacs. On deposits, certain preliminary enquiry was made by Assistant Director of Income Tax (ADIT) (Inv.), Unit-3, Surat by issuing summon under Section 131 of the Act. In response to such summon, the assessee explained the deposit and furnished cash book. Thereafter on filing return of income, the case of assessee was selected for complete scrutiny. Before the Assessing Officer, the assessee again furnished complete details and also filed copy of return of income for A.Y. 2014-15, 2015-16 and 2016-17. The assessee has shown total turnover of Rs. 12,43,200/- and have shown profit of Rs. 9,94,000/- which is about 80%. The assessee furnished cash flow statement, copy of which is filed at page No. 34 of paper book. Till

08/11/2016, the assessee was having cash receipt of embroidery income of Rs. 5,34,900/-, the opening cash balance as on 01/04/2016 was Rs. 13,84,827/- thus as on 08/11/2016, the assessee was having Rs. 19,19,727/- as cash in hand. No defect in the books of account maintained by way of cash book was pointed out by the Assessing Officer. The income of assessee has been accepted by the Assessing Officer. The addition under Section 69 is not warranted and the same is not based on books of account. The application of amended provision of Section 115BBE of the Act is not retrospective. Such provision cannot be applied for the transaction made prior to substitution of Section 115BBE of the Act. To support her submission that the addition on account of unexplained cash credit is not warranted, relied on the following decisions:

- (1) Narendra G. Goradia Vs CIT (1998) 234 ITR 571 (Bom)
- (2) Lakshmi Rice Mills Vs CIT (1974) 97 ITR 258 (Pat)
- (3) Gur Prasad Hari Das Vs CIT (1963) 47 ITR 634 (All)
- (4) Kanpur Steel Co. Ltd. Vs CIT (1957) 32 ITR 56 (All)
- (5) Sri Sri Nilkantha Narayan Singh Vs CIT (1951) 20 ITR 8 (pat)
- (6) R.S. Diamond (P) Ltd. Vs ACIT (2022) 145 taxmann.com 545 (Mum Trib)

On the wrong invocation/application of Section 115BBE of the Act, the Id.

AR of the assessee relied on the following decisions:

- (7) J.K. Choksi Vs ACIT Tax Appeal No. 149 of 2003 (Guj)
- (8) Green Associates Vs PCIT Tax Appeal No. 1199 of 2018 (Guj)
- (9) DCIT Vs Radhe Developers India Ltd. 329 ITR 1 (Guj)

- (10) CIT Vs Mhaskar General Hospital Tax Appeal no. 1474 of 2009
(Guj)

On the submission that the provisions of Section 115BBE of the Act is not retrospective, the Id. AR of the assessee has relied on the following case laws:

- (11) Karimtharuvi Tea Estate Ltd. Vs State of Kerela (1966) 60 ITR 262
(SC)
- (12) CIT Vs Vatika Township (P) Ltd. (2014) 367 ITR 466 (SC)
- (13) Sedco Forex International Drill Ltd. Vs CIT (2005) 279 ITR 310
(SC)
- (14) Avani Exports Vs CIT (2012) 23 taxmann.com 62 (Guj)
- (15) CIT Vs S.A. Wahab (1990) 48 Taxman 362 (Ker)
- (16) Samir Shantilal Mehta Vs ACIT ITA No. 42/Srt/2022 (Surat Trib)
- (17) Arjunsinh Harisinh Thakor Vs ITO ITA No. 245/Srt/2021 (Surat Trib)
- (18) Jitendra Nemichand Gupta Vs ITO ITA No. 211/Srt/2021 (Surat Trib)
- (19) DCIT Vs Punjab retail Pvt. Ltd. ITA No. 677/Ind/2019 (Indore Trib)
- (20) ACIT Vs Sandesh Kumar Jain ITA No. 41/Jab/2020 (Jabalpur Trib)

6. On the other hand, the Id. Sr. DR for the revenue supported the orders of the lower authorities. The Id. Sr. DR for the revenue submits that the assessee has not filed any document before the Tribunal to substantiate alleged business activities. The Id. Sr. DR for the revenue submits that he fully supports the order of Id. CIT(A) that the assessee was declared return of income in earlier years just about minimum income not chargeable to tax till A.Y. 2015-16 and all of a sudden increased her returned income.

7. I have considered the rival submissions of both the parties and perused the record carefully. I have also perused the orders of the lower authorities. I find that the assessing officer in para -7 of the assessment order recorded that in the return of A.Y. 2015-16, the assessee shown gross receipt of Rs. 3,78,000/- and profit of Rs. 3,62,780/- and under the column of cash balance mentioned at Zero. Such finding of the assessing officer is not countered by Id AR for the assessee by showing any adverse evidence. However, I further find that that the assessing officer in para - 7 of his order itself held that for A. Y. 2016-17 the assessee filed return of income on 24.12.2016 i.e. after demonetization the assessee has shown gross receipt under Section 44AD of the Act of Rs. 12,45,600/- and net income of Rs. 10,00,180/-. The assessee also claimed deduction under Chapter VIA of Rs. 1,75,560/- and paid tax of Rs. 96,130/-. Thus, out of total Rs. 10,00,180/-, the assessee incurred Rs. 2,71,690/- as per return of income and considering the household expenses of assessee at Rs. 1.00 lacs, the assessee was hardly having cash balance of Rs. 6.00 lacs. From the aforesaid observation of assessing officer, I find that the assessing officer has accepted the case balance of Rs. 6.00 lacs with assessee and disbelieved the remaining cash balance. Thus, the assessing officer accepted the availability of cash of RS. 6.00 lacs with the assessee. Since, the assessee was showing business income from several years, for the year under consideration the assessee has shown income of about

Rs. 10.00 lacs (Approx) therefore, the assessee is also given benefit benefits of Rs.200 lacs, thereby the additions to the extent of Rs. 8.00 lacs are deleted and remaining addition of Rs. 2.90 lacs is upheld.

8. So far as taxing of the addition under amended provisions of section 115BBE is concern, I find that division bench of this Tribunal in Samir Shantilal Mehta Vs ACIT (Supra), Arjunsinh Harisinh Thakor Vs (supra) and in Jitendra Nemichand Gupta Vs ITO ITA No. 211/Srt/2021 (supra) and Indore Bench in DCIT Vs Punjab Retain Pvt Ltd (supra) and Jabalpur bench in ACIT Vs Sandesh Kumar Jain (supra) held that applicability of amended provision of section 115BBE is not retrospective. Thus, the assessing officer is directed to tax the remaining addition @ 30% and applicable surcharges if any. In the result, the ground of appeal raised by the assessee is partly allowed.
9. In the result, this appeal of assessee is partly allowed.

Order announced in open court on 07th November, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 07/11/2023

**Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat