

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.705/Ahd/2024
Assessment Year: 2017-18**

Gautam Harmanbhai Solanki, Dairy Wala Faliya, Nr. Khodiyar Temple, At & Post. Ranoli, Vadodara, Gujarat - 391 350. [PAN – CJWPS 6630 M]	Vs.	Income Tax Officer, Ward 1(2)(1), Aayakar Bhawan, Race Course Circle, Baroda, Gujarat - 390007
(Appellant)		(Respondent)
Assessee by	Shri Hardik Vora, AR.	
Revenue by	Shri Purushottam Kumar, Sr. DR	
Date of Hearing	13.06.2024	
Date of Pronouncement	18.06.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 19.03.2024 passed by the CIT(A), NFAC for the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal :-

- “1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming addition of Rs. 19,45,000/- u/s 69A of the Act on account of unexplained cash deposits in bank account.*
- 2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming addition of Rs. 19,45,000/- on the grounds that confirmation from customers are not submitted without considering that assessee is engaged in the business of selling top-up recharges and customers are mostly retail customers and it is not practically possible to obtain confirmations.*
- 3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming addition of Rs. 19,45,000/- on the grounds that assessee could not justify that the cash deposits are out of regular business income even though CIT(A) has agreed that it is undisputed fact that cash deposited in bank account is received from customers.*
- 4. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming invocation of*

provisions of section 115BBE of the Act without considering that cash deposits are out of business income.

5. *Alternatively, on the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming addition of Rs. 19,45,000/- on account of unexplained cash deposits in bank account without considering that only profit element can be brought to tax.*
6. *It is therefore prayed that the above addition/disallowance made by the assessing Officer may please be deleted.*
7. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of this appeal.”*

3. The assessee filed his return of income for A.Y. 2017-18 on 09.11.2017 declaring total income at Rs. 3,49,900/-. The case was selected for limited scrutiny for the reason that “cash deposit during the year”. Notice u/s 143(2) of the Income Tax Act, 1961 dated 13.08.2018 was issued and served upon the assessee. The assessee filed submission on 12.09.2018 thereby stating that the assessee runs business of mobile recharge and cash was deposited to get recharge balance, and is not income of the assessee as it is not reflected in 26AS. Notice u/s 142(1) of the Income Tax Act, 1961 dated 10.07.2019 was issued. The assessee did not furnish any further details. The Assessing Officer observed that the assessee deposited cash amounting to Rs.19,45,000/- in his bank account maintained with Indian Overseas Bank during the period of demonetisation from 09.11.2016 to 30.11.2016. The Assessing Officer held that the said cash deposits of Rs. 19,45,000/- remains unexplained within the meaning of Section 69A of the Act and therefore, treated the same as unexplained cash deposits u/s 69A of the Act, thereby making addition to that extent.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that during A.Y. 2017-18, total cash deposited by the assessee was amounting to Rs. 1,44,31,500/- in Indian Overseas Bank from time to time for which the assessee has given his bank statement at the time of hearing before the CIT(A). The Ld. AR submitted that the said cash was mainly received on account of top up charges received from various customers (retailer)

of Idea Cellular Ltd. The Ld. AR also given the pattern of cash deposition over the year under the consideration which is as follows:

Cash deposition period	Cash deposited by assessee
01.04.2016 to 08.11.2016	93,30,000/-
09.11.2016 to 30.12.2016	18,45,000/-
31.12.2016 to 31.03.2017	32,56,500/-

6. The Ld. AR further submitted that in fact during the demonetization period, all cash deposited in bank account was not Specified Bank Notes but also the regular circulated notes received from the customers. The Ld. AR submitted that these evidences were totally ignored by the CIT(A).

7. The Ld. DR relied upon the assessment order and the order of the CIT(A).

8. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer as well as the CIT(A) never disputed the cash deposited in the previous period and in the subsequent period to that of demonetization. In fact from the perusal of records it is clear that the assessee is regularly depositing the cash in his account as cash is received from the customers of the assessee. Once the assessee establishes the source of the cash and the pattern of the business of the assessee, the assessee has explained the cash deposits fully and therefore, Section 69A of the Act cannot be invoked in such situation in present assessee's case. Thus, the CIT(A) was not right in confirming the addition. The appeal of the assessee is allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 18th June, 2024.

Sd/-

(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 18th day of June, 2024

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