

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.671/SRT/2023
(Assessment Year: 2017-18)
(Physical Hearing)

Rameshbhai Haribhai Bhalala, 51, Anandnagar Society, Nr. Hira Baug, Varachha Road, Surat – 395008.	Vs.	The ITO, Ward – 3(3)(4), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACHPB9372P		
(Appellant)		(Respondent)

Appellant by	Shri Hiren Vepari, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	29/07/2024
Date of Pronouncement	27/08/2024

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee, emanates from the order passed under section 250 of the Income-tax Act [in short, 'the Act'] of the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'the Ld.CIT(A)/NFAC'], dated 30.08.2023 for the assessment year (AY) 2017-18.

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

“(1) Addition u/s 68 of Rs.16,40,000:

(1) The learned CIT(A) was not justified in confirming addition of Rs.16,40,000 particularly when the source of cash deposits into the bank account was clearly explained with the evidence.

(2) The learned CIT(A) was not justified in arbitrarily confirming the addition.

(3) On the facts and circumstances of the case, the addition is required to be deleted.

(II) **Miscellaneous:**

(1) *All of the above grounds are prejudice to one another.*

(2) *The appellant craves leave to add, alter or vary any of the grounds of appeal."*

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

"The appellant pleads that provision of section 115BBE do not applicable to the facts of the case as well as they do not become applicable retrospectively to the transactions in question."

4. Since the additional ground goes to the root of the matter and details are available on record, the same is admitted.

5. The facts of the case in brief are that assessee was filed his return of income on 06.10.2017 declaring total income of Rs.3,35,420/- for AY.2017-18. The assessee's case was selected for scrutiny. During the assessment proceedings, notices were issued u/s 143(2) and u/s 142(1) to the assessee on various dates calling for details and explanation. The assessee did not file any submission or details to the above notices. The assessee had deposited cash amounting to Rs.16,40,000/- in his bank account maintained with Federal Bank (Rs.5,42,000/-) and the Surat People's Co-operative Bank (Rs.10,98,000/-) during the demonetization period (09.11.2016 to 30.12.2016). Finally, assessee filed details and explanation, which are at para 4 and 5 of assessment order. The AO examined the same but did not find it satisfactory as per para 6 and 7 of assessment order. During the assessment proceedings, the AO observed that the assessee had deposited cash amounting to Rs.16,40,000/- in his bank accounts during the demonetization period i.e. from 09.11.2016 to 30.12.2016. Since, the assessee has not explained the source of above referred cash deposit with supporting

evidences, the entire cash deposit of Rs.16,40,000/- in the above referred bank accounts of the assessee remained unexplained. Hence, the amount of Rs.16,40,000/- was treated as unexplained and added to the total income of the assessee for AY.2017-18 u/s 68 of the Act.

6. Aggrieved by the order passed by the AO, the assessee filed appeal before Ld. CIT(A). The assessee had filed written submission dated 30.06.2022 and enclosed copies of cash book, bank statement, replies to the AO, income-tax returns dated 26.03.2017, affidavit dated 01.12.2021 and details of cash deposits and withdrawals. After considering the same, Ld. CIT(A) observed that the assessee has merely submitted the cash book and bank book in support of his contention but he has not provided any evidence of the sources from which this cash was generated. Thus, the assessee failed to establish the sources of cash deposit along with the supporting evidence. Just providing a broader picture of cash flow of the current and the proceeding financial year is not sufficient to explain the cash deposited during the period of demonetization. The assessee was required to provide the sources of each cash deposit during this period. Further, Ld. CIT(A) observed that the AO has clearly elaborated his reasons for non-satisfaction with the explanation of the assessee after examining the details and documents. Since the assessee failed to discharge his onus to prove conclusively that the cash deposited in the bank account during the period of demonetization is from known sources of income and same is already included in the return of income, the addition made by AO was confirmed.

7. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before this Tribunal. The Learned Authorized Representative (Ld. AR) of the assessee submitted three paper books containing the submission and details furnished before AO / CIT(A), ITRs of AY.2016-17 and 2017-18 and case laws relied upon. He has taken us through the submissions made before the Ld. CIT(A) and has submitted that assessee has actually reported a cash balance of Rs.27,99,970/- in return of income filed on 26.03.2017 u/s 139(9) of the Act. Therefore, the point 6(i) referred by the AO in the assessment order is not factually correct, since it makes reference to original return filed u/s 139(1) of the Act, which was found defective by CPC system. In para 6 of the assessment order, the AO acknowledged twice that “cash withdrawn from the bank account has either been used for some expenses or has been redeposited in the bank account”. It was thus accepted that cash withdrawn has been partly utilized for redeposit in the bank. Therefore, the point raised by the AO as referred to in para 6(ii) is also incorrect, as it is inconsistent with the factual findings recorded in the assessment order. Further, he submitted that neither the cash book was rejected nor its genuineness was questioned by the AO. Therefore, with a credible and verifiable explanation of source being established by the appellant, as duly reflecting in the evidence furnished by the assessee, returns of income filed, and the findings of the AO, the addition deserved to be quashed. It is also submitted that section 68 is not applicable in respect of the impugned cash deposited in the bank account because the same are reflected in the cash book of the assessee. To

support of his contention, the Ld. AR of the assessee relied upon the following decisions, viz: (i) Hashmukhbhai Kanjibhai Tadhani vs. ITO, ITA No. 19/SRT/2023, dated 04.09.2023, (ii) Abhishek Anandkumar Jain vs. DCIT, ITA No. 848/SRT/2023, dated 27.02.2024, (iii) Paras Prints (Pvt.) Ltd. vs. ACIT, ITA No. 273/SRT/2022, dated 21.03.2023, (iv) DCIT vs. Seymore Print Pvt. Ltd., ITA No. 612/SRT/2023, dated 27.05.2024, (v) The Sagbara Deviapada Vibhag Adivasi Mahila Vikash Bachat & Dhiran Sahkari Mandli Ltd. vs. ITO, ITA No.472/SRT/2023, dated 12.10.2023, (vi) Bhulabhai Nathubhai Patel vs. ITO, ITA No.67/SRT/2024, dated 08.04.2024, (vii) Jinesh Kamal Jain vs. ITO, ITA No.239/SRT/2022, dated 13.03.2023, (viii) Ashokbhai Jerambhai Desai vs. DCIT, ITA No.206/SRT/2022, dated 24.03.2023a and (ix) Nilaben Aravindbhai Lad vs. ITO, ITA No.156/SRT/2024, dated 25.06.2024.

8. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) supported the order of lower authorities. He submitted that the assessee has argued on similar lines as was done before the Ld. CIT(A). The submission has been duly considered by Ld. CIT(A) and no informative could be found in his order. Therefore, he requested to confirm the order of Ld. CIT(A).

9. We have heard rival submission of both the parties and perused the material available on record. We have also deliberated on the decisions relied upon by the Ld. AR. Both the AO as well as CIT(A) have not accepted the contention of the assessee as regards the source of cash deposited in the bank account. The assessee had stated that the cash deposit of Rs.16,40,000/- during

demonetization period was out of cash withdrawal from time to time and out of the cash on hand of Rs.27,99,970/- as on 31.03.2016 which is reflected in the return filed u/s 139(9) for AY.2016-17. The view of the AO was that cash on hand as on 31.03.2016 was 'Nil' as per the return of income filed on 05.08.2016 for AY.2016-17. However, the assessee has filed copy of screenshot of defect notice at page 32 and 33 of the paper book. Thus, the return originally filed on 05.08.2016 was treated as defective by the CPC system. The defects have been rectified by assessee on 26.03.2017 in response to notice u/s 139(9). It is seen from the said return that the amount of cash on hand as on 31.03.2016 was Rs.27,99,970/- (page 83 of paper book). It is also seen from the cash book and the bank statement that assessee had withdrawn various amounts in cash, the total of which was Rs.26,11,200/-. The assessee has filed copy of the cash book in the paper book pages 8 to 21. The bank statement has been filed at pages 27 to 43 of the paper book. The assessee has also submitted details of cash deposits and withdrawals of the cash of the immediately preceding year. The total cash withdrawal from bank during AY.2015-16 was Rs.42,29,500/-. The assessee stated that he was doing job work of textiles on embroidery machines during the year under consideration and the earlier years. The Ld. DR was not able to rebut the contention of the Ld. AR. No evidence has been brought on record to prove that the cash on hand shown by the assessee was used for any other purpose so that sufficient cash was not available with assessee to make deposits in the bank account. When there is opening cash on hand of Rs.29,99,970/- as well as cash

withdrawal of Rs.26,11,200/-, the source of cash deposit of Rs.16,40,000/- cannot be said to be unexplained. Assessee has in fact deposited Rs.27,84,741/- in the bank account during the year which includes the impugned balance deposit of Rs.16,40,000/-. It may be stated that there was closing balance of Rs.17,22,800/- which is evident from return of income filed for AY.2017-18 on 06.10.2017 (page 39 of the paper book). In view of these facts, we hold that the assessee has satisfactorily explained the source of cash deposit of Rs.16,40,000/- during the demonetization period. The AO is therefore directed to delete the addition of Rs.16,40,000/-. The ground is allowed.

10. Since, we have deleted the entire addition, no question arises to tax the income of assessee u/s 115BBE of the Act.

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

Order pronounced on 27/08/2024 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 27/08/2024

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat