

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

ITA No. 498/Srt/2024 (Assessment Year 2017-18)
(Physical hearing)

Bhavesbhai Shamjibhai Kalathia, 88, Geetanagar Society, Katargam Siganpore Road, Near Balvantnagar, Surat. PAN No. AUZPK 8859 J	Vs.	I.T.O., Ward 3(2)(1), Aayakar Bhavan, Majura Gate, Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Kamlesh Pandya, C.A.
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeal	29/04/2024
Date of hearing	24/07/2024
Date of pronouncement	30/08/2024

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 29/02/2024 for the Assessment Year (AY) 2017-18, wherein the assessee has raised following grounds of appeal:

- “1. *Learned CIT(A) erred in making order by upholding addition made by ITO without considering facts, circumstances of our case and submission made by us during appeal proceedings.*
2. *Learned CIT(A) erred in making order by upholding addition made by ITO U/s 68 even though facts already explained and cash on hand already declared in preceding return and therefore section 68 not applicable in our case.*
3. *Learned CIT(A) erred in making order by upholding addition made by ITO even though we discharge our onus to prove source of cash deposit.*
4. *Learned CIT(A) erred in making order by upholding addition made by ITO since said addition in violation of judicial pronouncements wherein cash deposited out of earlier savings is not to be added to the total income of the assessee.*

5. *Learned CIT(A) erred in making order by upholding addition made by ITO and applying Section 115BBE for tax even though facts already explained and material on record.*
 6. *We pray to add or alter any ground of appeal during appeal hearing.”*
2. Brief facts of the case are that the assessee is an individual, filed his return of income for A.Y. 2017-18 on 01/03/2018 declaring total income of Rs. 2,95,560/-. The return of income was selected for scrutiny. During the assessment, the Assessing Officer noted that on perusal of ITR it was found that the assessee has made cash deposit of Rs. 13,07,000/- with Sarvodaya Sahkari Bank Ltd. during demonetization period. The assessee was issued show cause notice to explain nature and source of such cash deposit and asked as to why it should not be treated as unexplained cash credit under Section 68 and be taxed under Section 115BBE of the Income Tax Act, 1961 (in short, the Act). The assessee filed his reply and explained that he has deposited such cash which was earlier year's savings. The Assessing Officer examined return of income for A.Y. 2014-15, 2015-16 and 2016-17 and found that till A.Y. 2015-16, the assessee reported cash in hand as NIL. However, in ITR for A.Y. 2016-17, the assessee has shown cash in hand of Rs. 14,94,918/-, such return of income was filed on 07/01/2017, i.e. after demonetization. Thus, the explanation offered by assessee was not accepted and the entire cash deposit of Rs. 13.07 lacs were treated as unexplained and taxed 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 raised similar plea and furnished details of cash available in last three years. All such details and submissions of assessee are extracted in para 4.3 of order of Id. CIT(A). The

Id. CIT(A) after considering the submission of assessee held that he has not found any merit in the submission of assessee. No businessman shall keep such cash in hand for years together. No documentary evidence was furnished by the assessee to substantiate the source of such cash deposit. Further aggrieved, the assessee has filed present appeal before the Tribunal.

4. We have heard the submissions of 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 cash in hand with assessee is duly recorded in the books of account. The assessee is maintaining books of account from last ten years. Cash balance was uploaded in ITR every year. Copy of ITR, balance sheet for last seven years alongwith bank statement, cash flow statement and head wise source of income for last three years were furnished. The assessee made deposit of cash available in hand during demonetization period. The assessee discharged his primary onus in giving complete evidence to substantiate the cash available in his hand. The lower authorities failed to appreciate such cash available with assessee which was shown in the return of income for A.Y. 2016-17. To support his contention, the Id. AR of the assessee has relied on the following case laws:

- R.S. Diamonds India Pvt. Ltd. Vs ACIT, ITA No. 2017/Mum/2021 dated 26/07/2022
- Oghabhai Arjanbhai Der Vs ITO ITA No. 183/Srt/2024 dated 22/05/2024.
- Arjunsinh Harisinh Thakor Vs ITO ITA No. 245/Srt/2021 dated 15/06/2023
- Rajendrabhai Ramanlal Desai Vs ITO ITA No. 293/Srt/2022 dated 22/05/2023

- Hasmukh Kanjibhai Tadhani Vs ITO ITA No. 19/Srt/2023 dated 04/09/2023.
5. 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 Assessing Officer as well as the Id. CIT(A) clearly held that the assessee has filed return of income for A.Y. 2016-17 only 07/01/2017 i.e. after demonetization. Such attempt was made by assessee to create a false evidence about availability of cash in hand. The assessee is relying on self-serving story which cannot be believed.
6. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. We have also deliberated on the case laws relied upon by the Id. AR of the assessee. We find that the Assessing Officer made addition on account of cash deposit during demonetization period of Rs. 13,07,000/- by taking view that the assessee failed to substantiate the nature and source of cash deposit. The explanation of assessee that cash was available in hand at the opening of relevant financial year was not accepted by the Assessing Officer by holding that the assessee filed return of income showing such cash in hand only after demonetization period i.e. 07/01/2017. The Id. CIT(A) confirmed the action of Assessing Officer. We find that the assessee in the statement of claim has stated that he is engaged in the business of brokerage and commission agent and also partner in Anvay Textiles and Vyatirek Textiles. No evidence of such form of commission income is filed on record. No evidence is filed on record showing the cash withdrawal from bank accounts from various firms. The

assessee is simply relying on self-serving statement without filing any evidence in support of his claim.

7. We find that the CBDT in Circular No. 3/2017 has allowed Rs. 2.50 lacs in case of individual, wherein the cash in the form of 500 or 1000 currency notes were deposited during demonetization period. Considering overall facts and circumstances of the present case, we find that being an individual, the assessee has offered about Rs. 3.00 lacs for taxation for the year. The assessee is regularly filing his return of income for last several years, thus the assessee is further allowed benefit of Rs. 50,000/-. The assessee is allowed relief of Rs. 3.00 lacs and rest of the addition of Rs. 10,07,000 lacs i.e. (Rs.13,07,000 – 3,00,000/-) is sustained. The case laws relied upon by the Id. AR of the assessee are not applicable on the facts of the present case. In all cases relied by the assessee, those assessee are either engaged in the business activities or having sufficient agriculture holding and substantiated availability of such in hand.
8. So far as taxing the addition under section 115BBE at enhanced rate of tax @ 60% under Section 115BBE of the Act, is concerned, we find that that Division Bench of this Tribunal in case of Samir Shantilal Mehta Vs ACIT ITA No. 42/Srt/2022 (Surat Trib), Arjunsinh Harisinh Thakor Vs ITO in ITA No. 245/Srt/2021 and in Jitendra Nemichand Gupta Vs ITO ITA No. 211/Srt/2021 and Indore Bench in DCIT Vs Punjab Retail Pvt. Ltd 677/Ind/2019 (Indore Trib) and Jabalpur Bench in ACIT Vs Sandesh Kumar Jain in ITA No. 41/Jab/2020 held that applicability of amended provision of section 115BBE is not retrospective. Thus, the Assessing Officer is directed to tax the

remaining addition at normal rate of tax and applicable surcharges if any.

Thus, the assessee is allowed relief against taxing the addition at higher rate under section 115BBE.

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

Order announced in open court on 30th August, 2024.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 30/08/2024

**Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat