

आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत
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. 343/SRT/2024** (AY 2017-18)
(Physical court hearing)

Rajeshbhai Kantilal Popat 4, Gurukrupa Apartment, Navagam, Kamrej Char Rasta, Surat-394 185 [PAN : ARLPP 0225 E]	बनाम Vs	Income Tax Officer, Ward- 2(2)(1), Surat, Room No.626, Aayakar Bhawan, Athwalines, Surat-395 001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Hiren M. Diwan, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	18.11.2024
उद्घोषणा की तारीख/Date of pronouncement	24.01.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as "NFAC/Ld.CIT(A)] dated 02.02.2024 for assessment year (AY) 2017-18, which in turn arises out of assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') 18.12.2019. The assessee has raised following grounds of appeal:

"(1) The Id. CIT(A) has erred in law and on facts in confirming the action of the Id. AO of making addition u/s 69A of the Act to the tune of Rs.77,13,800/-.

(2) The Id CIT(A) has erred in law and on facts in confirming the action of the Id. AO of charging tax u/s 115BBE of the Act on the above addition of Rs.77,13,800/-.

(3) Each ground of appeal is independent and without prejudice to the other ground / grounds of appeal.

(4) The appellant craves leave to add, amend, alter, modify, substitute, delete, change or vary as all or any of the ground or grounds of appeal."

2. Rival submissions of both the parties have been heard and record perused.

The Ld. Authorized Representative (Ld.AR) of the assessee submits that though case of assessee was selected for "scrutiny" on account of cash deposit during demonetization period. However, the addition is not based on account of deposit of 500/- denomination note rather on account of cash deposits in two bank accounts with account No.00210120033476 and account No.00230110053845 with The Varachha Co-op. Bank Ltd. During assessment, Assessing Officer was of the view that assessee is maintaining three bank accounts, out of which cash credit entries in account No.*****3845 and *****3476 have not been debited from cash book which indicates that these two bank accounts are undisclosed bank accounts. The Assessing Officer prepared a summary of total cash deposit in those bank accounts aggregating Rs.77,13,800/-. The Assessing Officer on the basis of his observation, issued show cause notice. The assessee furnished detailed reply. The assessee explained that he is engaged in the business of trading of cattle food and one of the bank account was in the name of R.K.Patel Food Pvt. Ltd. Matangi Cotton Industries, Nilkanth Cotton Industries, which is proprietary concern of assessee, wherein majority of cash deposit and subsequent transfer of purchase of goods were made. The said account is current account and deposit shown in the said current account represents cash sales and debit in the payment against purchase. The assessee furnished complete details with

regard to both the bank accounts. The accounts of assessee are audited. The debit entry clearly reflects that such debit entry was in favour of R.K./Patel Food Pvt. Ltd. Matangi Cotton Industries, Nilkanth Cotton Industries, which is one of the primary food for cattle. During assessment, assessee furnished certain purchase bills and submitted before Assessing Officer. The Assessing Office rejected the contention of assessee and made addition of entire amounts in cash credit in both the bank accounts without giving any benefit of purchase. Majority of amount were debited on account of purchases. It is settled law that gross sales which is deposited in the form of cash income never be the profit of assessee without giving the Assessing Officer erred in adding entire cash as income of assessee without giving benefit of purchase. The Hon'ble jurisdictional High Court and co-ordinate Bench of this Tribunal in a series of decisions have already allowed that gross sales cannot be considered as "income" rather only income component is to be considered. Before Ld. CIT(A) assessee filed series of decisions to substantiate such contention. The Ld. AR of the assessee submits that assessee has shown gross profit around 3.30% and net profit at 1.00 % in the business of trading of cattle food. At the brushed aside the addition cannot exceed to such net profit. To support his submission, Ld.AR of the assessee relied on following decisions:

- Sumati Dayal vs. CIT (1995) 80 Taxman 89 (SC)
 - CIT vs. President Industries (2002) 124 TAXMAN 654 (Guj)
 - CIT vs. Gurubachhan Singh J. Juneja (2008) 171 Taxman 406 (Guj)
 - DCIT vs. Mehul T. Desai (2019) 101 taxmann.com 234 (Surat-Trib.)
3. Against Ground No.2, which relates taxing addition under section 115BBE of the Act. The Ld. AR of the assessee submits that provisions of section 115BBE

of the Act is not applicable for the year under consideration as has been held by this Bench in a series of decisions, even otherwise, the cash deposits in the bank accounts out of business treated as undisclosed cash deposit. Hence, rate of tax is not applicable made by Assessing Officer.

4. On the other hand, Ld. Senior Departmental Representative (Ld.SR-DR) for the Revenue supported the order of lower authorities.
5. We have heard the submission of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated the case law relied upon by Ld. AR of the assessee. We find that Assessing Officer during assessment accepted that assessee is engaged in the business of trading of cattle food. The main allegation of Assessing Officer is that the assessee has not shown bank account Nos.****53845 and ****33476 in his books of account and has not debited cash book and other credits while computing total income and that those bank accounts as undisclosed. The Assessing Officer made addition of entire credit in both the accounts. We find that Assessing Officer has not given any credit (Set off) of debit entries from both the accounts. The Ld. CIT(A) confirmed the action of Assessing Officer by taking view that assessee has not given any books of account like customer sale received, stock register and purchase and transportation receipt. It was also held that in absence of comprehensive and verifiable record, no relief can be allowed. We find that account No.***53945 is a current bank account in the name of "Shree Kishan Cattle Food", which is a proprietary concern of assessee as has been mentioned in the details of account itself. Further there are regular debit and credit entries in this bank account. Thus, there is regular

transaction in the bank account either of credit or debit. It is not the case that whatever amount was credited in those bank account, it remained ideal.

6. We find that Hon'ble jurisdictional High Court in the case of CIT Vs. President Industries (2002) 124 TAXMAN 654 (Guj) held that amount of sales by itself cannot represent the income of assessee who has not disclosed the sales. The sales only represent the price received by the seller of the goods for the acquisition of which it has already incurred the cost it is the realization of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that the investment by way of incurring cost in acquiring goods which have been sold has been made by the assessee and that has also not been disclosed the question whether entire sum of undisclosed sales proceeds can be treated as income. Further, in case of CIT vs. Gurubachhan Singh J. Juneja (2008) 171 Taxman 406 (Guj) also held that when the addition made by Assessing Officer was deleted by Tribunal holding that assessee could not be taxed on entire amount but was liable to be taxed only on gross profit earned on said sales. In the said case, the Tribunal made addition of gross profit and brought the same to the tax, the Hon'ble High Court held that no interference can be called for.
7. Further, the co-ordinate Bench of this Tribunal in case of DCIT vs. Mehul T Desai in ITA No.350/Ahd/2017 dated 13.12.2018 also held that assessee cannot earn gross receipt without incurrance of expenditure, it was only net profit embedded in unaccounted receipt which deserves to be added to his taxable income. Now again advertng to the facts of the case and considering

the continuous credit and debit in both the bank accounts, which show a systematic activity, thus, addition of entire cash deposits can never be income of assessee and only addition a reasonable estimation of profit on such debit and credit entries would be sufficient to prevent revenue leakage. Thus, considering the peculiar facts and circumstances of the case, in our view @ 10% of credit entries in both the accounts would meet the possibility of revenue leakage. Thus, the Assessing Officer is directed to tax @ 10% on addition of Rs.77,13,800/-. This ground of assessee is treated as partly allowed.

8. So far as taxing the addition under section 115BBE is concerned, we find that Divisions Bench as well as SMC Bench of this Tribunal in a series of case has held that enhance rate prescribed under section 115BBE is not applicable for AY 2017-18, reference is made 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. In the result, ground of the appeal is partly allowed.
9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 24/01/2025.

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/Accountant Member

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/Judicial Member

सूरत / Surat Dated: 24/01/2025
Dkp Outsourcing Sr.P.S*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत