

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
ITA No. 1114/Srt/2024 (Assessment Year 2017-18)
(Physical hearing)

A.M. Suppliers (P) Ltd., Shop No. 1, Rajhans Building, Ring Road, Surat-395002. PAN No. AADCA 3136 B	Vs.	I.T.O., Ward-1(1)(1), Surat.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Kiran K. Shah, C.A.
Department represented by	Shri Mukesh Jain, Sr.DR
Date of hearing	16/01/2025
Date of pronouncement	06/03/2025

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 15/10/2024 for the Assessment Year (AY) 2017-18.

The assessee has raised following grounds of appeal:

- “1. The learned CIT(A) grossly erred in confirming the addition of Rs. 44,65,445/- being cash deposited during the demonetization period in the HDFC Bank and Bank of Baroda as discussed in para 6 of the assessment order.
 2. The learned CIT(A) grossly erred in confirming invocation of provisions of Section 68 and Section 115BBE of the Act.
 3. The appellant reserves right to add, alter and withdraw of any grounds of appeal.”
2. Brief facts of the case are that the assessee is a company engaged in the business of tiles, hardware and sanitary items. The assessee filed its return of income for A.Y. 2017-18 on 09/10/2017 declaring taxable income of Rs. 3,27,900/-. The case was selected for scrutiny. During the assessment, the Assessing Officer, on perusal of bank statements noted that during demonetization period, the assessee made cash deposit with HDFC Bank and bank of Baroda of Rs. 44,54,000/- and

6,50,000/- respectively. The assessee was asked to furnish the source of cash deposit in the bank accounts. The assessee in its reply submitted that the cash deposited during the period is out of cash sales. The assessee also furnished a list of parties alongwith their names and address from whom the cash was received against sales. The Assessing Officer in order to verify the transaction, issued notice under Section 133(6) of the Act to the parties. The Assessing Officer recorded that the notices sent to most of the parties were either returned unserved or not served. One of the purchaser Pankaj Rameshchandra Desai attended the office of Assessing Officer, his statement was recorded. In his statement, Pankaj Rameshchandra Desai stated that he purchased tiles of Rs. 30,000/-. The Assessing Officer also recorded that the name of various parties, the nature of transaction and status of notice, if it was served or not, any reply if filed or not with regard to 20 such purchasers or sellers of goods to assessee. The assessee was also asked to furnish comparative chart of cash deposits, cash withdrawal and cash sales of year under consideration and of earlier years. The assessee furnished required details. On verification of such details, the Assessing Officer noted that the assessee has shown cash receipt from debtors in the month of October, 2016 of Rs. 22,32,853/-. The Assessing Officer further recorded that maximum cash in hand in preceding year with assessee was around Rs. 15-20 lacs, but in the year under consideration, the receipt of cash from debtors and sale is shown at Rs. 58,59,643/- as on 09/11/2016. The Assessing Officer also recorded that he has recorded statement of one of the purchaser who has accepted that he has purchased tiles of Rs. 30,000/- only, whereas the assessee has shown cash receipt from such person at Rs. 1,30,000/-. On the basis of such observation, the

Assessing Officer took his view that the source of cash deposit submitted by the assessee is not correct. The Assessing Officer issued fresh show cause notice to the assessee dated 16/12/2019 narrating all its observation as recorded above. The assessee was also asked to produce books of account and all registers and vouchers for verification and to produce parties from whom cash was received and as to why book result should not be rejected and gross profit be estimated and as to why Rs. 50,50,000/- should not be treated as unexplained cash credit under Section 68 of the Act. The assessee was asked to file reply by 20.12.2019. The assessee filed its detailed reply. Contents of reply is recorded in para 3.5 of assessment order. The assessee submitted that they could collect confirmation from Ajit Trading Co. and Kohler India Corporation (P) Limited. The assessee also explained that merely non-reply of notice under Section 133(6) of the Act cannot be the basis to assume the sales as non-genuine. The assessee submitted that from party shown at serial No. 6 of show cause, the assessee received amount by way of cheque and from parties shown at serial No. 9,11 and 20 by way of cash. In respect of other parties, fresh addresses were filed. For remaining parties which are shown at serial No. 5,7,13,15 and 16, the amount was received by cheque. Against the statement of Pankaj Bhai Desai, which was relied by Assessing Officer, the assessee asked for copy of statement and his cross examination. The assessee stated that the party has accepted the sale, which proved that sales is as per account and delivery challan bearing his signature, ought to have been accepted. The assessee explained that his cash book was verified by Assessing Officer and cash in hand on 30/09/2016 was of Rs. 36,03,228/-. Out of total cash deposit of Rs. 50,50,000/-, a major cash deposit in the cash balance accumulated prior to

30/09/2016. Thus, balance amount of Rs. 14,46,772/- was out of collection in the month of October and first week of November, 2016 and no doubt, should be raised for old cash in hand till 30/09/2016. The sales of assessee is of Rs. 4,87,66,541/- (Rs. 4.88 crores approx.) and the deposits of cash is fully justified which is duly supported by sale bills and delivery challan. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer reiterated his contention that in response to notice under Section 133(6) of the Act respective parties have not responded. The assessee filed confirmation of two persons only. Non-compliance of notice issued to the sales parties, the assessee merely submitted latest address of those parties. One of the party namely Pankaj Bhai Desai accepted purchase of tiles of Rs. 30,000/-, though the assessee has shown sales of Rs. 1.30 lacs. The assessee was asked to produce the parties but nobody attended. The assessee was asked to produce register and vouchers for verification but the assessee not produced books of account for verification. Thus, the assessee has failed to explain the source of cash deposit. The Assessing Officer recorded that the assessee has shown cash balance of Rs. 6,38,555/- in its hand. The Assessing Officer allowed the set off of such amount and remaining of Rs. 44,65,445/- (Rs. 51,04,000 minus 6,38,555/-) was treated as unexplained cash in the hands of assessee and taxed the same under Section 115BBE of the Act.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). The assessee apart from detailed statement of fact, filed his submission dated 28/08/2021. Submission of assessee are recorded in para 2.2 of order of Id. CIT(A) from page No. 3 to 12 of impugned order. The Id. CIT(A) also extracted the entire assessment order from page No. 12 to 25 in his order. In the

submission, the assessee explained that in response to all notices issued by Assessing Officer, the assessee filed their respective reply. Director of the assessee and AR of the assessee also attending the scrutiny assessment proceedings. Books of account, vouchers and bills were furnished. The assessee submitted that most of the sales were in cash. The assessee used to deposit cash in bank in time and again. The Assessing Officer issued notice to 20 parties including of parties from whom purchases were made. Out of 20 parties, the assessee has shown purchases. The assessee also explained sales each and every parties in the following manner:

Sr. No.	Name of the Party	Nature of Transaction	Remarks	Explanation
1	Ajit Trading Company	Purchases	Delivered but no reply	The purchases are supported by bills and payments were made by account payee cheques. There is no fault on the part of assessed if the party does not reply. It has nothing to do with cash deposit in the bank account.
2	Balaji Construction N Machines & Spare	Purchases	Delivered but no reply	- do -
3	Kohler India Corporation Pvt. Ltd.	Purchases	Delivered but no reply	- do -
4	Alpesh Bhai Modh	Sales	Return Unserved	There are counter sales where most of the parties either pay in advance or pay in cash and delivery is made to the site of buyer. The genuineness of sales gets established on the base of delivery challan.
5	Avadh Infratech	Sales	Return Unserved	- do -
6	Avanti Enterprise	Sales	Delivered but no reply	There is no fault on the part of assessee if the party does not reply.

7	Ceramica Exclusive	Sales	Return Unserved	There are counter sales where most of the parties either pay in advance or pay in cash and delivery is made to the site of buyer. The genuineness of sales gets established on the base of delivery challan.
8	Dhirubhai	Sales	Return Unserved	- do -
9	Harishbhai	Sales	Delivered but no reply	There is no fault on the part of assessee if the party does not reply.
10	Keshavbhai Kesal	Sales	Return Unserved	There are counter sales where most of the parties either pay in advance or pay in cash and delivery is made to the site of buyer. The genuineness of sales gets established on the base of delivery challan.
11	Pankajbhai Desai	Sales	He accepted purchase of Rs. 30,000/- against your claim of Rs.1,30,569/-	The statement of the person concerned was not confronted. Our sales are supported by bills and delivery challans.
12	Prakash Sutaria	Sales	Return Unserved	There are counter sales where most of the parties either pay in advance or pay in cash and delivery is made to the site of buyer. The genuineness of sales gets established on thebase of

				<i>delivery challan.</i>
13	<i>Ravani Builders</i>	<i>Sales</i>	<i>Return Unserved</i>	<i>- do -</i>
14	<i>Ravi BhagwandasJariwala</i>	<i>Sales</i>	<i>Return Unserved</i>	<i>- do -</i>
15	<i>Shantinath Associates</i>	<i>Sales</i>	<i>Reply Received</i>	<i>- do -</i>
16	<i>Sumangal Corporation</i>	<i>Sales</i>	<i>Return Unserved</i>	<i>- do -</i>
17	<i>Vimuben C. Patel</i>	<i>Sales</i>	<i>Return Unserved</i>	<i>- do -</i>
18	<i>Yash Rameshbhai</i>	<i>Sales</i>	<i>Return Unserved</i>	<i>- do -</i>
19	<i>Shivbhai Trivedi</i>	<i>Sales</i>	<i>Return Unserved</i>	<i>- do -</i>
20	<i>Hemant Ratiwala</i>	<i>Sales</i>	<i>Delivered but no reply</i>	<i>There is no fault on the part of assessee if the party does not reply.</i>

4. The assessee specifically stated that the parties shown in the above mentioned table at serial No. 5,7,13,15 and 16, there was no cash transaction, entire amount was received by cheque. The assessee also asked for cross examination of Pankaj Bhai Desai. For parties shown at serial No. 4,5,8,10,12,14,17 to 19, new addresses were furnished. No further verification was made on such new addresses. Parties shown at serial No. 6,9 and 20 received notice but no reply was filed. The Assessing Officer has allowed credit of cash in hand of Rs. 6,38,555/- as on 01/04/2016.

There was huge transaction between 01/04/2016 to 08/11/2016, therefore, accepting cash in hand only on 01/04/2016 is not justified. The assessee also furnished month wise closing balance of cash in hand. The Assessing Officer ought to have accepted the cash balance as on 30/09/2016 at Rs. 36,03,228/- instead of small amount of Rs. 6,38,555/-. The assessee also explained that majority of sales were for residential household construction, whereas the parties may not have accounted entire purchases, therefore, the sales with delivery challan to be accepted. In case, the assessee not have accounted, the sales and the deposits in the bank then they would not be in a position to make payment by cheques to the suppliers. The assessee also relied on reconciliation of sales with VAT return. The assessee also filed detailed written submission against taxing the addition under Section 115BBE of the Act as the same is not applicable for the year under consideration as the amount in the bank deposits were out of sale proceeds i.e. business transaction.

5. The Id. CIT(A) on considering the submission of assessee in para 6.1 of his order recorded that the assessee failed to satisfy Assessing Officer regarding the source of cash deposit except opening cash balance of Rs. 6,38,555/-. The Id. CIT(A) also referred the observation of Assessing Officer that Pankajbhai Desai in his statement accepted only purchase of Rs. 30,000/- against sale of Rs. 1,30,569/-. On the contention of assessee that they have furnished fresh address/latest address, the Id. CIT(A) noted that the Assessing Officer has given sufficient opportunity to the assessee to show the genuineness of cash transaction. The assessee failed to establish the genuineness of cash transaction. The notice sent to parties were returned back. In financial year (FY) 2015-16, the assessee was

having maximum cash in hand of Rs. 20,68,141/- whereas in this year, the assessee has shown cash in hand of Rs. 58,26,495/-. The cash receipt in the month of October 2016 was shown of more than Rs. 22,32,859/- whereas in the preceding year, it was less than Rs. 8,85,037/-. Monthly cash expenses of assessee is around Rs. 70,000/- to Rs. 85,000/-, therefore, there was no reason for accumulating such huge cash in hand. On the basis of such view, the Id. CIT(A) confirmed the action of Assessing Officer. No finding against specific ground against taxing the addition under Section 115BBE was given by Id CIT(A). Further aggrieved, the assessee has filed present appeal before this Tribunal.

6. 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. Apart from oral submission, the Id. AR of the assessee also filed short written synopsis which was taken on record. The Id. AR of the assessee submits that the Assessing Officer during the assessment also relied on the purchases from three parties namely Ajit Trading Company, Balaji Construction N Machines & Spare and Kohler India Corporation Pvt. Ltd. which has nothing to do with the sales realization. Out of three parties, the assessee filed confirmation of two parties and submitted that all purchases are supported by bills. And payments were made by account payee cheques. So far as parties shown in serial No. 5,7,13,15 and 16, the amounts were received through cheque against the sales. In some of the cases, new addresses were furnished but no verification on such new address was carried out. The Assessing Officer issued show cause notice for rejection of books of account, still books of account was not rejected. Merely some of the parties has not responded, entire sales cannot be doubted. The turnover of assessee is of more

than Rs. 4.87 crores and majority of sales of assessee are for household construction or finishing work of residential house. It may be possible that those parties may not have shown expenditure in their books of account, this may be reason for non-compliance. Though, the Assessing Officer while issuing show cause notice, proposed the addition of Rs. 50,50,000/- but finally made addition of Rs. 44,65,445/- after giving credit of opening cash balance in hand of Rs. 6,38,555/- that too as on 01/04/2016. The assessee furnished complete details of sales, yet the Assessing Officer made addition by considering sales and of purchases of three parties as non-genuine. The addition is without any logic and basis. No cross examination of party was allowed by Assessing Officer, whose statement was recorded and relied by him. The Id. AR of the assessee reiterated that books of account was not rejected. The Assessing Officer in his show cause notice, proposed to estimate the gross profit, yet the sales were not considered as genuine. The assessee furnished cash flow statement from April to October, 2016 which was not rejected by Assessing Officer. The assessee also reconciled the sales bill, VAT return and nothing adverse was found. The Assessing Officer merely relied upon his observation about non-compliance of notice under Section 133(6) of the Act or on the statement of one of the purchaser whose cross examination was not allowed. Statement is not evidence unless it is tested by cross examination. In support of ground No.2, which relates to taxing the addition under Section 115BBE, the Id. AR of the assessee submits that the provisions of Section 115BBE of the Act is not applicable as the provisions of Section 68 or 69 are not applicable on the transaction of assessee, which is otherwise a part of sale

proceed/business transaction. To support his submission, the Id. AR of the assessee relied upon the following decisions:

- DCIT Vs Ramnarayan Birla (ITA No. 482/JP/2015)
- ACIT Vs. Sanjay Bairathi Gems Ltd (ITA No. 157/JP/2017)
- Fashion World Vs ACIT ITA No. 1634/Ahd/2006
- Dagina Jewellers ITA No. 30/Srt/2022
- Shree Kuberji Associates IT(SS)A No. 29/Srt/2023.

7. In alternative and without prejudice submission, the Id. AR of the assessee submits that the Bench may estimate profit on impugned cash deposit to cover the possibility of revenue leakage. Opening and closing balance of assessee is duly accepted, then sale ought to have been accepted. The Id. AR of the assessee offered that an average gross profit of last two years was ranging from 8.00 to 10%. The Id AR of the assessee also relied on the decision in Amrita Gems P. Ltd. in ITA No. 181/Srt/2023 dated 21/08/2023, wherein, the Surat Bench has estimated 10% of cash deposit during demonetization period. The Id. AR of the assessee proposed to estimate addition @ 2.00 to 5.00% of impugned cash deposit to buy peace.

8. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders of the lower authorities. The Id. Sr. DR for the revenue by referring the contents of assessment order and the observation of Assessing Officer submits that majority of notices sent to various purchase parties were either returned unserved or no reply was filed by them. One of the persons namely Pankajbhai Desai was examined and his statement was recorded by Assessing Officer, who accepted only transaction of Rs. 30,000/- out of booking of sale by assessee of Rs. 1,30,000/-. The Id. Sr. DR for the revenue submits that since the assessee failed to prove the source of cash deposit, therefore, the

Assessing Officer was justified in making addition by allowing credit of cash in hand as on 01/04/2016.

9. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. We have also gone through the various evidences filed by the Id. AR of the assessee on record containing more than 200 pages. We find that the Assessing Officer made addition by taking view that during the assessment, the assessee was asked to explain the source of cash deposit during demonetization period in two bank accounts i.e. in HDFC bank and in Bank of Baroda and that the assessee failed to substantiate the source of cash deposit. The Assessing Officer issued notice to various parties, which was either returned unserved or no response was made by such parties. The Assessing Officer made addition of Rs. 44,65,445/- by allowing credit of Rs. 6,38,555/- as cash available on 01/04/2016. We find that before the Assessing Officer as well as before the Id. CIT(A), the assessee explained about each and every purchaser or seller. For first three parties shown in the show cause notice is seller of goods to the assessee. From first three parties, the assessee has made purchases through cheques out of which confirmation of two parties were filed. Again the assessee claimed that the assessee has received entire sale consideration from parties mentioned at serial No. 5,7,13,15 and 16. The assessee also claimed that they have filed fresh addresses of nine parties mentioned at serial No. 4,5,8,10,12,14,17,18 and 19. No fresh verification either by from Verification Unit of department or by sending notices or summons was carried out by Assessing Officer. The Assessing Officer remained on his first stand that notices sent to such parties were returned back unserved or no reply was filed. We find that the

addition is made by disregarding the explanation or submission of assessee. No addition in respect of parties shown at serial No. 1,2, and 3 can be made. Moreover, the Assessing Officer has not specified quantum/amount of sale or purchases of such parties. We have independently examined the statement of Pankajbhai Desai. Statement of Pankajbhai Desai is extracted on page No. 3 of assessment order. Though, we are conscious of the fact that statement of parties cannot be relied against individual (assessee) unless he is given opportunity for cross examination. Still if it is considered on the face of it, it is not helpful to the Assessing Officer, firstly, Pankajbhai Desai in his statement has accepted purchase of Rs. 30,000/- that too it was made in August, 2016 which was not demonetization period, rather it was a period when high demonization currency note was in uses. Even the credit of Rs. 30,000/- was not allowed by Assessing Officer for the reasons best known to him. No useful or material questions were asked to such purchaser, like production of invoices against which said Rs. 30,000/- was paid in cash, or the details of goods purchases by him. We find that opening stock and closing stock of assessee was not disputed. Purchases of assessee is also not disputed. No sale is possible in absence of purchases.

10. We find that the Id. CIT(A) in the impugned order recorded the submission of assessee up to page No. 12. Page No. 12 to 25, he has extracted the contents of assessment order and on page No. 25 and 26, he has given his finding and just narrating stand of Assessing Officer without giving his independent finding on his own appreciation of fact. The Id. CIT(A) referred the finding of Assessing Officer that in F.Y. 2015-16 maximum cash in hand with assessee was of Rs. 20,68,141/- whereas for the year under consideration, it is Rs. 58,26,495/-. Once the huge

cash availability in the hands of assessee in a particular business is accepted in the earlier years, at least similar amount should have been accepted in the year under consideration sale when there was an extraordinary event of demonetization period. We find that the sale of assessee during the year under consideration is more than Rs. 4.87 crores. The disputed amount cash is only of around Rs. 50.00 lacs which is almost 11%. Considering the overall facts and circumstances of the case, in our view, the addition of entire cash deposit on the peculiar facts of the case was not justified, when there was extraordinary event of demonetization during the financial year. Even though, if it is assumed that the assessee has failed to reconcile one to one sale or purchase the addition of entire cash deposit is not justified, when books of assessee was not rejected. It is settled position under income tax proceedings that only profit from business is to be taxed and not the cash or credit entry in the Bank account. We find that in a series of decisions in similar cases where the business transaction of assessee is in cash, only profit element to avoid the revenue leakage is estimated. The Id. AR of the assessee strongly relied on the decision of Surat Bench in Amrita Gems Pvt. Ltd. Vs ITO (supra) wherein Surat Bench has estimated 10% of profit as reasonable profit to avoid the possibility of revenue leakage. Thus, considering the overall facts of the case, the Assessing Officer is directed to tax 10% of cash deposit during demonetization period/cash deposited identified by Assessing Officer in two bank accounts of assessee. To be more specific, only 10% of Rs. 44,54,000/- and of Rs. 6,50,000/-. In the result, ground No. 1 of appeal is partly allowed.

11. So far as ground No. 2 of appeal is concerned, we find that once we have estimated addition @ 10% as profit element, therefore, there is no applicability of Section

115BBE of the Act as it has been considered as business profit of assessee. Even otherwise, this Bench in a series of decisions has held that Section 115BBE of the Act is not applicable for A.Y. 2017-18. In the result, ground No.2 of the appeal is allowed.

12. In the result, this appeal of assessee is partly allowed.

Order announced in open court on 06 March, 2025.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 06/03/2025

**DKP*

Copy to:

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

By order

// True Copy //

Sr. Private Secretary, ITAT, Surat