

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. 579/SRT/2023** (AY 2017-18)
(Hearing in Physical Court)

Income Tax Officer, Ward-1(2)(6), Surat, Room No. 303, 3 rd Floor, Anavil Building, Income Tax Office, Adajan Pal Road, Surat-395009	बनाम Vs	Vasudevbbhai Baldavbbhai Patel Patel House, Near Jasvanti Nagar, Rander Road, Surat-395009 [PAN : ABEP 7991 C]
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./**ITA No. 597/SRT/2023** (AY 2017-18)

Vasudevbbhai Baldavbbhai Patel Patel House, Near Jasvanti Nagar, Rander Road, Surat-395009 [PAN : ABEP 7991 C]	बनाम Vs	Income Tax Officer, Ward- 1(2)(6), Surat, Room No. 303, 3 rd Floor, Anavil Building, Income Tax Office, Adajan Pal Road, Surat-395009
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R Sheth, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	27.01.2025
उद्घोषणा की तारीख/Date of pronouncement	05.03.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These are cross-appeals by Revenue and assessee are directed against the common order of National Faceless Appeal Centre, Delhi/Commissioner of Income tax (Appeals)[for short to as "NFAC/Ld.CIT(A)"] dated 11.07.2023 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') dated 27.12.2019. Being cross appeals,

the parties have raised certain common/ interconnected grounds of appeal, thus, both the appeals were clubbed, heard together and are decided by consolidated order to avoid conflicting decisions. The Revenue in its appeal has raised following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition from Rs.15,15,310/- to Rs.9,19,797/- without appreciating the facts that the assessee had failed to prove the source of cash to pay income tax in cash during the assessment proceedings with corroborative evidences.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made of Rs.75,48,870/- under section 69 of the Act without appreciating the facts that the assessee had failed to prove the nature of TDR made during the year of consideration as the assessee was required to prove before the Assessing Officer that there is no fresh investment in the year under consideration and the TDR noticed by the AO was reinvestment of old TDR.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the additions made of the value of the TDR and giving relief on the addition made for payment of income tax in cash by appreciating the additional evidences admitted by him and without calling for the remand report on the same from the Assessing Officer, which violates the principle of the natural justice.

4. On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

5. It is therefore prayed that the order of the Ld. CIT(S) may kindly be set aside and that of the Assessing Office be restored.

6. The appellant craves leave to add, alter, amend and / or withdraw any grounds of appeal either before or during the course of hearing of the appeal."

2. The assessee in his appeal 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 Commissioner of Income Tax (Appeals), NFAC has erred in confirming the action of Assessing Officer in making addition of Rs.9,19,797/- u/s 69A of the IT Act.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the action of in invoking provisions of Section 115BBE of the Act thereby levying tax at the rate of 60% & surcharge at 25% on above addition.

3. It is therefore prayed that above addition made by Assessing Officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of appeal.”

3. Brief facts of the case are that assessee is an individual, engaged in the business of sanitary items as a proprietary firm namely M/s Bath House and a partner in a firm M/s Patel Sanitary Shop at Ahmedabad. For assessment year, 2017-18, the assessee filed his returned of income on 30.12.2017 declaring income of Rs.2,96,710/-. The case was selected for scrutiny on the issue of amount/cash deposit during demonetization period. The Assessing Officer after serving notice under section 143(2) proceeded for assessment. During assessment, Assessing Officer noted that assessee has made cash deposit in State Bank of Bank and Andhra Bank of Rs.2,00,76,960/- and Rs.1,60,30,000/- respectively. However, no addition on account of such cash deposit was made while passing assessment order. The Assessing Officer further noted that apart from cash deposit, assessee made payment of income tax of Rs.15,15,310/- in cash, the assessee was asked to furnish the source of cash utilized for payment of income tax. The assessee filed his reply dated 07.12.2019. In reply, the assessee submitted that he was having cash balance of Rs.9,19,797/- in his personal books of account, copy of cash book of his personal capital account, balance-sheet and cash account in the books of account of M/s Bath House was furnished. The assessee also stated that he has received Rs.6.00 lakh from

his proprietary concern and paid income tax. The reply of assessee was not accepted by Assessing Officer by taking view that assessee failed to furnish any corroborative evidence, which may support that cash utilized for payment of income tax was from accounted money. The Assessing Officer thereby treated cash payment of income tax as unexplained and added to income of assessee.

4. The Assessing Officer further noted that assessee made time deposit (Fixed Deposit) of Rs.40,48,658/- and Rs.35,00,212/- during the year under consideration. The assessee was asked to furnish source of such time deposit/term deposit. The Assessing Officer recorded that assessee avoided to give clear-cut reply to cover-up such issue. The Assessing Officer treated such time deposit as unexplained investment aggregating to Rs.75,48,870/- and taxed same under section 115BBE @ 60% of the Act.
5. Aggrieved by the addition made in the assessment order, assessee filed appeal before Ld.CIT(A). Before Ld.CIT(A) assessee filed detailed written submission on both the additions. The Ld.CIT(A) in his order has not recorded the contents of written submission filed by assessee. However, the assessee has filed copy of such written submission on record. On the addition of amount of payment of income tax in treating unexplained investment, the assessee stated that in response to show cause notice dated 07.12.2019, assessee explained that he was having cash balance of Rs.9,19,797/- in his persona books of account, to support such contention, the assessee furnished copy of cash book, personal capital account. It was also explained that assessee maintained two set of books of account, one for proprietary of M/s Bath House and other M/s Patel

Sanitary Shop. It was also explained that in vide reply dated 23.12.2019, he stated that income tax payment stands reflected in his cash book, which was also furnished. The Assessing Officer wrongly rejected the explanation and made addition thereof. The assessee further submitted that Rs.8,19,797/- was opening balance as on 09.11.2016 and assessee received Rs.6.00 lakh from M/s Bath House, a proprietary concern on 24.11.2016. Thus, having total cash amount of Rs.15,19,797/- which was sufficient for payment of income tax of Rs.15,15,310/-. No defect was found in the cash book. Once assessee explained the source, which was cash withdrawal from his books, the Assessing Officer failed to bring any contrary evidence to prove that income tax was paid from undisclosed source. On the addition of Rs.75,48,870/-, the assessee explained that fixed deposit of Rs.40,48,658/- was made on maturity of fixed deposit in State Bank of India. Similarly, other fixed deposit was also out of maturity of the same bank. The assessee stated that initial fixed deposit of Rs.40.00 lakhs and Rs.35.00 lakhs were made and on maturity further time deposit (FD) of Rs.40,48,658/- and Rs.35,00,212/-, were made. The assessee also furnished copy of ledger account of fixed deposit along with certificate from the bank about the details of fixed deposit, opening date, amount of fixed deposit, date of closer of fixed deposit along with closer amount of fixed deposit. There was no new investment, assessee also relied upon certain case law that when investment was made on renewal of existing fixed deposit, it cannot be constituted as unexplained investment. The assessee also objected against taxing the addition under section 115BBE.

6. The Ld. CIT(A) on considering the submission of assessee, on the addition of amount of income tax payment in cash, noted that assessee failed to furnish any evidence, which may support his claim that cash utilized for payment of income tax was accounted money. The persona capital account, personal balance-sheet were never filed by assessee before any authority, such necessary evidences are self-generated/self-serving document. Case of assessee was scrutinized for assessment year 2016-17 but no such personal set of account was found during assessment proceedings i.e., for assessment year 2016-17. Thus, available cash-in-hand of Rs.9,19,797/- was not accepted and the addition to that extent was upheld. So far as withdrawal/transfer from proprietary concern of M/s Bath House, the Ld.CIT(A) held that there is no finding in the assessment order that there was no such cash balance of Rs.6.00 lakh as on 24.11.2016. No defect in the cash book has been pointed out thereby assessee was allowed to the extent of Rs.6.00 lakhs. On the addition of unexplained investment in time deposit/fixed deposit, the Ld.CIT(A) noted that assessee has filed ledger account of fixed deposit, along with certificate from the banker about the details of fixed deposit, fixed deposit opening date, amount of fixed deposit, date of closer of fixed deposit with closer amount and certificate from the banker. Those evidence shows that fixed deposit made during the year are not from any new source but from the maturity proceeds of old fixed deposit. The investment in old fixed deposit does not pertain to year under consideration. On the basis of such view, the addition of Rs.75,48,870/- was deleted by Ld. CIT(A). On taxing the addition under section 115BBE @ 60%, the Ld. CIT(A) upheld the action of Assessing Officer by taking

view that as per provisions of Taxation Laws (Second Amendment) Act, 2016, which is made applicable from 01.04.2017. Therefore, for every assessment carry out in that year relevant to previous year, the rate as applicable on 01.04.2016 has to be applied.

7. Further, aggrieved both parties have filed their cross-appeal before the Tribunal. The assessee has challenged the action of Assessing Officer in sustaining addition of Rs.9,19,797/- under section 69A and taxing the same under section 115BBE of the Act. On the other hand, Revenue has also filed their cross-appeal in challenging the action of Ld.CIT(A) in deleting the addition made in fixed deposit.
8. We have heard the submission Ld. Authorized Representative (Ld.AR) of the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the revenue. Ground No.1 in Revenue's appeal and grounds of appeal raised by assessee are inter-connected. The Revenue has challenged the order of Ld.CIT(A) in allowing part relief to the extent of Rs.6.00 lakh. Similarly, assessee has also challenged the order of Ld. CIT(A) in sustaining the addition of Rs.9,19,797/-. The Ld. Sr-DR for the Revenue supported the order of Assessing Officer. The Ld. Sr-DR for the Revenue submits that Ld.CIT(A) allowed relief to the assessee simply on the basis of submission filed by assessee. The Ld. Sr-DR for the Revenue submits to reverse the order of Ld. CIT(A) and restore the order of Assessing Officer.
9. On the other hand, Ld. AR of the assessee supported the order of Ld. CIT(A), to the extent in deleting the addition of Rs. 6.00 lakhs. In support of his ground of appeal, the Ld. AR of the assessee submits that assessee has shown cash

withdrawal from the proprietary concern, copy of cash flow statement of M/s Bath House is filed. So far as cash-in-hand as on 01.11.2016 is concerned, assessee has also filed cash flow statement of assessee in his individual capacity. Once the assessee has shown cash balance of Rs.15,19,797/-, which was sufficient for making payment of income tax. There is no bar for payment of income tax in cash, during the relevant financial year. The Assessing Officer has not rejected the book of assessee. the Id AR of the assessee submits that entire addition was liable to be deleted.

10. We have considered the rival contention of both the parties and have gone through the orders of lower authorities carefully. We find that Assessing Officer made addition of Rs.15,15,310/- by taking view that assessee has made payment of income tax in cash and that on show cause notice assessee failed to discharge his onus the source of cash available with him. We find that before Ld.CIT(A) assessee in his detailed written submission explained that he was maintaining two set of books of account one for proprietary business of M/s Bath House and another personal capital account. The assessee has also claimed that Rs.9,19,797/- was available at cash-in-hand in his personal book. Further, Rs.6.00 lakh was received in cash from proprietary business concern. We find that Ld. CIT(A) accepted the cash received from proprietary business of M/s Bath House, however, source of Rs.9,19.797/- was not accepted by taking view that no independent evidence was filed. We also find that assessee failed to file any independent evidence of third party to prove that assessee was having cash Rs.9,19,797/- in his cash book. Thus, we confirm the order of

Ld.CIT(A). Resultantly, grounds of appeal raised by assessee is dismissed and that ground No.1 raised by Revenue is also dismissed.

11. Ground No.2 in Revenue's appeal relates to deleting the addition of Rs.75,48,870/- on account of investment in fixed deposit. The Ld. Sr-DR for the Revenue supported the order of Assessing Officer. The Ld. Sr-DR for the Revenue submits that no evidence was filed before Assessing Officer to substantiate the fact that fixed deposit/time deposit was made from the earlier fixed deposit. The Ld CIT(A) allowed relief to the assessee without giving opportunity to the Assessing Officer to make his comment, on the submission of assessee. the Id Sr DR for the revenue submits that this grounds of appeal may be restored to the file of Assessing Officer for considering the issue afresh.
12. On the other hand, the Id. AR of the assessee submits that during assessment, in response to show cause notice, assessee filed reply on 23.12.2019, the assessee filed his reply, copy of which is filed on record. In the reply, assessee clearly explained that the source of investment was from maturity of fixed deposit/time deposit made earlier. The assessee also furnished the date of deposit and date of maturity along with bank statement. Before Ld. CIT(A) assessee filed only certificate of banker, which is a third party independent evidence issued by banker of assessee, which is self-explanatory and no verification of fact was required at the end of Assessing Officer. The Ld. CIT(A) has co-terminus power to examine and appreciate the fact as of Assessing Officer. The Ld. CIT(A) on appreciation of fact that fixed deposit/time deposit made by assessee was out of maturity of earlier fixed deposit/time deposit and allowed relief to the assessee.

13. We have considered the rival submission of both the parties and have gone through the order of lower authorities carefully. We find that Assessing Officer made addition of investment in fixed deposit/time deposit aggregating to Rs.95,48,870/- by taking view that assessee was asked to furnish source of time deposit but the assessee avoided to submit clear-cut reply. We find that before Ld. CIT(A) assessee in his detailed written submission explained the source of investment as out of maturity of earlier fixed deposit. In support of his contention, assessee also furnished certificate from his banker, copy of such fixed deposit filed at pages 25 and 26 of paper book about date of opening of fixed deposit account, date of closer and amount of maturity. On considering of details on record and the categorical finding of Ld. CIT(A) that investment in fixed deposit/time deposit was out of maturity of earlier fixed deposit/time deposit. Thus, we do not find any reason to interfere with the order of Ld.CIT(A), which we affirm. This ground No.2 of Revenue's appeal is dismissed.
14. Ground No.2 in assessee's appeal relates to taxing the addition under section 115BBE @ 60% tax rate. We find that 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 allowed.

15. In the result, appeal of the revenue is dismissed whereas appeal of assessee is partly allowed. Copy of this order be placed in both the appeal folder. File be consigned to record room as per rules & practice of Tribunal.

Order pronounced in the open court on 05/03/2025.

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

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

सूरत / Surat Dated: 05/03/2025

Dkp, Outsourcing Sr.P.S*

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- 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