

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

आयकर अपील सं./ITA No.1321/SRT/2024

Assessment Year: (2017-18)

(Physical court hearing)

Vallabhbai Kalsariya 120, Kamal Park Society, L..H. Road, Varachha, Surat-395 006	Jadavbhai बनाम/ Vs.	Income Tax Officer, Ward- 3(3)(5), Surat, Aaykar Bhawan, Near Majura Gate, Opp. New Civil Hospital, Surat 395 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BIJPK 0301 G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Sapnesh R. Sheth, CA
राजस्व की ओर से /Respondent by	Shri Mukesh Jain, Sr-DR
सुनवाई की तारीख/Date of Hearing	13/03/2025
उद्घोषणा की तारीख/Date of Pronouncement	27/03/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 30.10.2024 by the Commissioner of Income-tax(Appeals)/National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] for the assessment year (AY) 2017-18, which in turn arises out of assessment order passed by Assessing Officer (in short 'AO') u/s 144 of the Act dated 05.12.2019. Grounds of appeal raised by the assessee are as under:

"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 best judgment assessment u/s 144 of the I.T. Act, 1961 without providing reasonable opportunity of hearing to the assessee.

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 Assessing Officer in making addition of Rs.11,69,500/- u/s 69A of the I.T. Act, 1961 as unexplained cash deposits.*

3. *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 invoking provisions of section 115BBE of the Act and in thereby taxing entire unexplained cash deposits at 60 percentage and levying surcharge at 25 percentage which is not applicable on above amount.*

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

5. *Appellant craves leave to add, amend, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

2. The brief facts of the case are that assessee filed his return of income for A.Y 2017-18 on 31.03.2018 declaring total income at Rs.3,62,810/-. The assessee had deposited cash of Rs.11,69,500/- in his bank accounts maintained with Bank of India and Vijaya Bank. The AO issued seven notices as detailed in para-4 of the assessment order. There was non-compliance on every occasions. Thereafter, show cause notice was issued on 25.11.2019 which was neither complied with nor any request letter for adjournment was filed. Therefore, the AO invoked provisions of section 69A and added Rs.11,69,500/- to the total income of assessee.

3. Aggrieved by the addition made in assessment order, assessee filed appeal before CIT(A). The assessee filed submission which was forwarded to the AO for remand report. Remand report of AO is at para-6.3 of the appellate

order. The AO remarked that the assessee made additional submission during appellate proceedings, which was never submitted before AO. The assessee has also not intimated the Department about change of address for communication or correspondence. On merit also, the AO did not accept submission of assessee. Copy of the remand report was forwarded to the assessee for rejoinder. The assessee filed reply which is at page-13 of the appellate order. The AO has stated that assessee did not file any documentary evidence in support of business activities claimed to have been carried out by him. The assessee has shown "Nil" amount against sundry debtors, sundry creditors and stock-in-trade in the trading business of grocery which is not satisfactory and acceptable. The CIT(A) stated that the burden was on the assessee to prove that the facts and findings of AO are incorrect. The appellant was provided several opportunities during appellate proceedings to establish with evidence the nexus between the cash withdrawals and cash deposited in his bank accounts and the other claims made during appellate proceedings. However, the appellant failed to provide evidence or explanation against the findings of AO. In view of the above, the CIT(A) confirmed the addition made by AO mainly because source of deposit was not explained.

4. Aggrieved by the order of CIT(A), assessee has filed present appeal before Tribunal. The Ld. AR submitted that the entire cash deposit cannot be added and only the income arising from such transactions can be taxed. He submitted that assessee had cash balance of Rs.10,66,062/- as on 01.04.2016

and there was total cash sales of Rs.19,36,677/- during the year under consideration. The assessee had turnover of Rs.32,69,480/- and return was filed u/s 44AD of the Act. He submitted that a reasonable amount may be added if the Bench is not satisfied with the explanation and details filed by the assessee.

5. On the other hand, Ld.Sr-DR for the Revenue supported the orders of lower authorities. He submitted that the Bench may decide the matter as it thinks fit.

6. We have heard the rival submissions of both the parties and perused the materials available on record. The appellant submitted that the AO had passed an *ex parte* order u/s 144 of the Act. The non-compliance by the appellant was not deliberated but due to circumstances beyond his control. The appellant was, in fact, engaged in grocery business and had filed return of income u/s 44AD of the Act by declaring total income at Rs.3,62,810/-. The appellant had total turnover of Rs.32,69,480/- out of which cash sale was Rs.19,36,677/-. The appellant had also opening cash balance of Rs.10,66,062/-. Hence, the deposit of Rs.11,69,500/- is duly explained; the source being cash sales and opening cash balance of Rs.30,02,739/- (Rs.19,36,677/- + Rs.10,66,062). Both the parties, however, agreed that a reasonable amount may be disallowed to avoid further litigation and reach finality of the proceedings. After considering facts of the case and submissions made by the parties, we are of the considered view that 30% of the cash deposit may be

added to the total income of the assessee to avoid leakage of revenue. The AO is, accordingly, directed to add Rs.3,50,850/- and delete remaining addition. This ground is partly allowed.

7. So far as taxing the addition at the enhanced rate of tax u/s 115BBE is concerned, we find that Divisions Bench as well as SMC Bench of this Tribunal in a series of case has held that enhanced rate prescribed u/s 115BBE is not applicable for AY 2017-18. Useful reference may be made to the cases 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 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 No. 3 raised by the assessee is allowed.

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

Order is pronounced on 27/03/2025 in the open court.

Sd/-
(PAWAN SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 27/03/2025

Dkp Outsourcing Sr.P.S*

Sd/-

(BIJAYANANDA PRUSETH)

लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अद्योषित/ 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