

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

आयकर अपील सं./ITA No.683/SRT/2024

Assessment Year: (2016-17)

(Physical hearing)

Mukeshbhai Karshanbhai Baflipara D/801, Shiv Plaza Apartment, Gadhpur Township Road, Nr. Sarhana Jakat Naka, Varachha Road, Surat-395 006	बनाम/ Vs.	Income Tax Officer, Ward- 3(3)(1), Surat, Adajan, Near Gas Circle, Surat-395001
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AIXPB 2114 M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Kiran K. Shah, CA
राजस्व की ओर से /Respondent by	Shri Manish Jain, Sr-DR
सुनवाई की तारीख/Date of Hearing	12/03/2025
उद्घोषणा की तारीख/Date of Pronouncement	15/04/2025

आदेश / ORDER

PER BIJAYANANDA PRUETH, 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 19.02.2024 by the National Faceless Appeal Centre, Delhi /Commissioner of Income-tax (Appeals) [in short 'Ld. CIT(A)'] for the Assessment Year (AY) 2016-17, which in turn arises out of assessment order passed by Assessing Officer (in short, "AO") u/s 147 r.w.s. 144B of the Act dated 25.04.2023. Grounds of appeal raised by the assessee are as under:

"1) The learned AO grossly erred in making addition of Rs.1,52,06,015/- invoking section 69A of the Act on credit transactions with Renuka Mata Multi State Urban Co-Op. Society Ltd. during the year as discussed in para-4 of the assessment order.

2. The appellant reserves right to add, alter and withdraw any grounds of appeal.”

2. Facts of the case in brief are that assessee had filed his Return of Income (ROI) on 08.10.2016 declaring income of Rs. 3,09,510/-. The case was processed u/s 143(1) and no order u/s 143(3) was passed. Subsequently, the AO found from the information available with the Department that the assessee had received credits of Rs.1,52,06,015/- during the FY 2017-18 relevant to AY 2016-17 in his account maintained with Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. The above credit found in the bank account was disproportionate to the meagre income disclosed by assessee in his ROI. Accordingly, the case was reopened by issuing notice u/s 148 on 30.07.2022. In response to the said notice, assessee filed his ROI on 29.08.2022 declaring total income of Rs.6,14,720/-. The AO issued notices u/s 143(2) and 142(1) of the Act and show cause notice as per the Table-2 in the assessment order. The assessee filed part reply and submitted that he carried out business of trading of agricultural produce viz. groundnut. He was buying agricultural produce from farmers and selling to various wholesale dealers. The said buyers deposited cash in his bank account which he used to withdraw and pay to farmers. He was receiving commission @ 2% on such business. He has not withdrawn any cash for personal purpose or for making any investments. The AO issued 133(6) issued to Renukamata Multi-State Urban Credit Society where assessee had received cash credits of Rs.1,52,06,015/- during the year under consideration. The AO observed that the assessee failed to prove with

material evidence that the credits are related to his business receipts. Hence, AO treated credit of Rs.1,52,06,015/- as unexplained money u/s 69A of the Act. Aggrieved by the addition made by AO, assessee preferred appeal before CIT(A).

3. The CIT(A) issued six notices through ITBA, but there was non-compliance to all these notices. Thereafter, CIT(A) decided the appeal based on material available on record. He has confirmed the addition on the ground that despite number of opportunities assessee failed to file any submission or documents in support of his claim and rebut the assessment order. He upheld the addition made by the AO in the assessment order.

4. Further aggrieved by the order of the CIT(A), the assessee has filed present appeal before the Tribunal. The Ld. AR of appellant submitted that in the business of trading of agricultural produce (groundnut) in the capacity of commission agent. The buyer of groundnut used to make payment through the agent to the farmers. The buyers used to deposit cash for payment to farmers in the account of commission agent and the appellant used to withdraw the amount in cash and pay to the farmers. The appellant has filed copy of bank statement of Renukamata Multi-State Urban Credit Society which apparently shows that the deposit of cash in the bank account from different cities like Pune, Hyderabad, Aurangabad, Nasik etc. Against the cash deposit, the appellant had withdrawn cash for payment to the farmers. According to the AR, this explanation was filed at the time of regular assessment and the same

is discussed in assessment order also. The AO, however, had made addition merely because no books of account were maintained and no proof regarding payment to the farmers was furnished. The CIT(A) had confirmed the additions by passing a very brief order without considering the submission made by appellant before AO as well as in the statement of fact in Form-35 by simply observing that no documents were filed to rebut the assessment order. The Ld. AR submitted that as per the *modus operandi* of the transactions evident from the bank statement, affidavits of the farmers and also the computation of income, *wherein* commission income was shown, some reasonable amount of commission / profit may be estimated on total turnover of Rs.1,52,06,015/- as per the bank statement. The Ld. AR further submitted that all withdrawals were by self in cash and there is no payment of any personal nature or any investment. He submitted that the entire transactions could not be the income of the assessee and only the profit element can be taxed instead of the gross receipts. The AR had relied upon decisions in cases of CIT vs. President Industries, 258 ITR 654 (Guj), ITO vs. Gurubacchansingh Juneja (Special Bench, ITAT, Ahmedabad) 216 (2008) 171 Taxman 406 (Guj), Kediam Gems (P) Ltd V/s. ITO (ITA No. 756/SRT/2023] and Amrita Gem (P) Ltd V/s. ITO (ITA No. 181/SRT/2023). He submitted that commission income was estimated at 1% or below 1% in the following cases (i) Rohit P. Panwala (ITA No.608-1612/Ahd/2010 (ii) Umeshchandra Garg vs. ACIT (2004) 91 TTJ Agra 549 and

(iii) C.K. Telang vs. ACIT (ITA No.4538/Del/1993 and hence, it can be estimated at 2 per cent of the total deposit.

5. On the other hand, Ld.Sr-DR for the Revenue supported the order of lower authorities. He submitted that no details were given by the assessee to the AO or CIT(A). There is no proof of trading of groundnut by the appellant. He submitted that in absence of the details, addition of 100% of the deposit may be upheld.

6. We have heard both the parties and perused the materials on record. We have also deliberated various decisions relied upon by Ld.AR. The appellant was in the business of selling agricultural produce (groundnut) in the capacity of commission agent. The appellant has uniformly made the above claim before the AO as well as CIT(A). The buyers of the groundnut used to make payment in the bank account of appellant, which in turn was withdrawn by the appellant to make payment in cash to the farmers. The appellant has filed copy of the bank statement with Renukamata Multi-State Urban Credit Society, which shows that there were deposits of cash in the bank account from different cities and the appellant has withdrawn cash from the said account. It is seen that there was total cash deposit of Rs.1,52,06,015/- against which there was cash withdrawal and small transaction charges of Rs.1,52,06,092/-. Therefore, almost equivalent amount of cash deposit has been withdrawn from the cash deposited in the impugned account. We find that the case of the appellant pertains to AY 2016-17 and not 2017-18 which was relevant to the

demonetization period. We also find that the above explanation was given by the assessee before the AO and the same has also been discussed in the assessment order. The AO, however, did not accept the explanation because no books of account were maintained and no proof of payment was submitted. The CIT(A) confirmed the addition as no documents were filed before him. The Ld. AR has submitted that the assessee was not aware about the digital proceedings and hence, he could not file the details. He has filed affidavit explaining the reasons for not filing the documents before CIT(A). We find that the appellant has consistently taken the plea that he has acted as commission agent of agricultural produce. He has explained the *modus operandi* of the transactions, affidavit of some farmers and computation of income wherein the commission income was disclosed. He submitted that a reasonable amount of commission may be estimated instead of taxing the entire transactions. The Ld. Sr-DR has not controverted the submission of Ld. AR of the appellant. We find that the Hon'ble jurisdictional High Court in the case of President Industries (supra) has held that 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 realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. There are other decisions relied upon by Ld. AR (supra), which support similar action in case of cash deposit by the assessee. The co-ordinate Bench of this Tribunal in the cases of Kediam Gem Pvt. Ltd. (supra) and Amrita Gem Pvt. Ltd. (supra)

held that a reasonable disallowance out of total cash deposit would meet the ends of justice. Taking a consistent view as has been taken in other cases, 10% of alleged cash deposit was held by the co-ordinate Bench of this Tribunal to be reasonable to avoid the possibility of revenue leakage. There is no reason to deviate from the finding in above cases. In our view, 12.5% of the cash deposit would be reasonable to avoid the possibility of revenue leakage. Hence, we direct the AO to restrict the addition to 12.5% of the cash deposit of Rs.1,52,06,015/- and delete the remaining amount. This ground of assessee's appeal is partly allowed.

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

Order pronounced under proviso to Rule 34 of ITAT, Rules, 1963
on 15/04/2025 in the open court.

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 15/04/2025
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 आधिकरण, सूरत/ DR, ITAT, SURAT**
- **गार्ड फाईल/ Guard File**

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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत