

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.468/SRT/2024

Assessment Year: (2017-18)

(Hybrid hearing)

Sabirhusen Rasulbhai Malek Indian Oil Pump, Devaliya Narmada, Devaliya SO - 391121	Vs.	The ITO, Ward - 2(1), Bharuch
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AOPPM9978Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Kinjal V. Shah, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	17/02/2025
Date of Pronouncement	29/04/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed u/s 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 28.02.2024 by the Addl. /JCIT(A) - 1, Kolkata/Commissioner of Income-tax (Appeals) [in short 'CIT(A)'] for the Assessment Year (AY) 2017-18.

2. Grounds of appeal raised by the assessee are as under:

"1. The CIT(A) has erred both in law and in fact in confirming the order of AO and thereby the addition of Rs.6,00,000/- u/s 69A.

2.Your appellant submits that Sec.69A does not apply to the facts of the case and the amount credited is backed by proof and sources viz., as advance from customer whose details were submitted to the AO.

3. The CIT(A) is also erred in confirming addition of Rs.6,00,000/- which has arisen and received as per Sale document dated 28.05.2018 i.e., A.Y.2019-20. Without prejudice or merits or any view taken by the authorities the income which has arisen as a result of sale deed for A.Y.2019-20 cannot form as income for A.Y. 2017-18 even on protective basis.

4. (a) The addition made by the AO of Rs.6,00,000/- on protective basis, it is not valid since prior to the protective basis there is no substantiate addition in assessment made and in such absence to the addition on potential basis cannot be added.

(b) It is further submitted that the fact of addition Rs.6,00,000/- on protective basis by Assessing Officer shows beyond doubt that he himself is not sure what is the amount to be added and in which year to be added which fix volumes for itself and addition deserves to be deleted.

5. Without prejudice in any case of matter if the said sum is of Rs.6,00,000/- is liable to be included u/s 69A then it shall be only Rs.1,200/- being net profit @2% is held by Hon. Guj. High Court and other judicial authority.

It is therefore submitted that relief claimed above be allowed and the order of the Assessing Officer be modified accordingly. Your appellant reserves right to add, alter, amend to withdraw any or all ground of appeal.”

3. The facts of the case in brief are that the assessee filed his return of income electronically on 30.10.2017 for AY.2017-18, declaring total income of Rs.2,81,500/- and agricultural income of Rs.8,59,379/-. The case was selected for complete scrutiny under CASS. Various notices u/s 143(2) and 142(1) were issued and served upon the assessee for furnishing requisite details, information, clarification and explanation. The assessee was running a petrol pump in the name and style of M/s Pragati Petroleum. On verification of the balance sheet as on 31.03.2017, the amount of Rs.6,00,000/- each was shown advance from customer, namely, Shri Manojbhai Narshibhai Patel. The assessee submitted that the advance was

taken from the above party in the subject year but sale deed was executed on 28.05.2018. According to Assessing Officer (in short, 'AO'), in the sale deed, it has been mentioned that total sale consideration of Rs.6,00,000/- was paid on the date of sale deed and the same was acknowledged by the assessee. Hence, the AO held that receipt of Rs.6,00,000/- during the year was unexplained and made addition of Rs.6,00,000/- u/s 69A of the Act. He observed that in case substantive view is not upheld, alternative view on protective addition shall be applied. The AO determined the total income of Rs.8,81,500/- against the returned income of Rs.2,81,500/-. Penalty proceedings u/s 270A of the Act has been initiated by AO.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The CIT(A) observed that the contention regarding receipt of advances against sale of shops was not corroborated from the sale deeds furnished by the appellant, because the deed was executed on 28.05.2018. The contention of receipt of Rs.6,00,000/- as advance was not accepted by AO. The appellant did not file any satisfactory explanation to justify his claim during the appellate proceedings. Therefore, the CIT(A) confirmed the addition of Rs.6,00,000/- made by AO, which was treated as deemed income u/s 69A of the Act. Hence, the CIT(A) dismissed the appeal of the assessee.

5. Aggrieved by the order of the CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee

filed a paper book and submitted that the assessee has received the impugned amount of Rs.6,00,000/- from Shri Lalkiya Manojbhai Narsingbhai and Shri Lalkiya Divyeshbhai Narsingbhai as advance against sale of property. The property was registered in the subsequent year on 28.05.2018. Copy of the sale deed for Rs.6,00,000/- dated 23.05.2018 is at pages 29 to 43 of the paper book. The Id. AR also submitted the return of income filed by the assessee for AY.2017-18. Since the source of the amount has been explained, he requested to allow the appeal of assessee.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities. He submitted that it is not clear from the sale deed as to when the payment was made. However, the undisputed fact is that the same deed was executed on 28.05.2018, relevant assessment year, i.e., AY.2019-20. In absence of proper and credible information, deposit of cash during demonetization period in SBNs was rightly added by AO and confirmed by the CIT(A).

7. We have heard both the parties and perused the materials available on record. There is no dispute regarding the fact that the assessee had deposited Rs.6,00,000/- in SBNs during demonetization period. As per the sale deed enclosed in the paper book, it is seen that the property was registered on 28.05.2018, which pertains to AY.2019-20. However, assessee has claimed that advance against the property was received in the subject

AY.2017-18, which is two years prior to the date of registration. No details or confirmation/affidavit of the payers namely, Shri Lalkiya M. Narsinghbhai and Shri Lalkiya D. Narsinghbhai have been submitted by the appellant in support of the claim. Bank statement, ITR, PAN etc. of the buyers have also not been furnished to substantiate the claim of receipt of advance. Despite adequate opportunities granted by AO and CIT(A), appellant has not furnished any supporting or corroborative evidence regarding receipt of advance two years before the actual date of registration. The AO has clearly mentioned at para 4.2 of the assessment order that the sale consideration of Rs.6,00,000/- was paid on 28.05.2018 (AY.2019-20). Hence, claim of the assessee that he had received Rs.6,00,000/- as advance in the instant AY.2017-18 is not borne out from the facts on record. In view of the above, the addition made by the AO is factually correct, which was rightly upheld by the CIT(A). The onus of proving the source of deposit primarily rests on the person in whose name the deposit appears in the bank account. The assessee failed to discharge the onus cast on him to escape the mischief of section 69A of the Act. Hence, we do not find any reason to interfere in the concurrent findings of the lower authorities. The ground is, accordingly, dismissed.

8. The appellant has raised an alternative ground that addition may be restricted to 2% of net profit. This ground is not liable to be entertained because source of the impugned money (Rs.6,00,000/-) has not been

explained by the assessee and, hence, the AO has rightly added Rs.6,00,000/- u/s 69A of the Act. The impugned amount of Rs.6,00,000/- is not the turnover of the assessee but unexplained money found in his possession. Therefore, the ground is also dismissed.

9. In the result, appeal of the assessee is dismissed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963
on 29/04/2025.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 29/04/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat