

**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.367/SRT/2024

Assessment Year: (2017-18)

(Hybrid Hearing)

Smt. Kailashben Lavjibhai Daliya, K-701, River View Heights, Pedar Road, Mota Varachha, Surat - 394101	Vs.	The ITO, Ward – 3(3)(3), Surat
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AIAPP7993D		
(Appellant)		(Respondent)

Appellant by	Shri Ashwin K. Parekh, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	12/02/2025
Date of Pronouncement	30/04/2025

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 22.02.2024 by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2017-18.

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

"1. The Learned Commissioner of Income-tax (Appeals) has grievously erred in law and on facts in confirming the addition of Rs.25,20,000/- on account of cash deposit in bank account without appreciating the source of cash deposit duly explained by e-proceedings. The Addition of Rs.25,20,000/- should therefore be deleted.

2. The Learned Commissioner of Income-tax (Appeals) has grievously erred in law and on facts in confirming the levy of tax u/s 115BBE of the Act on cash deposited without appreciating the satisfactory explanation on the source of cash deposits.

3. The appellant reserves the right to add, alter, modify, amend or withdraw any of the grounds of appeal before hearing.”

3. Brief facts of the case are that the assessee had filed her return of income for AY.2017-18 on 20.03.2018, declaring total income of Rs.11,60,020/-. The case was selected for limited scrutiny through CASS on the issue of ‘cash deposits during demonetization period’. Various notices were issued and served upon the assessee. The assessee submitted computation of income balance sheet, profit and loss account, copy of capital account and details of bank statement. The Assessing Officer (in short, ‘AO’) observed that the assessee had deposited cash of Rs.25,20,000/- in his bank account No.2450091002088 maintained with The Surat Mercantile Co-operative Bank Ltd. The assessee stated that the cash on hand has been deposited out of balance available as on date. However, no supporting documents were submitted by the assessee to substantiate the source of cash deposit. A show cause notice was issued on 24.11.2019 asking assessee as to why cash deposit of Rs.25,20,000/- and other credit entries should not be added/disallowed to the total income. The assessee filed reply on 27.11.2019 which is at pages 3 to 4 of the assessment order. The assessee stated that opening cash balance as on 01.04.2016 was Rs.31,07,483/-. The cash in hand at midnight of 08.11.2016 was Rs.32,10,013/-. The AO observed that no cash balance is verifiable from the returns of income filed for AYs.2015-16 and 2016-17 as assessee filed Form ITR-3. No supporting documents were furnished by the assessee for the generation of huge cash balance. Cash book is also not maintained by the assessee and even cash flow

statement was also not furnished for the AY.2016-17 to prove the huge cash kept in hand and deposited during demonetisation. The AO noted that assessee filed returns of income, declaring total income of Rs.3,41,290/- and Rs.3,71,590/- for AY.2016-17 and 2015-16 respectively. Hence, the contention of the assessee that the cash on hand has been deposited out of balance was not tenable. Further, no supporting documents were furnished by the assessee to substantiate his claim of huge cash balance of Rs.31,07,483/-. Hence, the source of cash of Rs.25,20,000/- made by the assessee in his bank account during demonetisation period remained unexplained. The AO made addition of Rs.25,20,000/- u/s 69A of the Act and taxed it @ 60% u/s 115BBE of the Act. Total income was assessed at Rs.36,80,020/- as against returned income of Rs.11,60,020/-.

4. Aggrieved by the order of AO, the assessee filed this appeal before CIT(A). The reply of the appellant is extracted at pages 3 to 7 of the appellate order. The CIT(A) observed that the source for the deposit, according to appellant, was cash balance with her as on 01.04.2016 amounting to Rs.31,07,483/-. The appellant further explained that out of this amount Rs.25,13,128/- was from the preceding year. According to the CIT(A), the appellant had not given any proximate source for the cash in hand which she claims to have deposited during demonetization period. Further, the CIT(A) observed that it is improbable that such large sums would be kept in cash at home for such length of time. Any rational person would invest the amount rather than keep the same in liquid cash. The CIT(A) did not give credence to the

balance sheet as on 31.03.2016, filed by assessee. The CIT(A) upheld the addition made by AO and dismissed the appeal of appellant.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed paper books including written submissions to AO, ITRs for AYs.2015-16 and 2016-17 and some decisions regarding levy of tax u/s 115BBE of the Act. He has reiterated the submission made earlier and argued that opening cash balance in hand as on 01.04.2016 was Rs.31,07,483/-. The cash in hand at the midnight of 08.11.2016 was Rs.32,10,013/-, out of which Rs.25,20,000/- was deposited in the bank. The appellant submitted that the reasons for cash withdrawal was that the current account does not allow interest on the balance kept therein; that there was no 'Chest facility'; that there was instability of the co-operative bank and that number of incidents of bank robbery/bank loot/cash snatching outside premises of the banks were taking place. He submitted that opening cash in hand as on 01.04.2014, 01.04.2015 and 01.04.2016 were Rs.6,99,048/-, Rs.25,13,128/- and Rs.31,07,483/- respectively. He has given a table where opening cash in hand, cash deposited in the bank, cash sale, investments / expenses in cash, cash withdrawal from bank and closing cash on hand has been given for the period 01.04.2016 to 08.11.2016 (page 4 of the paper book). He submitted that since closing cash in hand of AY.2016-17 was deposited in the bank during demonetization period, the addition was wrongly made.

5.1 On the issue of levy of the tax u/s 115BBE of the Act at the enhanced rate and surcharge, the Id. AR relied on the decisions of ITAT, Surat in cases of (i)

Samir Shantilal Mehta vs. ACIT, ITA No.42/SRT/2022, (ii) Dhirajlal Bhagwanbhai Talaviya vs. ITO, ITA No.726/SRT2023 and (iii) Sureshbhai Bhiukhabhai Patel vs. ITO, ITA No.657SRT2024. He submitted that in the aforesaid cases, the enhanced rate and surcharge are to be applied prospectively and not applicable to the AY.2017-18.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities. He submitted that no supporting documents were provided by the assessee to the AO to substantiate the source of cash deposit. The assessee had also not maintained any cash book. The return for AY.2016-17 was filed after the due date and after the demonetization period on 18.03.2017, where the opening cash balance is claimed at Rs.31,07,483/-. The said return is not supported by any evidence. He further submitted that the CIT(A) has duly considered the written submission of the assessee and found the explanation not convincing. The appellant could not give any proximate source of cash in hand, which she claims to have deposited during demonetization period.

7. We have heard both the parties and perused the material available on record. We have also deliberated on the decisions relied upon by Id. AR. It is an undisputed fact that there were cash deposits of Rs.25,20,000/- in the bank account of assessee maintained with The Surat Mercantile Co-operative Bank Ltd. during demonetization period. The Id. AR has mainly relied on the return of income of AY.2016-17, where the cash in hand as on 01.04.2016 was Rs.31,07,483/-. However, we find that the said return was not filed within the

due date as per section 139(1) of the Act and was filed much later on 18.03.2017 after the demonetization period. Further, the appellant has claimed opening cash in hand of Rs.25,13,128/- as on 01.04.2015. But the appellant has not given any details of cash deposit including the source and cash withdrawals during FYs.2013-14, 2014-15 and 2015-16. From the table given in the paper book, which is also reproduced by the CIT(A) at page 6 of the appellate order, it is seen that there was hardly any cash sales during the entire period and the amount of expenses and investment in cash was also meagre. Therefore, the claim of the assessee that the opening cash in hand was utilized for making the deposit during demonetization period is not fully supported by any credible evidence. The AO and the CIT(A) have noted that the income of the assessee was Rs.3,41,290/- and Rs.3,71,590/- only for AYs.2015-16 and 2016-17 respectively. The CIT(A) has also observed that appellant failed to provide any proximate source for the cash in hand, which was deposited in the bank account. He has also rightly observed that it was improbable that huge amount of Rs.25,13,128/- available on 01.04.2015 continued with the appellant for such long period till the date of demonetization. It may be stated that the appellant had cash balance of Rs.6,99,048/- as on 01.04.2014. The appellant has not explained as to how the said amount increased to Rs.25,13,128/- as on 01.04.2015, because the appellant had declared income of Rs.3,71,590/- and agricultural income of Rs.1,47,580/- only in her return of income. The appellant has not submitted the copy of the return for earlier assessment years. Be that as it may, the appellant has also not been able to controvert the findings of the

lower authorities in the proceedings before us. In absence of credible and corroborative evidence to support the claim of the opening cash balance as on 01.04.2015 and 01.04.2016, the explanation of the appellant cannot be accepted in toto. The principle of 'human probability' is also clearly applicable to the facts of the appellant. The assessee is required to incur expenses for various personal and household purposes, which would cause depletion of the cash in hand available with the assessee. Since the return for AY.2016-17 was filed after demonetization, credence cannot be given to the cash in hand as on 01.04.2016 in absence of any corroborative and supporting evidence. Considering the facts discussed above, it would be fair and reasonable if 50% of the cash in hand as reflected in the return of income filed for AY.2015-16 on 24.05.2016, before demonetization period, is allowed to assessee for the purpose of making deposit in the bank account. The cash in hand as on 01.04.2015 was Rs.25,13,128/-. The AO is accordingly directed to delete Rs.12,56,564/- and the remaining addition is upheld. Accordingly, the ground No.1 is partly allowed.

8. So far as levy of tax u/s 115BBE of the Act at enhanced rate of tax @ 60% on the addition u/s 69A of the Act is concerned, we find that similar issue has come up for consideration in many cases before this Bench. The provisions of section 115BBE of the Act was enacted on 15.12.2016 and hence cannot be applied for the year under consideration. The Id. AR has relied on various decisions viz., Samir Shantilal Mehta (supra), Dhirajlal Bhagwanbhai Talaviya (supra) and Sureshbhai Bhiukhabhai Patel (supra). We find that the Division Bench of this Tribunal in cases of Samir Shantilal Mehta vs. ACIT, in ITA

No.42/SRT/2022, Arjunsinh Harisinh Thakor vs. ITO, in ITA No. 245/SRT/2021, Jitendra Nemichand Gupta vs. ITO, in ITA No.211/SRT/2021 and Sanjaybhai Mansukhbhai Patel vs. DCIT, in ITA No.869/SRT/2023; the Indore Bench in DCIT vs. Punjab Retail Pvt. Ltd., in ITA No.677/Ind/2019 and the Jabalpur Bench in ACIT vs. Sandesh Kumar Jain, in ITA No.41/Jab/2020 held that applicability of amended provision of Section 115BBE of the Act is not retrospective. There is no reason not to follow above decisions. Thus, the AO is directed to tax the addition at normal rate of tax and applicable surcharges and cess, if any. The assessee is, accordingly, allowed relief against taxing the addition at higher rate u/s 115BE of the Act. Hence, we allow the ground No.2 of the assessee.

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

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 30/04/2025.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 30/04/2025

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 //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat