

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

**आयकरअपीलसं./ITA No.299/SRT/2024**

**Assessment Year: (2017-18)**

**(Physical Hearing)**

Jigar Dilkhushbhai Shah, F/17, 1203-4, Green City, PalGam Bhatha, Surat-395009	<b>Vs.</b>	The ITO, Ward- 2(3)(6), Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BBSPS8457F</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

<b>Appellant by</b>	Shri Suresh K. Kabra, CA
<b>Respondent by</b>	ShriMukesh Jain, Sr. DR
<b>Date of Hearing</b>	11/03/2025
<b>Date of Pronouncement</b>	13/05/2025

**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 18.01.2024 by the CIT(Appeals)/National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2017-18.

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

*"1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, [here-in-after referred to as Ld.CIT(Appeals)] was not justified and grossly erred in dismissing the appeal which is bad-in-law and against principal of natural justice equity, thereby confirming the action of the AO for the order passed u/s 143(3) of the I.T. Act, 1961 which is incomplete and also bad on facts as appellant was not provide opportunity to submit documentary evidence.*

*2.(a) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the AO in by accepting the addition on account of unexplained money u/s 69A amounting to Rs.1,60,96,771/- out of cash sales and out of cash-in-hand balance*

*deposited in bank account and taxed total income u/s 115BBE of the Act at the rate of 60 percent without providing an opportunity which is incorrect and bad-in-law and needs to be deleted in the interest of natural justice and equity.*

*2.(b) Without prejudice to above ground, that on the facts and in the circumstances of the case, the Ld. CIT(Appeals), was not justified and grossly erred and indirectly confirming the actin of the AO in whereby assessment was completed without considering factual documents, evidence, book of account, VGVAT audit etc.*

*3. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the AO in not justified and erred in confirming the initiated penalty proceedings u/s 271AAC r.w.s. 274 of the Act in respect of income referred to in section 69A and penalty proceedings u/s 274 r.w.s. 272A(1)(d) of the Act.*

*4. That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated here-in above, either before or at the time of hearing of an appeal.”*

3. Facts of the case in brief are that assessee filed his return of income on 14.10.2017, declaring total income of Rs.9,11,050/-. The case was selected for limited scrutiny under CASS on the issue of “Cash deposit during demonetization period”. The assessee deposited SBNs of Rs.1,45,65,000/- in his bank account with Kotak Mahindra Bank Limited and Rs.16,83,000/- with Surat National Co-operative Bank Limited. Thus, the total SBNs deposited during demonetization period was Rs.1,62,48,000/-. The assessee submitted cash book without any supporting documentary evidences in the form of bills, vouchers, invoices etc. At the fag-end of the assessment proceedings on 27.12.2019, the assessee furnished list of 150 purchasers with incomplete address and requested Assessing Officer (in short, ‘AO’) to issue notice u/s 133(6) for confirmation of cash sales. The AO allowed opening cash balance of Rs.1,51,229/- and added remaining amount of Rs.1,60,96,771/- u/s 69A of the Act.

4. Aggrieved by the order of AO, the assessee filed appeal before CIT(A). The CIT(A) issued 4 notices fixing the hearing on 09.02.2021, 24.10.2023, 14.12.2023 and 11.01.2024. But there was no compliance by the appellant to the aforesaid notices. Hence, the CIT(A) proceeded to decide the appeal based on the materials available on record. The CIT(A) observed that appellant did not furnish any detail or documents for deciding the appeal. The continuous non-compliance leads to conclusion that the appellant was not interested in pursuing the appeal. He accordingly confirmed the addition made by AO.

5. Aggrieved by the order of CIT(A) the assessee has filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) has filed two paper books, containing 246 pages. The first paper book includes details filed before the AO, which includes reply to the show cause notice, list of customers, copies of sample bills of sale, copy of cash book and bank statements of Kotak Mahindra Bank Ltd. and Surat National Co-op. Bank Ltd. In the second paper book, the appellant has filed additional evidences including contra confirmations of customers, VAT returns of the year, month-wise sales and cash deposits of AY.2016-17 & 2017-18 and stock statement of gold ornament and gold bar. He submitted that notice u/s 250 was issued on wrong e-mail Id due to which no reply could be given to the CIT(A). He also submitted that voluminous details were required to be compiled for making submission before the AO. Adequate time was not given to file all details by the AO. He, therefore, requested that the

additional evidence may be admitted and the matter may be set aside to AO or CIT(A) for considering the matter on merit.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities. He stated that the Bench may decide the matter as it thinks fit.

7. We have heard both the parties and perused the materials available on record. We find that CIT(A) has passed *ex parte* order. Evidently, the assessee did not comply with the notices issued by CIT(A). Hence, various additions made by AO were confirmed by CIT(A). The Id. AR of assessee submitted that non-compliance by assessee was not deliberate but due to non-receipt of the notices issued by the CIT(A). We also find that the AO issued notices u/s 142(1) on 26.09.2019 and 09.10.2019 and 07.12.2019. It is seen that additional information was required by AO in the notice dated 07.12.2019. The assessee submitted various details on 27.12.2019 including list of 150 purchasers and requested AO to issue notices u/s 133(6) for confirmations by them. It was not possible for AO to call for the information from so many parties in such a short time and complete the assessment. He, therefore, passed the assessment order on 29.12.2019 making the impugned addition after allowing the opening cash in hand. The appellant has now furnished additional evidence including contra confirmations of customers, VAT returns of the year, month-wise sales and cash deposits of AY.2016-17 & 2017-18 and stock statement of gold ornament and bar. Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 permits the ITAT to admit

additional evidence for any substantial cause. The intention behind the Rule is that substantial justice should be done and interests of justice should be overriding consideration. The appellant could not produce all the details and evidences for the reasons discussed earlier. The additional evidence filed by the appellant is accordingly admitted and the order of CIT(A) is set aside. Since the AO has also not verified the details filed by the assessee, the matter is restored to the file of AO for fresh adjudication after affording sufficient and reasonable opportunity of hearing to the assessee. The assessee is directed to file all relevant details and evidences before the AO. He should also furnish further details as may be required by the AO. The grounds of appeal are allowed for statistical purpose.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 13/05/2025.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 13/05/2024

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