आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No.362/JPR/2025
निर्धारण वर्ष/Assessment Years : 2017-18

Shri Mahesh Kumar Saini Near Bansidhar Mandir, Bassi, Main Market, Jaipur 303 301	बनाम Vs.	Income Tax Officer, Ward -7(4), Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AXFPS 9837 D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal, C.A.
राजस्व की ओर से/ Revenue by : Sh. Gautam Singh Choudhary, Addl. CIT-DR

सुनवाई की तारीख/ Date of Hearing : 24/04/2025
उदघोषणा की तारीख/Date of Pronouncement : 13 /05/2025

आदेश/ ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal filed by the assessee is directed against the order of the ld. CIT(A) dated 17-01-2025, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 raising therein following grounds of appeal.

''1. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.15,37,500/- by treating the cash deposit in the bank account during demonetization as unexplained income of the assessee.

2. The Ld. CIT(A), NFAC has erred on facts and in law in taxing the alleged unexplained cash deposit in the bank account u/s 115BBE @ 60% instead of taxing the same @ 30% by ignoring that section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 which received the assent of President on 15.12.2016 and made

applicable from 01.04.2017 is applicable to any transaction from 01.04.2017 onwards and not to any transaction prior to 01.04.2017.

2.1 Apropos grounds of appeal, it is noticed that the ld.CIT(A) has dismissed the appeal by observing at para 4.4 to para 5 of his order as under:-

> 4.4 I have gone through the grounds of appeal, statement of facts, assessment order and the submission of the appellant. The remand report submitted by the AO has also been perused. It is submitted by AO that the assessee has failed to establish the nexus as to how this cash of Rs. 15,37,500/- has related to his commission income The source of this cash has not been satisfactory explained by the assessee from his regular financial activities and had demonetization not taken place the assessee should have maintained this out of books of cash with him without offering the same for taxation.
>
> 4.4.1 In the appellate proceedings, burden of proof lies on the assessee to prove that facts and findings of the AO are incorrect. Assessee contested in appeal that the assessment order is totally arbitrary and not proper and justified. The appellant has to prove or rebut with cogent evidence against the facts and findings of the AO in the assessment order. The appellant pointed out that the Id AO arbitrarily decided the amount of Rs. 15,37,500/- on account of unexplained money. The appellant has not produced the copy of the bank account as well as the cash book to reconcile the figures and to prove the source of the cash deposits during demonetization period. In the present appeal, the issue is with regard to the cash deposits and the sources of such cash deposits. During the course of appellant proceedings the appellant has not explained the sources for such cash deposits
>
> 4.4.2 As per section 69A of the Act, assessee has to explain to the satisfaction of the AO the cash deposited by him. If the assessee fails to explain or the explanation is not satisfactory, the section

provides that the money is deemed to be income of the assessee for the year in which it was deposited. In this case the assessee failed to explain his claim that it relates to business. Therefore, the amount is liable to be added under deeming provision of 69A. Section 69A reads as under

Unexplained money, etc.

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year

4.4.3 in the present case the assessee is found to be the owner of the money in the financial year and no explanation is offered by her, the money is deemed to be the income of the assessee for such financial year as per section 69A of the Act Reliance in this regard is laced on the following decisions.

25 taxmann.com 440 Manojkumar Jain (ITAT Delhi)
34 taxmann.com 5 MH Raney (ITAT Mumbai)
49 taxmann.com 101 Sarwankumar Sharma (Guj)
56 taxmann.com 284 Bhagwandas D Vachani (Guj)

4.4.4 In view of the above discussion and the case laws relied, it is held that the AO correctly held that the assessee failed to discharge the onus vested on him. Under the circumstances and relied on the remand report dtd. 26.10.2024 submitted by the AO, the addition of Rs. 15,37,500/- made by the AO is confirmed as the source of which

remain unexplained and unsubstantiated. All the grounds raised in this appeal are dismissed.

5.0. In the result, the appeal is DISMISSED.''

2.2 During the course of hearing, the ld. AR of the assessee has filed following written submission with the prayer that the addition confirmed by the ld. CIT(A) amounting to Rs.15,38,500 needs to be deleted and further submitted that the amendment made in Section 115BBE is not applicable for the A.Y. 2017-18 as amendment made in Section 115BBE received assent of the President on 17-12-2016 and it is effective from 01-04-2017 and this would apply in F.Y. 2017-18 i.e. A.Y. 2018-19. Thus this Section of 115BBE is not applicable on the assessee.

Submission for ground No. 1:-

''1. It is submitted that assessee is a small commission agent working for Suvidha Infoserve Pvt. Ltd., LIC of India and others. He collects cash from customers, deposit the same in his bank account and then transfer the said amount through net banking to Suvidha Infoserve Pvt. Ltd. portal. After transferring this amount on the portal, assessee provides various services to his customers like online train & air tickets, LIC premium payments, mobile recharge of the customers, payment of electricity bills, DTH recharge, etc. for which he receives commission.

2. During demonetization period the total cash deposited in the bank account is Rs.15,06,000/- and not Rs.15,37,500/- **(PB 22-23)**. Out of it the demonetized currency deposited in the bank account on 23.11.2016 is only Rs.3,25,500/- and all other currency deposited in the bank account is new currency and not the old currency. The fact that cash deposit in the bank account during demonetization period is only Rs.15,06,000/- is evident from the bank statement placed at **PB 24-44**. The AO has incorrectly considered Rs.31,500/- deposited on 08.11.2016 as

cash deposit during demonetization period ignoring that the demonetization was enforced in midnight of 08.11.2016 whereas Rs.31,500/- was deposited prior to that.

3. From the bank statement it can be noted that against the cash deposit in the bank account, assessee has made various payments towards online train & air tickets, LIC premium payments, mobile recharge of the customers, payment of electricity bills, DTH recharge, etc. This itself proves that the source of cash deposit in the bank account is the amount received from the customers for obtaining various services through the assessee. Therefore, it was incorrect on part of lower authorities to held that assessee has not explained the source of cash deposit in the bank account.

4. It may also be noted that cash deposit during FY 2014-15 in the bank account was Rs.4,01,43,100/- and there was cash deposit in every month whereas in FY 2016-17 cash deposit between April, 2016 to June, 2016 was Rs.67,16,900/- and after that no cash was deposited barring the month of November & December during which cash deposited in the bank account is only Rs.20,50,000/-. Therefore also it cannot be presumed that assessee has not explained the source of cash deposit in the bank account.

5. The Ld. CIT(A) has incorrectly observed that assessee has not produced the copy of bank account as well as the cash book to reconcile the figures ignoring the fact that assessee has filed the bank statement **(PB 24-44)** and the fact that he receives commission income from LIC of India and Suvidha Infoserve Pvt. Ltd. is evident from the return placed at **PB 15-18** where on the commission income received, tax is deducted at source.

In view of above, addition of Rs.15,37,500/- confirmed by Ld. CIT(A), NFAC be directed to be deleted.

Submission for Ground No.2:-

1. The lower authorities have taxed the alleged unexplained cash deposit in the bank account @ 60% u/s 115BBE. It is submitted that section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 received the assent of President on 17.12.2016. The section is made applicable w.e.f. 01.04.2017. Hence this section will operate on the income referred to in sections 68, 69, 69A, 69B, 69C or 69D which accrues or arises on or after 01.04.2017. For this reliance is placed on the decision of **Supreme Court in case of Karimtharuvi Tea Estate Ltd. Vs. State Of Kerala 60 ITR 262** wherein it is held that it *is well-*

settled that the IT Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force. In the instant case, there is no escape from the conclusion that the Surcharge Act not being retrospective by express intendment, or necessary implication, it cannot be made applicable from 1st April, 1957 as the Act came into force on 1st September of that year. Since the Surcharge Act was not the law in force on 1st April, 1957 no surcharge could be levied under the said Act against the appellant in the asst. yr. 1957- 58."

2. Hon'ble Madurai Bench of Madras High Court in case of S.M.I.L.E Microfinance Ltd. Vs. ACIT order dt. 19.11.2024 (PB 45-68) has held that section 115BBE is applicable from 01.04.2017 and not prior to that date. Relevant extracts of the decision reads as under:-

> *"17. In the aforesaid objects and reasons nowhere it is stated that due to "demonetization" the unaccounted money ought to be charged 60% rate of tax. It only states that step had been taken to curb black money by withdrawing Specified Bank Notes of denomination of Rs.500 and Rs.1000. And also states the people may find illegal ways of converting their black money into black again, hence as per experts advice heavy penalty ought to be levied. From the language of the object "that instead of allowing people to find illegal ways of converting their black money into black again", it is evident that the government is intended to impose the same for future transactions.* ***Especially the use of word "again" in the object would clearly indicate it is for future transactions i.e. from 01.04.2017. Therefore this Court is of the considered opinion that the revenue is empowered to impose 60% rate of tax for the transactions from 01.04.2017 onwards and not prior to the said cut-off date. And for prior transaction the revenue is empowered to impose only 30% rate of tax."***

3. In the present case also, section 115BBE was substituted by Taxation Laws (Second Amendment Act), 2016 whereby the tax rate under this section was increased from 30% to 60%. This amendment received the assent of President on 17.12.2016. The section is made applicable w.e.f. 01.04.2017. Hence this section will operate on the income referred therein which accrues or arises on or after 01.04.2017. Thus even if section 115BBE is applied, the pre-substituted section 115BBE would be applicable and not the substituted section and therefore even u/s 115BBE, the cash deposit would be subjected to tax @ 30% and not 60%.

4. It may also be noted that Taxation Laws (Second Amendment Act), 2016 also inserted a new sub clause (1A) to section 271AAB whereby the liability of penalty in case of searches was increased. However, this clause was specifically made applicable only where searches has been initiated on or after the date on which the Taxation Laws (Second Amendment Act) Bill, 2016 receives the assent of President and thus this clause was specifically made effective only where the searches took place on or after 15.12.2016. Section 115BBE inserted by the same Amendment Act is specifically made effective from 01.04.2017. Thus, from the analogy of section 271AAB it is evident that section 115BBE is also applicable where income referred to in that section is assessed on or after 01.04.2017 i.e. AY 2018-19. Hence the substituted section 115BBE is not applicable for AY 2017-18.

5. It is a settled proposition of law that legislations which modify accrued rights or which impose obligations or imposed new duties or attach a new disability have to be treated as prospective. This is so held by the **Hon'ble Supreme Court in case of CIT Vs. Vatika Township Private Limited (2014) 109 DTR 33** where the Hon'ble court has given the following finding for deciding whether a provision has prospective operation or retrospective operation:-

> *"39(e) There is yet another very interesting piece of evidence that clarifies the provision beyond any pale of doubt, viz. understanding of CBDT itself regarding this provision. It is contained in CBDT circular No.8 of 2002 dated 27th August, 2002, with the subject "Finance Act, 2002 – Explanatory Notes on provision relating to Direct Taxes". This circular has been issued after the passing of the Finance Act, 2002, by which amendment to Section 113 was made. In this circular, various amendments to the Income Tax Act are discussed amply demonstrating as to which amendments are clarificatory/retrospective in operation and which amendments are prospective. For example, explanation to Section 158BB is stated to be clarificatory in nature. Likewise, it is mentioned that amendments in Section 145 whereby provisions of that section are made applicable to block assessments is made clarificatory and would take effect retrospectively from 1st day of July, 1995. When it comes to amendment to Section 113 of the Act, this very circular provides that the said amendment along with amendments in Section 158BE, would be prospective i.e. it will take effect from 1st June, 2002. Finance Act, 2003, again makes the position clear that surcharge in respect of block assessment of undisclosed income was made prospective. Such a stipulation is contained in second proviso to sub-section (3) of Section 2 of Finance Act, 2003. This proviso reads as under:*

"Provided further that the amount of income-tax computed in accordance with the provisions of section 113 shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule of the Finance Act of the year in which the search is initiated under section 132 or requisition is made under section 132A of the income-tax Act."

Addition of this proviso in the Finance Act, 2003 further makes it clear that such a provision was necessary to provide for surcharge in the cases of block assessments and thereby making it prospective in nature. The charge in respect of the surcharge, having been created for the first time by the insertion of the proviso to Section 113, is clearly a substantive provision and hence is to be construed prospective in operation. The amendment neither purports to be merely clarificatory nor is there any material to suggest that it was intended by Parliament. Furthermore, an amendment made to a taxing statute can be said to be intended to remove 'hardships' only of the assessee, not of the Department. On the contrary, imposing a retrospective levy on the assessee would have caused undue hardship and for that reason Parliament specifically chose to make the proviso effective from 1.6.2002.

40. The aforesaid discursive of ours also makes it obvious that the conclusion of the Division Bench in ***Suresh N. Gupta*** *treating the proviso as clarificatory and giving it retrospective effect is not a correct conclusion. Said judgment is accordingly overruled."*

In view of above discussion, it is clear that the amendment made in section 115BBE by Taxation Laws (second Amendment) Act 2016 which received the assent of President on 17.12.2016 and made effective from 01.04.2017 would apply in FY 2017-18 i.e. AY 2018-19. Thus, the amended section is not applicable for AY 2017-18 and therefore tax charged by AO on the cash deposited @ 60% instead of taxing it under the regular provisions of the Act is not as per law.''

To support his case, the ld. AR of the assessee has filed following paper book.

S.N.	Particulars	Page No.	Filed before AO/ CIT(A)
1.	Copy of submission dt. 20-01-2021 filed before ld. CIT(A)	1-3	CIT(A)
2.	Copy of remand report dt.28-10-2024 by AO to CIT(A)	4-7	Both
3.	Copy of rejoinder to remand report dt 09-01-2025	8-14	CIT(A)
4.	Copy of acknowledgement of return alongwith computation of total income	15-17	Both
5.	Copy of financial statements	18	Both
6.	Copy of reply dt 10-12-2023 filed before AO	19-21	Both
7.	Details of cash deposited during demonetization period	22-23	Both
8.	Copy of Bank Statement of assessee	24-44	Both
9.	Copy of order dt 19-11-2024 of Hon'ble Madras High Court, Madurai Bench in case of S.M.I.L.E. Microfinance Ltd. vs ACIT	45-68	Refernence

2.3 On the other hand, the ld.DR supported the order of the ld.CIT(A).

2.4 We have heard both the parties and perused the materials available on record. Brief facts of the case are that Assessee is a commission agent working for LIC of India, Sahara India, Suvidha Infoserve Pvt. Ltd. and others. He filed the return on 21.07.2018 declaring total income of Rs.2,71,410/-. The nature of the business activity of the assessee is that he collects cash from customers, deposit the same in his bank account and make payment through mobile & net banking for services taken by them from the above concerns. The AO observed that as per the online information assessee has made cash deposit of Rs.15,37,500/- in his bank

account maintained with SBI, Jaipur. The assessee explained that he is an agent of Suvidha Infoservice Pvt. Ltd. for which cash received from the customers is deposited in the bank account. The AO held that assessee did not furnish any concrete evidence that cash deposit in the bank account is part of his agency work of Suvidha Infoservice Pvt. Ltd. and therefore he treated the amount of Rs.15,37,500/- as unexplained income and made addition for the same. During the course of appellate proceedings, assessee filed additional evidences on which remand report was called from the AO. The remand report is reproduced at Pg 3-5 of the appellate order and also placed at PB 4-7 of the paper book. The rejoineder to the remand report is reproduced at Pg 6-9 of the appellate order and also placed at PB 8-14 of the paper book. The Ld. CIT(A), NFAC at Para 4.4.1 of the order held that burden of proof lies on the assessee to prove that the facts & findings of the AO are incorrect. Assessee has not produced the copy of bank account as well as the cash book to reconcile the figures and has not explained the source of cash deposit. He therefore confirmed the addition made by AO by referring to section 69A of the Act. From the entire submissions of the lower authorities, the Bench feels that lower authorities have not properly applied their mind to the facts of the present case. From the bank statement placed at PB 24 to 44 for the period 8-11-

2016 to 31-12-2016 i.e. period of demonetization, we note that Rs.31,500/- was deposited on 8-11-2016 which is prior to the announcement of demonetization. Further, against the cash deposit in the bank account, payments have been made for booking of Railway Tickets or amounts have been transferred to Suvidha Info Services Pvt. Ltd from whom assessee earned commission income as reflected in the return of income at page16 & 17. It is felt that these facts are not taken care of by the lower authorities. Therefore in the interest of equity and justice, the matter is restored to the file of the AO to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings. Thus the appeal of the assessee is allowed for statistical purposes.

2.5 Before parting, we may make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by AO independently in accordance with law.

3.0 In the result, the appeal of the assesee is allowed for statistical purposes

Order pronounced in the open court on 13 /05/2025.

Sd/-	Sd/-
(राठौड़ कमलेश जयन्तभाई)	(डॉ.एस.सीतालक्ष्मी)
(RATHOD KAMLESH JAYANTBHAI)	(Dr. S. Seethalakshmi)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur	

दिनांक / Dated:- 13 /05/2025

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1अपीलार्थी / The Appellant- Shri Mahesh Kumar Saini, Jaipur.

2प्रत्यर्थी / The Respondent- ITO, Ward-7(4), Jaipur.

3आयकर आयुक्त / CIT

4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.

5. गार्ड फाईल / Guard File {ITA No. 362/JPR/2025}

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar