

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1120/SRT/2024

Assessment Year: (2017-18)

(Hybrid hearing)

Jivrajbhai Mavjjbhai Pavsiya 204, Amizara Palace, B/h Gabani Kidney Hospital, Lal Darwaja, Surat-395006	Vs.	Income Tax Officer Ward No.3(3)(2), Surat, Ayakar Bhawan, Majura Gate Nr. New Civil Hospital, Surat-395 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ADWPP 2625 F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Kamlesh Pandya, CA
राजस्व की ओर से /Respondent by	Ms. Neerja Sharma, Sr-DR
सुनवाई की तारीख/Date of Hearing	08/05/2025
उद्घोषणा की तारीख/Date of Pronouncement	30/06/2025

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 30.08.2024 by the National Faceless Appeal Centre, Delhi /Commissioner of Income-tax (Appeals) [in short, 'CIT(A)'] for the Assessment Year (AY) 2017-18, which in turn arises out of assessment order passed by Assessing Officer (in short, 'AO') u/s 143(3) of the Act dated 27.12.2019. Grounds of appeal raised by the assessee are as under:

"1. Learned CIT(A) erred in making order by upholding addition made by ITO without considering facts, circumstances of our case and submission made by us during appeal proceedings even though source of cash deposit already explained, therefore section 69A not applicable in our case.



2. Learned CIT(A) erred in making order by upholding addition made by ITO even though we discharge our onus to prove source of cash deposit along with supporting evidence.;

3. Learned CIT(A) erred in making order by upholding addition made by ITO since said addition in violation of judicial pronouncements wherein cash deposited out of earlier savings or opening cash balance is not to be added to the total income of the assessee.

4. Learned CIT(A) erred in making order by upholding addition made by ITO and applying section 115BBE for tax even though facts already explained and material on record.

5. We pray to add or alter any ground of appeal during appeal hearing."

2. Facts of the case in brief are that assessee filed is return of income of Rs.4,44,760/- on 28.03.2018. The case was selected for scrutiny under CASS for the reasons of "Large value cash deposits during demonetization period as compared to returned income". In response to notices issued u/s 143(2) and 142(1) of the Act, assessee filed various details, which were examined by the AO. Thereafter, the AO asked assessee to explain source of cash deposited during demonetization period i.e., Rs.11,50,000/- in Bank of Baroda and Rs.2,00,000/- in ICICI Bank. The assessee submitted that it had withdrawn capital of Rs.3,00,000/-, Rs.2,50,000/- and Rs.5,00,000/- on 10.04.2016, 16.05.2016 and 26.10.2016 respectively from his partnership firm M/s B Pavasiya & Co. It was also submitted that cash-in-hand on 31.03.2016 was Rs.14,18,607/-. The cash deposit was out of the above withdrawals and cash-in-hand. The submission of assessee was not accepted by the AO because assessee had not submitted any supporting evidences to substantiate his explanation. In view of above, AO issued a show cause notice asking assessee

to explain why Rs.13,50,000/- should not be treated as unexplained money. The assessee submitted copy of ITR, computation of income, cash book and ledger of M/s B. Pavasiya & Co., but he did not file any documentary evidence about the source of cash deposited in the bank accounts during demonetization period. Hence, AO added Rs.13,50,000/- u/s 69A of the Act. Aggrieved by the addition made by AO, assessee preferred appeal before CIT(A).

3. Before CIT(A) assessee submitted bank statement of M/s B. Pavasiya & Co. and submitted that in the ROI, he has shown that he is assessed u/s 44AD and was not required to maintain books of account. He was, however, needed to furnish cash balance as on 31.03.2016. He also submitted that the partners of M/s B. Pavasiya & Co. decided to discontinue its business and assessee had substantial capital balance, which was withdrawn from the firm. The CIT(A) did not accept the explanation of the assessee that mere signing of the return of income proves the correctness and genuineness of the transactions i.e., cash deposited in the bank accounts. The assessee did not submit any supporting documentary evidences and copy of dissolution of the partnership firm. He observed that appellant is making a story to cover-up unexplained cash deposit in the bank accounts. The appellant failed to discharge the onus of proof u/s 69A of the Act. Hence, addition made by AO was confirmed.

4. Further aggrieved by the order of CIT(A), the assessee has filed present appeal before the Tribunal. Before us, Ld.AR of the assessee filed a paper book

containing 243 pages including copy of cash book, bank statement, assessment order for AYs 2013-14, year-wise cash flow summary from AYs 2014-15 to 2017-18 along with cash book, ITR, computation of income, balance-sheet, bank statement. He has also filed documents of M/s B. Pavasiya & Co. He also relied on various decisions. He further submitted that the appellant was a senior citizen during the year under consideration. He was a businessman and was maintaining regular books of account and filing his return of income since more than 20 years. He could not upload balance-sheet on the portal of every year because some ITR form did not permit the same. However, assessee declared cash-in-hand in the ITR for AY 2013-13 and assessment order u/s 143(3) of the Act was also passed for the same year wherein cash-in-hand was declared at Rs.7,59,582/-. The gross amount of cash upto 08.11.2016 was Rs.25,33,606/-, out of which the appellant had utilized cash of Rs.10,85,000/- and the net cash available on 08.11.2016 was Rs.14,48,606/-. The appellant had deposited Rs.13,50,000/- out of the said cash-in-hand. The appellant also had capital balance of Rs.35,26,134/- in M/s B. Pavasiya & Co. from which it had withdrawn Rs.3,00,000/-, Rs.2,50,000 and Rs.5,00,000/- in April, May and October, 2016 respectively. The Ld. AR requested that these details /evidences were not duly considered by the lower authorities. The assessment order for AY 2013-14 was already in the record of Department and should have been considered by the AO before making addition u/s 69A of the Act. The Ld. AR

submitted that the appellant may be given one more opportunity to explain his case before AO.

5. On the other hand, Sr-DR for the revenue supported the orders of lower authorities. She submitted that the returns for AY 2016-17 and 2017-18 were filed after demonetization period to justify cash-in-hand. He, therefore, requested that the orders of lower authorities may be upheld.

6. We have heard both the parties and perused the materials on record. We have also deliberated the decisions relied upon by the Ld.AR of the assessee. The appellant was a senior citizen during the year under consideration. He has been filing his returns of income for more than 20 years. The appellant was a partner of M/s B. Pavasiya & Co. and has claimed that he had capital balance of Rs.35,26,134/-, which has not been controverted by the Revenue. We also find that in the assessment order u/s 143(3) dated 29.01.2016, the assessee had declared total income of Rs.7,56,050/- and agricultural income of Rs.10,38,320/- (page-96 of PB). The AO has determined total income at Rs.7,71,930/-. Thus, agricultural income of Rs.10,38,320/- has been accepted by the AO. In AY 2014-15, assessee had declared gross total income of Rs.3,72,237/- and agricultural income of Rs.3,28,560/- (page-101 of PB). In AY 2015-16, assessee has shown gross total income of Rs.4,90,135/- and agricultural income of Rs.4,90,290/- (page 109 of PB). The assessee has declared gross total income of Rs.6,24,269/- and Rs.7,68,531/- in AYs 2016-17 and 2017-18 respectively (pages 136 and 143 of PB). Considering the above

details, it cannot be held that the appellant did not have any cash-in-hand prior to demonetization period. These details have not been considered by the AO before finalizing the assessment order, which has been upheld by the CIT(A). In view of the above facts, we deem it proper to set aside the order of CIT(A) and restore the matter back to the file of AO for fresh assessment after considering the details discussed above. The AO may call for further details as deem fit to arrive at a reasonable and logical conclusion regarding the nature and source of cash deposit of Rs.13,50,000/- during demonetization period. The AO shall grant adequate and reasonable opportunity of being heard to the assessee. The ground Nos.1 to 3 are, accordingly, allowed for statistical purposes.

7. Ground No. 4 pertains to levy of tax at enhance rate 60% u/s 115BBE of the Act. Since we have set aside the order of CIT(A) and remit the matter back to the file of AO, this ground, being consequential in nature, does not require any adjudication.

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

Order pronounced under proviso to Rule 34 of the ITAT Rules, 1963 on 30/06/2025 in the open court.

(TR SENTHIL KUMAR)
न्यायिक सदस्य/JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 30/06/2025

Dkp Outsourcing Sr.P.S*

B. Pruthi
(BIJAYANANDA PRUETH)
लेखा सदस्य/ ACCOUNTANT MEMBER