



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, AM.

&

DINESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No. 17/RJT/2024

निर्धारणवर्ष / Assessment Year: (2017-18)

(Hybrid Hearing)

Abhay Hargovindbhai Patel 305, Dwarkeshdham, B/h. Samudra Sales, Rajnagar, Aerodram Road, Jamnagar 361006 AUBPP7196D	Vs.	The Income Tax Officer, Ward 1(3), Jamnagar 1st Floor, Taranjali Building, PN Marg, Jamnagar 361008
(Assessee)		(Respondent)

Assessee by : Shri Vimal Desai, Ld. AR

Respondent by : Shri K. L. Solanki, Ld. Sr. (DR)

Date of Hearing : 27/04/2025

Date of Pronouncement : 16/07/2025

आदेश / ORDER

Per, Dr. Arjun Lal Saini, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2017-18, is directed against the order passed by Commissioner of Income Tax (Appeals), vide order dated 08/11/2023, which in turn arises out of an order passed by the Assessing Officer, dated 26/11/2019, u/s 144 of the Income Tax Act, 1961.



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

- 1. The assessment order passed u/s. 144 is bad in law.*
- 2. The learned Assessing Officer has erred on facts and in law in not considering the submissions of the assessee while passing an ex-parte assessment order under section 144.*
- 3. The learned Assessing Officer has erred on facts and in law in making addition of Rs. 40,16,900/- by considering the cash deposited in bank account as alleged unexplained money u/s. 69A and the learned CIT(A) has erred in confirming the same.*

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual. In assessee's case, on verification of data relating to "cash deposits during the demonetization period" available with this office on AIMS Module of ITBA, demonetization of Rs.500/- & Rs. 1000/- currency note, steps taken by the Government of India on 8th November, 2016, ceasing the usage of Rs.500/- & Rs. 1000/- currency notes form of a legal tender in India from 9th November, 2016, it is to state for clarity that the persons who deposited such currencies in their bank accounts were in possession of the said cash and was the owner of such money. On verification, the assessing officer noticed that during the demonetization period (9th November, 2016 to 30th December, 2016), the assessee has deposited huge cash in his bank account No. 18940100010833 maintained with Bank of Baroda, Khodiyar Colony, Jamnagar and from the quantum of cash deposit made by the assessee, it was noted by the assessing officer that the assessee was liable to file return of income offering correct picture of income. Accordingly, before the end of the F.Y. 2017-18, a notice u/s 142(1) of the Act, dated 26/12/2017, was issued and duly served upon the assessee electronically through ITBA, as well as physically too requiring him to file return of income for A.Y. 2017-18, however the assessee has failed to file return of income for A.Y. 2017-18, within time, as prescribed in section 139 of the I.T. Act. Non-compliance of such notice has compelled the income tax department,



to assess the income of the assessee on the basis of details available on record u/s. 144 of the Act.

4. However, following the principle of natural justice, an opportunity was provided to the assessee in form of detailed questionnaire issued vide e-notice u/s.142(1) of the Act dated 24/04/2019 which was duly served on the assessee electronically through ITBA and RPAD as well. However again, the assessee has neither filed the written submission with regard to the proceeding nor furnished any documentary evidences or proof. Thereafter, the case was received on transfer from the ITO, Wd-1(5), Jamnagar on 08/05/2019 as per order u/s. 120(5) of the Jt.CIT, Range-1, Jamnagar dated 07/05/2019. Information u/s. 133(6) of the Act was called for from the Bank of Baroda vide letter dated 13/05/2019, 28/05/2019, 14/06/2019 & 23/10/2019. Information was received from the Bank of Baroda on 17/05/2019, 03/06/2019, 24/06/2019, 23/10/2019 & 25/10/2019. Further, a notice u/s.142(1) cum show cause was issued on 25/06/2019 asking the assessee to furnish the details / clarification, which was duly served on the assessee, electronically through ITBA and RPAD. Further, following the principle of natural justice, the sufficient and ample opportunities were given to the assessee, as discussed above and narrated above, however, a final show cause notice u/s. 142(1) of the I.T. Act, 1961, was issued by the assessing officer to the assessee on 17/09/2019, which was duly served upon the assessee electronically through ITBA and RPAD as well. In response to final show cause notice dated 17/09/2019, the father of the assessee has filed written submission dated 11/10/2019.

5. During the assessment proceedings, the assessing officer observed that sufficient and ample opportunities were given to the assessee, however, the assessee did not file/submit/furnish any details. The assessee has not responded to any notices issued u/s 142(1) of the I.T. Act, hence there was no option left



with the assessing officer to finalize the assessment to the best of the judgment of the Assessing Officer, on the basis of material available on record. It may also be mentioned that considering the non-cooperative attitude of the assessee, penalty u/s 272A(1)(d) r.w.s. 274 of the I.T. Act 1961 was also initiated for non-compliance of notices issued u/s 142(1) of the I.T. Act. During the assessment proceedings, the information u/s 133(6) from bank/banks were called for regarding bank accounts held by the assessee. On perusal of information received from bank, it was observed by the assessing officer that the assessee was maintaining bank account No. 18940100010833 with Bank of Baroda, Khodiyar Colony, Jamnagar where in the assessee has deposited (credit) aggregate cash of Rs.22,93,500/- in Specified Bank Notes, during the demonetization period and Rs.17,23,400/- during other period. In this regard, the assessee was requested to explain the source of cash deposit. In response to above notices, the father of the assessee has furnished a written submission dated 01/07/2019 and mentioned that his son is not in his control and he has published an advertisement in newspaper (Nobat) on 30/12/2017 and in Newspaper (Bhumi) on 01/01/2017 stating that he has no any transaction or relation with his son and his son has already left the home and he and his wife both are senior citizen and requested not to harass them. Further, the father of the assessee has filed written submission dated 11/10/2019 in response to show cause notice dated 17/09/2019. Due consideration has been given to the submission filed by assessee's father but he could not explain source of cash deposits. In absence of any details, the source of such aggregate deposited (credit) of Rs.40,16,900/-during demonetization period as well as during the year under consideration in his bank account remains unexplained. The onus to prove the source of aggregate cash deposited (credit) of Rs.40,16,900/- during demonetization period as well as during the year under consideration in his bank account lies upon the assessee and he has failed to discharge primary onus and therefore, it is without any doubt clear that the assessee is not in a position to



explain the source of the said cash deposited (credit). Hence, assessing officer left with no option but to treat the cash of Rs.40,16,900/- deposited(credit) in Specified Bank Notes during the demonetization period as well as during the year under consideration in his bank account No. 18940100010833 maintained with Bank of Baroda, Khodiyar Colony, Jamnagar as unexplained money within the meaning of section 69A read with section 115BBE of the Income Tax Act, 1961 for the year under consideration. Accordingly, addition of Rs.40,16,900/- was made u/s 69A of the Act.

6. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the action of the assessing officer.

7. Shri Vimal Desai, learned Counsel for the assessee, submitted that during the appellate proceedings, the assessee has explained the source of cash deposit and learned CIT(A) obtained the remand report from the assessing officer in respect of additional evidences submitted by the assessee. The Id. Counsel submitted that loan was taken from Manappuram Finance Limited, which was withdrawn in cash and subsequently deposited in the bank. The assessee also submitted gift deed of his father and proof of provident fund withdrawal by the mother. Therefore, father and mother both gave the gift to the assessee and out of so gifted amount, the assessee deposited the amount in the bank account, therefore assessee has explained the source of the cash deposit and hence the addition made by the assessing officer may be deleted.

8. On the other hand, learned DR for the revenue, submitted that it is not possible that both father and mother gave the gift to the assessee, during the demonetization period and the assessee has deposited the amount in his bank account, these are merely self- servicing documents, and a cooked story,



therefore, these documents should not be relied on, and the addition made by the assessing officer may be upheld.

9. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that assessment order was framed by the assessing officer under section 144 of the Act. No return of income (ROI) was filed by the assessee, even after issuance of various statutory notices. The questionnaire was issued online by the assessing officer, however, no response was given by the assessee and the Bank statement was procured under 133(6) of the Act, by the assessing officer to examine the sources of cash deposit. However, some details were filed by the relatives of assessee, trying to explain the source of cash deposit. It was held by the assessing officer that assessee had not been able to explain such sources and therefore cash deposits were bought to tax in hands of assessee to the tune of Rs.40,16,900/-. We note that assessing officer has given umpteen opportunities to the assessee, as detailed in the assessment order. It was the duty of the assessee in assessment proceeding to lead the evidence. During the appellate proceedings, the assessing officer called the remand report, and we note that findings of the assessing officer in the remand report is entirely against the assessee. The comments of the assessing officer in the remand report and rejoinder submitted by the assessee, during the appellate proceedings are reproduced below:

Amount	Appeal Proceedings	Remand report comments	Rejoinder
9,80,000 Opening cash available	– Opening Balance of Cash available Rs. 9,80,000/-: The two-agriculture land were sold of Rs. 4,86,000/- aggregating to Rs. 9,72,000/- during the preceding year. A copy	Entire amount of sale consideration was received through bank account cheques and no amount was received in cash. The assessee has not submitted any evidence to show that these amounts were withdrawn in cash and kept in	Not submitted. To be taken as per earlier submission made.



	of each of sale deed No. 1309/2015 dated 02.12.2015 and sale deed No. 86/2016 dated 30.01.2016 are enclosed herewith in Annexure D1 and Annexure D2.	hand without utilizing for any other purpose. The purpose of withdrawal and keeping the same as cash on hand and depositing the same again in bank account is not established along with cogent documentary evidences. The assessee has not submitted any copy of day to day cash book for the relevant period i.e. FY 2015-16 explaining the details of inflow and outflow of cash with supported documentary evidences.	
9,48,570 Loand taken from Mannapuram Finance	– withdrawn out of loan taken and demonetization declared within a month, there was no other option with the appellant rather than to re-deposit the same cash again to the bank account. The documentary evidences of Loan from Mannapuram Finance, Bank Statement showing loan entry followed with the Cash Withdrawal (from said loan amount credited) as well as entry showing repayment of the said loans are enclosed herewith in Annexure E. 3	The assessee has submitted that he twice obtained loans from Manappuram Finance i.e. Rs. 1,48,600/- on 27.07.2016 and Rs. 7,99,970/- on 07.10.2016 which were withdrawn in cash and later on deposited again in bank account in the form of cash. However, it is observed that the assessee has submitted loan account of Manappuram finance in respect of loan of Rs. 7,99,970/- and no such evidence is submitted in respect of other amount claimed to be loan of Rs. 1,48,600/-. From the loan statement submitted for loan amount of Rs. 7,99,970/- it is observed that the assessee repaid entire amount of loan along with interest thereupon, totaling to Rs. 8,23,331/-, during the period from 22.11.2016 to 24.11.2016, in cash only. No such cash amounts of withdrawals or corresponding identical debit entries of other than cash are reflecting in bank account of the assessee on or around these dates i.e. from 22.11.2016 to	Not submitted. To be taken as per earlier submission made.



		<p>24.11.2016. These amounts of repayments of loan are not considered while making addition in case of the assessee. The assessee has not submitted any evidence to show that these amounts of loans withdrawn were kept in hand without utilizing for any other purpose. The purpose of withdrawal and keeping the same as cash on hand and depositing the same again in bank account is not established along with cogent documentary evidences. The assessee has not submitted any copy of day to day cash book for the relevant period i.e. FY 2016-17 explaining the details of inflow and outflow of cash with supported documentary evidences.</p> <p>Therefore, the amount of cash withdrawals immediately after obtaining such loan cannot be considered as available cash on hand for cash deposits in bank accounts to that extent.</p>	
<p>3,92,529 Agricultural Income of father</p>	<p>– The father of the appellant, Shri Hargovindbhai K. Patel, contributed to the appellant by giving entire amount earned from agriculture activities. Copies of Sale Bills along with self declaratory affidavit made on stamp paper are enclosed herewith in Annexure F.</p>	<p>The assessee has submitted that his father paid cash amounts, totaling to Rs. 3,92,529/-, to him which were earned/received by him through agricultural activities and the father of the assessee has submitted a copy of affidavit in this respect. He has further submitted copies of two bills for sale of 'Kapas' i.e. cotton by Shri Hargovinbhai Karshanbhai to 'Surbhi Industries' dated 04.05.2016 for Rs. 1,98,979/- and dated 05.05.2016 for Rs. 1,93,550/- both totaling to Rs. 3,92,529/-.</p>	<p>Not submitted. To be taken as per earlier submission made.</p>



		<p>On verification, it is observed that both the sale bills do not contain any detail of mode of payment and date of payment. Thus, it is not established that the said amounts of sale were received in cash and were subsequently paid to the assessee. It is further observed that the confirmation of father of giving these amounts to the assessee is in form of a simple letter only and not in the form of affidavit duly notarized. Therefore, the submission of assessee in this respect is nothing but an afterthought which is not credible and supported with documentary evidences.</p>	
<p>12,50,000 – PF withdrawal by Smt.Kiranben H Patel mother of appellant</p>	<p>Smt. Kiranben H. Patel, the mother of the appellant worked with BSNL deriving salary income since last 30 years or more. To assist appellant, out of natural love and affection towards her son, she withdrew Rs. 12,50,000/- from her Provident Fund accumulated. A copy of PF withdrawal sanction letter, bank statement showing deposit of PF in her bank account and cash withdrawal of same amount i.e. paid to the appellant in cash along with declaration in affidavit duly stamped therein are enclosed herewith as</p>	<p>The assessee has submitted that he received cash amounts, totaling to Rs. 12,50,000/-, from her mother who worked with BSNL and had withdrawn that amount from her GPF balances and the mother of the assessee has submitted a copy of affidavit in this respect. He has also submitted a copy of application form, dated 15.03.2016, for GPF withdrawal of Rs. 12,50,000/- by Smt. Kiran Patel and copy of bank account statement jointly held by Shri Hargovind Patel and Smt. Kiran Patel wherein credit of Rs. 12,50,000/- is reflecting through ECS on 16.04.2016 and subsequent cash withdrawals i.e. Rs. 1,50,000/- on 16.04.2016 and Rs. 11,00,000/- on 18.04.2016.</p> <p>On verification, it is observed that no document confirming GPF withdrawal allowed in case of</p>	<p>Not submitted. To be taken as per earlier submission made.</p>



Annexure G.		<p>assessee's mother and that too to the extent of Rs. 12,50,000/- is submitted. In the application for withdrawal from GPF, the reason for withdrawal is mentioned to be for 'Cost of reconstruction of House'. Further, in the same application Smt. Kiranben has mentioned that she was earlier allowed one withdrawal of Rs. 4,00,000/- from her GPF balances on 21.01.2016 for the same purpose of 'Cost of reconstruction of House'. Thus, the next withdrawal of Rs. 12,50,000/- was in continuation of earlier withdrawal of Rs. 4,00,000/- for the same purpose. The Government employees have to submit purpose of such withdrawals and estimation of such amount required along with relevant evidences. They have to mandatorily submit evidences of expenditure for which such GPF withdrawals were allowed and no deviation from the purpose of such GPF withdrawal is allowed. Therefore, the submission of the assessee in this respect is not tenable. It is further observed that the confirmation of mother of giving these amounts to the assessee is in form of a simple letter only and not in the form of affidavit duly notarized. Therefore, the submission of assessee in this respect is nothing but an afterthought which is not credible and supported with documentary evidences.</p>	
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10. We note that during the assessment proceedings, father of the assessee appeared before the assessing officer and did not file any details and documents relating to the issue under consideration, except general submissions. However, on appeal, before the Ld. CIT(A), the written submission, were furnished by the assessee, which were sent by the Ld. CIT(A) to the Assessing officer for calling the remand report. The assessing officer having examined the documents and written submissions filed by the assessee, has submitted the remand report to the Ld. CIT(A). We find that in the remand proceedings also, the assessee has failed to prove his claim and also failed to prove the source of the cash deposit in the bank account. The remand report submitted by the assessing officer during the appellate proceedings is completely against the assessee. Therefore, Ld. CIT(A) confirmed the action of the assessing officer.

11. However, we find a little merit in the documents and evidences submitted by the assessee, during the appellate proceedings. The assessee submitted that out of natural love and affection, during the demonetization period, father, and mother of the assessee gave the gift to the assessee. The assessee stated that he received some amount withdrawn by her mother from provident fund, which the assessee has received by way of gift from his mother. The copies of agricultural bills were submitted along with affidavit. We find that these documents are self servicing documents only. Therefore, submission of the assessee during the appellate proceedings is nothing but an afterthought which is not credible and not supported with any cogent evidences.

12. However, at this juncture, we would like to quote golden words of Hon'ble justice H. R. Khanna from the decision of **CIT Vs. Simon Carves Ltd. (1976) 105 ITR 212 (SC)** where applying the legal maxim of **ex majorie cautela** (out of abundant precaution) he said that:



"the taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not in a partisan manner. Although, it is a part of the duty to ensure that no tax which is legitimately due from an assessee should remain unrecovered, they must also at the same time act in a manner that might indicate scales are weighed against the assessee. We are wholly unable to subscribe to the view that unless those authorities exercise the power in a manner most beneficial to the revenue and subsequently most adverse to the assessee they should be deemed not have exercised it in a proper and judicial manner."

13. Considering these facts, we note that legitimate taxes, should be recovered from the assessee. Therefore, we note that entire cash deposit in the bank account should not be treated as a profit of the assessee or net income of the assessee. Therefore, we are of the view that only profit element may be taxed. The Hon`ble jurisdictional High Court of Gujarat in the case of President industries, 258 ITR 654 held that 30% tax rate is appropriate in case of "on money". Therefore, we are of the view that treating the cash deposit of the assessee, as an "on-money", of the assessee, we confirm the addition of 30% of the total cash deposited in the bank account. Therefore, we direct the assessing officer to disallow the 30% of the total cash deposit in the bank account which comes to Rs. 12,05,070/- (30% of Rs. 40,16,900/-). Therefore, assessing officer is directed to make the addition in the hands of the assessee, to the tune of Rs. 12,05,070/-.

14. Before parting, we would like to state that assessee has submitted some documents and evidences showing the sources of the unaccounted money (on-money), so deposited in the bank account, therefore, said amount should not be taxed u/s 115BBE of the Act, hence, we direct the assessing officer to tax Rs. 12,05,070/-, by applying the normal rate of Income Tax. We have adjudicated the assessee's appeal considering the peculiar facts and circumstances, therefore, it is also made clear that instant adjudication shall not be treated as a precedent in any preceding or succeeding assessment year.



15. In the result, the appeal filed by the assessee is partly allowed, in above terms.

Order pronounced in the open court on 16/ 07 /2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Rajkot

दिनांक/Date: 16/ 07 /2025

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Copy of the Order forwarded to

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

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By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot