

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE MS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.133/SRT/2024

Assessment Year: (2017-18)

(Hybrid Hearing)

Rahulkumar Bharatbhai Surti, 15-16, Shyam Residency, Kumbhariya Gam, Kumbhariya, Surat - 395010	Vs.	The ITO, Ward – 2(3)(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: EXHPS8576M		
(Appellant)		(Respondent)

Appellant by	Shri Shaunak K. Zaveri, CA
Respondent by	Ms Neerja Sharma, Sr. DR
Date of Hearing	05/06/2025
Date of Pronouncement	22/07/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the appellant emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 15.12.2023 by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'Ld. CIT(A)/NFAC'] for the Assessment Year (AY) 2017-18.

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

"1. That on the facts and in the circumstances of the case, the Ld. Commission of Income Tax National Faceless Appeal Centre (NFAC), Delhi, [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.

Without prejudice that on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred in confirming the action of the AO.

Without prejudice that on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred in confirming the action of the AO wherein AO was not justified by making the addition u/s 69A of the Income Tax Act, 1961.

2. 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 of the Act amounting to Rs.11,52,700/- without considering the documents and evidences which is incorrect and amp; bad-in-law and needs to be deleted in the interest of natural justice and equity.

2.0(b) Without prejudice that on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred in confirming the action of the AO wherein AO was not justified and has erred in not considering the fact that the assessee is regularly depositing the cash to his bank account not only in demonetization period but also during the whole year.

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.

4. That the appellant craves leave to 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 this appeal.”

3. The facts of the case in brief are that the assessee filed his return of income for AY.2017-18 on 12.07.2017, declaring total income at Rs.3,21,650/-. The assessee was having agency of Idea Cellular Ltd. (Now Vodafone Idea Ltd.). The appellant was running the business in the name and style of M/s Krishnakar Sales Agency. The appellant received the recharge and SIM cards from Idea Cellular Ltd. and passed on the same to retailers. The company paid commission to the appellant. The Assessing Officer (in shot, 'AO') issued statutory notices, in response to which appellant filed details and explanation. However, the explanations were not found satisfactory and, hence, AO issued show cause notice regarding the cash deposited during demonetization period. However, assessee did not submit the

details called for, in absence of which the closing cash balance as on 08.11.2016 could not be ascertained. The assessee also did not produce copies of deposit slips of the currency notes, deposited during demonetization period. Hence, AO added cash deposit of Rs.11,52,700/- during demonetization period u/s 69A of the Act.

4. Aggrieved by the order of AO, the assessee filed an appeal before the CIT(A). The CIT(A) posted the case for hearing on 19.02.2021, 03.11.2022, 04.11.2022, 13.03.2023, 24.08.2023, 16.10.2023 and 20.11.2023. The appellant finally filed written submission before the CIT(A), which is reproduced at pages 3 to 8 of the appellate order. In the said reply, the assessee had extracted the reply given to the AO in response to notice dated 14.11.2019. It includes details of cash deposits during FYs.2015-16 and 2016-17, total cash deposited for the period 01.04.2015 to 08.11.2015 and 01.04.2016 to 08.11.2016 as well as total cash deposited from 09.11.2015 to 31.12.2015 and 09.11.2016 to 03.12.2016. The appellant submitted that the source of cash deposited was out of the amount received from the debtors to whom recharge and SIM card had been supplied by the appellant. However, the explanation was not accepted by the CIT(A). He observed that no confirmation letters and PAN from the said parties were furnished due to which their identity, genuineness of transactions could not be established. In view of the above facts and for the reasons given by the AO, he upheld the addition made by him and dismissed the appeal.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The appellant had filed three paper books including prayer for admission

of additional evidence and written submissions. The appellant had filed an affidavit stating that due to some unavoidable circumstances, the previous Accountant had not submitted certain documents, which are new additional evidence. He requested to admit the same under Rule 29 of the ITAT, Rule 1963.

5.1 We have considered the prayer of the appellant for admission of the additional evidence. Rule 29 of the ITAT Rules is negatively worded and parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal unless the Tribunal requires any documents for any substantial cause. Further, the additional evidence may be admitted if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence. In this case, we find that both the AO and CIT(A) have given adequate opportunities of hearing. The AO had issued notices u/s 142(1) and show cause notice before finalizing the assessment order on 17.12.2019. The CIT(A) has also issued 7 notices on 19.02.2021, 03.11.2022, 04.11.2022, 13.03.2023, 24.08.2023, 16.10.2023 and 20.11.2023. Therefore, reasonable and adequate opportunity of hearing were granted by the lower authorities. Hence, the request for additional evidence is rejected. Be that as it may, we find that the appellant had furnished various details, which have not been properly appreciated by the lower authorities while making the respective orders. The same shall be considered while deciding the appeal on merit.

6. Ground No.1 pertains to the order of CIT(A), which is urged as being violative of the principles of natural justice. As stated earlier, the CIT(A) issued 7

notices of hearing, but appellant sought adjournments on 5 occasions. Still fresh opportunity was given by CIT(A) and the submission of the appellant has been reproduced at pages 3 to 8 of the appellant order. Therefore, it cannot be said that the principles of natural justice has been violated by the CIT(A). This ground is accordingly dismissed.

7. Ground No.2 pertains to confirming the addition of Rs.11,52,700/- made by the AO u/s 69A of the Act. The appellant had deposited the above cash in his bank account during demonetization period. The AO added the impugned sum because assessee made partial submission and failed to produce deposits slips. The CIT(A) has confirmed the addition because the appellant did not file confirmation letters from the parties to whom the recharge and SIM card were sold. The appellant had also not given PAN of the parties and failed to establish the identity of the parties and genuineness of the transactions. The CIT(A) also endorsed the view of the AO.

7.1 The learned Authorized Representative (Id. AR) of the assessee has filed paper books and submitted that various details and written submissions were filed before the AO and CIT(A). The Id. AR referred to page 44 of the paper book where details of cash deposits in the bank accounts of the appellant were given. He submitted that there was no abnormal increase in cash deposits during the year or during the demonetization period as compared to the figures of the preceding assessment year. He submitted the same reply had also been given to the CIT(A), in addition to further clarification, which is at pages 545 to 550 of the paper book.

In view of the above reply, the order of CIT(A) in confirming the order of AO was not justified.

7.2 On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue relied on the order of lower authorities.

8. We have heard both the parties and perused the materials available on record. We find that the appellant had submitted copy of 'Distributorship Agreement' of the assessee with Idea Cellular Ltd., dated 26.08.2013 to the AO, which is at page 1 to 21 of the paper book. The assessee was engaged in the business of selling of mobile talk-time recharge to local mobile shop owners on commission basis. The assessee had shown commission income of Rs.5,27,227/- and after claiming various expenses, has declared net profit of Rs.3,93,392/-. The reply of the appellant in response to the notice u/s 142(1) of the Act, dated 14.11.2019 is at pages 44 to 47 of the paper book. The total cash deposited by the appellant in preceding AY.2016-17 (FY.2015-16) was Rs.1,17,25,412/- as against Rs.1,10,24,097/- in the subject AY.2017-18 (FY.2016-17). The total cash deposit in the bank from 01.04.2015 to 08.11.2015 was Rs.68,32,322/- including Rs.15,70,250/- during demonetization period from 09.11.2015 to 31.12.2015. The corresponding figures for the subject assessment year were Rs.65,39,777/- and Rs.17,11,800/- respectively. There is minor variation in the amount of cash deposit between the two periods. Hence, the entire amount of cash deposit in Specified Bank Notes (SBNs) cannot be added. However, in absence of complete details, such as PAN of the parties and confirmations, the claim of the appellant is not

verifiable. Therefore, in the interests of justice, we accept the source of cash deposit of Rs.10,00,000/- from sale of mobile talk-time recharge to various retail mobile shop owners. The AO is accordingly directed to delete addition of Rs.10,00,000/- and the addition of remaining amount of Rs.1,52,700/- is sustained. Accordingly, this ground is partly allowed.

8. Ground No.3 pertains to initiation of penalty proceedings u/s 271AAA r.w.s 274 of the Act. The AO has initiated the penalty proceedings but has not yet passed the penalty order. Therefore, this ground is premature and is accordingly not adjudicated.

9. Ground No.4 is general in nature and do not require adjudication.

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

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 22/07/2025.

Sd/-
(SUCHITTA R. KAMBLE)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 22/07/2024

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat