

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD
BEFORE MS.SUCHITRA R. KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V.MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.599/Ahd/2025
Asstt.Year : 2012-13

Pinkeshkumar Melapchand Shah B-1, 1 st Floor, Abhinandan Flat Opp: Kothari Tower Ramnagar, Sabarmati, Ahmedabad 380005.Gujarat. PAN : AEAPS 0609 D.	Vs.	The ITO, Ward-2(2)(4) Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	Shri Sunil Maloo, CA
Revenue by :	Shri Amit Pratap Singh, Sr.DR

सुनवाई की तारीख /Date of Hearing : 31/07/2025
घोषणा की तारीख /Date of Pronouncement: 12/08/2025

आदेश / O R D E R

PER MAKARAND V.MAHADEOKAR, AM:

This appeal has been preferred by the assessee against the order passed under section 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"], dated 29.01.2025 for the assessment year 2012-13, confirming the assessment order passed under section 144 read with section 147 of the Act dated 07.11.2019 by the Income Tax Officer, Ward 2(2)(4), Ahmedabad.

2. Facts of the Case

2.1 The brief facts leading to the impugned addition, as culled out from the assessment order, are that the case of the assessee was reopened under

section 147 of the Act on the basis of Annual Information Return (AIR) information received through the ITS database indicating that cash deposits aggregating to Rs.16,69,608/- had been made in the assessee's ICICI Bank Account No. 091701502517 during the financial year 2011-12 relevant to the assessment year under consideration. On verification of departmental records, it was found that the assessee had not filed any return of income under section 139 for the said assessment year. To ascertain the genuineness of the transactions, the AO issued a letter dated 20.02.2019 under section 133(6) of the Act calling for information from the assessee. No reply was received. Another letter dated 27.02.2019 was also issued to the Manager, ICICI Bank Ltd., Bandra-Kurla Complex, Mumbai, calling for information under section 133(6). In response, ICICI Bank Ltd. furnished a copy of the bank statement of the assessee for the period from 01.04.2011 to 31.03.2012, reflecting cash deposits totalling Rs. 16,69,608/-. Thereafter, several notices were issued by the AO to the assessee for furnishing details and explanations in respect of the cash deposits. Consequently, the Assessing Officer (hereinafter "AO") issued notice under section 148 dated 25.03.2019, which was duly served on 26.03.2019. In response, the assessee did not file any return of income. Despite service of notices through speed post as well as electronically, the assessee did not respond to any of them. The AO, therefore, proceeded to complete the assessment under section 144 read with section 147 of the Act, by treating the cash deposits of Rs.16,69,608/- as unexplained money under section 69A of the Act.

2.2 The assessee preferred an appeal before the Ld. CIT(A), wherein it was submitted, inter alia, that the assessee was engaged in the business of trading in garments and his total income for the year under consideration was below the basic exemption limit, and therefore, no return was filed. It was further contended that the cash deposits were out of accounted business sales, that the bank withdrawals and VAT returns had been completely ignored by the AO, and that the matter required a proper

appreciation of the facts. The assessee also sought to submit additional evidence under Rule 46A of the Income Tax Rules, 1962, along with a detailed explanation vide letter dated 24.12.2022 for the earlier non-compliance due to inadvertence. The Ld. CIT(A), however, rejected the request for admission of additional evidence, holding that although the assessee had uploaded fresh documents during appellate proceedings, no proper application under Rule 46A was filed, and that the assessee had failed to establish valid reasons for not producing the said evidence before the AO despite repeated opportunities. The Ld. CIT(A) relied on judicial precedents including *CIT v. Calcutta Agency Ltd.* [19 ITR 191 (SC)], *T.N. Subash Thangam v. ITO* [156 taxmann.com 732 (Madras HC)], and *Jyotsna Suri v. DCIT* [61 ITD 139 (ITAT Delhi)] to conclude that the onus was on the assessee to establish the source of the cash deposits and to furnish supporting material at the appropriate stage. Consequently, the addition under section 69A was sustained, and the appeal was dismissed.

3. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising following grounds of appeal:

1. *The Ld. CIT(A) grossly erred in law and facts in upholding the addition of Rs.16,69,608/- u/s 69A by rejecting additional evidence submitted under rule 46A of Income Tax Rules 1962 despite a letter requesting for admission of additional evidence dated 24 December 2022 explaining reasons for inadvertent noncompliance during Re-Assessment Proceedings u/s 147 was furnished.*
2. *The Ld. CIT(A) grossly erred in law and facts in upholding the addition of Rs.16,69,608/- u/s 69A being cash deposited in ICICI Bank Account generated out of duly accounted business sales by ignoring the debit / withdrawal side of same bank account.*
3. *The Ld. CIT(A) grossly erred in law and facts in upholding the addition of Rs.16,69,608/- u/s 69A being cash deposited in ICICI Bank Account generated out of accounted business sales which was duly reconciled with VAT returns furnished.*
4. *The Ld. CIT(A) grossly erred in law and facts in upholding the addition of Rs.16,69,608/- u/s 69A being cash deposited in ICICI Bank Account without acknowledging that, as per section 44AD of the Income Tax Act 1961 for small scale Assessee having business turnover of less than Rs 40 Lakhs, at the*

max, only 8% profit is taxable on presumptive basis and not entire cash deposited of Rs.16,69,608/-.

5. *The Appellant reserves the right to add, alter, amend, or modify any of the grounds of appeal during the course of the appellate proceedings.*

3.1 During the course of hearing before us, the learned Authorised Representative (AR) of the assessee reiterated the factual background and submitted that the assessee is a genuine small trader engaged in the business of ready-made garments under the proprietorship concern "Vatera Wear". It was explained that the assessee, being an individual with limited educational and financial literacy, had inadvertently failed to respond to the statutory notices issued by the Assessing Officer during reassessment proceedings as he was unaware of the e-proceeding compliance requirements on the income tax portal. It was only after receiving the assessment order that the assessee approached a Chartered Accountant and was advised to prefer an appeal before the CIT(A), along with an application seeking admission of additional evidence under Rule 46A of the Income Tax Rules, 1962.

3.2 The AR drew our attention to the written communication submitted before the CIT(A), wherein the assessee had candidly admitted the reasons for earlier non-compliance and sought to place on record key documents to explain the nature and source of cash deposits in the ICICI Bank account. The assessee had submitted, inter alia, (i) a copy of the profit and loss account for F.Y. 2011-12 reflecting total sales of Rs. 22,54,232/-, (ii) the balance sheet showing cash and bank balances, and (iii) a computation of income showing net taxable income of Rs. 1,71,080/- below the basic exemption limit. In support of the turnover figures, the assessee had also placed reliance on CST Form 3B filed for all four quarters of F.Y. 2011-12, duly showing sales reported to the Gujarat Commercial Tax Department aggregating to Rs.22,54,232/-.

3.3 It was argued by the AR that the cash deposits of Rs. 16,69,608/- in the ICICI Bank account were out of cash collections from such business sales and were fully reconciled with sales turnover declared in VAT/CST returns. The AR contended that the Ld. CIT(A) committed a serious error in mechanically rejecting the additional evidence merely on the ground that a formal application under Rule 46A was not separately filed, despite the detailed submission clearly explaining the reasons for non-filing before the AO and making a specific prayer for admission. The AR further submitted that the Ld. CIT(A) failed to consider the fact that even assuming the cash deposits of Rs. 16,69,608/- were business receipts, the same could not be treated as unexplained money under section 69A. It was contended that once the turnover is accepted, and the assessee is eligible to be assessed under the presumptive scheme of section 44AD of the Act (as turnover was below Rs. 40 lakhs), only 8% of such gross receipts can be deemed to be taxable income. Therefore, taxing the entire cash deposit under section 69A was patently unjustified.

3.4 The AR placed copies of the profit and loss account, balance sheet, computation of income and all four quarterly VAT returns on record during the hearing, all of which were also part of the submissions filed before the CIT(A). The AR prayed that the addition sustained by the Ld. CIT(A) under section 69A be deleted in full. Alternatively, and without prejudice, it was submitted that if the source of cash deposits is accepted to be business turnover, the income, if any, ought to be computed under section 44AD by applying presumptive rate of 8% to the turnover of Rs. 22,54,232/-, which works out to Rs. 1,80,339/-, and the same being below taxable limit after deductions under Chapter VI-A, the return be treated as valid and nil demand be confirmed.

4. Per contra, the learned Departmental Representative (DR) relied upon the orders of the lower authorities and submitted that the addition made by the Assessing Officer under section 69A was fully justified in the absence of

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any explanation or supporting documents during the course of reassessment proceedings. The DR emphasized that despite issuance of multiple notices under sections 133(6), 148 and 142(1), the assessee remained completely non-compliant and failed to file the return of income or furnish any evidence to substantiate the source of cash deposits.

5. We have carefully considered the rival submissions made by the assessee through the learned Authorised Representative (AR) and the counter submissions advanced by the learned Departmental Representative (DR). We have also perused the orders of the lower authorities and examined the material placed on record, including the profit and loss account, balance sheet, CST Form 3B returns, computation of income, and the written request dated 24.12.2022 filed by the assessee under Rule 46A of the Income-tax Rules, 1962. The central issue arising for our adjudication is whether the addition of Rs. 16,69,608/- made under section 69A of the Income-tax Act, 1961 is sustainable on facts and in law, particularly in light of the assessee's explanation and supporting material submitted at the appellate stage.

5.1 The Ld. CIT(A) rejected the assessee's plea to admit additional evidence under Rule 46A, primarily on the ground that no formal application was filed. However, on perusal of the records, we find that the assessee had filed a detailed representation dated 24.12.2022 specifically explaining the reason for non-compliance during the reassessment proceedings and requesting the CIT(A) to admit documents such as the profit and loss account, balance sheet, computation of income, and VAT returns as additional evidence. The assessee categorically stated that the earlier non-response was due to lack of awareness about e-proceeding notices and absence of professional guidance, and that there was no mala fide intent to withhold any information from the Assessing Officer. The said request squarely invoked clauses (c) and (d) of Rule 46A(1), which permit admission of additional evidence if the appellant was prevented by sufficient

cause from producing it before the AO, or if the AO refused to admit evidence which ought to have been admitted. It is a settled proposition of law that where the assessee has explained sufficient cause and the documents sought to be admitted go to the root of the matter, technical objections should not defeat substantive justice. We accordingly hold that the documents submitted by the assessee ought to have been admitted and considered on merits, and we proceed to do so in the interest of justice.

5.2 The addition made by the AO under section 69A was based solely on the fact that cash deposits of Rs.16,69,608/- were made into the assessee's ICICI Bank account during the relevant financial year, and that the assessee failed to offer any explanation in response to the statutory notices. The AO did not conduct any independent enquiry or investigation to ascertain whether the said deposits were linked to any undisclosed source or whether they had any nexus with the assessee's declared business activity. The AO also did not refer to any material or third-party information which could disprove the assessee's claim of being engaged in business.

5.3 It is trite law that the deeming fiction under section 69A cannot be invoked mechanically or *in terrorem*. The provision requires the Assessing Officer to establish three cumulative conditions: (i) the assessee is found to be the owner of any money, bullion, jewellery or valuable article; (ii) such money is not recorded in the books of account; and (iii) the assessee offers no explanation about the nature and source, or the explanation offered is not satisfactory. In the present case, while ownership of the bank account is not disputed, the subsequent explanation now furnished by the assessee—that the cash deposits represent business receipts—is duly corroborated by audited accounts and VAT returns.

5.4 In our considered view, once the assessee has demonstrated through financial statements and CST returns that the total sales for F.Y. 2011-12 amounted to Rs. 22,54,232/-, and the cash deposits in question aggregate

to Rs.16,69,608/-, the presumption under section 69A stands rebutted. The explanation offered is not only plausible but is duly supported by contemporaneous evidence filed with the commercial tax department. The AO has neither disproved the sales turnover nor brought any contrary material on record to suggest that the cash deposits were from any other source. Therefore, the necessary ingredient of “unexplained money” under section 69A fails on facts.

5.5 The assessee has placed on record the profit and loss account and VAT returns in Form 3B filed with the Gujarat Commercial Tax Department for each quarter of F.Y. 2011-12. The turnover as reflected in these statutory returns tallies with the total sales reported in the profit and loss account at Rs.22,54,232/-. The AO has not disputed the genuineness of these returns or questioned the business existence of the assessee. The bank account in which the deposits were made is also disclosed in the balance sheet. It is also relevant that the assessee had a closing cash balance as per audited books and no adverse inference has been drawn with reference to application of funds.

5.6 In light of this documentary trail, we find merit in the assessee's submission that the cash deposits of Rs.16,69,608/- were inextricably linked to his business turnover. The Department has failed to prove otherwise.

5.7 As an alternative plea, the assessee has invoked the presumptive taxation scheme under section 44AD, contending that since the gross turnover is below Rs. 40 lakhs, only 8% of the total receipts can be deemed as income, and therefore taxing the entire cash deposits under section 69A results in double taxation and defeats the very purpose of section 44AD. We find merit in this contention as well. It is now settled by many judicial precedents that where business receipts are taxed under presumptive scheme, separate additions under section 69A on account of cash deposits are not warranted unless the AO demonstrates that such deposits are from

an extraneous or non-business source. In the present case, we find that there is no such material brought by the AO. The entire cash deposit forms part of the declared business turnover which has been duly substantiated with VAT returns and accounts. The assessee's declared income of Rs.1,71,080/- after deduction under Chapter VI-A remains below the taxable limit. Accordingly, even if the case is considered under section 44AD, no addition survives.

5.8 In view of the foregoing discussion, we are of the considered view that the addition of Rs.16,69,608/- made under section 69A and confirmed by the Ld. CIT(A) is unsustainable in law and on facts. The cash deposits have been sufficiently explained to be out of business receipts, supported by documentary evidence. The rejection of additional evidence by the CIT(A) was unjustified and the material now on record fully supports the assessee's claim. Accordingly, the addition is liable to be deleted.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 12th August, 2025 at Ahmedabad.

Sd/-
(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad, dated 12/08/2025