

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.856/SRT/2023

Assessment Year: (2017-18)

(Hybrid Hearing)

Amir Traders, Plot No. 26A, Opp. Surat Board and Paper Mills, M.G. Road Udhna, Surat – 394210, Gujarat, India	Vs.	ITO, Ward – 1(2)(6), Surat
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AAGFA3878G		
(Appellant)		(Respondent)

Appellant by	Shri Rushi Parekh, CA
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	03/07/2025
Date of Pronouncement	15/09/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Act (in short, 'the Act') by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short, "CIT(A)"], dated 17.11.2023 for assessment year (AY) 2017-18.

2. The grounds of appeal raised by the appellant are as follows:

"1. That the CIT(A) erred in confirming the addition of Rs.11,67,182/- being fall in G.P.

2. That the CIT(A) erred in confirming the addition of Rs.62,60,000/- being cash deposited during the demonetization period.

3. That the addition made of Rs.11,67,182/- and Rs.62,60,000/- may be deleted.

4. The appellant craves leave to add, amend, alter, vary and / or withdraw any or all the above grounds of appeal.”

3. The additional grounds raised by the assessee are as under:

“1. That the learned A.O. has erred in taxing the addition by taking the rate @ 77.25% by attracting Section 115BBE of the Act instead of taxing as per normal tax slab. The addition, if any, that may be confirmed should be taxed as business income.

2. That even otherwise on the facts and circumstances of the case as well as law on the subject, the assessing officer has erred in taxing the income u/s.115BBE @ 77.25% in a retroactive manner by applying the duly substituted section 115BBE of the Act inserted retrospectively instead of taxing it @35.54% as per the old provisions of Section 115BBE of the Act.”

3.1 Since the additional grounds pertains to a legal issue and goes to the root of the matter and details are available on record, the same are admitted in view the decisions of the Hon'ble Supreme Court in the cases of NTPC vs. CIT, 229 ITR 383 (SC) and Jute Corporation India vs. CIT, 187 ITR 688 (SC).

4. The facts of the case in brief are that assessee firm filed its return of income declaring income at Rs.2,25,560/- on 31.10.2017. The case was selected for scrutiny under CASS. Notice u/s.143(2) of the Act was issued on 04.09.2018. Subsequently, notices u/s.142(1) of the Act were issued and served upon the appellant. In response, the appellant had filed submissions from time to time. The Assessing Officer (in short, 'AO') passed order u/s 143(3) of the Act on 29.12.2019, making additions of (i) Rs.11,67,182/- towards difference in gross profit (GP) rate by 3.54% and (ii) Rs.62,60,000/- towards cash deposit during demonetization

period. The AO assessed the total income of the appellant at Rs.76,49,742/- and taxed the same u/s 115BBE of the Act.

5. Aggrieved by the order of AO, the appellant filed appeal before CIT(A). Regarding the addition made of Rs.11,67,182/- on account of GP difference, it was observed by the CIT(A) that the turnover for the AY 2016-17 was Rs.1,69,54,099/- and GP was Rs.96,10,621/-, which is 56.68% of turnover. For the AY 2017-18 under consideration, the appellant admitted turnover of Rs.3,29,71,238/- and declared GP at Rs.93,31,804/-, which worked out to 28.30%. Thus, there was substantial increase in turnover compared to last year. The reasons given by the appellant for decrease in GP was due to pressure from bank for reduction of bank OD/CC balance and because the appellant sold goods at cheaper rates. The GP rate admitted by the appellant was not commensurate with earlier years and the reason given by the appellant was not a cogent reason for decrease in GP. In view of the same, the action of the AO in taking average of the gross profit rate of the last five preceding AYs was upheld by the CIT(A).

6. Regarding the addition made of Rs.62,60,000/-, being cash deposited during the demonetization period, it was observed by the CIT(A) that the appellant made cash deposits of Rs.62,60,000/- from 11.11.2016 to 31.12.2016. The appellant made cash deposits of SBNs in piecemeal basis during the entire demonetization period till the last day to tender SBNs. It was not clear whether the appellant had

accepted SBNs after 08.11.2016, since the appellant made cash deposits till 31.12.2016. It was further seen that as per return of income for the AY 2017-18, the appellant had also made cash deposits of Rs.47,20,000/- in two banks. The appellant failed to give any cogent reason for keeping huge cash in hand as on 08.11.2016, therefore, it was clear that the cash deposited during demonetization period did not pertain to business income of the assessee and was outside the books of account. Burden to explain the source of cash deposits was on the appellant, which the appellant had not been able to discharge satisfactorily. In view of the same, the CIT(A) upheld the action of the AO.

7. Aggrieved by the order of the CIT(A), the appellant is in further appeal before this Tribunal. The learned Authorized Representative (Id. AR) of the appellant submitted three paper books containing the submission and details furnished before AO/CIT(A), ITRs of AY 2016-17 and 2017-18, computation of income, audit report, VAT return Form 205 for AY 2017-18, copy of cash books for FY 2015-16 and 2016-17, cash deposit charts in different banks, copy of Tijori a/c, sales register, comparative sale and purchase bills, copies of bank book and bank statements of all banks and case laws relied upon.

8. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) supported the order of lower authorities. He submitted that both lower authorities have passed reasoned and speaking order after giving adequate

opportunity of hearing to the appellant. Hence, the order of CIT(A) may be sustained.

9. We have heard rival submissions and perused the material available on record. Regarding the first ground of appeal, the appellant had explained that due to pressure from bank for reduction of bank OD/CC balance, the appellant had sold goods at cheaper rates. Besides, the average GP rate of last five years was 31.84% and the GP rate of this year was 28.30%, which not a substantial decrease. The appellant is a trader of iron scrap where it purchased scrap from companies and sold to local traders. The price of iron scrap is volatile and fluctuates very fast and the price is also dependent on quality of scrap. Appellant has furnished detailed comparative chart of the period between AY 2015-16 and AY 2016-17 of the purchase and sale rates. It is seen therefrom that purchase rates have increased but sales rate have not increased proportionately or decreased, thereby impacting the GP ratio. The appellant has filed a chart or the GP rate of the earlier years from which it could be seen that there is wide fluctuation in the GP rate. The GP rate was 56.68%, 36.28%, 22.58% for AYs 2016-17, 2015-16 and 2014-15 respectively and was as low as 15.38% in AY 2013-14. It is further seen that AO has not pointed out any defect in the books of account including the purchase and sale registers. It is well established that no addition can be made solely on the basis of fall in gross profit rate unless the books of account are first rejected by invoking the provisions

of section 145(3) of the Act for proper reason. In the instant case, the AO has not pointed out any specific defect, discrepancy or inconsistency in the books of account, nor has the AO invoked section 145(3) of the Act. It is also an undisputed fact that the trade result in scrap business vary from year to year due to multiple reasons such as market conditions, change in product mix, increased competition, higher input costs etc., which are not in the control of the appellant. In view of the above factual position, the addition of Rs.11,67,182/- made solely on account of fall in rate of GP is hereby deleted and the ground is allowed.

10. The next ground is regarding addition of Rs.62,60,000/-, being cash deposit during demonetization period, the sources of which could not be explained by the appellant before AO and CIT(A). The AO has added sum of Rs.62,60,000/- as unexplained money u/s 69A of the Act. The Id. AR submitted that on the one hand, the AO accepted the net profit (NP) arrived at from the trading account and also accepted returned income of Rs.2,22,560/- but made the above addition, which was out of cash sales. The sales are verifiable from cash book whereas purchases are by banking channels, which can easily be verified from bank statement. The AO has also not pointed out any defects either in cash book, sales book, bank statement and bank book produced before him. The AO has not disputed the sales but as made addition on account of cash deposit, which was from the cash sales made by the appellant. The Id. AR further submits that cash was deposited on

various dates because the assessee was scared to deposit all the cash on a single date.

10.1 We have heard both the parties and perused the material available on record. We have also deliberated upon the case laws relied upon by both sides. It is seen that the appellant made cash deposits of Rs.62,60,000/- in SBNs from 11.11.2016 to 31.12.2016. Further, as per return of income for the AY 2017-18, the appellant had also deposited cash of Rs.47,20,000/- in two banks. After considering the facts of the case and submission of the Id. AR, we find that the appellant failed to give any cogent reason for keeping huge cash in hand as on 08.11.2016. From the facts on record, it is clear that the entire cash deposited during demonetization period does not pertain to business income of the appellant and the source of such cash is from outside the regular books of account. Burden to explain the nature and source of cash deposits was on the appellant who, as per the findings noted above, has not been able to discharge the onus cast upon him. The AO has rightly observed that the assessee could have deposited the SBNs at the first instance after the demonetization was announced. In the alternative, it could have deposited the SBNs in 5 to 6 instances. The reasons given that it could not deposit the cash due to fear is not convincing and acceptable. The amount was not so big as to create fear in the mind of a normal person. Further, the appellant had multiple bank accounts where the cash could have been

deposited. The explanation of the assessee is beyond the realm of human probability. It has not been able to explain as to why he kept on depositing SBNs on regular basis for such a long period from 11.11.2016 to 30.12.2016. Therefore, we find that the findings of the AO and the CIT(A) are correct in the facts and circumstances of the case. However, keeping in view the observation of the AO that the appellant could have deposit the cash in 5 or 6 instances, we allow cash deposit in the first 2 weeks after demonetization, i.e., up to 18.11.2016 as explained. It is seen from the details of cash deposit that the appellant had deposited cash of Rs.16,42,000/- upto 18.11.2016. The same is accepted as part of the turnover/cash sales of the assessee. The addition of the remaining amount of Rs.46,18,000/- is upheld. The AO is, accordingly, directed to delete addition of Rs.16,42,000/- out of Rs.62,60,000/-. The ground is partly allowed.

11. The additional ground pertains to taxing the addition as per the provisions of section 115BBE of the Act. The provisions of section 115BBE of the Act were enacted on 15.12.2016 and hence cannot be applied for the year under consideration. We find that the Division Bench of this Tribunal in cases of Samir Shantilal Mehta vs. ACIT, in ITA No.42/SRT/2022, Arjunsinh Harisinh Thakor vs. ITO, in ITA No. 245/SRT/2021, Jitendra Nemichand Gupta vs. ITO, in ITA No. 211/SRT/2021 and Sanjaybhai Mansukhbhai Patel vs. DCIT, in ITA No. 869/SRT/2023; the Indore Bench in DCIT vs. Punjab Retail Pvt. Ltd., in ITA

No.677/Ind/2019 and the Jabalpur Bench in ACIT vs. Sandesh Kumar Jain, in ITA No.41/Jab/2020 held that applicability of amended provision of Section 115BBE of the Act is not retrospective. The Hon'ble Madras High Court in case of S.M.I.L.E. Micro Finance Ltd. vs. ACIT, [WP(MD) No.2078 of 2020] has held that provisions of section 115BBE are not applicable for AY 2017-18. Respectfully following the above decisions, the AO is directed to tax the addition at normal rate of tax and applicable surcharges and cess. The assessee is, accordingly, allowed relief against taxing the addition at higher rate u/s 115BE of the Act. This ground is allowed.

12. In the combined result, the appeal of the assessee is partly allowed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 15/09/2025.

**Sd/-
(T. R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 15/09/2025

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

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Assistant Registrar/Sr. PS/PS
ITAT, Surat