

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.27/SRT/2025

Assessment Year: 2017-18

(Hybrid hearing)

Hiren Ashokkumar Bardoliya Flat No.L/801, Rameshwaram Green Opp. D-Mart, Bamroli, Althan Road, Surat- 395 007	बनाम/ Vs.	Income Tax Officer Ward-2(2)(2), Surat, Room No. 625, 6 th Floor, Aaykar Bhawan, Majura Gate, Surat-395 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: APXPB 4857 J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Sapnesh R Sheth, CA
राजस्व की ओर से /Respondent by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख/Date of Hearing	22/07/2025
उद्घोषणा की तारीख/Date of Pronouncement	26/09/2025

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 30.12.2024 by the Commissioner of Income-tax (Appeals), NFAC, Delhi [in short 'CIT(A)'] for the assessment year (AY) 2017-18, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s. 143(3) of the Act on 29.11.2019.

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

"1. On the facts and circumstances of the case as well as law on the subject, the Ld. Addl./JCIT (Appeal), Mumbai has erred in confirming the action of AO in making addition of Rs.9,16,800/- as unexplained expenditure u/s.69C of the IT Act, 1961.

- 2. It is, therefore, prayed that above addition made by the AO and confirmed by CIT(A) may please be deleted.*
- 3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

3. Brief facts of the case are that the return of income for AY 2017-18 declaring income of Rs.3,24,390/- was filed by the assessee on 18.03.2018. The case was selected for scrutiny through CASS and notice u/s.143(2) of the Act was issued to the assessee. Subsequently, notices u/s.142(1) of the Act were issued to the assessee calling for basic documents, details and explanations relevant to the case. In compliance, assessee furnished the details, documents and explanation from time to time. The assessee is an employee in Kotak Mahindra Bank and earned salary income, income from house property and income from other sources during the year under consideration.

4. During the course of assessment proceedings, the assessee had furnished details, viz., copy of ROI filed for AY 2017-18, computation of income, bank statements and credit card statements. In addition to this, the assessee had also furnished a statement showing the cash deposit and cash withdrawal from HDFC saving account. With regard to cash payment in credit card account against the credit card bill, it is stated by the assessee that credit card was used for payment of expenses/purchases for his personal use. For making payment of credit card bill, he deposited cash of Rs.9,16,800/- into the credit card account. The assessee stated that cash deposit by him was the cash-in-hand. The cash-in-hand was generated out of cash withdrawals of earlier periods, accumulated cash balance of residual tax paid income and the

cash received as gifts of his marriage held in 14.12.2015. It was noticed by the AO that assessee had withdrawn meagre amount from his bank accounts during the year under consideration. The assessee was therefore, show caused as to why the aforesaid cash payment of Rs.9,16,800/- should not be treated as expenditure from unexplained sources. However, the assessee failed to furnish any reply in compliance, therefore, it was concluded that the assessee had nothing to say regarding the source of aforesaid cash payment of Rs.9,16,800/-. Therefore, amount of Rs.9,16,800/- was added to the total income of the assessee for AY 2017-18 u/s.69C of the Act and the same was taxed u/s.115BBEE of the Act @ 60%. Aggrieved by the addition made by AO, assessee preferred appeal before CIT(A).

5. During the appellate proceedings, the assessee for the first time, submitted that he was doing the business activities and made payments by credit card for purchase of goods from parties, i.e., M/s. Ranjeeta Fashion, M/s. Sai Corporation and M/s. Karni Synthetics, which were subsequently sold in market in cash. The assessee submitted confirmations of account from the parties and requested to admit them as additional evidences. He further argued that the payments from credit card were for purchase of goods and therefore, his business income may be estimated u/s.44AD of the Act. The CIT(A) after perusing the submissions of the assessee observed that purchase of goods from M/s. Ranjeeta Fashion, M/s. Sai Corporation and M/s. Karni Synthetics, does not ipso facto establish that the assessee was engaged in the

business activities. The CIT(A) also noted that assessee neither furnished any evidence for sale of goods nor submitted any evidence to substantiate his business activities, viz., license from Municipal Corporation, place of business, mode of business activities, etc. It was also noted that the assessee was an employee of Axis Bank Ltd as well as Kotak Mahindra Bank Ltd., therefore, the assessee was required to show with evidences as to how he was engaged in the business activities. However, assessee failed to furnish any 'NOC' from his employer to conduct business activities. In view of the same, the assessee's claim of having been engaged in business activities was rejected by the CIT(A). Consequently, the source of cash deposits which were used for making credit card bills payment remained unexplained. Therefore, it was held by CIT(A) that the AO correctly taxed the credit card payments as unexplained expenditure.

5.1 The assessee further submitted before CIT(A) that Taxation Laws (Second Amendment Act), 2016 received assent of the President on 15th December, 2016 and accordingly changes brought in Section 115BBE for imposing higher rate of 60% plus surcharge 25% with applicable cess ideally should be made applicable prospectively to cover those transactions which happened from 15th September, 2016 onwards. The assessee placed reliance in this regard on the decision given by this Tribunal in the case of Hareshkumar Jayantilal Mahadevwala HUF Vs. ITO, Surat (ITA No. 248/SRT/2023, for AY 2017-18, *wherein* it was held that applicability of the amended provisions of Section 115BBE is not retrospective. Reliance was placed on the following

judgements of this Tribunal, where similar view was taken: (a) Samir Shantilal Mehta vs. ACIT, ITA No. 42/SRT/2022, (b) Arjunsinh Harisinh Thakor vs. ITO, ITA No. 245/SRT/2021 and (c) Jitendra Nemichand Gupta vs. ITO, ITA No. 211/SRT/2021.

5.2 The CIT(A) followed the judgement passed in aforementioned cases by this Tribunal and directed to tax the credit card payments made prior to 15.12.2016 as per the provision of Section 115BBE prior to amendment and those payments which were made after 15.12.2016 were directed to be taxed under amended provision of section 115BBE w.e.f. 15.12.2016. Thus, the appeal of the assessee was partly allowed by Ld. CIT(A).

6. Aggrieved by the order of CIT(A), the assessee has filed appeal before this Tribunal. The Ld. A.R. of the appellant submitted the paper book consisting of written submission before CIT(A), account confirmation of M/s. Sai Corporation, M/s. Shree Karni Synthetics, M/s. Ranjita Fashion, credit card statements of Kotak Mahindra Bank, ITR acknowledgement and computation of income. The Ld. AR submitted that the assessee is having credit card of Kotak Mahindra Bank and the credit limit is Rs.84,000/-. The assessee is a salaried employee and he tried to earn extra income by doing business activity relating to textile items on very small scale basis. It is further submitted that the assessee purchased textile goods from three parties, viz., M/s. Ranjeeta Fashion, M/s. Sai Corporation and M/s. Karni Synthetics. The purchases were made from these entities every month and textile goods so purchased were

sold locally to various parties in cash and the amount so received was utilized for making payment of outstanding credit card dues. The Ld. AR submitted that the cash deposits made toward payment of credit card bill did not represent unaccounted income. It is also stated that the credit card was also used towards personal use but the quantum of such usage as evident on perusal of the credit card statement issued by Kotak Mahindra Bank was very nominal. The Ld. AR further stated that in view of the above stated facts, the addition of entire cash deposits of Rs.9,16,800/- for clearing credit card dues should not be treated as unexplained expenditure u/s. 69C of the Act but only a reasonable amount of profit on the trading activity may be estimated on such transactions.

7. On the other hand, Ld. Sr. DR for revenue relied on the orders passed by the lower authorities and submitted that AO's addition was based on the mismatch between cash payments and bank withdrawals and absence of other formal business credentials.

8. We have heard both the parties and perused the material available on record. We have also deliberated on the decisions relied upon by the Ld. AR. Where the assessee has recorded purchases and there is no material on record showing suppression of cost or investment in acquiring the goods, the authorities should confine additions to the profit element only and not treat gross sales as income. This principle has been authoritatively laid down by the Hon'ble jurisdictional High Court in CIT v. President Industries [(2000) 158 CTR

(Guj) 372; (2002) 258 ITR 654], where the Hon'ble Court held that when goods sold are shown to have been acquired and there is no finding of suppression of investment, the amount of sales cannot ipso facto be taken as income and the profit element alone can be added. Applying the above principle to the facts, it is seen that the assessee has placed on record (i) credit-card statements of Kotak Mahindra Bank showing transactions with the three named suppliers (the names appear in the transaction details), and (ii) confirmations/ledger confirmation from M/s Ranjeeta Fashion, M/s Sai Corporation and M/s Karni Synthetics, acknowledging the sales to the assessee. These documents are contemporaneous business records which, taken together, satisfactorily establish that the assessee made purchases from these suppliers and that payments in the credit-card were in respect of those purchases. In exercise of the Tribunal's fact-finding and appraisal authority and for the purposes of finality of assessment, profit @ 15% of Rs.9,16,800/- is considered to be fair and reasonable. The AO is accordingly directed to add Rs.1,37,520/- (15% of Rs.9,16,800/-) and delete the remaining addition. The ground raised by appellant is partly allowed.

9. Because the impugned payments are held not to be unexplained expenditure and are now dealt with by way of estimation of profit, the AO's invocation of Section 115BBE cannot be sustained. The addition so made and taxed u/s 115BBE of the Act stands deleted to the extent indicated above. Instead the estimated business profit of Rs.1,37,520/- shall be brought to tax in

the hands of the assessee as business income in the relevant assessment year, and be taxed as per normal provisions of the Act. The co-ordinate Bench of this Tribunal has consistently held that provisions of Section 115BBE are not applicable for AY 2017-18. Reliance is placed on the decisions in cases of Samir Shantilal Mehta (supra), Hareshkumar Jayantilal Mahadevwala HUF (supra), Arjunsinh Harissinh Thakor (supra), Jitendra Nemichand Gupta (supra) and S.M.I.L.E. Micro Finance Ltd. vs. ACIT, WP(MD) No.2078/2020 (Mad). Hence, ground is allowed.

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

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 26/09/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 26/09/2025
Dkp Outsourcing Sr.P.S*

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- **अपीलार्थी/ The Appellant**
- **प्रत्यर्थी/ The Respondent**
- **आयकर आयुक्त/ CIT**
- **आयकर आयुक्त (अपील)/ The CIT(A)**
- **विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT**
- **गार्ड फाईल/ Guard File**

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By order/आदेश से,
सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत