



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER AND  
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.302/RJT/2023

निर्धारण वर्ष /Assessment Year: (2017-18)

Nathabhai Parsana (LR. Ganeshbhai Parsana) Gajanand, 3- Diwanpara, Beside Milan Apartment, Rakot-360 001	बनाम/ Vs.	Assistant Commissioner of Income-tax, Circle-2(1), Rajkot Aaykar Bhawan, Race Course, Rajkot-360 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>CPKPP 1123 C</b>		
(अपीलार्थी/Assessee)	..	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Samir Bhuptani, Ld. AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

सुनवाई की तारीख/Date of Hearing : 06/08/2025

घोषणा की तारीख/Date of Pronouncement : 07/10/2025

**आदेश/Order**

**Per, Dr. Arjun Lal Saini, A.M.:**

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2017-18, is directed against the order under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') passed by the National Faceless Appeal Centre (NAC) Delhi/Commissioner of Income-tax (Appeals) [in short 'NFAC/Ld.CIT(A)'], dated 02.08.2023, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Act, dated 01.12.2019.

2. Grievances raised by the assessee, which are interconnected and will be taken up together, are as follows:

*"1. Ld. CIT(A) erred in law as well as on facts in passing order u/s 250 of the Income Tax Act, 1961, which is bad in law and invalid.*



*2. Ld. assessing officer erred in law as well as on facts in making addition of Rs.37,65,000/- u/s 69A of the Income Tax Act, 1961 in respect of cash deposited during demonetization period, Id. CIT(A) erred in law as well as on facts in confirming the same.*

*3. Ld. assessing officer erred in law as well as on facts in passing order on the basis of surmises and conjecture, Id. CIT(A) erred in law as well as on facts in confirming the same.*

*4. Ld. assessing officer erred in law as well as on facts in rejecting the opening cash generated from the income offered for tax in the preceding year, without bringing any evidence on record, Id. CIT(A) erred in law as well as on facts in confirming the said action.*

*5. Ld. CIT(A) erred in law as well as on facts in confirming addition on the basis of the doubts, suspicions, surmises, conjecture and human probabilities, without bringing any evidence on record.”*

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual. The assessee had filed its return of income, on 04.08.2017, declaring therein total income at Rs.40,390/-. The return of income has been processed u/s 143(1) of the Act. The assessee`s case was selected for limited scrutiny under CASS for verification, viz: Large value cash deposits during demonetization period as compared to returned income. Therefore, the notice u/s 143(2) of the Act was issued on 21.09.2018 and duly served upon the assessee through ITBA portal on his e-mail ID. Further, various notice u/s 142(1) of the Act was issued to the assessee through ITBA System, calling for various details relevant to the e-assessment proceedings in his case. In response to the above notice, the assessee through e-filing portal uploaded necessary details online as called for. It was noticed, by the assessing officer, from the statement of bank account maintained by the assessee, that the assessee has deposited Rs.37,65,000/- cash during the period of demonetization. Accordingly, notice u/s 142(1) of the Act was issued to the assessee calling for details in respect of source of such cash deposited. In response to the notice, the assessee stated that he had sold immovable properties worth Rs.2,79,36,000/- in financial year (F.Y.) 2014-15 and out of the sale proceeds of the said amount, sum of Rs.2,70,86,000/- was received in cash. The assessee further stated that these cash receipts were not deposited in the bank



account in F.Y. 2014-15 and 2015-16 and he was having said cash on hand as of 08/11/2016, out of which the sum of Rs.37,65,000/- have been deposited. The assessee is subjected to tax audit, and as per Tax audit and books of accounts, the assessee had opening cash balance, out of that assessee deposited the cash in the bank account.

4. However, the assessing officer rejected the above contention of the assessee and observed that assessee had failed to submit the reliable evidence, therefore, the assessing officer made the addition to the tune of Rs.37,65,000/- in the hands of the assessee, under section 69A read with section 115 BBE of the Act.

5. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of Assessing Officer. The learned CIT(A) noted that assessee having been prompted to withdraw cash in spite of fact that he had enormous cash in hand already with him, clarifies that the cash was required by him and the preponderance of evidences elucidates that the cash deposited during demonetisation is not the same cash which was earned through sale of the land. Under these circumstances, it was held by Id.CIT(A) that circumstances of the case and the concept of human probabilities lie against the assessee and the cash deposited in the bank has remained unexplained in his hands. Therefore, the addition was upheld by Id.CIT(A).

6. Aggrieved by the order of Ld.CIT(A), assessee is in further appeal before us.

7. The Ld. Counsel for the assessee, vehemently argued that in the assessee's under consideration, the source of the cash-on-hand is not in dispute. The Ld. CIT(A) has contended that this money might have been spent/ invested somewhere else and may not be available with the assessee and hence made an another presumption that the assessee might have some other undisclosed source



of income wherefrom he might have earned the sum of Rs. 37,65,000/- and that amount would have been deposited in the bank account during the demonetisation period and hence the addition made by assessing officer by invoking provision of section 69A of the Act has been upheld by Id.CIT(A). In this connection, the Id.Counsel submits that provision of section 69A of the Act is warranted only when where the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, etc., which is not recorded in the books of account, if any, maintained by him. In this case, the assessee has submitted the details of the source of the money deposited in the bank and the source is not in challenge and hence under such circumstances the provisions of section 69A of the Act is unwarranted, particularly when no document and evidence has been brought on record to rebut the evidences submitted by the assessee. The Id.Counsel submitted that assessee has opening cash balance as per books of accounts which was not considered by the assessing officer. The assessee has also received cash from long term capital gains, and the same was not considered by the assessing officer. Out of opening cash balance, and out of the proceeds of LTCG, the assessee had deposited the amount during demonetization period. Hence, explanation of source of amount deposited during demonetization period by submitting the cash flow statement was also explained by the assessee. Besides, as per wealth tax return filed by the assessee, the assessee had cash balance, which has not been considered by the assessing officer and CIT(A).The Ld.CIT(A) has ignored these evidences. Therefore, learned Counsel argued that since the assessee has explained the cash deposit with documentary evidences, therefore, addition made by the assessing officer may be deleted.

8. On the other hand, Ld. Senior DR for the Revenue submitted that whatever documents submitted by assessee before lower authorities were self-serving documents, therefore, these documents should not be relied on. Apart from this,



assessee has submitted documents of Wealth Tax, which is computer generated receipts and hence, should not be relied and therefore cash-in-hand shown by assessee, in the wealth tax return on 31.03.2015, to the tune of Rs.2,71,06,379/- should not be considered, as source of cash deposit, as the assessee has only submitted the computation of wealth tax return before the Bench. Hence assessee's appeal should be dismissed.

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 assessee is 85 years old individual. The assessee has income from sale of the immovable property, opening cash balance, and the cash balance shown by the assessee in the wealth tax return, which were the source to deposit the amount during the demonetisation period. During the assessment proceedings assessing officer asked for the source of the cash deposited during demonetisation period. The assessee submitted that during the assessment year (A.Y.) 2015-16, he had sold immovable properties for Rs. 2,79,36,000/-out of which sum of Rs. 2,70,86,000/- was received through cash, which was not deposited in the bank account/ spent anywhere and hence the said cash balance was available with the assessee to deposit in the bank account. To substantiate his claim, the assessee has also submitted following documents, before the Bench, which were already submitted by the assessee before the lower authorities, Viz:

- (a)Return of income and computation of total income for the A.Y. 2015-16 (paper book Page No.: 29 to 31).
- (b). Bank statement for the period from 01.04.2014 to 31.03.2017 ( paper book Page No.: 32 to 35).



- (c) Statement containing name of buyers of properties, sale amount and mode of payment of sales consideration (paper book Page No.: 36)
- (d). Copies of sale deed of immovable properties showing receipts of sales consideration in cash ( paper book Page No.: 37 to 62).
- ( e) Cash-flow statement showing movement of the cash (paper book Page No.: 63).
- (f.) Copy of ITR form for the A.Y. 2015-16 containing the details of cash-on-hand reported therein (Page No.: 64 to 92).

However, we note that assessing officer did not appreciate the above submissions and relevant documents and evidences of the assessee. The assessing officer, did not give any finding in respect of the above evidences, except to say that documents and evidences of the assessee are not acceptable.

10. We note that assessing officer has not discussed any of these (above listed details) in the assessment order. The assessing officer has not made any adverse finding in any of these documents even, though all the details were furnished by the assessee, before him. The assessing officer ought to have examined all these details and refuted / rejected them, with a cogent adverse findings and discernable line of reasoning, in order to arrive at a conclusion and to make the addition u/s 69A of the Income Tax Act. Therefore, we note that assessing officer has not refuted or discredited these evidences and documents. The assessing officer does not mention why he is not accepting these evidences. On the contrary, the assessing officer has just brushed aside these evidences of assessee without even a word on why they are not acceptable. It is a well settled Law that when an assessee has all the possible evidence in support of its claim, they cannot be brushed aside based on surmises.



11. We also find that some of the documents and evidences, submitted by the assessee before the lower authorities, our self- servicing documents. We also aware that entire cash deposit in the bank account should not be the profit of the assessee and only profit element in the cash deposit in bank account should be considered. Only real income and neither notional income nor astronomical income, can be taxed under the I.T. Act, 1961. We also note that there must be honest and fair estimate of the proper figure of assessment, for which consideration of local knowledge and repute, besides the previous returns an assessment of the assessee concerned, and all other matters must be taken into account for fair and proper estimate which of course, would fall in the category of guesswork, but a honest guesswork. We therefore take into account all these peculiar facts to restrict the impugned disallowance @ 10% only ( 10% of Rs.37,65,000/-), which comes to Rs. 3,76,500/-. It is made clear that instant adjudication shall not be treated as a precedent in any preceding or succeeding assessment year. The Assessing Officer is accordingly directed to recompute the impugned disallowance @ 10% afresh as per law, which comes to Rs. 3,76,500/-

12. Before parting, we would like to state that assessee has deposited the cash in Bank account out of defined sources, therefore, it should not be taxable u/s. 115BBE of the Act. Hence, we direct the AO to tax the amount of Rs.3,76,500/- by applying normal rate of income tax.

13. This assessee's appeal is partly allowed in above terms.

**Order is pronounced in the open court on 07/10/2025.**

**Sd/-**  
**(DINESH MOHAN SINHA)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**  
राजकोट /Rajkot  
दिनांक/ Date: 07/10/2025

**Sd/-**  
**(DR.ARJUNLAL SAINI)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**  
(True Copy)



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

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्ड फाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण ,राजकोट