

**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.185/SRT/2024**

**Assessment Year: (2017-18)
(Physical hearing)**

Neville Homi Sarkari Vallabh Baug G6, Chikhali Road, Near ITI, Antalia, Antalia via Bilimora, Antalia S.O. Nandarkha-396 325	बनाम/ Vs.	Income-tax Officer (International Taxation), Surat, Aaykar Bhawan, Anvil Business Centre, Adajan, Surat- 395 007
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: CELPS 7187 B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Rasesh Shah, CA
राजस्व की ओर से/Respondent by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख /Date of Hearing	01/09/2025
उद्घोषणा की तारीख /Date of Pronouncement	30/10/2025

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 22.03.2024 by the Commissioner of Income-tax (Appeals)-4, Ahmedabad [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. 144 of the Act on 28.12.2019.

2. The 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 learned CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs.11,50,000/- u/s 69A as alleged unexplained credits being cash deposits in the bank account.

2. On the facts and in the circumstances of the case as well as the law on the subject, the learned assessing officer has erred in taxing the addition by taking the rate @ 77.25% by attracting S.115BBE instead of normal tax rate.

3. On the facts and in the circumstances of the case as well as the 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 S.115BBE inserted retrospectively instead of taxing it at 35.34% as per the old provisions of S..115BBE.

4. It is therefore prayed that addition made by assessing officer and confirmed by CIT(A) may please be deleted.

5. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."

2.1 Vide application dated 25.03.2025, the appellant has raised additional ground, which is as follows:

On the facts and circumstances of the case as well as law on the subject, the learned assessing officer having jurisdiction over the assessee has erred in completing assessment u/s 144 on the basis of various notices issued u/s 142(1) by non-jurisdictional assessing officer. Accordingly, the proceeding of assessment is invalid and therefore the assessment order is required to be quashed.

3. Let us first decide as to whether the additional ground raised by the appellant could be admitted by us. Rule 11 of Income Tax (Appellate Tribunal) Rules, 1963 governs the grounds of appeal to be considered by the ITAT. The same reads as under:

"Grounds which may be taken in appeal. –

*11. The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule: **Provided** that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.”*

3.1 The Learned Sr. DR for the revenue has not raised any objection to admission of the additional ground raised by the assessee.

3.2 It is seen that no additional facts are necessary to adjudicate these additional grounds of appeal. It also goes to the root of the matter. The Hon’ble Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT, 229 ITR 283 (SC) held that the power of the Tribunal in dealing with appeals is expressed in the widest possible terms. The Hon’ble Court did not find any reason as to why the assessee should be prevented from raising a question before the Tribunal for the first time so long as the relevant facts are on record in respect of that item. It further observed that the power of the Appellate Assistant Commissioner in permitting assessee to raise an additional ground in accordance with law, as held in case of Jute Corporation of India Ltd. vs. CIT, 187 ITR 688 (SC), is also available to ITAT in respect of appeals pending before it. In light of the above facts and

settled legal position, we admit the additional grounds raised by the assessee for adjudication along with the other grounds raised by the assessee.

4. Brief facts of the case are that in the instant case, the assessee had not filed return of income for AY 2017-18. He had deposited Rs.11,50,000/- in cash during the demonetization period. Therefore, AO issued notice u/s 142(1) on 11.03.2018 to prepare a return of income for AY 2017-18. But the assessee did not file any return in response to the said notice. Thereafter, various notices were issued u/s 142(1) in response to which assessee filed some reply. Not being satisfied with the reply of the assessee, who did not file necessary details, the AO invoked the provisions of Sec. 144 of the Act and made best judgment assessment adding Rs.11,50,000/- u/s 69A of the Act. Aggrieved by the addition made by AO, assessee filed appeal before CIT(A), who confirmed the addition made by the AO. The CIT(A) had admitted additional evidence filed before him and obtained remand report from AO and rejoinder from the assessee.

5. Further aggrieved by the order of CIT(A), assessee has filed present appeal before the Tribunal. The Ld. AR for the assessee filed a paper book and submitted that the notice u/s 142(1) was issued by an Assessing Officer having no jurisdiction over the assessee. He further submitted that no notice u/s 143(2) was issued. Therefore, the order passed u/s 144 is bad in law. The Ld. AR, however,

submitted that the matter may be set aside to the AO with liberty to the appellant to raise the additional ground.

6. On the other hand, Ld. Sr. DR for the Revenue supported the order of lower authorities and submitted that sufficient opportunities of being heard were provided by AO and CIT(A) but assessee did not file any explanation or details. He would, however, have no objection if the matter is set aside to the file of AO for considering the entire issue including the additional ground raised by the assessee.

7. We have heard both the parties and have gone through order of lower authorities carefully. There is no dispute that the assessee had not filed return of income for AY 2017-18. The AO issued notice u/s 142(1) to the assessee to file return of income but assessee failed to do so. Thereafter, he has passed order u/s 144 which was confirmed by the CIT(A). The Ld. AR submitted that notice u/s 142(1) was issued by a non-jurisdictional AO and further notice u/s 143(2) was not issued. Since the assessee did not effectively participate in the assessment proceedings, nor raised any such issue before the AO or CIT(A), the issues raised by the Ld. AR have not been considered by the lower authorities. Both the Ld. AR and Ld. Sr.-DR agreed that the matter may be set aside to the file of AO for fresh assessment. Accordingly, the order of CIT(A) is set aside and the matter is restored to the file of AO for de novo assessment order in accordance with law

after providing reasonable opportunity of being heard to the assessee. We make it clear that we have not expressed any opinion on the merits of the case, which shall be decided by the AO independently in accordance with law.

8. In the result, the appeal of the assessee is allowed for statistical purposes in terms indicated above.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 30/10/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 30/10/2025

Dkp Outsourcing Sr.P.S*

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**

By order/आदेश से,

// True Copy //

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत