

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.1070/SRT/2024

Assessment Year: 2017-18

(Hybrid hearing)

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| Thakorbbhai Vasantbhai Patel A-28, Punit Society, Near Civil Road, Bharuch-392 001 | बनाम/ Vs. | Income Tax Officer Ward-1(3) Bharuch, 1 st Floor, Station Road, Near Panchwati Chowk, Bharuch- 356 069 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AKCPP 0669 E | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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| 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 | 28/07/2025 |
| उद्घोषणा की तारीख/Date of Pronouncement | 16/10/2025 |

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 31.08.2024 by the National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals) [in short 'the CIT(A)'] for the assessment year (AY) 2017-1, which in turn arises out of assessment order passed by the Assessing Officer (in, short 'AO') u/s. 143(3) of the Act on 23.12.2019.

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

"1. In the facts and circumstances of the case as well as in law, the Ld. Commissioner of Income Tax (Appeals) – NFAC has erred in upholding the addition of Rs.15,45,424/- u/s.69A of the Act despite the fact that appellant has proved sources of agricultural income by producing agriculture income related evidences, i.e., 7/12 and 8A as also sale bills of agriculture produce.

2. *In the facts and circumstances of the case as well as in law, the Ld. Commissioner of Income tax (Appeals) – NFAC has erred in holding that the AO is directed to recalculate the amount of cash deposited during Demonetization period and restrict the addition to the actual cash deposited despite the fact on record that cash deposited during the Demonetization period was of Rs.12,59,187/- only.*

3. *In the facts and circumstances of the case as well as in law, the Ld. Commissioner of Income tax (Appeals) – NFAC has erred in confirming the additions without considering the supporting evidence. The same was proved before Ld. AO and Ld. CIT(A).*

4. *The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be.”*

2.1 Vide application dated 20.05.2025, the additional ground of appeal raised by the assessee is as follows:

“On the facts and circumstances of the case as well as law on the subject, the Ld. AO has erred in taxing the addition of Rs.15,45,424/- by invoking provisions of section 115BBE of the Act thereby levying income tax at the rate of 60% & surcharge at 25%.”

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

3.3 In light of the above facts and settled legal position, the additional ground raised by the assessee is admitted for adjudication.

4. Brief facts of the case are that in the instant case, the assessee, Shri Thakorbhai Vasantbhai Patel, is an individual who had filed his return of income on 26.08.2017 for the AY 2017-18 declaring the total income at Rs.2,84,280/- after claiming deduction under chapter VI-A of Rs.10,000/-. The return of assessee was selected for 'limited scrutiny' through CASS to verify the issue of 'Cash deposited during demonetization period'. During the assessment proceedings, it was noted by the AO that the assessee during the entire FY 2016-17 had deposited total cash of Rs.41,07,842/- and during the

demonetization period, he had deposited cash of Rs.15,45,424/- in the bank account maintained with the Federal Bank. The assessee was asked to furnish the source of the aforesaid transaction made. In response to the same, it was submitted by the assessee that he is an agriculturist and source of the aforesaid cash deposited was from his agricultural income. In order to substantiate his claim, the assessee had furnished the copy of 7/12 and 8A, being proof of having agricultural land. Besides, the assessee had also uploaded the copy of five different sale invoice of agriculture produce sold to 3 different parties namely of M/s. Narandas Maganlal, M/s. Shree Adhyashakti Traders and M/s. Maa Enterprise. But, assessee failed to produce any bills to substantiate the expenses incurred towards fertilizers, seeds and other essential expenses which were for carrying agricultural activity. The aforesaid sale invoices appeared fake to the AO so he issued notices u/s133(6) of the Act to 3 different parties as mentioned in the furnished bills/vouchers. Besides, the Inspector of Income tax was deputed to get confirmation from these parties and to verify as to whether the assessee had actually transacted with these parties or not. In the report submitted by the Inspector, it was mentioned that there were no such entities/parties available/exists on the addresses as mentioned on bills /vouchers, which were filed by the assessee. It was further submitted by the Inspector that on inquiry from the neighboring people, no one was able to recognize the parties as mentioned on bills/vouchers. After considering all the facts, it was held by the AO that the assessee had grossly failed to establish the nature and source of cash deposits totaling to Rs.15,45,424/- made during the period of demonetization in bank accounts held by him with Federal Bank. AO

further observed that total of cash deposit of Rs.41,07,842/- made by the assessee does not commensurate with the income shown in the ROI filed for the year under review. Accordingly, AO added the cash deposited by assessee during the demonetization period of Rs.15,45,424/-, u/s 69A of the Act.

5. Aggrieved by the aforesaid assessment, assessee preferred appeal before CIT(A). During appellate proceedings, assessee tried to justify that the source of cash deposits was from the agricultural income and from the money withdrawn from the loan account of Rs.3,00,000/- during the year. However, assessee failed to furnish cogent documentary evidence to substantiate the same. In view of the same, CIT(A) upheld the addition made by the AO of Rs.15,45,424/- u/s69A of the Act. CIT(A) further observed that as per contention made by AO, actual cash deposits made during the demonetization were at Rs.12,59,187/-. Therefore, CIT(A) directed the AO to recalculate the amount of cash deposited during the demonetization period and restrict the addition made of Rs.15,45,424/- to the actual cash deposit.

6. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The Ld. AR of the assessee submitted the paper book containing copies of written submissions filed before CIT(A), reply filed before AO, copy of 7/12 extract, sample bills of agricultural produce sold in the year, statement of cash deposit during the demonetization period, ITR acknowledgement for preceding two years. The Ld. AR contended that the assessee is an agriculturist having predominantly agriculture income and income from other source (interest income from various banks) of Rs.2,94,280/-. It is further stated that the assessee had filed a return of income for AY 2017-18 on 20.08.2017

declaring total income at Rs.2,84,280/- and agriculture income of Rs.6,98,740/-. The Ld. AR stated that the assessee had deposited Rs.12,37,664/- during demonetization period and not Rs.15,45,424/- as alleged by the AO and that bank statements of all the banks have been attached for verification. It is further submitted that the assessee's land is an irrigated land and he grows both Rabi and Kharif crops and hence, sale proceeds were received throughout the year. The Ld. AR stated that since most of the sales were made to individual traders, therefore, all bills were not available and the bills produced of the three customers were only sample bills available with them. In view of the same, the Ld. AR requested to delete the addition made by the AO of Rs.15,45,424/- or in the alternative, make a reasonable addition on estimate basis.

7. On the other hand, Ld. Sr. DR for the revenue relied upon the order of the lower authorities and requested to uphold the order of CIT(A).

8. We have heard both the parties and perused the materials available on record. It is apparent that the appellant has failed to completely discharge the onus u/s 69A of the Act to satisfactorily explain the nature and source of the cash deposits made during the demonetization period. While 7/12 and 8A extracts indicate landholding, they do not demonstrate actual generation of agricultural income to the extent claimed by the appellant. The sale bills produced by the assessee were found to be unverifiable and linked to non-existent entities, as evidenced by the Inspector's report and the lack of response to notices issued u/s.133(6) of the Act. The assessee has also failed to produce any supporting documents like purchase of seeds, fertilizers, labour payments, electricity bills or transport expenses, which are essential in substantiating

genuine agricultural activity. Furthermore, the claim that the deposits represented accumulated or seasonal cash from agricultural operations was not substantiated by consistent or reliable records. However, the appellant has been showing income from the agricultural land owned by him. The entire cash deposit, therefore, cannot be added only due to non-verification of the sale bills and supporting documents for the expenses. In our view, it would be fair and reasonable if the appellant allowed benefit of Rs.5,00,000/- in respect of the cash deposit arising out of agricultural income. The AO is, accordingly, directed to delete addition of Rs.5,00,000/- out of the actual cash deposit of Rs.12,59,187/-. The remaining addition of Rs.7,59,187/- is confirmed. The grounds are partly allowed.

8.1 The AO taxed the unexplained income at 60% + 25% surcharge u/s 115BBE of the Act. So far as taxing the addition u/s 115BBE at enhanced rate of tax @ 60% u/s 115BBE of the Act is concerned, we find that that Division Bench of this Tribunal in case of Samir Shantilal Mehta vs. ACIT (ITA No. 42/SRT/2022 [Surat Trib]), Arjunsinh Harisinh Thakor v. ITO in ITA No. 245/SRT/2021 and in case of Jitendra Nemichand Gupta vs. ITO (ITA No. 211/SRT/2021), 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 Microfinance Ltd. vs. ACIT in WP(MD) No.2078/2020 (Mad) has held that provisions of Section 115BBE is not application for AY 2017-18. Thus, for the AY 2017-18, the pre-amended provisions of Section 115BBE shall apply, and hence, the applicable tax rate is 30% and not 60%. Following these decisions, the AO is directed to apply tax @

30% and applicable surcharges, if any, on the amount confirmed in this order.

The ground is accordingly allowed.

9. In the result, appeal is partly allowed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 16/10/2025 in the open court.

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

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

सूरत /Surat

दिनांक/ Date: 16/10/2025

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 अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

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आयकर अपीलीय अधिकरण, सूरत