

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.23/SRT/2025

Assessment Year: (2017-18)

(Hybrid hearing)

Hiteshbhai V. Mahala, Vagan Faliya, Nana Pondha, Valsad – 396126, Gujarat	Vs.	The ITO, Ward - 2, Valsad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BAFPM7489F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

Appellant by	Shri Parin Shah, CA
Respondent by	Shri Abhishek Gautam, Sr. DR
Date of Hearing	24/09/2025
Date of Pronouncement	31/10/2025

आदेश / O R D E R

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 28.11.2024 by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the assessment year (AY) 2017-18.

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

"1. The learned CIT, NFAC has erred and was not just and proper on the facts of the case and in law in confirming the addition of 8,31,518/- u/s. 69A of the Income-tax Act.

2. Ld. NFAC erred in law and on facts in confirming Rs.29,94,100/- by invoking section 69A of the Act.

3. Ld. NFAC erred in ignoring fact that appellant is recharge operator and entitled to commission income.

4. *Without prejudice to above and in alternative, Ld. NFAC ought to have estimated certain percentage as profit rather than taxing entire credit in bank accounts.*

5. *Ld. NFAC erred in upholding invocation of section 115BBE of the Act.*

6. *Charging of Interest u/s 234A, 234B, 234C & 234D are unjustified.*

7. *Intimation of penalty proceedings u/s 271AAC is unjustified.”*

3. Brief facts of the case are that a notice u/s 142(1) of the Act was issued to the assessee on 09.03.2018, asking him to prepare a true and correct return of income for the relevant AY 2017-18. In response, the assessee failed to furnish his return of income u/s 139 of the Act. On the basis of data analytics and information gathered during the phase of online verification under 'Operation Clean Money', the Assessing Officer (in short, 'AO') observed that the appellant had deposited substantial cash of Rs.12,37,350/- in his bank a/c No.31475168032 maintained with State Bank of India (SBI) during the demonetization period from 08.11.2016 to 31.12.2016. Six statutory and show cause notices were issued to the assessee through his registered e-mail, i.e., madhav.telecom123@gmail.com. Despite various opportunities were given to the assessee, but he failed to comply with the notices and furnish details as called for. The AO issued final show cause notice on 24.09.2019 and fixed the hearing on 26.09.2019. The appellant failed to file any submission before him. The AO was left with no option but to complete the best judgement assessment u/s 144 of the Act. He referred to the decisions of Hon'ble Supreme Court in cases of (i) Chuharmal vs. CIT (1988) 1722 ITR 250 and (ii) Smt. Srilekha Banerjee

and Ors. vs. CIT, 1964 AIR 697. Further, he observed that the assessee had made cash deposits of Rs.12,37,350/- and other credit entries of Rs.29,94,100/- in his bank account. The assessee failed to give any explanation about the nature and source of cash deposits, therefore, the credit entries and cash deposits were treated as unexplained money u/s 69A of the Act and added it to the total income. The AO determined the total income of Rs.29,94,100/- and taxed it @60% u/s 115BBE of the Act. Separately penalty proceedings u/s 271AAC, 272A(1)(d) and 271F were initiated.

4. Aggrieved by the order of AO, the assessee filed this appeal before the CIT(A). The CIT(A) issued 3 notices of hearing, i.e., on 09.02.2021, 12.02.2021 and 26.07.2023. There was a part compliance to the notices on 26.07.2023 issued by CIT(A). He observed that the appellant had not furnished any supporting document for such transactions like cash book, daily cash register etc. Hence, he confirmed the order passed u/s 144 of the Act and dismissed the appeal.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that both lower authorities have passed ex parte orders without hearing the appellant on merit. He also submitted that the order of the CIT(A) is not as per the mandate u/s 250(6) of the Act. He submitted that the non-compliance of the notices was not deliberate on the part of the appellant. The appellant is now ready to submit all details and evidences in support of the

grounds raised by him before CIT(A). He requested that one more opportunity may be given to the appellant to plead his case on merit.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of lower authorities. He submitted that the CIT(A) has passed the order dismissing the appeal due to non-compliance by the appellant. He would, however, have no objection if the matter is restored to file of CIT(A) with cost imposing upon the appellant.

7. We have heard both the parties and perused the material available on record. The AO made additions of Rs.29,94,100/- u/s 69A of the Act towards unexplained money in SBI bank account of the assessee. The CIT(A) has dismissed appeal because the appellant did not file supporting documents in respect of transactions. The Id. AR submitted that the AO passed an ex parte order, which was confirmed by the CIT(A) in absence of details and documents. He submitted that the non-furnishing of relevant details by the appellant was not deliberate but due to circumstances beyond control of the appellant. The appellant is ready to submit all details in support of the grounds raised by him. He, therefore, requested that one more opportunity may be given to the appellant to plead his case on merit. After considering the contentions of both parties and perusing the order of lower authorities, we find that the CIT(A) has not passed an order as per the mandate of section 250(6) of the Act and dismissed the appeal of assessee only on the ground of non-compliance. We are of the view that the principles of natural justice would call for giving another

opportunity of hearing to the assessee. Accordingly, we hold that the interests of justice would be met in case the CIT(A) re-examines the entire issue afresh subject to payment of cost of Rs.5,000/- (Rupees five thousand only) by the assessee to the credit of the "**District Legal Services Authority, Surat**" within 3 weeks from receipt of this order. Subject to payment of above cost, we set aside the order of CIT(A) and remit the matter to the file of CIT(A) with a direction to pass fresh appellate order in accordance with law after granting adequate opportunities of hearing to the assessee. The assessee is directed to be more vigilant and diligent and to furnish all the details and explanations as needed by the CIT(A) by not seeking adjournment without valid reasons. With this direction, the appeal of the assessee is allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 31/10/2025.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 31/10/2025

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

// TRUE COPY //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat