

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

आयकर अपील सं./ITA No.166/SRT/2025

Assessment Year: (2017-18)

(Hybrid hearing)

Patel and Sons Raja Road, Maroli Bazar, Maroli, Tal: Jalalpore, Navsari – 396436	बनाम/ Vs.	ITO, Ward – 3, Navsari
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAJFP1701E		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

निर्धारित की ओर से/ Appellant by	Shri Rasesh Shah, CA
राजस्व की ओर से / Respondent by	Shri Ajay Uke (Sr. DR) with Shri Kevin Langaliya, CA
सुनवाई की तारीख/ Date of Hearing	04/08/2025
उद्घोषणा की तारीख/ Date of Pronouncement	04/11/2025

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 16.12.2024 by the Commissioner of Income-tax (Appeals)[in short "the CIT(A)"] for the assessment year (AY) 2017-18.

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 Ld. CIT(A) has erred in confirming the action of AO in making the addition of Rs.12,07,000/- u/s.69A of the IT Act on account of alleged unexplained money being cash deposits in bank account.

(2) On the facts and circumstances of the case as well as law on the subject, the Ld. AO has erred in taxing the addition by taking the rate @77.25% by invoking Section 115BBE instead of normal tax rate. The addition, if any, that may be confirmed should be taxed as business income.

(3) On the facts and circumstances of the case as well as law on the subject, the AO has erred in taxing the income u/s.115BBE @ 77.25% in a retroactive manner by applying the duly substituted section 115BBE inserted retrospectively instead of taxing it at 35.54% as per the old provisions of section 115BBE.

(4) It is, therefore, prayed that the addition made by AO and confirmed by the Ld. 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 the hearing of the appeal.”

3. Brief facts of the case are that the appellant had not filed its return of income for the AY 2017-18. Information was received by the department about the assessee who deposited substantial cash in bank accounts during the demonetization period. On perusal of the same, it was seen that the appellant firm had deposited cash amounting to Rs.12,07,000/- during the demonetization period. Notice u/s.142(1) of the Act was issued to the assessee with the request to file a return of income for the relevant AY. However, assessee failed to furnish its return of income for AY 2017-18 within the stipulated time allowed. Since the assessee neither filed the ROI u/s.139(1) of the Act nor in response to notice u/s.142(1) of the Act, the AO observed that the source of the aforesaid cash deposits of Rs.12,07,000/- made during the demonetization period remained unexplained. Therefore, assessee was

requested to furnish details regarding the source of aforesaid cash deposits, vide notices/show cause notice during assessment proceedings. In compliance of the same, the appellant firm stated that the assessee firm was dissolved on 05.05.2015 during AY 2016-17 and it had filed its last return of income for AY 2016-17. It further explained that there was a closing cash balance of Rs.12,07,537/- as on 31.03.2016 and the same had also been reflected in its ITR under the head "3. Current assets, loans and advances (a)(iii)." A copy of acknowledgement of return filed as well as ITR for AY 2016-17 were also submitted during the course of assessment proceedings. The appellant also stated that the said cash amount of Rs.12,07,000/- which was the closing balance as on 31.03.2016 was deposited in the assessee's bank account held with Bank of Baroda, Maroli Branch.

4. The AO, however, was not satisfied with the explanation given by the assessee regarding the source of cash deposits in its submissions. It was observed by him that the assessee had shown cash balance of Rs.12,07,537/- as on 31.03.2016 in the return of income filed for AY 2016-17; however, from the Deed of Dissolution furnished by the assessee, it was noticed that aforesaid Deed was made on 01.05.2015. Hence, there was huge gap between the date of dissolution of the assessee firm and amount of deposit made in Bank especially in demonetization period. AO further noticed that no

intimation regarding dissolution of the firm was given nor any application was made for deactivation of PAN after the dissolution. The AO, therefore, concluded that the nature and source of cash deposited bank account of assessee remained unexplained. Since the assessee failed to give satisfactory explanation with documentary evidence about the nature and source of cash deposits of Rs.12,07,000/-, was treated as income of the assessee within the meaning of provisions of section 69A of the Act and taxed as per provisions of section 115BBE of the Act. Accordingly, assessment order was passed by the AO u/s.144 of the Act on 11.10.2019 wherein total income of the assessee was determined at Rs.12,07,000/-.

5. Aggrieved by the aforesaid assessment order dated 11.10.2019, assessee preferred appeal before CIT(A). During appellate proceedings, CIT(A) observed that the appellant uploaded the same set of explanations which were submitted by it before the AO during the assessment proceedings. The CIT(A) concurred with the AO's view that there was huge gap between the dissolution of the assessee firm and amount of cash deposit made in bank during demonetization period. The CIT(A) categorized such explanation as an afterthought on the part of the appellant to hide the issue of cash deposit made into the bank account even after dissolution of the partnership firm way

back in May 2015. In view of the same, the CIT(A) dismissed the appeal of the assessee vide order dated 16.12.2024.

6. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The learned Authorized Representative (Ld. AR) of the assessee submitted that the assessee firm was dissolved on 05.05.2015 during the AY 2016-17 and it had filed its last return of income for AY 2016-17. The Ld. AR further explained that there was a closing cash balance of Rs.12,07,537/- as on 31.03.2016 and the same had also been reflected in its ITR under the head "3. Current assets, loans and advances (a)(iii)." The Ld. AR also stated that the said cash amount of Rs.12,07,000/- which was the closing balance as on 31.03.2016 was deposited in the assessee's bank account held with Bank of Baroda, Maroli Branch and that the assessee also had an OD account with Central Bank of India wherein an over draft balance of Rs.9,87,970/- was still outstanding. Therefore, the appellant, after depositing the closing cash on hand in Bank of Baroda, had transferred through NEFT, the outstanding overdraft amount on 23.11.2016 and 08.12.2016, respectively to close the said overdraft account. The appellant had also submitted copy of bank statement of Bank of Baroda as well as Central Bank of India OD account during the course of assessment proceedings.

7. The Ld. AR further submitted that the AO and CIT(A) failed to appreciate the facts of the case in right perspective. He stated that the assessee had closed its business and the said firm had been dissolved during the FY 2016-17, thus the assessee was liable only to file its last return for the said AY. All the accounts as on the date of dissolution were to be settled and the outstanding bank over draft/cash credit was also to be settled before the distribution of amount of capital out of surplus fund. Due to some misunderstanding amongst the partners, the accounts were yet to be settled though the firm was dissolved and the business was discontinued. The Ld. AR requested that since the assessee had submitted enough evidences to prove the source of deposit in its bank account, therefore, addition made by the AO on this account may be deleted. Ld. AR also stated that the AO has erred in taxing the income u/s.115BBE @ 77.25% in a retroactive manner by applying the duly substituted section 115BBE inserted retrospectively instead of taxing it at 35.54% as per the old provisions of section 115BBE.

8. The learned Senior Departmental Representative (Ld. Sr. DR) for the revenue, on the other hand, relied upon the order of the lower authorities and requested to uphold the order of CIT(A), in the interest of justice.

9. We have heard both sides and examined the materials available on record. There is no dispute about the fact that the appellant firm stood

dissolved on 05.05.2015 and that the firm filed its last return for A.Y. 2016-17, declaring closing cash balance of Rs.12,07,537/-. It is also undisputed that cash deposits of Rs12,07,000/- were made during demonetization period (Nov–Dec 2016) and that the firm had an overdraft account with Central Bank of India, which was cleared by transferring funds from the Bank of Baroda account in November and December, 2016. The main question before us is whether the source of the cash deposits stands satisfactorily explained by the assessee.

9.1 We find that the assessee has produced the balance sheet and return of income for A.Y. 2016-17 filed on 13.10.2016, wherein the cash balance of Rs.12,07,537/- has been duly disclosed. The Revenue has not disputed the authenticity of this return or its acceptance by the Department. Therefore, the existence of cash balances as on 31.03.2016 cannot be doubted. However, what creates doubt is the time gap of about 19 months between the dissolution of the firm (May, 2015) and the deposit of cash (November, 2016). No documentary evidence such as cash book, partner confirmation or closing statement of affairs as on dissolution has been furnished to establish continuity of cash holding till the date of deposit. It is also not shown where or with whom the cash was physically held during this period.

9.2 At the same time, it is equally a fact that the assessee has demonstrated a bonafide nexus between the cash deposit and repayment of

the outstanding overdraft liability, which appears consistent with ordinary commercial prudence. In view of these mixed circumstances, while the explanation of the assessee cannot be accepted in entirety, it also cannot be rejected outright as implausible. The evidences support at least a partial explanation for the source of funds. Considering the overall facts, evidences and keeping in view the principle of substantial justice, we are of the view that it would be fair and reasonable to accept 50% of the cash deposit and upheld the remaining amount as unexplained cash u/s 69A of the Act and grant relief for the balance. Accordingly, the addition of Rs.12,07,000/- made by the AO and confirmed by the CIT(A) is restricted to Rs.6,03,500/- and remaining Rs.6,03,500/- is confirmed. The ground is partly allowed.

10. Regarding the assessee's contention on the applicability of the higher tax rate @ 60% u/s 115BBE of the Act is concerned, we find that that Co-ordinate Bench of ITAT, Surat in case of Samir Shantilal Mehta v. ACIT, in ITA No. 42/SRT/2022, Arjunsinh Harisinh Thakor v. ITO, in ITA No. 245/SRT/2021 and Jitendra Nemichand Gupta v. ITO, in ITA No.211/SRT/2021, wherein it was held that applicability of amended provision of section 115BBE of the Act is not retrospective. 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%. Respectfully following these precedents, the AO is directed to apply tax @ 30%

and applicable surcharges, if any on the addition confirmed u/s 69A of the Act.

Accordingly, this ground is allowed.

11. Ground Nos.4 and 5 are consequential in nature and do not require any separate adjudication.

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

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 04/11/2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 04/11/2025

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

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat