

**IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT
(HYBRID HEARING)**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. No. 726/SRT/2025
(Assessment Year: 2017-18)

Ajit Rameshchandra Pathak, Plot. 5 A/3, B/h. Sai Natha Petrol Pump, Road No. 2, Udhna Udyognagar, Udhna, Surat-394210	Vs.	Deputy Commissioner of Income Tax, Circle-1(1)(1), Surat (Prev. J.O. ACIT, Circle-1(2), Surat)
[PAN No.ABGPP6261M]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Sunil Taladi, CA
Respondent by:	Shri Ajay Uke, Sr. DR

Date of Hearing	06.11.2025
Date of Pronouncement	25.11.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 25.06.2025 passed for A.Y. 2017-18.

2. The assessee has raised the following grounds of appeal:

“1. The Ld. CIT(A) has erred in confirming the addition of Rs. 59,39,500/- u/s. 69A of the Act, without appreciating the documentary evidences and explanations submitted during the course of assessment and appellate proceedings. The addition is unjustified and liable to be deleted.

2. The Ld. CIT(A) has failed to appreciate that the cash deposit of Rs. 43,00,000/- was made in the bank account of the appellant’s deceased mother, Late Smt. Shantaben R. Pathak, out of her own cash withdrawals duly reflected in her books of account and

bank statements. The appellant was merely acting as legal heir. Mere operation of a joint account of deposit by a legal heir does not confer ownership under section 69A in absence of contrary evidence. Hence, the addition is unjustified.

3. *The Ld. CIT(A) erred in confirming the addition of Rs. 16,39,500/- deposited in the appellant's bank account, despite the cash book, bank statements, and cash flow clearly evidencing availability of funds from earlier withdrawals. While accepting the books of account of Appellant and his later mother, the Ld. CIT(A) disregarded the recorded cash balance without identifying any specific defect, which is contrary to settled law.*

4. *The Ld. CIT(A) has passed a non-speaking and mechanical order, merely reiterating the findings of the Ld. AO without independent examination of facts and evidences on record. The order is thus contrary to law, devoid of judicial reasoning, and deserves to be deleted. It is submitted that the same be held so now.*

5. *Your appellant craves leave to add, alter, and/or amend all or any of the grounds before the final hearing of the appeal."*

3. The brief facts of the case are that the assessee is an individual earning income from interest and dividend from shares and mutual funds. The assessee filed his return of income for A.Y. 2017-18 declaring total income of Rs. 57,32,500/-. The case was selected for limited scrutiny under CASS for the reason of large cash deposits during the demonetisation period. During the assessment proceedings, the Assessing Officer observed that cash aggregating to Rs. 59,39,500/- was deposited during the demonetisation period, comprising Rs. 43,00,000/- deposited in the bank account of the assessee's late mother, Smt. Shantaben R. Pathak, and Rs. 16,39,500/- deposited in the assessee's own bank account. The Assessing Officer held that the assessee failed to satisfactorily explain the source of the deposits and presumed that the withdrawals made earlier by the assessee and his mother were spent for renovation or other purposes, and therefore treated the entire amount of Rs. 59,39,500/- as unexplained

money under section 69A of the Act and added the same to the income of the assessee. The Assessing Officer also levied consequential interest.

4. Before the CIT(Appeals), the assessee contended that the deposits of Rs. 43,00,000/- belonged to his late mother and were made out of her own cash withdrawals amounting to Rs. 42,00,000/- during April to August 2016 and Rs. 3,00,000/- withdrawn after her death, and that the same were duly recorded in her cash book regularly maintained. It was further submitted that the assessee deposited the said cash only in his capacity as legal heir and the money did not belong to him. With respect to Rs. 16,39,500/- deposited in his own account, the assessee submitted that the same represented earlier cash withdrawals and was duly recorded in his cash book and bank statements. It was argued that both sets of deposits were fully explained and that the Assessing Officer had made additions merely on presumption without rejecting the books of account or bringing contrary evidence on record. However, the CIT(Appeals) held that the assessee failed to substantiate the source of cash deposits with cogent documentary evidence, and that the explanation offered was not acceptable. The CIT(Appeals), therefore, upheld the addition of Rs. 59,39,500/- made under section 69A and dismissed the appeal of the assessee.

5. The assessee is in appeal before us against the order passed by the CIT(Appeals) dismissing the appeal of the assessee.

6. Before us, the Counsel for the assessee primarily reiterated the submissions made before CIT(Appeals) to the effect that the source of cash deposits has been duly explained and that the Department had not brought anything to controvert the evidences placed by the assessee on record.

7. In response, the Ld. DR placed reliance on the observations made by the Assessing Officer and Ld. CIT(Appeals) in their respective orders.

8. We have heard the rival contentions and perused the material on record. The assessee has placed on record the cash book of his late mother showing systematic withdrawals from her bank account amounting to Rs. 45,00,000/- between April and October 2016. The bank statements corroborate these withdrawals and there is no dispute raised by the Department regarding the genuineness of the withdrawals. The deposits of Rs. 43,00,000/- were made after her death and the assessee deposited the same in his capacity as legal heir. **The Assessing Officer has not brought any material on record to show that the cash withdrawn was utilised for any other purpose or that the cash balance as per the books was incorrect.** The addition has been made purely on presumption and conjecture that the withdrawn cash might have been spent for renovation or medical expenditure, without any supporting evidence. When the withdrawals are accepted and books of account are not rejected, the availability of cash cannot be denied. Therefore, the source of Rs. 43,00,000/- stands duly explained.

9. Similarly, with respect to the cash deposit of Rs. 16,39,500/- in the assessee's own account, the cash book and bank statements demonstrate that the assessee had sufficient cash in hand arising from withdrawals made prior to demonetisation. The Department has not disproved the correctness of the cash book nor has it shown that the cash was utilised elsewhere. The mere suspicion that the cash may have been spent cannot substitute evidence. Once the assessee has demonstrated availability of cash and maintained books which have not been rejected, the addition under section 69A cannot be sustained.

10. It has been held in a number of ITAT decisions that unless the Assessing Officer brings any material on record to show that the cash withdrawn was utilized / used for other purpose, it could not be said that such cash withdrawals might not have been redeposited in the bank account. This proposition was upheld in the case of **ITO v. M/s. Murlidhar Ice-cream & Sweet Parlour I.T.A. No.531/Ahd/2012** wherein it was held that the disallowance of interest should be proportionately reduced taking into account the amount not utilized for business. Again, in the case of **ITO v. Shri Vishan Lal ITA No.634/LKW/2014**, the Lucknow ITAT held that where the cash deposit and withdrawal in the bank account was made regularly by the assessee during the year, it is very reasonable to say that the same was business turnover outside books and therefore, only gross profit addition is justified in the facts of the present case. This proposition was also upheld in the case of **Shri B. Jenson Thanaraj v. ACIT [2017] 83 taxmann.com 243**

(Chennai - Trib.) where it was held that where cash deposited in bank account of assessee was treated as unexplained cash credit by Assessing Officer but Commissioner (Appeals) having found that money withdrawn by assessee from bank account might be available for subsequent deposit, directed Assessing Officer to take only peak credit, there was no infirmity in order of Commissioner (Appeals). In the case of **C. Vamsi Mohan v. ITO ITA.No.469/Hyd/2014** the ITAT held that said withdrawal having been made by the assessee just before a week, the same can reasonably be treated as available with the assessee for cash deposit especially when there is nothing to show that the said amount was utilized by the assessee for some other purpose. In the case of **ITO v. Deepali Sehgal I.T.A. No. 5660/Del/2012** it was held that merely because there was a time gap between withdrawal of cash and its further deposit to the bank account, the amount cannot be treated as income from undisclosed sources u/s 69 of the Act in the hands of the assessee. In the case of **ITO v. Shri Rajeev Kumar Gupta ITA No. 273/Agra/2013**, the ITAT held that held that the entire amount of deposit made in the bank account cannot be said to be unexplained because after deposit of the cash amounts, there are withdrawals. In the case of **Smt. Satya Bhama Bindal v. ITO ITA No.713/Chd/2012**, ITAT held that that the concept of peak theory needs to be applied both in respect of the opening introduction of cash in hand and various transactions of cash deposits and withdrawals during the year under consideration. The above proposition was also laid down in the case of **ITO. Ward-51(4), Kol vs Deb Kumar Jana ITA No.263/Kol/2012** and also in the case of **Jagdish N. Thakkar v. ITO ITA No.1475/Mum/2009**

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11. In view of the above factual position and documentary evidence placed on record, we are of the considered view that the explanation of the assessee regarding the source of cash deposits amounting to Rs. 59,39,500/- is satisfactory and the additions made under section 69A are unsustainable. Accordingly, the addition of Rs. 59,39,500/- made by the Assessing Officer and sustained by the CIT(Appeals) is directed to be deleted. The appeal of the assessee is allowed.

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

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 25/11/2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 25/11/2025

TANMAY, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat