



आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकरअपीलसं. /ITA No.87/RJT/2025
निर्धारणवर्ष/Assessment Year : 2017-18

Vipul Pravinbhai Lagadhir C/o. Sarda & Sarda (CA), Sakar 1 st Floor, Dr. Radha-Krishnan Road, Opp. Rajkumar College, Rajkot, Gujarat - 360001	बनाम/ Vs	Income Tax Officer Ward – 1(2)(1), Rajkot
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AJMPL7494C		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारितीकीओरसे / Assessee by : Shri Vimal Desai, Ld. AR
राजस्वकीओरसे/Revenue by : Shri Dheeraj Kumar Gupta, Ld.Sr. DR

सुनवाईकीतारीख/**Date of Hearing** : **11/09/2025**
घोषणाकीतारीख/**Date of Pronouncement** : **28/11/2025**

आदेश/ORDER

Per, Dr. Arjun Lal Saini, A.M:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2017-18, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 13.12.2024, which in turn arises out of a penalty order passed by Assessing Officer u/s.144 of the Act on 28.11.2019.



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

- “1. *The assessment order u/s. 144 of the Act is bad in law*
2. *The learned Assessing Officer has erred in law as well as on facts for making an addition of cash deposits in SBN of Rs. 8,62,000/- u/s. 69A of the Act. The Id. CIT(A) has erred in law as well as on facts in confirming Rs. 68,960/- by estimating business income at 8% of the same.*
3. *The learned Assessing Officer has erred in law as well as on facts in making addition by estimating business income of Rs. 15,28,114/-i.e. 8% of cash deposits of Rs. 1,91,01,420/-. The Id. CIT(A) has erred in law as well as on facts in confirming the same after reducing the amount by Rs. 3,48,915/- which was already offered by the assessee in his return.”*

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual. A perusal of the assessment order passed by the assessing officer would reveal that first issue under consideration in the assessee's case was cash deposited by him during demonetization period in his bank account maintained with the Co-operative Bank of Rajkot Ltd., Jetpur, bearing Account No. 0006110100003614. The said cash deposits were worked out by the assessing officer from the bank account statement of the assessee at Rs. 8,62,000 during the demonetization period. Since the assessee has not submitted any details during the assessment proceedings, even after giving sufficient time and opportunity to explain source of cash deposits in his bank account, therefore assessing officer made addition in the hands of the assessee, of Rs. 8,62,000/- u/s. 69A rws 115BBE of the Act.

4. The assessing officer also noticed that in other remaining period (excluding the demonetization period) the assessee under consideration, also deposited cash Rs. 1,91,01,420/- for the remaining period. At para 5.1 of Assessment Order, the assessing officer has concluded that the assessee was having business activities, throughout the year under consideration and therefore, in so far as cash deposits of



consideration. If this fact is admitted by the assessing officer then I find no reason why deposits during demonetization period by the assessee should be construed as unexplained cash credit in its bank accounts by the assessing officer. Demonetization period lasted for about 50 days and during the said period the cash deposited by the assessee in his bank account amounted to Rs. 8,62,000/-, The entire cash deposited by the assessee, as per the assessing officer's calculation, for the concerned F.Y. amounted to Rs. 1,99,63,420/- (Rs. 8,62,000/- + Rs.1,91,01,420/-). This would mean that the average daily cash deposit by the assessee in his bank account worked out to Rs. 54,694/- (Rs. 1,99,63,420/365). If this average daily cash deposit is multiplied by the period of demonetization i.e. 50 days, the resultant figure is Rs. 27,34,715/-. The actual cash deposited by the assessee during the said demonetization period was way lesser than this figure of Rs. 27,34,715/-. It is, therefore, perplexing as to how assessing officer adapted two different approaches for cash deposited duringdemonetization period and that during non-demonetization period without any rationale and logic. It is, therefore, held that the assessing officer ought to have adopted the same approach as he did for the cash deposited during non-demonetization period, i.e. working out the business income of the assessee @ 8% of total cash deposited of Rs. 8,62,000/- during demonetization period. In the result, the ground of appeal raised by the assessee is partly allowed.

5.7 Ground of appeal no. 4:The assessee contends that the assessing officer erred in estimating his business income at Rs. 15,28,114/- by applying profit @ 8% on total transaction value of Rs. 1,91,01,420/-, without even granting credit for business income of Rs. 3,48,915/- declared by the assessee in its original ITR filed for the concerned AY.

5.7.1 During the course of appellate proceedings the assessee has submitted that he is an individual engaged in the business of dealing in mobiles and mobile balance recharges for various telecom operators under his proprietorship concern M/s.Chamunda Sales and Mobile. For the AY under consideration, he filed his ITR declaring Total Income of Rs. 3,48,915/- under the presumptive scheme of section 44AD of the Act. However, it is the claim of the assessee that he has maintained complete books of account. He was working as a sub-dealer for mobile balance recharge. Besides this, the assessee was also purchasing and selling mobile phones on a small-scale basis. In the business of mobile balance recharge, the assessee used to get the balances from the distributors (i.e. Agency House, Reliance Retail Limited and Telenor India Communications Private Limited). The assessee used to sell mobile recharge balances to numerous small retailers and customers on a daily basis. These retailers and customers were almost always making the payments to the assessee in cash. The assessee used to deposit such cash in his bank accounts from which the amounts were remitted to distributors.

5.7.2 To substantiate his claim, the assessee has filed the following documents:

- i. Agreement with Reliance Retail Ltd.*
- ii. Copy of his ITR and Computation of Total Income for the concerned A.Y.*
- iii. Copy of his Balance Sheet and Profit and Loss Account for the concerned F.Y.*
- iv. Copy of his cash book for the concerned F.Y.*



- v. Copy of his bank statement.
- vi. Ledger account of distributors in his books of accounts.

5.7.3 Facts of the case and contentions of the assessee have been taken into account. It is seen that to demonstrate that he was into the business of working as sub-dealer for various telecom operators doing mobile balance recharge in lieu of commission, the assessee has filed Activation and Recharge Distribution Agreement dated 27.11.2015 entered into by him (Chamunda Sales and Mobile) with Reliance Retail Ltd. Although in his written submission, the assessee has mentioned that he was doing mobile balance recharges for various telecom operators, he has filed the agreement only with respect to Reliance Retail Ltd. Even the said agreement is not registered. Be that as it may, the issue as to whether or not the assessee was into regular business activity has not been doubted by the assessing officer and therefore this aspect seems to be covered.

5.7.4 From the computation of Total Income filed by the assessee, it is seen that he has disclosed total turnover of Rs. 23,89,191/- and declared profit @ 14.6039% on the sale as his business income u/s. 44AD of the Act at Rs. 3,48,915/-. Further, from the Profit and Loss Account for the year ended 31.03.2017, it is seen that the said turnover of Rs. 23,89,191/- is bifurcated into Sales of Rs. 14,17,167/- and Direct Incomes of Rs. 9,72,024/- being 'balance transfer commission income'. From para 6 of ground no. 4 in Annexure B of written submission filed by the assessee dated 25.10.2024, it is mentioned by the assessee that his total cash receipts amounted to Rs. 2,12,94,274/- as under:

Sr No.	Particulars	Amount
i)	Cash receipt pre-demonetization period	1,27,43,095/-
ii)	Cash receipt during the demonetization period	19,12,205/-
iii)	Cash receipt post-demonetization period	66,38,974/-

5.7.5 The assessee has not been able to explain as to how he has bifurcated his total cash deposits into his bank account during the entire financial year under consideration of Rs. 2,12,94,274/- into his turnover and his direct income. If the entire cash receipts of the assessee represent the recharge vouchers sold by him to his customers on account of mobile recharge done by them or sale of mobile phones, then the said cash receipts should have been accounted for by the assessee as his business turnover and accordingly, as the same was more than Rs. 2 crores, in view of provisions of section 44AB of the Act, he should have got his books of accounts audited by a statutory auditor, and therefore should not have offered his income for taxation under the presumptive scheme as per section 44AD of the Act. The assessee has not been able to demonstrate as to how his direct income in the form of commission of Rs. 9,72,024/- was worked out. In view of these factual matrices, it is felt that assessing officer was judicious and fair enough to hold that the assessee was involved in continuous business activities, and accordingly making addition to the Total income of the assessee only to the extent of Rs. 15,28,114/-, being 8% of cash deposits of Rs. 1,91,01,420/-. As such, it is felt that no interference is required in the said addition made by the assessing officer. It is, however, felt that the Total Income offered by the assessee in the original ITR filed by him of Rs.3,48,915/-, ought to have been reduced by the assessing officer from the assessed Total Income as including the same has led to double taxation in the hands of the assessee. The assessing



officer is directed accordingly. Therefore, the ground of appeal filed by the assessee is partly allowed.”

6. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal.

7. The Learned Counsel for the assessee, submitted that the Ld. CIT(A) had sustained the addition to the tune of (Rs.15,28,144 – Rs.3,48,915) Rs.11,79,199/- in respect of the cash deposited by the assessee on account of business activities. The Ld. Counsel for the assessee, therefore, stated that the estimated addition sustained by the Ld. CIT(A) is on very higher side, considering the facts that the assessee has submitted entire documents and evidences to prove the cash deposit.

8. On the other hand, Ld. DR for the Revenue submitted that the Ld. CIT(A) has given sufficient relief to the assessee, therefore, the assessee does not deserve further relief and hence, the addition sustained by the Ld. CIT(A) may be confirmed.

9. I have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Ld CIT(A) and other materials brought on record. I note that cash deposited during the demonetization period and non-demonetisation, period are from the business activities of the assessee. I find merit in the conclusion reached by the learned CIT(A) to the effect that assessee has not been able to explain as to how he has bifurcated his total cash deposits into his bank account during the entire financial year under consideration of Rs. 2,12,94,274/-, into his turnover and his direct income. If the entire cash receipts of the assessee represents the recharge vouchers



sold by him to his customers on account of mobile recharge done by them or sale of mobile phones, then the said cash receipts should have been accounted for by the assessee as his business turnover and accordingly, as the same was more than Rs. 2 crores, in view of provisions of section 44AB of the Act, he should have got his books of accounts audited by a statutory auditor, and therefore should not have offered his income for taxation under the presumptive scheme as per section 44AD of the Act.

10. I note that the recharge vouchers were sold by the assessee to his customers on account of mobile recharge done by him where the margin of profit is lower than 8%. However, on sale of mobile phones, margin (profit) may be more than 8%. The assessee under consideration does both the business activities together, therefore, I am of the view that this issue needs to be addressed by taking a holistic view. Therefore, I find some merit in the contention of the Id. Counsel for the assessee. Therefore, I find that while the case of the assessee merits some relief, at the same time entire relief cannot be permitted to the assessee. In my view the ends of justice would be met, if a net profit rate of 6% is adopted on the amount of cash deposited in the bank account, during demonetization period and non-demonetisation period, since the same would take care of the inconsistencies, in the various documents and evidences submitted before the lower authorities. Therefore, in order to plug the leakage of revenue, I direct the assessing officer to make addition at the rate of 6% (on Rs. 1,91,01,420/- and Rs. 8,62,000/-). Total income offered by the assessee in the original ITR filed by him of Rs.3,48,915/-, ought to have been reduced by the assessing officer from the assessed total income. The assessing officer is directed accordingly.



11. Before parting, I make it clear that the assessee has deposited amount in bank account out of his business activities, therefore, the assessing officer is directed to impose the tax by applying normal rate of income tax and not under section 115BBE of the Act.

12. In the result, appeal filed by the assessee is partly allowed in above terms.

Order pronounced in the open court on 28/11/2025.

Sd/-
(Dr. Arjun Lal Saini)
लेखा सदस्य/Accountant Member

//True Copy//

राजकोट /Rajkot

दिनांक/ Date: 28/11/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot