

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "सी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

श्री संजय गर्ग, न्यायिक सदस्य एवं
अन्नपूर्णा गुप्ता, लेखा सदस्य के समक्ष।

Before Shri Sanjay Garg, Judicial Member And
Annapurna Gupta, Accountant Member

1. आयकर अपील सं/ITA No.930/Ahd/2024
2. आयकर अपील सं/ITA No.924/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)

1. New Surroad Ginning and Pressing Factory At Post Surroad Tal: Idar Himatnagar - 383 430 Dist. Sabarkantha	<u>बनाम/</u> <u>v/s.</u>	1. The ITO Ward-2, Himatnagar 383 001
2. The ITO Ward-1, Himatnagar		2. New Surroad Ginning and Pressing Factory Himatnagar - 383 430
स्थायी लेखा सं./PAN: AAKFN 5184 C		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Tej Shah, AR	
Revenue by :	Shri Rignesh Das, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 17/12/2025
घोषणा की तारीख /Date of Pronouncement: 30/01/2026

आदेश/ORDER

Per Sanjay Garg, Judicial Member:

The captioned are cross-appeals; one by the assessee and the other by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)'] dated 06/03/2024 passed u/s.250 of the Income Tax

Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Year (AY) 2017-18.

ITA No.924/Ahd/2024 for AY 2017-18

2. The Revenue, in its appeal, has taken the following grounds of appeal:

"1. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in deleting the addition made of Rs. 1,34,20,228/-u/s. 68 of the Act on the account of cash deposit in the bank during the demonetization period without appreciating the facts of the case.

2. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in deleting the addition made of Rs. 4,16,98,589/-u/s. 68 of the Act on the account of unexplained capital accretion to capital account of firm's partner.

3. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.

4. It is, therefore, prayed that order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored."

ITA No.930/Ahd/2024 for AY 2017-18

2.1. The assessee, in its appeal, has taken the following grounds of appeal:

"1. The Learned Commissioner of Income tax (Appeals) has erred in facts and in law and confirmed the addition made by assessing officer Amt. of Rs. 1,04,02,985/- u/s. 68 of 1. T. act as a unexplained cash credit for cash deposited in a bank during the demonetization period for the A.Y.2017-18.

2. The Learned AO erroneously made addition and invoked section 115 BBE of I. T. Act.

3. Direction to charge interest u/s. 234 B & C without application of mind is unjustified. It be so held now.

4. That the appellant craves leave to add, to alter, to amend, to modify, to Substitute, delete and/or rescind all or any of the GROUNDS OF APPEALS on or before the final hearing, if necessary so arises."

3. The brief facts of the case are that the assessee is a partnership-firm engaged in the business of purchase of raw-cotton from local market/farmers and then processing the same to separate cotton seeds from raw-cotton and, thereafter, processed cotton is sold in Bales to different parties and cotton-seeds are further processed to extract cotton oil and cotton cake which is further sold to the farmers. The Assessing Officer (AO) noticed that the assessee-firm had made cash deposits amounting to Rs.1,34,20,228/- during demonetization period in its bank account, regarding the source of which, the assessee could not furnish any satisfactory explanation. He, therefore, made an addition of Rs.1,34,20,228/- as income of the assessee from unexplained sources.

4. Before the Ld. CIT(A), the assessee explained that the assessee used to sell its by-products, such as, cotton oil and cotton cake to farmers on cash sale basis. That the total turnover of the assessee-firm was of Rs.4,45,79,409/- and the cash deposited amounted to Rs.1,30,03,728/- only. The assessee submitted that the aforesaid cash deposit was out of the cashsales made by the assessee. The Ld. CIT(A), however, observed that the AO has noted that if the cash sales were normal in the course of business of the assessee, then why there were no such cash deposits during the same period in the immediately preceding financial year.

4.1. The Ld. CIT(A), however, noted that by the doctrine of human probabilities, it cannot be assumed that at the time of introduction of demonetization, the assessee would not have any cash in hand given the nature and scale of its business. He, therefore, observed that the submissions of the assessee cannot be disregarded in entirety. He, therefore, held that it

would be fair and reasonable to hold that 20% of the cash deposits in the bank account of the assessee constituted its business receipts. He, however, confirmed the balance addition amounting to Rs.1,04,02,985/-.

5. Before us, the Ld. Counsel for the assessee has submitted that the cash sales were a normal incident of its business. He has explained that in the normal course of business, the assessee used the receipts on cash sales for purchase of raw-cotton from the market/framers by making purchases in cash. However, when the demonetization scheme was announced, the assessee was not left with any alternative except to deposit in bank the cash lying with it out of cash sales and, hence, he deposited the same in the bank account, and that is why, there was higher amount of cash deposit out of cash sales during the demonetization period as compared to earlier years. He has further submitted that the AO could not dispute the cash sales made by the assessee. He has further submitted that the assessee has duly offered to tax the profit earned on its sales.

6. The Ld.DR, on the other hand, has relied upon the findings of the lower authorities.

7. We have considered the rival submissions. We find force in the submissions made by the Ld. AR of the assessee. It has not been rebutted by the Revenue that the assessee used to make purchases of raw-cotton in cash and further used to make cash sales of cotton oil and cotton seed/cake. The Ld.AR has explained that the assessee remained used to make cash purchases of raw-cotton out of the amount received

on cash sales. However, due to announcement of demonetization scheme, the assessee deposited the cash, lying with it out of cash sales, in the bank account and, therefore, the cash deposits during the year out of cash sales were more as compared to earlier year. The Ld. CIT(A) has duly taken note of the turnover of the assessee at Rs.4,45,79,409/-. Hence, considering the aforesaid facts and circumstances of the case, the assessee has duly explained the source of the cash deposited in the bank account. Therefore, we do not find justification on the part of the lower authorities in making/confirming the impugned addition of Rs.1,34,20,0228/- and the same is, accordingly, ordered to be deleted.

8. The aforesaid issue raised in the appeal of the assessee vide Ground No.1 stands allowed, whereas, the ground No.1 of the Revenue's appeal stands dismissed.

9. The second issue involved in the Revenue's appeal is relating to the action of the Ld. CIT(A) in deleting the addition made by the AO of Rs.4,16,98,589/- on account of unexplained accretion to the capital account of the partners of the firm.

10. It is noted that the Ld. CIT(A) after referring to various case-laws has observed that the accretion to the capital account of the partners of the firm cannot be treated as income of the partnership-firm. That the addition, if any, in this respect, could have been made in the hands of

the partners and not in the hands of the assessee-firm. The relevant part of the order of the Ld. CIT(A), in this respect, is reproduced as under:

“5.4. I have gone through the facts of the case, submissions made by the appellant and also the findings of the AO. It emerges from the facts of the case that the AO have made the addition of addition of Rs. 4,16,98,589/- on account of accretion to capital account of the partners of appellant firm u/s 68 of the IT Act 1961. These additions have been made by the AO primarily due to the fact that during the course of assessment proceedings the appellant could not offer any cogent or concrete explanation pertaining to the cause and source of the same to the satisfaction of the AO. The AO was not justified on the facts and circumstances of the case to make the impugned addition on the ground that it is now well settled jurisprudentially that when any partner invests or contributes in capital to the partnership firm, it is the partner who has to explain the source of such contribution and addition, if any, can be made in the hands of the partner only u/s 68 or 69 of the Income Tax Act, 1961 (the Act) and no addition can be made in the hands of the firm. The reliance is placed on the following judgements which are squarely applicable to the facts and circumstances of the instant case:-

*(i) According to Section 68 of Income Tax Act 1961, where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source of the same or the explanation offered by him is not satisfactory in the opinion of A.O., the sum so credited may be charged to income tax as the income of the assessee of that previous year. In **Smt Shanta Devi v. CIT [1998] 171 ITR 532 (P&H)**, it was held that a perusal of section 68 would shows that the expression books has been used with reference to the word assessee. In other words, such books of account have to be books of the assessee himself and not of any other assessee. Thus books of account of a partnership firm cannot be considered to be the books of account of the partner.*

(ii) Once it is established that the amount has been invested, by a particular person, be he a partner or an individual then the responsibility of the appellant firm is over. The appellant firm cannot ask the person who makes investment, whether the money invested is properly taxed or not. If that person owns the entry then the burden of the appellant firm is discharged. It is open to the A.O to undertake further investigation with regard to that individual who has deposited the amount. In the instant case when it was clear to the AO that the capital has increased in partner's capital account, it was incumbent upon the AO conduct further investigation if the concerned

partners were assessed with him or should have passed the information to the concerned AO to take remedial action as per law. In *Khandelwal Constructions v. CIT* 227 ITR 900, it has been held that section 68 of Income Tax Act, 1961, empowers the Assessing officer to make enquiry regarding cash credit. If he is satisfied that these entries are not genuine he has every right to add these as income from other sources. But before rejecting the appellant's explanation A.O. must make proper enquiries and in the absence of proper enquiries, addition cannot be sustained. In the instant case, prima-facie no enquiry had been conducted by the AO.

(iii) In *ITO Vs Nithyasudha Combines (ITAT Chennai)*, it was held that whether the partners' capital is assessable in the hands of the assessee firm has been adjudicated by various Benches of the Tribunal as well as various courts and held that there cannot be any addition in the hands of the assessee firm on account of capital contribution by its partners. The tribunal further held that:-

"Similarly, by following the decision in the case of *CIT v. M. Venkateswara Rao and others* [2015] 370 ITR 212 (T&AP), In the case of *ITO v. Gowthami Builders* in ITA Nos. 314/Viz/2016 & 392/Viz/2017 & ors dated 14.03.2018, the Visakhapatnam Bench of ITAT has decided the issue against the Revenue. The relevant portion of the order of the Hon'ble Telangana & Andhra Pradesh High Court is reproduced as under:-

"Held, dismissing the appeal, (i) that the amount that was sought to be treated as income of the firm was the contribution made by the partners to the capital. In a way, the amount so contributed constitutes the very substratum for the business of the firm. The pooling of such capital as credit. It was only when the entries were made during the course of business that they could be subjected to scrutiny under section 68 of the Income-tax Act, 1961. Even otherwise, it was evident that the assessee explained the amount of Rs. 76,57,263 as the contribution from its partners. In such a situation, section 68 could no longer be pressed into service. Inquiry into the source for the respective partners to make that contribution could, at the most, be conducted against the individual partners. If the partner was an assessee, the concerned Assessing Officer can require him to explain the source of the money contributed by him to the firm. If, on the other hand, the partner was not an assessee, he can be required to file a return and explain the source. Undertaking such an exercise, vis-a-vis the firm itself, was impermissible in law. Therefore, the view taken by the Assessing Officer that the firm must explain the source of income for the partners regarding the amount contributed by them towards capital of the firm could not be sustained in law."

*In view of the above, the additions made by the AO on account of unexplained accretion to the partners' capital account amounting to Rs. 4,16,98,589/- u/s 68 of the IT Act 1961 was not justified to be assessed in firm's hand. It should be assessed in partners hand as observed above. The AO is at liberty to initiate action against the partners if they are assessed with him or in the alternative, he should pass on information to the concerned AO to take appropriate action in accordance with the law. In view of the above, this ground of appeal taken by the appellant is **allowed**."*

11. The Ld. DR could not bring to our notice any distinguishing facts or case-law, justifying our interference in the aforesaid reasoning given by the Ld. CIT(A). Therefore, the order of the Ld.CIT(A) on this issue is affirmed. Ground No.2 of Revenue's appeal is, therefore, dismissed.

12. The other grounds taken by the parties are general in nature and do not require any independent adjudication.

13. In the result, the appeal of the assessee stands allowed, whereas, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 30 /01/2026.

**Sd/-
(Annapurna Gupta)
Accountant Member**

**Sd/-
(Sanjay Garg)
Judicial Member**

अहमदाबाद / Ahmedabad, दिनांक / Dated 30/01/2026

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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)- (NFAC), Delhi.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , अहमदाबाद/DR, ITAT, Ahmedabad.
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad