

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.156/SRT/2024

Assessment Year: (2017-18)

(Physical Hearing)

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| Nilaben Aravindbhai Lad, Velachha, Tal – Mangrol, Dist – Surat – 395003, Gujarat | Vs. | The ITO, Ward – 2, Bardoli |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ALQPL4379N | | |
| (Appellant) | | (Respondent) |

| | |
|------------------------------|------------------------------|
| Appellant by | Shri Mayur Thakkar, CA |
| Respondent by | Shri J. K. Chandnani, Sr. DR |
| Date of Hearing | 15/05/2024 |
| Date of Pronouncement | 25/06/2024 |

आदेश / ORDER

PER BIJAYANANDA PRUETH, AM:

This appeal by the appellant emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, ‘the Act’) dated 29.12.2023 by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, ‘Ld. CIT(A)’] for the assessment year (AY) 2017-18.

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

“1. The Assessing Officer and Commissioner (Appeals) have erred in law and in facts, in considering the cash deposit as un-explained cash deposits.

2. The Ld. AO has erred in law and on facts in applying provision of Section 115BBE.

3. I pray to your to allow to add, edit or delete any of the ground of appeal during hearing.”

3. The facts of the case in brief are that the assessee is a farmer and is having joint bank accounts with her husband, Shri Arvind Lad. All family members of the assessee are farmers. The primary source of income of the family is agriculture apart from some petty bank interest income. The assessee filed return of income for AY.2017-18 declaring total income of Rs.22,585/- and agriculture income of Rs.3,01,866/-. The case was selected for limited scrutiny for cash deposited during demonetization period. The assessee has deposited total cash of Rs.21,00,000/- in her individual bank account and joint bank accounts during demonetization period. There was a cash withdrawal of Rs.13.10 lakhs since January, 2016 till demonetization as well as cash withdrawal and cash agriculture income of Rs.39.18 lakhs during October, 2013 till December, 2015. For the last three years, there was a total cash withdrawal of Rs.52.28 lakhs. Out of the same, balance cash on hand was deposited in the bank during demonetization. The assessee stated that there was no bank in the village of Velachha. The nearest bank is approximately 10 kilometres away in nearby town Kosamba. The cash withdrawal in the bank as stated above, mainly out of agriculture income, was deposited in the bank account.

4. After examining the details of cash book furnished by the assessee, the Assessing Officer noticed that the opening cash balance as on 01.01.2016 was Rs.12,80,023/-. The Assessing Officer further observed that assessee had frequently withdrawn cash from the bank account in petty amounts. Therefore, in the show-cause notice issued on 15.12.2019, the assessee was

required to explain as to why cash deposit of Rs.21,00,000/- be not added to the total income. After considering the reply, the Assessing Officer observed that assessee failed to give satisfactory explanation as to why cash was withdrawn from the bank in petty amounts from 01.01.2016 till the period of demonetization despite having substantial amount cash in hand. Frequent withdrawal by the assessee clearly shows that cash was not actually available with the assessee. Further, no household withdrawals were shown by the assessee. The assessee has also not shown any expenditure in respect of the agricultural income shown by her. Since, the explanation of the assessee was not satisfactory, Assessing Officer added Rs.21,00,000/- to the total income and taxed the income u/s 115BBE of the Act @ 60%. The Assessing Officer also initiated penalty proceedings u/s 271AAC of the Act.

5. Aggrieved, the assessee has filed appeal before the Ld. CIT(A). In his order, the Ld. CIT(A) has considered the written submissions of the assessee. He also allowed virtual hearing and considered the submission made thereafter. The Ld. CIT(A) also made analysis of the bank accounts and stated that Assessing Officer made addition of Rs.21,00,000/-, being the cash deposits in the bank account of the assessee and joint accounts of the assessee with her husband. The Ld. CIT(A) found that in the joint account with her husband, where she is the first account holder, with Surat District Co-operative Bank Ltd., there was cash deposits of Rs.16,00,000/-. In her individual account in State Bank of India (SBI), she deposited of Rs.3,00,000/-. The third account with Bank of Baroda (BoB) where deposit of Rs.2,00,000/- was made, is in the

name of her husband and the assessee is the second account holder of the account. The Ld. CIT(A) has not considered the cash deposit of Rs.2,00,000/- in the third account while deciding the issue. Therefore, total cash deposits of Rs.19,00,000/- and not Rs.21,00,000/- was considered by him. The Ld. CIT(A) has allowed Rs.8.5 lakhs being the cash withdrawn of Rs.3,50,000/- in January, 2016; Rs.4,00,000/- in September, 2016 and Rs.1,00,000/- in October, 2016. The Ld. CIT(A) has accordingly allowed relief of Rs.8,50,000/- out of the deposit of Rs.19,00,000/- in the bank accounts hold by her in individual capacity and in joint name with the appellant being the first account holder. Addition of the balance amount of cash deposits of Rs.10,50,000/- was upheld.

6. Aggrieved by this order, the assessee filed the present appeal before the Tribunal.

7. The Learned Authorized Representative (Ld. AR) stated that the assessee and her husband are farmers and they had only agricultural income during the year under consideration. The copy of agricultural income is given at page nos. 30 to 40 of the paper book. The detail of land held is given page nos.42 to 46 of paper book. It is further stated that the assessee and her husband deposited Rs.21,00,000/- during demonetization in assessee's individual account and in their joint accounts. The copies of the bank statements have been given at page nos.47 to 69 of the paper book.

8. We find that the Ld. CIT(A) has already allowed relief of Rs.2,00,000/- being the cash deposit in which husband of the assessee was the first account holder. Out of the balance amount of Rs.19,00,000/-, he has allowed

Rs.8,50,000/-, being the cash withdrawn on various dates starting from January, 2016 to October, 2016. Accordingly, the balance amount of Rs.10,50,000/- was confirmed by the Ld. CIT(A). In this regard, the Ld. AR stated that the opening cash balance was Rs.12,80,000/- which was not considered and allowed by the Ld. CIT(A) without giving any reasons in his order. The availability of cash of Rs.12,80,000/- has been explained by the Ld. AR in the following tabular form:

| Sr. No. | Particulars | Amount (Rs.) |
|----------------|--|---------------------|
| a. | Total Cash Receipts during Oct-2013 to Dec-2015 (Working attached in Annexure 1 Page no.29 of paper book) | 38,18,461 |
| b. | Cash Deposits during Oct-2013 to Dec-2015 | 450,000 |
| c. | Agricultural Exp during Oct-2013 to Dec-2015 (Approx. 40%) | 14,12,400 |
| d. | Living Expenses (Rs.25000 x 27 Months) | 6,75,000 |
| e. | Approximate balance as on 1st Jan 2016 (a-b-c-d) | 12,81,061 |

9. In support, The Ld. AR has given the cash withdrawn statement (page no.29 of paper book); agricultural income statement (page no.32 to 40 of the paper book); and bank statements (page no.47 to 69 of the paper book). The Ld. AR further stated that neither the assessee nor her husband have purchased any single asset from October, 2013 to November, 2016. It is further stated that there was not a single bank in the village till 16.03.2019. Therefore, during the period under consideration accounts were maintained at bank branches which were 10 kilometres away from the village. Since, no bank account was in the village, the small amounts were withdrawn while travelling out of the home village. This is clear from the fact that cash withdrawals have

been made while travelling to Surat which is nearly 45 kilometres away from the village. It is further argued that provisions of section 115BBE of the Act was enacted on 15.12.2016 and therefore tax rate applied by the Assessing Officer on the cash deposit is not as per law.

10. We have considered rival submissions and perused the material on record. We have also deliberated on the case laws relied upon by the parties. We find that the Ld. CIT(A) has not considered the opening cash balance of Rs.12,81,061/- as on 01.01.2016. In this regard, the Ld. AR has stated that the cash receipt from October, 2013 to December, 2015 was of Rs.38,18,461/-. From the above, the assessee has reduced the cash deposits of Rs.4,50,000/-; agricultural expenditure, being 40% of the agricultural income, for the period October, 2013 to December, 2015; and household expenses of Rs.6,75,000/- @ Rs.25,000/- per month for 27 months. The assessee has given details of the total cash withdrawal and cash agricultural income at page no.29 of the paper book. We find that apart from living expense of Rs.25,000/- per month, the assessee has not shown any expense such as medical expenses, expenses for various social and family functions, educational expenses, travelling expenses and other miscellaneous expenses. Therefore, the expenses shown by the assessee at Rs.25,000/- per month is on the lower side and in our view Rs.50,000/- would be the reasonable monthly expense. Therefore, the personal expenses for the 27 months would be Rs.13,50,000/- instead of Rs.6,75,000/- claimed by the assessee. If such expenses are considered, the cash available as on 01.01.2016 would be Rs.6,06,061/-. Therefore, the

assessee has been able to explain only Rs.6,06,061/- as against the claim of opening balance of Rs.12,80,000/-. Therefore, addition to the extent of Rs.6,73,939/- is sustained and balance is deleted. Hence, ground no.1 is raised by the assessee is partly allowed.

11. Ground no.2 pertains to application of provisions of section 115BBE of the Act on the impugned addition.

12. The Ld. AR has submitted that provisions of section 115BBE of the Act was enacted on 15.12.2016 and hence cannot be applied for the year under consideration. The Ld. AR has relied on various decisions which are at page nos. 78 to 101 of the paper book, viz: (i) Om Prakash Nahar vs. ITO, ITA No. 960/Del/2021 (Del – Trib.), (ii) Samir Shantilal Mehta vs. ACIT, ITA No. 42/SRT/2022 (Surat – Trib.), (iii) ITAT, Indore in ITA No.677/Ind/2019 and (iv) Sandesh Kumar Jain, in ITA No.41/Jab/2020.

13. The Co-ordinate Bench of ITAT, Surat in the case of **Samir Shantilal Mehta vs. ACIT (supra)** has elaborately discussed the issue at para 6 and 7 at pages 3 to 8 of the order. After reproducing provisions of section 115BBE of the Act and decisions of Hon'ble Courts and ITAT on the subject issue, it has held as under:

"8. We note that case of the assessee, under consideration is that the amendment in section 115BBE came into force only on 15.12.2016 whereas the search was conducted on 16.08.2016 and the assessee has paid tax @ 30%. Since the search in the case of the assessee was carried out before the amendment the addition ought to have been made in terms of the prevailing provision and therefore, the addition made by the assessing officer invoking section 115BBE, provision of which came into force only on 01.04.2017, is not sustainable. Therefore, we note that assessee's issue is squarely covered by the aforesaid precedents, hence we allow the appeal of the assessee."

14. The facts of the present case are similar to the facts of the case discussed above. There is no reason as to why the ratio will not be applicable to the present case. Therefore, following the reasons given in the above order, we hold that provisions of section 115BBE are not applicable to the present case. Hence, we allow the ground no.2 of the assessee.

15. In the combined result, the appeal of the assessee is partly allowed.

Order is pronounced on 25/06/2024 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 25/06/2024

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

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat