

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT "SMC" BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
आ.अ.सं./ITA No.657/SRT/2024 (AY 2017-18)
(Physical court hearing)

Sureshbhai Bhiukhabhai Patel B-5, KwikNagar, Kim-Mandvi Road, Karang GIDC, Surat-394 110 [PAN No: AMJPP 3016 E]	Vs	Income Tax Officer, Ward-1, Bardoli, Income tax Office, 2 nd Floor, BSNL Building, Opp. Jalaram Temple, Station Road, Bardoli-394 601
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R Sheth, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain, Sr-DR
अपील पंजीकरण/Appeal instituted on	06.06.2024
सुनवाई की तारीख/Date of hearing	25.10.2024
उद्घोषणा की तारीख/Date of pronouncement	14.11.2024

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as "NFAC/Ld. CIT(A)"] dated 24.01.2024 for assessment year 2017-18, which in turn arises out of assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 04.12.2019. The assessee has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing Office by sustaining addition to the extent of Rs.27,14,000/- as unexplained cash credits u/s 68 of the I.T. Act, 1961.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A), NFAC has erred in confirming the action of

Assessing Officer in invoking provisions of Section 115BBE of the Act and in thereby taxing entire unexplained cash credits at 60 percentages and levying surcharge at 25 percentages which is not applicable on above amount.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."

2. Brief facts of the case are that assessee is an individual, filed his return of income for assessment year 2017-18 declaring income of Rs.1,55,290/-. The case was selected for scrutiny on the issue of cash deposit during demonetization period. During assessment, the Assessing Officer noted that there were huge cash deposits by assessee during demonetization period. The Assessing Officer issued show cause notice, the assessee in e-proceedings to substantiate the source of such cash deposits. The assessee filed reply on 16.11.2019 and stated that cash was available of Rs.27,17,000/- out of agricultural income and Rs.14,43,000/- on account of cash-in-hand. The Assessing Officer further noted that no supporting evidence was furnished in support of agricultural income and cash-in-hand. The Assessing Officer, thus issued a detailed show cause notice dated 15.11.2019. The contents of show cause notice are recorded in para-4 of the assessment order. The Assessing Officer noted that assessee along with his reply dated 16.11.2019 submitted cash book for the period of 01.04.2016 to 31.03.2017 showing opening cash balance of Rs.20,32,763/- but no supporting evidence was furnished. The Assessing Officer again issued show cause notice pointing out certain discrepancies in the cash book and source of total cash deposit of Rs.27,17,000/- deposited during demonetization period. The Assessing Officer

recorded that no further reply was received from assessee and that assessee always furnished part compliance. The assessee made cash deposit in seven bank accounts, out of three bank accounts with Bank of Baroda, one with Corporation Bank and three with Dena Bank aggregating of Rs.27,14,000/-. The assessee was asked to furnish source of opening cash balance, which assessee failed to furnish. The Assessing Officer after recording his finding in para-6.4 in assessment order held that assessee claimed cash-in-hand of Rs.25,31,314/- as on 31.10.2016. The demonetization period started from 08.11.2016. On 11.11.2016, the assessee deposited only Rs. 25,000/- in Corporation Bank, Rs. 3,000/- on 12.11.2016 and Rs. 99,000/- on 15.11.2016. The pattern of cash deposits continued in similar way and assessee deposited cash in different bank accounts. In absence of satisfactory source of such cash deposit, Assessing Officer made addition under section 68 of the Act of Rs.27,17,000/- and taxed the same under section 115BBE of the Act, in assessment order passed on 04.12.2019.

3. Aggrieved by the additions made in the assessment order and taxing such additions at the enhanced rate under section 115BBE, the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A), assessee filed written submission and submission of assessee is recorded in para-3 of the order of Ld. CIT(A). The assessee in his submission, submitted that after claiming deduction under 80C amounting to Rs.1,50,000/- and 80TTA amounting to Rs. 6,779/-, the assessee has offered taxable income of Rs.1,55,290/-. During impugned assessment year, assessee earned income from partnership firm amounting to Rs.3,04,822/-. The assessee also earned agricultural income of

Rs.16,64,234/- and from other source of Rs. 7,243/-. During the year under consideration, assessee deposited total cash in his bank accounts of Rs.46,32,500/- out of which cash of Rs.27,14,000/- was deposited during demonetization period from 08.11.2016 to 30.12.2016. The figure of cash deposited during demonetization period is wrongly mentioned as Rs.27,17,000/-, rather it is Rs.27,14,000/-. The assessee reported the transaction of cash deposits in column No.14 of Part-B of ITR for assessment year 2017-18. The assessee also furnished bank-wise bifurcation cash deposits. The assessee further explained that during assessment, assessee explained the source of cash deposits and submitted that cash of Rs.12,71,000/- was on account of agricultural income and Rs.14,43,000/- was from cash-in-hand as on 08.11.2016. The Assessing Officer not accepted the submission of assessee by holding that assessee failed to produce supporting evidence. The Assessing Officer thereafter issued show cause notice as to why amount Rs.27,17,000/- should not be treated as unexplained cash credit under section 68 of the Act. The Assessing Officer also held that assessee failed to comply said notices. The assessee reiterated that Assessing Officer is not justifying to make such huge addition. The assessee has already explained source of cash deposits while filing his replies/ letters dated 07.11.2019, 12.11.2019 and 16.11.2019, such replies of assessee was not taken into consideration. The assessee furnished date-wise details of cash deposits in his reply dated 16.11.2019. The assessee has already filed supporting evidence to justify the agricultural income in the form of agricultural expenses bills. Out of cash deposits of Rs.46,32,500/-, the

Assessing Officer accepted Rs.19,28,500/- and doubted the deposit of Rs.27,14,000/- which was deposited during demonetization period. The action of Assessing Officer is not justified as per Assessing Officer, the assessee has "0" cash balance on the date of demonetization period, which is highly illogical for the reasons that the assessee has substantial agriculture income as has been disclosed in the return of income. The assessee received his agricultural income of Rs.27,73,724/- and after excluding agricultural expenses of Rs.11,09,490/-, the net agricultural income comes to Rs.16,64,234/-, the assessee furnished extract of Form-7/12 and Form-8A and agriculture bills to substantiate his agricultural income. In addition to, the assessee also availed agricultural loan from Bank of Baroda and Dena Bank. The assessee also stated that in assessment years 2015-16, he has disclosed agricultural income of Rs.6,57,409/- and in assessment year 2016-17 of Rs.2,87,660/-. So far as cash balance available in hand, the assessee stated that in ITR Form-4 for assessment years 2013-14 and 2012-13, assessee has shown cash-in-hand Rs.8,25,082/- and Rs.9,66,166/- respectively. Thus, cash deposit during demonetization period was fully justified. On taxing the addition under section 115BBE @ 60%, assessee stated that such provisions are applicable only prospectively and not for AY 2017-18.

4. The Ld. CIT(A) after considering the submission of assessee noted that assessee filed return of income for assessment year 2017-18 on 15.03.2018 declaring income of Rs.1,55,290/-. During demonetization, the assessee deposited Rs.27,17,000/- out of which Rs.12,72,000/- was claimed from agricultural income and Rs.14,43,000/- as cash-in-hand. The assessee filed

cash book from 01.04.2016 to 31.03.2017 showing opening cash balance of Rs.20,32,763/-. The Assessing Officer asked the assessee to prove of opening cash balance but assessee could not prove such cash in hand with evidence. The Assessing Officer rejected the contention of assessee on the ground that assessee has not shown cash-in-hand in three preceding assessment years. Thus, opening cash balance is not justified. Thus, assessee failed to prove with documentary evidence to source of such cash deposits. On the aforesaid observation, Ld. CIT(A) upheld the addition and directed to rectify the figure of Rs.27,17,000/- to Rs.27,14,000/- after verifying. No specific finding was given on taxability of addition at enhanced tax rate under section 115BBE. Further aggrieved, assessee has filed present appeal before the Tribunal.

5. I have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue. At the outset of hearing, Ld. AR for the assessee submits that there is delay of 74 days in filing appeal before Tribunal. The impugned order passed by Ld. CIT(A) on 24.01.2024, physical copy of impugned order was not received through post and no e-mail was received regarding passing the impugned order. The assessee was not checked ITBA portal on regular basis. Thus, assessee was unaware about passing the impugned order by Ld. CIT(A). The assessee came to know about the order passed by Ld. CIT(A) when assessee's consultant checked the ITBA portal and found the status of assessee's appeal. His counsel immediately downloaded the order and advised assessee to file appeal before Tribunal with the application for condoning delay in filing appeal. The Ld. AR for the assessee submits that assessee has

filed affidavit and explaining the cause of delay and delay in filing appeal is neither intentional nor deliberate. Similar difficulties are facing by income tax officer in not knowing the orders passed in faceless manner. The Hon'ble Finance Minister while presenting Finance Bill, 2024 has also took note of such difficulties that is why time limit for filing of appeals by Revenue Authority has been made from the end of the month, in which order is passed. The Ld. AR of assessee submits that delay is not deliberate and is not a long delay and in interest of justice, the delay may be condoned.

On merit, Ld. AR for the assessee submits that assessee is an individual and engaged agriculture activities and is also partner in a partnership firm. The assessee is having huge agricultural land about 50 hectares. The assessee has received share from partnership firm of Rs.3,04,842 and net agricultural income of Rs.16,64,274/-. In the return of income for assessment years 2012-13 and 2013-14, assessee has shown substantial cash-in-hand. Such cash-in-hand was not shown in ITR for assessment years 2014-15 to 2016-17 as ITR was filed in Form-3, which does not require reporting of cash-in-hand. Merely not reported such cash-in-hand, does not mean that the assessee was not having cash-in-hand. The assessee furnished complete details of exempt income earned from agricultural income to Assessing Officer vide his reply dated 16.11.2019. The Assessing Office has not rejected such details and simply held that assessee has not furnished required details. The assessee while filed his submission dated 07.11.2019 also explained the fact that assessee is a partner in Khodiyar Textiles and also furnished detailed of various bank accounts. The Assessing Officer on furnishing reply of assessee

every-time held that assessee has not furnished required details though complete details were furnished. The assessee deposited more than Rs.46,00,000/- in assessment year 2017-18 out of which cash received Rs.27,14,000/- in the form of Specified Bank Note (in short, "SBN") were deposited. The earlier cash deposited was not doubted by Assessing Officer. The Assessing Office doubted the cash deposited only during demonetization period when the agriculture holding and income from partnership firm, which is substantial, is not rejected by Assessing Officer, the Assessing Officer was not justified in disregarding the submission made by assessee. The Assessing Officer has not made any independent investigation of fact. The cash-in-hand reported in ITR for assessment years 2012-13 and 2013-14 was not doubted. Merely the taxable income is only of Rs.1,55,000/-, therefore the component of tax-free income and availability of cash-in-hand cannot be doubted without bringing any adverse material on record. The assessee has furnished complete details of agricultural bills, and expenses which were not doubted or rejected by lower authorities. Therefore, making addition @ 100% cash deposit during demonetization, when assessee has no option but to expect deposit such SBN, the action of Revenue Authority is not justified. In alternative submission, Ld. AR of the assessee submits that in order to avoid long drawn process of litigation, a token amount may be disallowed.

On the faxing of addition under section 115BBE, the Ld. AR for the assessee submits that assessee deposited entire cash prior to 15.12.2016. The tax rate at enhanced rate under section 115BBE was introduced in the month of December, 2016. Thus, such enhance tax rate is not applicable on the

transaction made prior to such amendment. Even otherwise, this Bench in a series of decisions has taken a consistent view that such tax rate is not applicable for assessment year 2017-18. Moreover, the cash-in-hand deposited by assessee was out of agricultural income or from saving from taxable income. So, there is no question of taxing such addition at enhance rate.

6. On the other hand, Ld. Senior Departmental-Representative (Sr DR) for the Revenue on the plea of condonation of delay submits that the bench may take a view in accordance with law. On merit, the Id Sr DR for the revenue supported the order of lower authorities. The assessee failed to bring any third-party evidence to substantiate cash available in hand at the time of closing of last financial year or at the time of cash deposit during demonetisation. The cash book furnished by assessee is nothing but a self-serving document. The Assessing Office as well as Ld. CIT(A) in their respective finding has categorically discarded the entries made therein.
7. I have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. Firstly, I will consider the plea of condonation of delay in filing appeal. The Id AR of the assessee argued before me that physical copy of impugned order was not received through post and no e-mail was received regarding passing the impugned order. The assessee has not checked ITBA portal on regular basis. Thus, assessee was unaware about passing the impugned order by Ld. CIT(A). The assessee came to know about the order passed by Ld. CIT(A) when assessee's consultant checked the ITBA portal and found the status of assessee's appeal. The assessee on

coming to know about dismissal of appeal immediately downloaded the order and file appeal before Tribunal. Considering overall facts and circumstances of the case, I find that delay in filing of appeal is neither intentional nor deliberate, moreover delay is not unreasonable. Hence, the delay in filing appeal is condoned. Now adverting to the merits of the case.

8. I find that during the year under consideration, assessee has made total cash deposit of Rs.46,32,500/- out of which Rs.27,14,000/- was deposited in the form SBN which was doubted by Assessing Office. The Assessing Officer as well as Ld. CIT(A) doubted the source of cash deposits by taking view that assessee has not shown cash-in-hand in the ITR for assessment years 2015-16 and 2016-17. Before me Ld. AR for the assessee vehemently argued that assessee is an agriculturist and having substantial agricultural income in every year and having substantial cash available. The assessee also filed ITR Form-4 showing cash-in-hand of Rs.9,67,166 in assessment year 2012-13 and Rs.8,25,082/- in assessment year 2013-14. The Ld. AR of the assessee by referring the aforesaid fact has submitted that Assessing Officer was not justify in rejecting the cash book, when in earlier two assessment years as the assessee has disclosed net agricultural income of Rs.2,87,660/- and Rs.6,57,42/- in assessment years 2016-17 and 2015-16 respectively. And that the Assessing Officer has not doubted cash deposit of Rs.19,15,500/- out of total cash deposits.
9. Considering the overall facts and circumstances of the case, and the facts that no independent investigation of fact was carried out about agricultural holding nor discarded / rejected the receipt of agricultural produce. Thus, in my view,

in order to avoid the possibility of revenue leakage at reasonable disallowance would be sufficient to avoid the possibility of revenue leakage. Thus, considering the various heads of income of assessee, I find that *ad hoc* disallowance @ 10% of addition of Rs.27,14,000/- would be sufficient to avoid the possibility of revenue leakage. In the result, ground No.1 of appeal is partly allowed.

10. So far as taxing the addition under section 115BBE is concerned, I find that Divisions Bench as well as SMC Bench of this Tribunal in a series of case has held that enhance rate prescribed under section 115BBE is not applicable for AY 2017-18, reference is made in case of Samir Shantilal Mehta Vs ACIT ITA No. 42/Srt/2022 (Surat Trib), Arjunsinh Harisinh Thakor Vs ITO in ITA No. 245/Srt/2021 and in Jitendra Nemichand Gupta Vs ITO ITA No. 211/Srt/2021 and Indore Bench in DCIT Vs Punjab Retail Pvt. Ltd 677/Ind/2019 (Indore Trib) and Jabalpur Bench in ACIT Vs Sandesh Kumar Jain in ITA No. 41/Jab/2020. In the result, ground of the appeal is partly allowed.

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

Order pronounced in open court on 14 November, 2024.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूत /Surat, Dated: 14/11/2024
Dkp Outsourcing Sr.P.S*

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत