

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.631/SRT/2024 (AY 2017-18)
(Hearing in Physical Court)

Yogesh Kumar Chandrakant Jariwala, 48, Hariom Industrial Society, Udhna Magdalla Road, Surat-395007 [PAN No: ABIPJ 5403 F]	बनाम Vs	Income Tax Officer, Ward-1(2)(5), Surat
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Ms. Chaitali Shah, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain, Sr-DR
अपील पंजीकरण/Appeal instituted on	28.05.2024
सुनवाई की तारीख/Date of hearing	21.10.2024
उद्घोषणा की तारीख/Date of pronouncement	28.11.2024

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 30.03.2024 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 27.12.2019. 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) has erred in confirming the action of assessing officer in allowing the addition of Rs.26,09,000/- u/s 68 of the I.T. Act on account of alleged unexplained cash credits in bank account.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in allowing addition of Rs.9,60,845/- u/s 69C of the I.T. Act on account of alleged unexplained expenditure being outstanding creditors as on 31.03.2017.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in allowing the disallowance of R.2,09,147/- on account of being 10% of expenses of Rs.20,91,470/- claimed by the assessee.

4. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in allowing the taxation of the addition by taking the rate @ 77.25 percent by attracting S.115BBE instead of normal tax rate. The addition if any that may be confirmed should be taxed as business income.

5. Even otherwise, the learned CIT(A) has erred in confirming the action of assessing officer in allowing the taxation of the income u/s 115BBE @ 77.25 percent by applying the duly substituted S.115BBE inserted retrospectively instead of taxing it at 35.54 percent as per the old provision of S.115BBE.

6. 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 on 20.01.2018 declaring income of Rs.3,63,060/-. The case was selected for scrutiny. During assessment, Assessing Officer (AO) noted that assessee has made cash deposit of Rs.26,09,000 (26.00 lacs approx) in Prime Co-Op. Bank Ltd. during demonetization period. The assessee was asked to substantiate source of cash deposit. The AO further noted that assessee has shown various outstanding creditors and asked to furnish supporting evidence about the credit entries. The AO further noted that assessee has shown various expenses on account of different type of labour expenses, conveyance expenses against miscellaneous expenses of aggregating Rs.20,91,470/-. The AO issued show cause notice to substantiate source of cash deposits, details of outstanding creditors and to furnish complete details of such expenses with

documentary evidence. The AO noted that in response to show cause notice, assessee filed his reply. On cash deposit, assessee submitted that cash was deposited out of cash balance on 01.04.2016, cash receipt against sale, received from debtor and from withdrawal from bank. The reply of assessee was not accepted by Assessing Officer by taking view that assessee has shown opening balance of Rs.11,02,897/- as on 01.04.2016 but no supporting evidence was furnished by assessee. The Assessing Officer held that assessee has prepared cash book of exact cash deposit. The AO, treated the entire cash deposit of Rs.20,26,000/- as unexplained cash and taxed the same under section 115BBE of the Act.

3. So far as creditors are concerned, the AO in para-4.1 in his order recorded that assessee could not furnish sufficient supporting evidence with regard to following creditors:

Name of creditor	Amount Rs.000
Ajay Chorawala	1,30,449/-
Chaitali Traders	4,04,697/-
Navinchandra Sunderlal	1,75,820/-
Subhash Traders	2,49,879/-
Total	9,60,845/-

4. The assessee has not furnished any supporting evidence like copy of bill, ledger account to prove of payment to creditors in subsequent year. The AO treated such credit as unexplained expenditure and addition of Rs. 9,60,845/- made under section 69C of the Act. On the issue of various labour and other expenses, the AO took his view that assessee has not furnished sufficient details and evidence in respect of such various expenses. In absence of justifiable evidence, AO disallowed @ 10% of such expense in the assessment order passed on 27.12.2019.

5. Aggrieved by the additions made in the assessment order, assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A), assessee filed detailed statement of fact, as well as detailed submission in all three additions made by AO Office. The submissions of the assessee are recorded on page 2 to 11 of the impugned order. Against addition of Rs.26.00 lacs on account of cash deposit, assessee stated that he is engaged in manufacturing of textile and grey cloth in the name of Shree Harsiddhi Textiles. The assessee used to sales textile and grey s in cash as well as on credit. The assessee also earned grey checking income and rental income in cash. During demonetization period, he has deposited Rs.26.00 lacs approximately in Prime Co-Op Bank. Cash was deposited, out of cash received during the year, if deposit cash in bank. In response to query raised by Government, the assessee filed on-line response on 20.01.2018 and stated that cash was deposited from business receipt. No further enquiry was raised by Revenue, during assessment, assessee filed bank statement and cash book for assessment year 2016-17 and 2017-18 respectively. Income Tax Return for 2016-17 and 2017-18, with comparative details of cash deposit during current and preceding year along with comparative details of cash sales during current year and preceding year. The assessee furnished complete details, despite furnishing such details, AO made addition. On the addition of unexplained expenditure on account of creditors, the assessee stated that AO issued various notices requiring assessee to furnish details regarding credits as on 31.03.2017. In response to such notice, assessee furnished required details. There were total creditors outstanding of

Rs. 73,09,386/-. The AO required details of only four such creditor. The assessee submitted account confirmation and purchase bills of said parties, the AO was not satisfied and made addition on account of unexplained expenditure. On *ad hoc* addition by disallowing 10% expenses, it was submitted that before AO, the assessee furnished supporting bills, expenses and ledger account. In his submission, the assessee reiterated all submission. In addition to, assessee stated that assessee has offered his income under section 44AD. Once the turnover of assessee is accepted no further disallowance on account of any expenses or of creditors is warranted. On taxing the addition of cash deposit under section 115BBE, the assessee stated that higher rate of tax came into force from 15.12.2016, the assessee made deposit in bank prior to such date. Thus, such enhance rate of tax is not applicable. To support such contention, assessee relied on various case law.

6. The Id. CIT(A) after considering the submission of assessee upheld all additions in one sentence on each addition "on addition of cash deposit", the Ld. CIT(A) held that no evidence was furnished by assessee about opening cash balance. On addition of creditors, the Id. CIT(A) held that no evidence was filed in appellate proceedings. Similarly for *ad hoc* disallowance of expenses, the Ld. CIT(A) held that no bills and sufficient details were furnished. Further aggrieved, the assessee has filed present appeal before Tribunal.
7. I have heard the submissions of both the parties and have gone through the orders of lower authorities carefully. Ground No.1 of the appeal relates to the

unexplained cash credit in the bank account of the assessee. The Id AR of the assessee submits that during the relevant financial year, the assessee was engaged in the business of manufacturing of textile and grey. The assessee was running his business in the name of "Shree Maheshwari Textiles". The assessee used to sell textile goods in cash and on credit basis. The assessee also earned income from rent and income from grey checking. During demonetization period, the assessee made cash deposits of about Rs. 26.00 lacs in his bank account, which was out of cash received against sell during the year. During assessment, the assessee furnished cash book for A.Y. 2016-17 and A.Y. 2017-18. Comparative details of cash deposit during the current years and preceding year were also furnished. There was no abnormal cash deposit. The Assessing Officer has not rejected the cash book. The assessee has shown cash in hand in the return of income for A.Y. 2016-17 of Rs. 11,20,893/-. The cash book is matching with the cash balance shown in the cash book. The return of income for A.Y. 2016-17 was filed on 06/03/2017. The assessee also furnished comparative sales in F.Y. 2015-16 and F.Y. 2016-17. Due to demonetization of Rs. 1000/- and Rs. 500/- currency notes, the assessee has no option except to deposit entire currency notes which were banned by the Central Government. The cash deposit was out of cash available in cash book and from cash sales. The Id. AR of the assessee submits that the assessee has already included the cash realization as a profit in his income, making addition of same amount would be a double taxation. Merely during demonetization period, cash sales was little higher cannot be a

ground for treating the deposit as undisclosed. The cash deposit was out of business savings/cash generated in the business, the same cannot be taxed at higher rate prescribed under Section 115BBE of the Act. Otherwise, the enhanced rate of tax was brought into statute book in December, 2016, the assessee made cash deposit prior to said amendment. The Surat Bench in a series of decisions have held that enhanced rate of tax under Section 115BBE is not applicable for A.Y. 2017-18. To support his submission, the Id. AR of the assessee relied on the following case laws:

- R.B. Jessaram Fatehchand Vs CIT 75 ITR 33 (Bom)
 - R.S. Diamond Ltd. Vs ACIT 145 taxmann.com 545 (Mum)
 - CIT Vs Vishal Exports Overseas Ltd. Tax Appeal No. 2471 of 2009 (Guj)
 - ACIT Vs Ramlal Jewellers 154 taxmann.com 584 (Mum)
8. On the other hand, the Id Sr. DR for the revenue supported the orders of lower authorities. The Id. Sr. DR submits that on deposit of old currency notes, the assessee was required to explain the source of cash deposit, the assessee while explaining such cash deposit in relevant column of cash transaction has reported Rs. 26.09 lacs as received from an unidentified person. The cash book is nothing but self-serving evidence
9. In the rejoinder submission, the Id. AR of the assessee submits that the assessee furnished the details of cash deposit in the format prescribed by Income Tax Department, yet in the succeeding column of the said form, the assessee had mentioned nature of transaction as cash sales and gross receipt from business prior to 08/11/2016.

10. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. I have also deliberated on various case laws relied by the Id AR of the assessee. I find that the AO made addition of entire cash deposit, deposited in the form of old currency notes. One of the explanations of the assessee about the source of cash deposit was that the assessee was having cash balance of Rs. 11,20,893/- as on 01/04/2016 in his cash book. I find that return of income for A.Y. 2016-17 was filed on 06/03/2017 which is after declaration of demonetization of Specified Bank Notes (SBN). The assessee also took the plea that he has made withdrawal from his bank account. However, such bank withdrawals are not sufficient to substantiate the entire cash deposit. Though, I find that the assessee is engaged in the business of textile and grey and is filing return of income for many years. The cash sales in the business of the assessee, is a usual practice. Thus, considering the overall facts and circumstances of the case, entire cash deposit during demonetization period cannot be treated as unexplained credit, for a businessman having turnover of more than Rs. 1.00 crore. Further considering the fact that the assessee is not able to substantiate the source of entire cash deposit, similarly entire cash deposit cannot be treated as income. Therefore, a reasonable addition out of total cash deposit will be sufficient to avoid the possibility of revenue leakage. Thus, considering the facts of the present case, 20% of total cash deposit of Rs. 26.09 lacs are upheld and remaining addition is deleted. So far as taxing the addition is concerned, the cash deposit is out of business receipt, therefore, it cannot be taxed under

Section 115BBE. The Assessing Officer is directed to tax the sustained addition at normal rate of tax. In the result, ground No. 1 of the appeal is partly allowed.

11. Ground No. 2 of appeal relates to addition of sundry creditors. The Id. AR of the assessee submits that during the period under consideration, the assessee was having total outstanding creditors as on 31/03/2017 of Rs. 73,09,386/- as has been recorded in para 2 of assessment order. The AO issued show cause notice doubting about four creditors. The assessee filed detailed reply on 25/12/2019. The assessee filed account confirmation, purchase bill of all four parties. The AO was not satisfied with the reply of assessee and added total of their credit as unexplained expenditure under Section 69C of the Act. The assessee has already filed account confirmation and purchase bills of all the parties. The AO wrongly held that account confirmation was not filed. The Id. AR of the assessee submits that copy of purchase bills and account confirmation are filed at page No. 124 to 132 of the paper book. The Id AR of the assessee prayed for deleting the entire additions of creditors.
12. On the other hand, the Id. Sr. DR for the revenue submits that the assessee has not furnished any evidence of subsequent payment to such creditor till date. Thus, the AO has rightly added such creditors in the income of assessee.
13. I have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. I find that the AO made

addition of four sundry creditors aggregating of Rs. 9,70,845/- by taking view that no supporting evidence like copy of bills, Ledger account and proof of subsequent payment is filed. The Id. CIT(A) confirmed the action of AO. On considering the submission and perusal of supporting evidence in the form of account confirmation and sample purchase bill, I find that neither the AO nor the Id. CIT(A) verified such bills and account confirmation or made any independent investigation of such evidences. Moreover, all the purchase bills are in respect of yarn. Complete details of creditors are available on sales invoices/purchase bills. Thus, I do not find any justification of making such addition. The AO is directed to delete the addition. In the result, ground No. 2 of appeal is allowed.

14. Ground No. 3 relates to ad hoc disallowances of 10% of expenses. The Id. AR of the assessee submits that the assessee has offered income under Section 44AD, thus, there is no scope of further addition.
15. On the other hand, the Id. Sr. DR for the revenue submits that all the expenses are shown in cash without supporting any evidence. The evidence furnished by assessee are self-serving document.
16. I have considered the rival submissions of both the parties and perused the record carefully. I find that the AO made disallowance of 10% of various expenses by taking view that the assessee has not furnished sufficient supporting evidence in respect of various claim and that all expenses are incurred in cash. The AO disallowed 10% of the expenses and added to the income of assessee. The Id. CIT(A) confirmed the action of AO with similar

view. Before me, the Id. AR of the assessee vehemently argued that the assessee has offered income under Section 44AD. On perusal of Profit & Loss Account and computation of total income, I do not find any such reference in offering income under Section 44AD, thus, I do not find any merit in the submission of Id. AR of the assessee. Considering the nature of expenses and the ratio of *ad hoc* disallowance being 10% only which is on reasonable basis. Thus, I do not find any reason to interfere in the findings of lower authorities. In the ground No. 3 of appeal is dismissed.

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

Order pronounced in open court on 28th November, 2024.

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

सूरत /Surat, Dated: 28/11/2024

***Ranjan**

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File



By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत