

आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No. **610/SRT/2024** (AY 2017-18)
(Physical court hearing)

Jayeshbhai Becharbhai Chovatiya 293 Hans Society, Opp. Krishna Township Mota Varachha, Surat-394 101 [PAN : AQIPP 0434 H]	बनाम Vs	ITO, Ward-2(3)(2), Aaykar Bhawan, Majura Gate, Opp. New Civil Hospital, Surat-395 001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri P.M. Jagasheth. CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	11.12.2024
उद्घोषणा की तारीख/Date of pronouncement	21.01.2025

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 03.05.2024 for assessment year (AY) 2017-18, which in turn arises out of assessment order passed by Assessing Officer under section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') 01.10.2019. The assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition Rs.72,81,670/- u/s 69 of the Act on account of treating all the credit found in bank as unexplained money.

2. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer erred in charging special tax rate 60 percent u/s 11BBE of the Act.

3. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has not offered adequate opportunities to hear the case and passed ex-parte order and hence the case may please be set aside and restored back to the CIT(A) or AO.

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

2. Brief facts of the case are that Assessing Officer was having information that assessee has made cash deposit in his three bank accounts during demonetization period. The Assessing Officer in para-2 of assessment order preparing a summary of cash deposits in Corporation Bank, Varachha Co-Op. Bank and HDFC Bank aggregating of Rs.18,05,620/- during demonetization period. The Assessing Officer issued notice under section 142(1) of the Act on 06.02.2018 to prepare correct return of income for assessment year 2017-18 and to furnish in a prescribed form on or before 08.03.2018. The Assessing Officer recorded that no reply was furnished by assessee. The Assessing Officer issued notice under section 133(6) of the Act to the bankers of assessee. In response to such notices, banks of assessee furnished detailed cash deposit and other credit as well as cash deposit during demonetization period. The Assessing Officer recorded such summary in para-2.1 of assessment order and noted that a sum of Rs.72,81,674/- was deposited during relevant financial year 2016-17, details of which are given below:

Name of the Bank	Bank a/c No.	Name of the a/c holder	Cash deposits made during demonetization period (i.e. from 09.11.2016 to 30.12.2016)	Cash deposits during the FY (excluding demonetization period)	Other credits (other than cash)	Total credit (cash + credit entries)
Corporation Bank	01/003471	Jayeshbhai B Chovatiya	11,95,620/-	60,000/-	6,321/-	12,61,941/-
Vacahha Co-Op. Bank	01310120021625	Jayeshbhai B Chovatiya	2,50,000/-	26,500/-	2,51,243/-	5,27,743/-
HDFC Bank	50100020836112	Jayeshbhai B Chovatiya	3,60,000/-	2,68,500/-	48,63,490/-	54,91,990/-
	Total		18,05,620/-	3,55,000/-	51,15,812/-	72,81,674/-

3. The Assessing Officer (AO) noted that assessee was given various notices to make compliance and substantiate such cash and other credits. The AO after recording the fact that assessee failed to furnish response to such notices, ultimately made addition of Rs.18,05,620/- on account of cash deposit during pre and post demonetization and other credits in the bank accounts of assessee of Rs.54,70,812/- thereby added Rs.72,81674/- and taxed the same under section 115BBE of the Act in the assessment order passed under section 14 of the Act on 01.10.2019. Aggrieved by the additions made in the assessment order, assessee filed appeal before Ld. CIT(A).
4. Before Ld. CIT(A) assessee furnished statement of fact and the detailed written submissions. However, the Ld.CIT(A) confirmed the action of Assessing Officer by taking view that assessee has not replied nor furnished any submission. Therefore, he has no reason to interfere with the addition made in the assessment order. Further, aggrieved by the assessee has filed present appeal before the Tribunal.
5. We have heard the submission of Ld. Authorized Representative (Ld.AR) of the assessee and have gone through the orders of lower authorities carefully. The Ld. AR of the assessee submits that assessee has not received notices

during assessment proceedings. So no compliance was made before Assessing Officer, however, before Ld.CIT(A) assessee filed complete statement of fact and submission in response to notice under section 250 of the Act. The assessee vide his submission dated 29.04.2024 and furnished complete details to substantiate various grounds of appeal. First appeal was filed on 23.10.2019. The assessee furnished response on 26.07.2021 as well as on 07.03.2024. The assessee submitted that he is an individual and engaged in the business of PVC pipeline and other various items used in bore well. The assessee was not well aware regarding pre-assessment proceedings. So no compliance was mad. In fact, no physical notice was served upon the assessee. The Assessing Officer made huge addition under section 69/69A of the Act. No return was filed by assessee as he has no taxable income during relevant financial year 2016-17. A computation of total income was furnished. The Assessing Officer while making best judgment assessment has simply added entire credit entries in the bank accounts for making hefty addition. Even aggregate a credit entries are not correct. The assessee furnished complete details of cash deposit during demonetization period, during other period (other additional demonetization period and other credit) in his all three bank accounts. The assessee on the basis of such statement submitted that there was total credit cash entry of Rs.72,61,804/-, which the Assessing Officer considered at Rs.72,81,674/- and no permissible deduction on account of interest on savings under section 80TTA of the Act was allowed to assessee. The assessee furnished details of turnover for assessment years 2013-14 to 2016-17 by showing gross turnover and gross taxable income for the year

under consideration. There was no business nor any taxable income. The assessee submitted that he has received/availed home loan of Rs.44,01,180/- , which was disbursed through HDFC Bank, which was also added as "income" of assessee. Copy of loan sanctioned from banker is also furnished. The assessee specifically stated that his turnover was never crossed Rs.20,00,000/-. The assessee also submitted that Assessing Officer made addition of cash deposit of Rs.18,05,620/- during demonetization period. The assessee was having sufficient cash balance in his hand as on 31.03.2016. The assessee was having Rs.9,92,080/- as cash-in-hand as on 31.03.2016, which was shown in the returned income for assessment year 2016-17, even such amount was not considered by Assessing Officer while making assessment. The Ld. AR of the assessee submitted that Assessing Officer made huge addition of Rs.72,81,674/- without taking into account the fact that assessee has availed a home loan of Rs.44,01,180/-, if such amount is reduced from whole of the addition, the addition will reduce to Rs.28,80,494/-, if deduction under section 80TTA of the Act is allowed at Rs. 2,042/-, the addition will further reduce to Rs.28,78,452/-. Further, there is mistake on figure of Rs. 19,870/- by considering as correct amount will reduce to Rs.28,58,582/-. The assessee was having cash-in-hand of Rs.9,92,080/- which is reflected in the return of income for assessment year 2016-17 filed on 14.09.2016, copy of which placed on record pages 39 to 41 of the paper book. Thus, if such credit is allowed, the additions would have left only Rs.18,66,502/-. Admittedly, assessee was engaged in PVC items used in boring well and if the income of assessee is estimated under section 44AD of

the Act @ 8%, the taxable income would be Rs.1,49,320/-. The Ld.AR of the assessee furnished the aforesaid details in a following tabulate, which was furnished before Ld.CIT(A) also:

Sl.No.	Particulars	Amount (Rs)
1	Addition made by the learned assessing officer	72,81,674
2	Less: a loan disbursed by the HDFC Bank (Annexure-03)-Point 03-C	44,01,180
3	(1-2)	28,80,494
4	Less: Bank interest (u/s 80TTA)-Point 03-A	2,042
5	(3-4)	28,78,452
6	Less: Mistake made by learned AO in making total (7281674 – 7261804) – Point 03	19,870
7	(5-6)	28,58,582
8	Less: Cash on hand as on 01.04.2016 –Point 03-D	9,92,080
9	Estimated gross turnover	18,66,502
10	8% of gross turnover – taxable income	1,49,320

6. The Ld. AR of the assessee submits that Assessing Officer as well as Ld.CIT(A) made addition without appreciating the fact of assessee. The Ld. AR of the assessee reiterated that all the submissions were furnished before Ld.CIT(A) copy of e-proceedings acknowledgement along with submission filed before Ld. CIT(A) along with bank statement, cash book and copy of disbursement of home loan certificate from banker of assessee is placed on record. The Ld. AR of the assessee submits that at the worst the addition is to be sustained is only Rs.1,49,320/- which is below taxable income. Thus, the assessee has not rightly filed his return of income. The Ld. AR of the assessee submits that entire addition is liable to be deleted.
7. On the other hand, Ld. Senior Departmental Representative (Ld. CIT-DR) for the Revenue after going through the submission of Ld. AR of the assessee and supported the order of lower authorities. The Ld. Sr-DR for the Revenue submits that allegedly furnishing by assessee is not considered by Ld. CIT(A),

therefore, the matter may be restored back to the file of lower authorities to consider the matter afresh.

8. In short rejoinder, Ld. AR of the assessee submits that in response to notice under section 250, the assessee furnished all requisites details and framing of order is not under his control, it is the duty of Ld. CIT(A) to consider and pass a speaking order in accordance with law by recording submission of assessee, fact remain the same that all such submissions are available on ITBA portal. Sending the matter back to the file of CIT(A) or AO would be futile exercise as the majority of evidence furnished by the assessee is self-explanatory and does not require specific verification.
9. We have considered the rival submissions of both the parties and have gone through order of lower authorities carefully. We have also gone through the various documentary evidence furnished by assessee in the form of paper book from pages 1 to 44, consisting of screen shot of ITBA porta, acknowledgement of reply filed in response to notice under section 250 of the Act, written submission filed before Ld.CIT(A), copy of cash book for financial year 2016-17 sales book for financial year 2016-17 with copy of bank statement of all three bank accounts, return of income for assessment year 2016-17 and home loan disbursal letter dated 26.12.2022. On considering the facts of the present case and the evidences placed on record, we find that AO made addition of Rs.72,81,674/-. Out of which a credit of Rs. 44,01,180/- is on account of a home loan, copy of home loan disbursal is placed on record, otherwise it is evident from the credit entry, if such amount is reduced from whole of the addition, the addition will reduce to Rs.28,80,494/-. Further, if the assessee is

allowed deduction under section 80TTA of Rs. 2,042/-, the addition will reduce to Rs.28,78,452/-. Further, there is mistake on figure of Rs. 19,870/- by considering as correct amount will reduce to Rs.28,58,582/-. From the copy of ITR for AY 2016-17, we find that the assessee was having cash-in-hand of Rs.9,92,080/- the return of income for AY 2016-17 filed on 14.09.2016, copy of which placed on record pages 39 to 41 of the paper book. Thus, if such credit is allowed, the additions is left only to Rs.18,66,502/-. We find that the assessee was engaged in business income is estimated @ 10% the taxable income would be Rs.1,86,650/-, which we rounded off to Rs. 2.00 lakhs. Thus, the additions made by AO is restricted to Rs. 2.00 lakhs. In the result, the grounds of appeal raised by the assessee are partly allowed.

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

Order pronounced in the open court on 21/01/2025.

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/Accountant Member

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/Judicial Member

सूरत / Surat Dated: 21/01/2025

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,

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सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत