



**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE DR.BRR KUMAR, VICE PRESIDENT &  
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**

I.T.A. No.272/Ahd/2024  
(Assessment Year: 2017-2018)

Naranbhai Samatbhai Bharwad, Through legal heir Devrajbhai Naranbhai Bharwad, 1, Indira Nagar, Nr. Sindhvai Matas Mandir, CTM, Ahmedabad-380026.	Vs.	Income Tax Officer, Ward-6(1)(1), Ahmedabad.
[PAN No.AFLPB1086M]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Kushal Fofaria, A.R.
<b>Respondent by:</b>	Shri Waghe Prasad Rao, Sr. DR

<b>Date of Hearing</b>	30.12.2024
<b>Date of Pronouncement</b>	03.01.2025

**ORDER**

**PER: DR. BRR KUMAR, VICE PRESIDENT:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-12, Ahmedabad, vide order dated 20.12.2023 passed for the Assessment Year 2017-18.

2. The Assessee has taken the following grounds of appeal:-

*01. That the Ld. CIT has erred in law and on facts of the case in confirming the action of the Ld.AO in making addition of cash deposits in bank account of Rs.68,50,000/- u/s.69A of the Act..*

*02. That the Ld. CIT(A) has erred in law and on facts of the case in confirming application of provisions of Section 115BBE of the Act.*

*03. The Ld.CIT(A) has erred in law and on facts of the case in confirming action of the Ld.AO in levying interest u/s.234 A/B/C/D of the Act*

04. *The Ld.CIT(A) has erred in law and on facts of the case in confirming action of the Ld.AO in initiating penalty proceedings u/s.271AAC of the Act.*

05. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. The action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

06. *The Appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

3. The facts of the case are that the assessee filed return of income on 10.11.2017 declaring total income of Rs.2,09,270/-. The case has been taken up for complete scrutiny by the revenue authorities and addition of Rs.68,50,000/- has been made on account of cash deposits in bank account.

4. Aggrieved, assessee filed an appeal before the Ld.CIT(A), who has affirmed the order of the Assessing Officer (AO) by observing as under:

*“6.3 I have considered the issue at hand and the submission by the appellant. The appellant has not adduced any further material during the appeal proceedings other than the one filed during the assessment proceedings. He is reiterating that the confirmation from Pritam Enterprises and Bhaktinandan Trading Co. are being produced. This is an unacceptable proposition as despite lapse of such huge time is unable to adduce any evidence to establish His claim of earning agricultural income through sale to certain parties. Furthermore, he has not adduced any evidence on record to even prove that he owned any Etios car which was purportedly sold. Even otherwise he has not brought even a shred of evidence other than his claim that the aforesaid property was sold to some Arvindbhai Prajapati. He states that a confirmation has been attached but no such document was attached in the appeal proceeding. There is no sale deed made to prove that transfer of such immovable property had happened. In fact it appears that the said property is in the name of some Tejas Patel and how he became the owner of the property is*

*not known. Furthermore, the appellant has not adduced any shred of cogent credible and contemporaneous evidence in support of the cash flow statement it has furnished for the period 2012-13 to 2015-16. During appeal no cash flow statement for the period 01.04.2016 to 08.11.2016 was adduced. The appellant is showing huge amount of cash deposits in his bank account and withdrawals therein. It is not possible for any individual to continuously withdraw huge amount and keep it in his custody losing interest at the risk of security. Therefore, I do not find that the appellant has been able to adduce sufficient evidence to explain the nature and source of huge amount of deposits during the demonetization period in his bank accounts. Therefore, I confirm the addition of Rs. 68,50,000/- as undisclosed income of the appellant deposited in the bank account u/s 69A rws 115BBE of the Act. The appellant has raised the issue that the AO has not mentioned application of Sec. 115BBE in the assessment order which appears to be an inadvertent slip as the tax is calculated by applying special rate u/s 115BBE of the Act. Grounds of appeal 1 to 4 are dismissed.”*

5. Being aggrieved by the order of the Ld.CIT(A), the assessee filed appeal before us.

6. Before us, assessee submitted cash flow statement from the year 2012-13 to 2015-16 to substantiate the cash deposits made during the demonetization period and argued that there has been a closing cash balance of Rs.1,82,11,228/- which has been deposited during the Financial Year (FY) 2016-2017.The cash flow statement prepared by the assessee is as under:

FY	Opening Cash Balance	Cash Inflows			Cash Outflows			Closing Cash Balance
		Cash withdrawals from bank	Agricultural Income (as per ITR)	Other cash inflows	Cash deposited in bank	Agricultural expense (as per ITR)	Other cash outflows	
2012-13	2,32,187	3,94,99,941	15,74,800	-	1,51,74,500	5,70,424	73,50,776	1,82,11,228
2013-14	1,82,11,228	14,27,439	19,38,119	13,00,000	3,14,000	7,75,247	2,50,000	2,15,37,539
2014-15	2,15,37,539	23,73,146	24,42,167	7,40,790	89,42,140	9,18,110	10,27,894	1,62,05,498
2015-16	1,62,05,498	7,85,000	15,95,066	7,31,000	96,05,650	5,90,330	12,21,998	<b>78,98,586</b>
		<b>4,40,85,526</b>			<b>3,40,36,290</b>			

7. The Ld.Counsel for the assessee submitted that there has been cash withdrawal from the bank for FY 2012-13 to the tune of Rs.3.94 crores and hence no addition on account of cash deposits cannot be made considering the fact that the assessee had continuously held cash in hand from the FY 2012-13 which has been utilized to deposit cash in the year 2016-17.

8. On the other hand, the Ld. DR argued that cash in hand for the year 2012-13 cannot be considered to have been deposited in the year 2016-17 and the argument of Ld. Counsel for the assessee stands without any reason or rhyme to substantiate cash deposits of 2016-17 as from the withdrawals of 2012-13. Further, the Ld. DR argued that by any means of logic it cannot be accepted that the assessee had cash for a period of 4 years lying with him idle and without depositing in the bank account even though the assessee has been continuously having transaction in the bank account and withdrawing cash for the remaining period of 4 years while at the same time keeping in hand cash of Rs.1.82 crores, the assessee continued to withdraw the cash of Rs.14 lakhs in FY 2013-14 and Rs.23 lakhs in FY 2014-15

9. We have gone through the fact on record and find that the cash withdrawals in the year 2013-14 to the tune of Rs.14,27,439/- and in the year 2014-15 the cash withdrawals to the tune of Rs.23,73,146/- and year 2015-16 the assessee had cash withdrawals of Rs.7,85,000/-. With regard to cash deposits, we find that assessee had cash deposited of Rs.3,14,000/- in the year 2013-14, Rs.89,42,140/- for the year 2014-15 and Rs.96,05,650/- for the year 2015-16. We find that the assessee had rental income of Rs.6,88,000/-, profit from the partnership firm of Rs.1.50 crores, interest income on FDs amounting to Rs.1,42,000/- and agricultural income of

Rs.10,00,004/- during the year. We have examined the detailed cash withdrawals pertaining to FY 2012-13 of Rs.3.94 crores and the same is as under:

DATE	DESCRIPTION	MODE	CHQ. NO.	WITHDRAWAL	DEPOSIT	BALANCE
DECEMBER 2012						
10/12/12						0.00
RECEMBER 2012						
10/12/12		CASH	0		5000.00	
	CR 657	TRF	0		6000000.00	
	SELF	CASH	153876	6000000.00		
	CHQ. BOOK CHARGES	TRF		50.00		4950.00 CR
14/12/12	CR 657	TRF	0		2000000.00	
	SELF	CASH	153877	2000000.00		4950.00 CR
JANUARY 2013						
12/01/13	Core AT.Br.-MAN	CASH	0		2500000.00	
	CR 657	TRF	153878	2500000.00		4950.00 CR
31/01/13	REMITTANCE CHARGE	TRF		260.00		4690.00 CR
FEBRUARY 2013						
05/02/13	CR-657	TRF	0		5000000.00	
	SELF	CASH	153879	5000000.00		4690.00 CR
08/02/13	CR-657	TRF	0		5000000.00	
	SELF	CASH	153880	5000000.00		4690.00 CR
09/02/13	CR-657	TRF	0		5000000.00	
	SELF	CASH	153881	5000000.00		4690.00 CR
MARCH 2013						
04/03/13	CR-657	CASH	0		6000000.00	
		TRF	153882	6000000.00		4690.00 CR
05/03/13	CR 657	CASH	0		5000000.00	
	CR-657	TRF	153883	5000000.00		4690.00 CR
19/03/13	SELF	TRF	0		11000000.00	
		CASH	153884	11000000.00		4690.00 CR
20/03/13	CR-657	TRF	0		3600000.00	
	SELF	CASH	153885	3600000.00		4690.00 CR
29/03/13	SERVICE CHARGE	TRF		56.00		
	REMITTANCE CHARGE	TRF		510.00		4124.00 CR

10. We find that the entire cash withdrawals of Rs.3.94 crores took place from 10.12.2012 to 30.03.2013 and the entire withdrawals were out of the transfer of fund. We also find that from 01.04.2014 to 05.03.2015 i.e. almost the entire year there were no transaction in the bank account of the assessee and again there were transactions from 05.03.2015 to 26.03.2015

wherein the cash has been withdrawn out of the transfer of fund in day or two from date of transfer of fund. The pattern shows that the amounts have been received and withdrawn for a specific purpose but certainly not to keep the amounts withdrawn as cash in hand. We have also gone through the bank account for all the years with regard to the cash deposits and withdrawals which pertains to very short period of duration in the year. We have also given consideration to the argument of the Ld.DR to remand the matter to examine the opening balance of the cash in hand perpetually shown by the assessee. The assessee since expired and the case was represented through legal heir. We have given our considerable thought about the entire fact and find that no useful purpose would be served to enquire into the amounts deposited or withdrawn 12 years back. At the same time, the entire cash deposits also cannot be considered as undisclosed income keeping in view the earning of income to the tune of Rs.1.8 crores by the assessee and it is also a fact that the assessee had agricultural income to the tune of Rs.10 lakhs. The assessee has also received cash as part of sale consideration pertaining to the agricultural land. We are not in agreement with the cash flow submitted by the assessee as cash flow for the period from 10.12.2012 to 29.03.2012 cannot be accepted as the same cash was deposited in the year 2016 in the un-rebuttable evidence that the assessee has been continuously withdrawing cash in the year 2013-14, 2014-15 and 2015-16 also. No further enquiries are feasible as the assessee stand deceased. Hence, keeping in view the entire contents and facts specific to the instant case, we deem it appropriate to determine that the assessee could have had cash in hand of Rs.30 lakhs and the remaining can be treated as undisclosed income.

11. The next ground raised by the assessee pertaining to invocation of provision of section 115BBE of the Act. The provision of section 115BBE of the Act reads as under:

*“... (1) Where the total income of an assessee.-*

*(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139, or*

*(b) determined by the Assessing Officer includes any income referred to in section 68 section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the income tax payable shall be the aggregate of-*

- (i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent, and*
- (ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i)*

*(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub section (1)...”*

12. We find that the issue stands settled by the order of the Hon’ble High Court of Madras in the case S.MI.L.E Microfinance Limited Vs.The Assistant Commissioner of Income Tax. The relevant extract of the order is reproduced as under:

*“...16. The next contention raised by the Learned Senior Counsel is that the under section 115BBE the rate of tax imposed is increased from 30% to 60% and the same is applicable with effect from 01.04.2017 onwards as per the amendment. Therefore, the same is applicable to any transaction from 01.04.2017 onwards and nor prior to any transactions prior to 01.04.2017. Since in the present case all alleged transactions are for the period from 08.11.2016 to 30.12.2016, hence the erstwhile rate of tax 30% only is applicable. But the contention of the revenue is that the amendment was with effect from 01.04.2017 and hence the same is applicable for the financial year 2016-2017 and the assessment year 2017-2018. Further the amendment to section 115BBE is directly related to demonetization which would be evident from objects and reasons for such amendment. In order to consider the same,*

*the objects and reasons of Taxation Laws (Second Amendment) Bill 2016 is extracted hereunder:*

*Press Information Bureau*

*Government of India*

*Ministry of Finance*

*28-November-2016 15:56 IST*

*Taxation Laws (Second Amendment) Bill, 2016 introduced in Lok Sabha; A scheme namely, Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY) proposed in the Bill.*

*Evasion of taxes deprives the nation of critical resources which could enable the Government to undertake anti-poverty and development programmes. It also puts a disproportionate burden on the honest taxpayers who have to bear the brunt of higher taxes to make up for the revenue leakage. As a step forward to curb black money, bank notes of existing series of denomination of the value of Rs.500 and Rs. 1000 [Specified Bank Notes (SBN)] have been recently withdrawn the Reserve Bank of India*

*Concerns have been raised that some of the existing provisions of the Income- tax Act, 1961 (the Act) can possibly be used for concealing black money. The Taxation Laws (Second Amendment) Bill, 2016 (the Bill') has been introduced in the Parliament to amend the provisions of the Act to ensure that defaulting assesseees are subjected to tax at a higher rate and stringent penalty provision.*

*Further, in the wake of declaring specified bank notes "as not legal tender", there have been suggestions from experts that instead of allowing people to find illegal ways of converting their black money into black again, the Government should give them an opportunity to pay taxes with heavy penalty and allow them to come clean so that not only the Government gets additional revenue for undertaking activities for the welfare of the poor but also the remaining part of the declared income legitimately comes into the formal economy.*

*In this backdrop, an alternative Scheme namely, "Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY) has been proposed in the Bill. The declarant under this regime shall be required to pay tax @ 30% of the undisclosed income, and penalty @10% of the undisclosed income. Further, a surcharge to be called 'Pradhan Mantri Garib Kalyan Cess' @33% of tax is also proposed to be levied. In addition to tax, surcharge and penalty (totaling to approximately 50%), the declarant shall have to deposit 25% of undisclosed income in a Deposit Scheme to be notified by the RBI under the 'Pradhan Mantri Garib Kalyan Deposit Scheme, 2016. This amount is proposed to be utilised for the schemes of irrigation, housing, toilets, infrastructure, primary education, primary health, livelihood, etc., so that there is justice and equality.*



An overview of the amendments proposed in the Bill are placed below;

### Overview of Amendments Proposed

<b>PARTICULARS</b>	<b>EXISTING PROVISIONS</b>	<b>PROPOSED PROVISIONS</b>
<i>General Provision for penalty</i>	<i>PENALTY (Section 270A)  Under-reporting - @50% of tax Misreporting-@200% of tax (Under-reporting/ Misreporting income is normally difference between returned income and assessed income)</i>	<i>No changes proposed</i>
<i>Provisions for &amp; of taxation penalty unexplained credit, investment, cash and other assets</i>	<i>TAX (Section 115BBE)  Flat rate of tax @30% surcharge + cess  (No expense, deductions, set-off is allowed)</i>	<i>TAX (Section 115BBE)  + Flat rate of tax @60% surcharge @25% of tax (i.e 15% of such income). So total incidence of tax is 75% approx.  (No expense, deductions, set-off is allowed).  PENALTY (Section 271AAC)  If Assessing Officer determines income referred to in section 115BBE, penalty @10% of tax payable in addition to tax (including surcharge) of 75%.</i>
<i>Penalty for search seizure cases</i>	<i>Penalty (271AAB)  (i) 10% of income, if admitted. returned and taxes are paid (ii)20% of income, if not admitted but returned and taxes are paid (iii)60% of income in any other case</i>	<i>Penalty (271AAB) (i) 30% of income, if admitted, returned and taxes are paid not(ii) 60% of income in any other</i>
<i>Taxation Investment Regime and for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY)</i>	<i>New Taxation and Investment Regime</i>	<i>Undisclosed income in the form of cash &amp; bank deposit can be declared: (A) Tax, Surcharge, Penalty payable  Tax @ 30% of Income declared Surcharge @33% of Penalty @10% of</i>

		<i>Income declared Total @ 50% of Income (approx.) (B) Deposit 25% of declared income to be deposited in interest. Free Deposit Scheme for four years.</i>
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17. In the aforesaid objects and reasons nowhere it is stated that due to "demonetization" the unaccounted money ought to be charged 60% rate of tax. It only states that step had been taken to curb black money by withdrawing Specified Bank Notes of denomination of Rs.500 and Rs.1000. And also states the people may find illegal ways of converting their black money into black again, hence as per experts advice heavy penalty ought to be levied. From the language of the object "that instead of allowing people to find illegal ways of converting their black money into black again", it is evident that the government is intended to impose the same for future transactions. Especially the use of word "again" in the object would clearly indicate it is for future transactions i.e. from 01.04.2017. Therefore this Court is of the considered opinion that the revenue is empowered to impose 60% rate of tax for the transactions from 01.04.2017 onwards and not prior to the said cut-off date. And for prior transaction the revenue is empowered to impose only 30% rate of tax..."

Thus, respectfully following the above decision of Hon'ble High Court of Madras, the ground of appeal of the assessee on the issue of Section 115BBE of the Act is hereby allowed.

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

**This Order pronounced in Open Court on 03.01.2025**

**Sd/-  
(TR SENTHIL KUMAR)  
JUDICIAL MEMBER**

**Sd/-  
(DR. BRR KUMAR)  
VICE PRESIDENT**

**(True Copy)**

Ahmedabad; Dated 03 .01.2025  
Manish, 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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad