



**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH**

**BEFORE: DR. B.R.R. KUMAR, VICE PRESIDENT  
And SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

**ITA No. 64/Ahd/2024  
Assessment Year : 2017-18**

Shri Sanjaykumar Zamatmal Kalwani, Vegetable Market, Near New Market Yard, Diddhpur, Patan-384151 <b>[PAN: ACPK9029E]</b>	Vs	The Income Tax Officer, Ward-4, Patan.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee Represented by : Shri Mohit Balani, A.R.  
Revenue Represented by : Shri Ravindra, Sr.D.R.**

Date of hearing : 19.02.2025  
Date of pronouncement : 10.03.2025

**आदेश/ORDER**

**PER : DR. B.R.R. KUMAR, VICE PRESIDENT:**

This appeal has been filed by the Assessee against the order of the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "CIT(A)" for short) dated 01.12.2023 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Year (AY) 2017-18.

2. The assessee has raised the following grounds of appeal:

1. *Learned CIT(A) has erred in law and on facts of the case in confirming the action of learned AO in making an addition of Rs.11,83,000/- u/s.69B of the Act.*

2. *Learned CIT(A) has erred in law and on facts of the case in not appreciating that the demand has been issued in the present case after invoking the provisions of S.115BBE of the Act without there being any specific direction/satisfaction of the Assessing Officer to that effect in the Assessment Order.*

3. The brief facts of the case are that the assessee is an individual who filed his return of income for the year under consideration declaring total income of Rs.5,28,360/-. During the course of assessment proceedings, the Assessing Officer made addition of Rs.11,83,000/- u/s. 69B of the Act as the assessee failed to explain the source of cash deposited during the demonetization period.

4. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the Ld. CIT(A) who dismissed the appeal of the assessee holding that the assessee claims to be a trader of fruit and the fruits are purchased from other traders and sold.

5. The Ld. CIT(A) held that apparently the assessee failed to produce sale bills and purchase bills and there was no closing or opening stock. The Ld. CIT(A) held that the items of other expenses claimed were also unlike those found in normal accounts and also there was no claim of direct expenses such as transport, labour etc. The Ld. CIT(A) held that the bank account does not reflect any payments for purchases made through banking channels and hence the assessee's claim of running fruit trading business was not substantiated. It was held that the assessee was depositing cash and immediately withdrawing it. These

kinds of transactions merely increase the quantum of inflow and outflow from the account without any actual transactions of substance. The Ld. CIT(A) held that there were instances of immediate transfer of the cash deposited to different accounts out of cash deposits, hence, the banking transactions do not inspire confidence in the explanation given that the withdrawals from bank account are the source of deposits made in demonetization period. The Ld. CIT(A) held that the sales and purchases being in cash were not supported by proper documentation i.e. sale & purchase bills. Therefore, the books of accounts maintained as claimed and the statements of accounts produced were not reliable for computing the income assessable and hence the Ld. CIT(A) held that the books of accounts are rejected in terms of Sec 145(3) of the Income Tax Act. The Ld. CIT(A) held that the withdrawals from the bank account have not been organized and presented in a fashion for correlating the withdrawals with the deposits. Since, the cash book claimed to be maintained had been rejected u/s 145(3) of the Act, the withdrawals credited to the cash book could not be relied upon as source for subsequent redeposit. In conclusion, the Ld. CIT(A) held that the assessee failed to discharge the onus of satisfactorily explaining the source of cash deposit.

6. Aggrieved, the assessee is now in appeal before the Tribunal.

7. With regard to the addition of Rs.11,83,000/- made by the Assessing Officer u/s 69B of the Act, the Ld. AR contended before the Revenue Authorities that :-

- The Assessing Officer has selectively questioned only Rs.11,83,000/- out of total sales of Rs.1,58,30,380/-, while the remaining sales and corresponding cash deposits have been accepted.
- Cash deposits before and after the demonetization period have been accepted as genuine, yet only deposits made during demonetization are being questioned.
- This addition creates a factual estoppel against the Revenue, as once a fact is accepted in part, it cannot be denied selectively without valid justification.
- The cash deposits in question are part of business turnover and are fully accounted for in books, resultant profit has already been offered to tax.
- The following documentary evidence was provided before the AO:
  - Cash Book (showing daily cash sales and deposits).
  - Sample Purchase Invoices (substantiating stock purchases).
  - Sample Sales Invoices (proving cash sales).
- Audit report confirms no discrepancy in sales figures or cash balance.

In view of above, the Ld. AR submitted before the Revenue Authorities that the amount of sales could not have been added u/s 69B of the Act, for which he has placed reliance on the following judgements:

- (i) CIT Vs. Vishal Exports Overseas Ltd (Tax Appeal No.2471 of 2009)
- (ii) Nitisha Silk Mills Pvt Ltd Vs. ITO (ITA No. 896/Ahd/2011)

- (iii) ITO Vs. Jethu Ram Prem Chand [2001] 114 Taxmman 291 (Del)
- (iv) Harish Kumar Vs., DCIT [2003] 85 ITD 366 (Hyd.)

8. Heard the contentions of both the parties and perused the material available on record on this issued.

9. We find that, as per the financial statements available before the Revenue Authorities, the total sales were Rs1,58,30,380/- and purchases were to the tune of Rs.1,32,35,740/-. The assessee is a fruit seller who has been depositing and withdrawing cash at regular intervals, the fact of which has not been disputed by the Ld. CIT(A), but disputed that the assessee has not proved to be a fruit seller on the grounds that no printed bills have been made available. The Ld. CIT(A) has totally ignored the cash withdrawals made during the year, while the total transactions were to the tune of Rs.1.58 crores. The Ld. CIT(A) choose to treat the amount of Rs.11,83,000/- deposited during the demonetization period. In the business of trading of vegetables & fruits, the assessee cannot be expected to maintain impeccable records as that of a corporate. As per the records before the Revenue, the assessee has submitted financial statements in the submission which show that assessee has made sales of Rs 1,58,30,380/- and purchases of Rs 1,32,35,739/-. The Ld. CIT(A) has not doubted the deposits of Rs.1.58 crores but only doubted the deposits made during the demonetization period of Rs.11.83 lakhs which, based on the evidences before us, could be treated as part of the regular business. Hence, the decision of the Ld. CIT(A) holding that *the withdrawals are not arising from cash deposits*

*made and hence, the cash withdrawals do not represent the actual cash available or otherwise cannot be affirmed.*

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

Order pronounced in the open court on 10.03.2025

Sd/-

**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**Ahmedabad : Dated 10.03.2025**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

True Copy

Sd/-

**(DR.B.R.R. KUMAR)**  
**VICE PRESIDENT**

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद