

**THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH**

**Before Dr. BRR Kumar, Vice President  
And Ms. Suchitra Kamble, Judicial Member**

**ITA No. 781/Ahd/2025  
Assessment Year 2017-18**

Dineshkumar Nemichand Jain, 3080-A-13, New Mahalaxmi Atores, Patel Shopping Centre Opp. Ghodasar Rail Crossing, Ahmedabad PAN: AMUPJ2606D (Appellant)	Vs	The ITO, Ward-3(2)(6) Ahmedabad (Respondent)
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**Assessee by: Shri Vivek Chavda, A.R.  
Revenue by: Shri Kamal Deep Singh, Sr. D.R.**

Date of hearing : 07-07-2025  
Date of pronouncement : 04-09-2025

**आदेश/ORDER**

**Per Suchitra Kamble, Judicial Member:**

This is an appeal filed against the order dated 14-02-2025 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2017-18.

2. The grounds of appeal are as under:-

*“1.1 The order passed u/s 250 on 14.02.2025 for A.Y. 2017-18 by CIT(A)-NFAC, Delhi upholding the addition of Rs.26,57,500/- made by AO is wholly illegal, unlawful and against the principles of natural justice.*

*1.2 The Ld CIT(A) has grievously erred in law and or on facts in not considering fully and properly the eccentric facts and evidence available with regard to the impugned addition.*

*1.3 The Ld. CITIA) has grievously erred in law and on facts in not carrying out any inquiry with regard to the applicability of the provisions of Income tax Act*

and thereby violated the principle of natural justice Therefore the appellant shall be granted opportunity to produce additional evidences.

2.1 The Ld CIT(A) has grievously erred in law and facts in upholding the addition of Rs. 26,57,500/- u/s 69A when the appellant has clearly demonstrated consistent business activities throughout the year with similar pattern of cash deposits both before and after the demonetization period.

2.2 The Ld CIT(A) has grievously erred in adopting a pick and choose approach by accepting cash deposits of Rs 94,01,100/- made during non-demonetization period as business receipts taxable u/s 44AD while treating identical deposits of Rs.26,57,500/ during demonetization period as unexplained money u/s 69A, which is inconsistent and contradictory.

2.3 The Ld CIT(A) has grievously erred in not appreciating that when cash deposits follow a consistent pattern throughout the year and when the appellant has substantiated his business activity with sales and purchase details, it is illogical to treat identical transactions differently solely based on the time period when they occurred.

2.4 Without prejudice to the above grounds, the Ld CIT(A) has grievously erred in not directing that even if the addition of Rs. 26,57,500/ is to be sustained, it should be taxed as business income under section 44AD 8% and not at the maximum marginal rate under section 115BBE of the Income-tax Act, 1961.

3.1 The Ld. CIT(A) has grievously erred in law and on facts in upholding the application of the maximum marginal rate under section 115BBE of the Income-tax Act, 1961.

3.2 That in the facts and in the circumstances of the case the Ld CIT(A) ought not to have applied the maximum marginal rate under section 115BBE when it can be clearly demonstrated that the alleged amount of cash as generated out of business activity only and therefore, it is not headless income.

3.3 The Ld. CIT(A) has failed to appreciate that provisions of section 115BBE can be applied only when the head of the income is not determined.

3.4 The Ld. CIT(A) has failed to appreciate that before applying the provisions of section 115BBE, the AO has not issued any specific show cause notice and granted to opportunity to explain the facts which led to mechanical application of the provision which is not permitted under the Act.

4.1 The Ld. CIT(A) has grievously erred in law and or on facts in not granting opportunity of being heard through video conferencing.

4.2 That in the facts and in the law, the Ld. CIT(A) has failed to appreciate that granting opportunity of video conferencing is mandatory in the newly introduced faceless appeal proceedings.

*It is therefore prayed that the addition of Rs. 26,57,500/- made by Ld. AO and upheld by the CIT(A) may please be deleted in the interest of natural justice considering the facts and circumstances of the case."*

3. Notice u/s. 142(1) dated 22-12-2017 was issued to the assessee thereby calling upon to file the return of income for the assessment year 2017-18. The assessee failed to furnish the

return of income either u/s. 139 or in response to notice issued u/s. 142(1) of the Act. On the basis of data analytics and information gathered during the phase of online verification, the Income Tax Department found that during demonetization period, the assessee deposited cash of Rs. 26,57,500/- in his bank accounts during demonetization period. Statutory notices were issued to the assessee and after receiving the same, the assessee filed copy of computation of total income, copy of audit report dated 15-06-2019, balance sheet and profit and loss account. In the profit and loss account, the assessee has shown total sales of Rs. 1,42,92,427/- and opening stock of Rs. 13,25,250/- as well as closing stock of Rs. 2,50,432/- thereby showing gross profit of Rs. 6,70,450/-, net profit of Rs. 3,51,167/- i.e. 2.46%. The assessee filed cash book showing opening cash as on 01-04-2016 of Rs. 1,85,250/- with monthly balance of cash as incorporated in para 7 of the assessment order. The Assessing Officer further issued the show cause notice dated 25-09-2019 which was responded by the assessee on 01-10-2019. The assessee again has given the month-wise sales and purchase details and after taking cognizance of the same, the Assessing Officer held that since the assessee has not filed ITR, the deposit of cash of Rs. 26,57,500/- during demonetization period remains unexplained. Thus, the Assessing Officer made addition to that extent as unexplained money u/s. 69A of the Act. The Assessing Officer also made addition to the extent of Rs. 11,11,800/- as NP of the assessee estimating the same at 8%.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. A.R. submitted that the assessee made non-cash deposits of Rs. 25,92,810/- during the year. The details of sales totaling to Rs. 1,42,42,427/- and purchases totaling to Rs. 1,24,97,193/- for the entire financial year along with the list of purchase, parties their addresses and sample purchase invoices to establish the genuineness of business activities was submitted to the Assessing officer during the assessment proceedings. The Ld. A.R. submitted that the CIT(A) was not right in estimating 6% of NP. The Ld. A.R. submitted that the CIT(A) erred in adopting a pick and choose approach of accepting cash deposit of Rs.44,01,100/- made during the non-demonetization period as business receipts taxable u/s. 44AD while treating the identical deposits of Rs. 26,57,500/- during the demonetization period as unexplained money u/s. 69A which is not correct. Without prejudice to the said submissions, the Ld. A.R. submitted that the CIT(A) has grievously erred in not directing the Assessing Officer that even if the addition of Rs. 26,57,500/- is to be sustained. It should be taxed as business income u/s.44AD at 8% and not at the maximum marginal rate u/s. 115BBE of the Income Tax Act.

6. The ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the addition made by the Assessing Officer at Rs. 26,57,500/- u/s. 69A is properly adjudicated by the CIT(A). The CIT(A) categorically held that out of total cash deposited that of Rs. 1,20,58,600/- shown in the table as mentioned in para 6.2 of the order, Rs. 26,57,500/- was added u/s 69A as unexplained

cash in the hands of the assessee. The CIT(A) further held that the remaining amount of cash then stands at Rs. 94,01,100/- and further the non cash credits in the table has shown at Rs. 94,01,100/-. This finding does not require any interference. But the findings of the CIT(A) that tax cash deposits in the bank account as reduced by Rs. 26,57,500/- @ 8% and tax the credits other than cash @ 6% as per provisions of Section 44AD of the Act is without any basis. As regards estimating of NP i.e. net profit at 6% is not justified by the CIT(A) and the same should have been taxed as business income and has to be verified as per earlier years net profit percentage. The profits estimation @ 6% is on the higher side after looking the assessee's business profits and therefore, it will be appropriate to estimate the profit at 4% subject to the verification of the figures in Table 1 incorporated in para 6.2 of CIT(A)'s order. Thus, the appeal of the assessee is allowed for statistical purpose.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 04-09-2025

**Sd/-**  
**(Dr. BRR Kumar)**  
**Vice President**  
**Ahmedabad : Dated 04/09/2025**

**Sd/-**  
**(Suchitra Kamble)**  
**Judicial Member**

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.

By order/आदेश से,

उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण,  
अहमदाबाद