

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

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1593/Ahd/2024
(Assessment Year: 2012-13)

Babubhai Ramanbhai Patel, 1, Jay Mahadev Society, Randheja, Gandhinagar-382620	Vs.	Income Tax Officer, Ward-3, Gandhinagar
[PAN No.AWNPP5144K]		
(Appellant)	..	(Respondent)

Appellant by :	Shri M K Patel, Advocate
Respondent by:	Shri Ravindra, Sr. DR

Date of Hearing	06.11.2025
Date of Pronouncement	25.11.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 11.07.2024 passed for A.Y. 2012-13.

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

“(1) That on facts, and in law, the learned NFAC has grievously erred in confirming the addition of Rs. 20,23,800/- made u/s 69 of the Act in respect of cash deposit in bank account.

(2) That on facts, and in law, the learned NFAC ought to have considered and accepted the fact that appellant is taxable on presumptive basis u/s 44AD of the Act and the cash deposits are in respect of sales of appellant’s ‘Kirana Business’, and taxing the same on gross basis amounts to double taxation.

(3) The appellant craves leave to add, alter, amend any ground of appeal.”

3. The brief facts of the case are that the assessee is an individual engaged in a kirana retail business at village Randheja, Gandhinagar, and had not filed his return of income for A.Y. 2012-13. The Assessing Officer received information that the assessee had deposited cash of Rs. 20,23,800/- in his savings bank account with SBI during the relevant financial year and accordingly the Assessing Officer issued notice under section 148 of the Act and also several notices under sections 142(1) and 133(6) of the Act. However, the assessee did not respond to these notices. The Assessing Officer, on obtaining the bank statement from SBI under section 133(6) of the Act and in the absence of any explanation from the assessee, treated the cash deposits as unexplained investment under section 69 of the Act.

4. Aggrieved, the assessee filed an appeal before the CIT(A) and contended that he was a small kirana trader and that the cash deposits represented sales proceeds duly recorded in his books. The assessee raised grounds stating that the deposits were fully accounted for, that the Assessing Officer wrongly treated them as unexplained and the assessee was covered under section 44AD of the Act. During appellate proceedings, the assessee filed additional evidences like trading account, profit and loss account, balance sheet, cash book, sales register and bank statements, and the assessee requested admission of the same under Rule 46A on the ground that he had shifted residence and was unaware of Departmental notices due to health issues. The CIT(A) forwarded the additional evidence to the Assessing Officer and called for a remand report, and the Assessing

Officer strongly objected to the admission of additional evidence, stating that sufficient opportunities had been given and that notices were served at all available addresses. The Assessing Officer further stated that even after being asked during the remand proceedings to furnish purchase bills, VAT returns, confirmations from suppliers, electricity bills, rent agreement and municipal permission, the assessee failed to provide any documentary evidence to establish that he was actually carrying on kirana business during the relevant year. The assessee filed a detailed rebuttal in response to the remand report and submitted that under section 44AD of the Act he was not required to maintain books of accounts or produce purchase bills, the sales register and cash book clearly showed daily sales and cash deposits, and that the Assessing Officer could not demand documents beyond the scope of section 44AD of the Act. The assessee also submitted additional documents such as food safety registration, sample testing records, GST registration obtained in 2018 and certain purchase party accounts, and submitted that these supported the existence of kirana business. He further argued that the Assessing Officer had wrongly applied section 69 of the Act as the deposits were not investments but business receipts, and relied upon judicial precedents to support the contention that cash deposits representing business turnover cannot be treated as unexplained income.

5. After considering the assessment order, grounds of appeal, additional evidence, the remand report and the assessee's rebuttal, the CIT(A) held that the assessee had not filed his return under section 139(1)

of the Act or in response to notice under section 148 and had failed to prove that he was engaged in an eligible business during the relevant year. The CIT(A) observed that the documents submitted, such as food safety registration, GST registration and sample testing reports, pertained to later years and did not establish business activity during FY 2011-12. The CIT(A) further held that the assessee had failed to produce VAT returns, purchase bills or any concurrent business-related documents and therefore had not discharged the burden of proving the nature and source of the cash deposits. The CIT(A) also held that merely claiming applicability of section 44AD did not relieve the assessee of the responsibility to establish that he was an eligible assessee and was engaged in eligible business during the relevant period. Accordingly, the CIT(A) held that since the assessee was the owner of the money and had failed to satisfactorily explain the source, the addition made by the Assessing Officer was justified. Accordingly, the CIT(A) dismissed the appeal and confirmed the addition of Rs.20,23,800/-.

6. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee.

7. Before us, the counsel for the assessee submitted the assessee was running a small kirana shop and hence not liable to file return of income. The assessee was also not maintaining any books of accounts. Further, even in the remand report, no specific adverse findings have been made against the assessee. The counsel for the assessee drew our attention to page 4 of CIT(Appeals) wherein all relevant details were duly furnished

before CIT(Appeals). The counsel for the assessee submitted that the total sales of the assessee for the impugned assessment year were Rs. 22 lakhs and cash deposits were sources out of the same. Therefore, the source of cash deposits was duly explained. Further, the counsel for the assessee drew our attention to pages 10 and 17 of Paper-Book and submitted that a perusal of bank statement matches with the figures of sales of the assessee during the impugned assessment year. Further, it was submitted that there are concomitant withdrawals from the bank account as well, which were utilized towards purchase of goods.

8. In response, the Ld. DR placed reliance on the observations made by the Assessing Officer and Ld. CIT(Appeals) in their respective orders.

9. We have considered the rival submissions and perused the material available on record. It is an undisputed fact that the assessee is an individual running a kirana retail shop in village Randheja and the total cash deposits in his savings bank account during the year amounted to Rs. 20,23,800/-. It is also a matter of record that the assessee had explained before the CIT(A) that the said deposits were out of daily cash sales of the kirana business and had furnished a sales register, cash book, bank statements and trading results which showed total sales of approximately Rs. 22 lakhs during the relevant period. A perusal of the bank statement placed in the paper book demonstrates that the pattern of deposits broadly corresponds with the daily sales recorded, and further, there are regular withdrawals from the same bank account by the assessee, which the assessee has claimed were utilized for purchase of goods. Before us, the

Department has not brought on record any cogent material to controvert the explanation furnished by the assessee or to demonstrate that the cash deposits originated from any source other than the business receipts of the assessee. Even in the remand report, the Assessing Officer has not recorded any specific adverse finding to the effect that the assessee did not carry on kirana business during the year under consideration or that the sales recorded were fabricated. The objections raised by the Assessing Officer primarily relate to the absence of VAT returns or purchase bills, however, considering the nature and scale of business, the assessee being a small kirana trader operating in a rural area, and claiming to be covered by the presumptive provisions of section 44AD of the Act, the insistence on such records cannot, in the facts of the present case, be made the sole basis for rejecting the explanation when contemporaneous cash book, sales register and bank entries support the assessee's version. We find merit in the contention of the assessee that when the cash deposits are commensurate with turnover disclosed by the assessee and the bank deposits and withdrawals follow a business pattern, the same cannot be treated as unexplained merely on the basis of technical deficiencies or non-maintenance of supporting documentation, particularly when the Department has not brought any material to show that the deposits are from undisclosed sources. In view of the matching figures between the sales and deposits, the concomitant withdrawals for purchase of goods, absence of any contrary evidence from the Revenue, and applying the principle that when a plausible explanation supported by concurrent records is furnished,

the same cannot be rejected without any positive material, we hold that the addition made under section 69 of the Act is unsustainable.

10. Accordingly, the addition of Rs. 20,23,800/- made by the Assessing Officer and sustained by the Ld. CIT(Appeals) is hereby deleted and the appeal of the assessee is allowed.

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

This Order pronounced in Open Court on

25/11/2025

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 25/11/2025

TANMAY, Sr. PS

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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