आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL

Hyderabad ' B ' Bench, Hyderabad

श्री विजय पाल राव, उपाध्यक्ष एवं

श्री मधुसूदन सावडिया, लेखा सदस्य के समक्ष ।

Before Shri Vijay Pal Rao, Vice-President

A N D

Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं /**ITA No. 2070/Hyd/2026**

(निर्धारण वर्ष/Assessment Year: 2017-18)

Sree Gayathri Brahmana Mutually Aided Co-operative Society Ltd, ADONI PAN:AAFAS5530D	Vs.	Income Tax Officer Ward-1 ADONI
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	CA E Phalguna Kumar	
राजस्व द्वारा/Revenue by:	Shri K. Prasad, Sr. AR	
सुनवाई की तारीख/Date of hearing:	03/09/2026	
घोषणा की तारीख/Pronouncement:	16/10/2026	

ORDER

Per Madhusudhan Sawdia, A.M.:

This appeal is filed by Sree Gayathri Brahmana Mutually Aided Cooperative Society Ltd ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi ("Ld. CIT(A)") dated 29.04.2026 for the A.Y. 2017-18.

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

1. The Ld.Commissioner of Income-tax (Appeals) erred in confirming the order of the Ld. Assessing officer, in the given facts and circumstances of the case, by not considering the evidences filed at the time of Appeal and by not following the principles of Natural Justice and hence the Appeal order is bad in law.

2. The Ld.Commissioner of Income-tax (Appeals) erred , in the facts and circumstances of the case by concurring with the Ld.AO by Treating the Total year Bank deposits amounting to Rs. 4,85,80,856/-, as the turnover of the appellant,.

3. The Ld.Commissioner of Income-tax (Appeals) erred in estimating the income at 8 percent thereof on the impugned Turnover i.e Rs.35,66,504/-, and treating the said income as income u/s. 115JC, attracting tax u/s. 115BBE .

4. The Ld. Commissioner of Income-tax (Appeals) erred , in the facts and circumstances of the case, in treating the cash deposits in SBNs during the demonetization period, amounting to Rs. 39,99,555/- as unexplained money u/s. 69A attracting Higher rate of tax u/s. 115BBE, ignoring the evidences filed and the decisions relied upon by ignoring the submissions filed at the time of hearing.

5. The Ld. Commissioner of Income-tax (Appeals) erred as per the principles of Natural justice by not considering the submissions made by the Appellant during the course of Appeal proceedings.

6. The Appellant craves the Hon'Tribunal to delete the addition of Rs. 35,66,504/- made by Estimating the Income @ 8% on the impugned Turnover of the Appellant Cooperative society and the also the addition made for the cash deposits made during the Demonetisation period of Rs.39,99,555/- ,based on the above grounds.

7. The appellant craves the kind permission of the Hon'ble Appellate Tribunal to add, amend, delete or substitute any ground or grounds during course of hearing.

3. The brief facts of the case are that the assessee is a co-operative society registered under the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995. The assessee filed its return of income for the Assessment Year 2017-18 on 04.11.2017, declaring total income of Rs.37,050/-. The case of the assessee was selected for scrutiny through CASS, and notice under section 143(2) of the Income Tax Act, 1961 ("the Act") dated 08.08.2018 was issued by the Assessing Officer ("AO") to the assessee. During the assessment proceedings, the AO examined the cash deposits made by the assessee in its bank accounts during the demonetisation period. After allowing credit for the closing cash balance available as on 08.11.2016, the AO treated the balance amount of Rs.39,99,555/- as unexplained money and added the same under section 69A of the Act in the hands of the assessee. The AO further observed that there was a difference of Rs.4,85,80,856/- between the aggregate credits in the bank accounts and the turnover disclosed by the assessee. The AO made a further addition of Rs.35,66,504/- under the head "Income from other sources", stating that the income was estimated at the rate of 8% on the differential turnover. Accordingly, the AO completed the assessment under section 143(3) of the Act vide order dated 23.12.2019, determining the total income of the assessee at Rs.76,03,109/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who sustained the additions and dismissed the appeal of the assessee.

5. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal. At the outset, the Learned Authorized Representative ("Ld. AR") submitted that the grounds raised by the assessee involve three issues, namely, (a) the addition of Rs.39,99,555/- under section 69A of the Act in respect of cash deposits during the demonetisation period, (b) the addition of Rs.35,66,504/- arising from estimation of income on the differential turnover, and (c) the application of the tax rate of 60% under section 115BBE of the Act for the year under consideration.

6. In respect of the addition under section 69A of the Act, the Ld. AR submitted that the cash deposited in the bank account was received from 21 persons. He submitted that, although the assessee could not furnish their confirmations and affidavits before the AO, the confirmations and affidavits were subsequently filed before the Ld. CIT(A). Inviting our attention to the confirmations and affidavits placed at page nos. 127 to 201 of the paper book, the Ld. AR submitted that the Ld. CIT(A) sustained the addition without considering these relevant evidences. He, therefore, requested that the confirmations and affidavits be considered and the addition be deleted. The Ld. AR further invited our attention to the

certificate issued by the Banks and supporting documents regarding cash deposits made during the demonetisation period, placed at page no. 116 to 125 of the paper book. He submitted that the amount of cash deposits considered by the AO differed from the amount certified by the bank. He accordingly submitted that this discrepancy also required examination while determining the addition under section 69A of the Act.

7. Per contra, the Learned Departmental Representative ("Ld. DR") supported the orders of the lower authorities and submitted that the assessee, being a co-operative society, was not entitled to receive cash from persons other than its members and carry on a parallel banking business. He accordingly submitted that there was no infirmity in the addition made by the AO and sustained by the Ld. CIT(A).

8. We have heard the rival submissions and perused the material available on record. The issue under consideration relates to the source and quantum of cash deposited by the assessee in its bank account during the demonetisation period. The assessee has explained that the cash was received from 21 persons and has relied upon their confirmations and affidavits placed at pages 127 to 201 of the paper book. According to the Ld. AR, these confirmations and affidavits were furnished before the Ld. CIT(A), but were not

considered while sustaining the addition. Since the confirmations and affidavits were not furnished during the assessment proceedings, the AO had no opportunity to examine their contents or verify the explanation offered by the assessee.

9. The confirmations and affidavits have a direct bearing on the explanation regarding the nature and source of the cash deposits. However, the mere filing of confirmations and affidavits does not, by itself, establish that the cash deposits stand satisfactorily explained. Their contents require verification with reference to the identities of the persons concerned, the amounts stated to have been paid by them, the relevant dates, their capacity to make such payments, and the corresponding entries in the books and records of the assessee. The objection of the Ld. DR regarding receipt of cash from persons other than members also requires examination in the light of the actual nature of the transactions and the supporting material. Such objection, by itself, does not dispense with the need to examine the assessee's explanation regarding the source of the deposits.

10. Further, the assessee has contended that the amount of cash deposited in its bank accounts during the demonetisation period, as considered by the AO, differs from the amount certified by the banks in the certificate placed at page nos. 116 to 125 of the paper book. This contention also

requires factual verification by the AO. The AO shall examine the bank certificates along with the relevant bank statements and reconcile the amount of cash deposits considered in the assessment order with the amount certified by the banks.

11. In these circumstances, we consider it appropriate to set aside the order of the Ld. CIT(A) on this issue and restore the matter to the file of the AO for fresh adjudication. The AO shall examine the confirmations and affidavits of the 21 persons placed at page nos. 127 to 201 of the paper book, verify the discrepancy claimed by the assessee with reference to the bank certificates placed at page nos.116 to 125 of the paper book, and undertake such further verification as may be necessary. Thereafter, the AO shall decide the issue in accordance with law after granting a reasonable opportunity of being heard to the assessee. The assessee shall be at liberty to furnish further evidence in support of its explanation and shall co-operate with the proceedings. We have expressed no opinion on the merits of the addition. Accordingly, the grounds relating to the addition of Rs.39,99,555/- under section 69A of the Act are allowed for statistical purposes.

12. With regard to the second issue relating to the addition of Rs.35,66,504/- under the head “Income from other sources” on account of estimation of income at the rate of 8% on the differential turnover of Rs.4,85,80,856/-, the Ld. AR submitted that the amount considered by the AO was

incorrect. Inviting our attention to the summary of transactions in all bank accounts, placed at page no. 247 of the paper book, the Ld. AR submitted that the aggregate credits in these bank accounts during the year under consideration amounted to Rs.5,54,66,180/-. He submitted that there was a mismatch between the aggregate credits reflected in the bank statements and the amount considered by the AO, which required reconciliation.

13. The Ld. AR further submitted that the assessee was engaged in making statutory payments on behalf of its customers. For this purpose, the assessee received cash from the customers, deposited the same in its bank accounts and thereafter made the statutory payments on their behalf. In this process, the assessee earned only a small amount of commission, which had already been recorded in its books of account and offered to tax. He submitted that the entire amount received from the customers and deposited in the bank accounts could not be treated as the turnover of the assessee.

14. Inviting our attention to CBDT Circular No. 452 dated 17.03.1986, placed at page nos. 69 and 70 of the paper book, the Ld. AR submitted that only the commission earned by the assessee constituted its turnover and not the entire amount received from its customers. He accordingly submitted that the AO had erred in treating the bank deposits

as turnover without verifying the actual nature of the receipts and the transactions undertaken by the assessee.

15. Per contra, the Ld. DR relied upon the orders of the lower authorities.

16. We have heard the rival submissions and perused the material available on record. The addition under consideration proceeds on the treatment of the differential bank credits as turnover of the assessee and the estimation of income thereon at the rate of 8%. The assessee has disputed both the amount of bank credits considered by the AO and the treatment of such credits as its turnover. In support of its contention regarding the quantum of bank credits, the assessee has referred to the summary of transactions in its bank accounts placed at page no. 247 of the paper book. The discrepancy pointed out by the assessee requires verification and reconciliation with the relevant bank statements and the computation made by the AO.

17. The assessee has further explained that the amounts received from its customers were deposited in the bank accounts for making statutory payments on their behalf and that its income from these transactions was confined to the commission earned. Whether the bank credits represent the assessee's own business receipts or amounts received and disbursed on behalf of its customers can be determined only

after examining the underlying transactions and supporting records. The assessee's contention that the entire amount deposited in the bank accounts does not constitute its turnover, with reference to CBDT Circular No. 452 dated 17.03.1986, also requires examination of the actual nature of the receipts and the applicability of the said circular to the facts of the case. Accordingly, we consider it appropriate to set aside the order of the Ld. CIT(A) on this issue and restore the matter to the file of the AO for fresh adjudication. The AO shall verify and reconcile the aggregate credits in all the bank accounts with reference to the summary placed at page no. 247 of the paper book and the relevant bank statements. The AO shall also examine the nature of the amounts received from the customers, their corresponding deposits in the bank accounts, the statutory payments made on their behalf, and the commission recorded and offered to tax by the assessee. After considering the supporting evidence and the applicability of the CBDT circular relied upon by the assessee, the AO shall determine the nature of the receipts and decide the issue in accordance with law. The assessee shall be afforded a reasonable opportunity of being heard and shall be at liberty to furnish further evidence in support of its submissions.

18. Since the issue concerning the nature of the receipts has been restored to the file of the AO, we are not adjudicating upon the rate of 8% adopted by the AO for

estimating income. This issue is kept open to be decided by the AO in accordance with law after determining the nature of the amounts deposited in the bank accounts of the assessee. Accordingly, the grounds relating to this addition are allowed for statistical purposes.

19. The assessee has also raised an issue regarding the applicability of the enhanced rate of tax under section 115BBE of the Act. The assessee has challenged the levy of tax at increased rate of 60% under section 115BBE of the Act instead of 30% applicable for the year under consideration i.e. A.Y. 2017-18. We find that an identical issue has already been considered by this Tribunal in the case of Soma Shekhar Bingumalla Vs. ITO in ITA No. 76/Hyd/2026 for the assessment year 2017-18, dated 29.07.2026, wherein, at para nos. 18 to 21 of the order, the Tribunal has held as under:

> *"18. We shall now deal with the grievance of the assessee that the AO had erred in subjecting the addition made under Section 69A of the Act to tax at the enhanced rate prescribed under the amended provisions of Section 115BBE of the Act.*
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> *19. We find that it is the contention of the Ld. AR that the amendment made to Section 115BBE by the Taxation Laws (Second Amendment) Act, 2016, enhancing the rate of tax, is prospective in nature and would, therefore, apply only from Assessment Year 2018-19 onwards. Consequently, according to the Ld. AR, the enhanced rate could not have been applied to the case of the assessee for the year under consideration, i.e., Assessment Year 2017-18.*
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> *20. We find substance in the Ld. AR's contention, as the said issue is squarely covered by the judgment of the Hon'ble High Court of Rajasthan in the case of Deepak Maratha v. Union of India & Ors., CWP No.3625 of 2020,*

dated 27- 05-2026. The Hon'ble High Court, after examining the scheme of the Taxation Laws (Second Amendment) Act, 2016 and the amended provisions of Section 115BBE of the Act, had concluded that although the amendment came into force with effect from 01-04-2017, the enhanced rate of tax could operate only prospectively and would, therefore, apply from Financial Year 2017-18, corresponding to Assessment Year 2018-19 onwards. The Hon'ble High Court further observed that the amending enactment does not contain any express provision conferring retrospective operation upon the amended provisions of Section 115BBE of the Act. At this stage, we deem it apposite to observe that the Hon'ble High Court of Kerala in Maruti Babu Rao v. ACIT, W.A. No.984 of 2019, has taken a contrary view and held that the enhanced rate of tax under the amended provisions of Section 115BBE would apply from Assessment Year 2017-18 itself.

21. We, thus, find that there are divergent views expressed by two Hon'ble High Courts on the issue before us. As per the settled position of law, in such a situation, and in the absence of any authoritative pronouncement of the Hon'ble jurisdictional High Court or the Hon'ble Supreme Court directly on the controversy involved, the view favorable to the assessee deserves to be adopted. We draw support for the aforesaid proposition from the judgment of the Hon'ble Supreme Court in the case of CIT v. Vegetable Products Ltd. (1973) 88 ITR 192 (SC), wherein it was held that where two reasonable constructions of a taxing provision are possible, the one favorable to the assessee should ordinarily be preferred. We respectfully follow the view taken by the Hon'ble High Court of Rajasthan in the case of Deepak Maratha v. Union of India & Ors. (supra), being the view favorable to the assessee, and hold that the enhanced rate of tax prescribed under the amended provisions of Section 115BBE of the Act is not applicable to the assessment year under consideration. Accordingly, we direct the AO to compute the tax liability of the assessee on the addition of Rs.4,07,481/- sustained by us hereinabove by applying the rate of tax as applicable under the unamended provisions of Section 115BBE of the Act."

20. On perusal of the above, we find that the Tribunal has considered the reliance placed by the assessee on the decision of the Hon'ble Rajasthan High Court in the case of Deepak Maratha Vs. Union of India & Others (supra) as well as the reliance placed by the Department on the decision of the Hon'ble Kerala High Court in the case of Maruti Babu Rao Vs. ACIT (supra), and ultimately held that the enhanced rate of 60% under section 115BBE of the Act is not applicable for the assessment year 2017-18. In the present case also, the assessment year under consideration is 2017-18. Therefore, respectfully following the aforesaid order of the Tribunal in the case of Soma Shekhar Bingumalla Vs. ITO (Supra), we hold that the enhanced rate of 60% under section 115BBE of the Act is not applicable to the assessment year under consideration. Accordingly, we direct the Assessing Officer to compute the tax liability of the assessee by applying the rate of tax as applicable under the unamended provisions of section 115BBE of the Act.

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

Order pronounced in the Open Court on 16th October, 2026.

Sd/-	Sd/-
(VIJAY PAL RAO) **VICE PREESIDENT**	**(MADHUSUDAN SAWDIA)** **ACCOUNTANT MEMBER**

Hyderabad, dated 16th October, 2026.

Vinodan/sps

Copy to:

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3	Pr. CIT, KURNOOL
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order