

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B', NEW DELHI)**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND**

SH. K. N. CHARY, JUDICIAL MEMBER

ITA No:-7167/Del/2018

(Assessment Year: 2013-14)

WEL Intertrade (P) Ltd. 5E Local Shopping Centre Masjid Moth, Greater Kailash II New Delhi	Vs.	Assistant Commissioner of Income Tax Circle – 27 (2) New Delhi
APPELLANT		RESPONDENT

Assessee by : Sh. C. S. Aggarwal, Sr. Advocate
Sh. Ravi Pratap Mall, Advocate

Revenue by : Sh. Abhishek Kumar, Sr. DR

Date of Hearing : 15.05.2019

Date of Pronouncement : 03.06.2019

ORDER

PER: N. K. BILLAIYA, AM

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals]-9, New Delhi, dated 20.09.2018 for Assessment Year 2013-14.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in sustaining the order of the Assessing Officer framed u/s. 154 of the Act.

3. Facts of the case show that an assessment was framed u/s 143 (3) of the Act vide order dated 28.03.2016 after making addition of Rs.4.50 crores u/s 68 of the Act. After framing the assessment the Assessing Officer found that the tax computation as per assessment order dated 28.03.2014 required to be amended as there is mistake apparent from the record.

4. The Assessing Officer noticed that the net taxable income has been calculated at Rs.37369890/- after inadvertently setting of the current year loss of Rs.7630108/- against income from other sources of Rs.4.50 crores added u/s. 68 of the Act.

5. The Assessing Officer was of the opinion that the addition made u/s 68 has to be taxed at a flat rate of 30% and no deduction and allowance can be set off there with u/s. 115 BBE of the Act. Accordingly the assessment was rectified u/s. 154 of the Act.

6. Assessee agitated the matter before the CIT(A) but without any success.

7. Before us the counsel for the assessee stated that the provisions of section 115 BBE do not apply in the year under consideration. It is the say of the counsel that the amendment are effect from 01.04.2017 and hence not applicable in the year under consideration.

8. The DR strongly supported the findings of the Assessing Officer.
9. We have carefully considered the orders of the authorities below. At the very outset, we have to state that the addition of Rs.4.50 crores have been deleted by us in ITA No.7166/Del/2018 vide order dated 03.06.2019. On this issue itself the rectification order does not survive.
10. Even otherwise the amended provisions of section 115BBE do not apply during the year under consideration. For ready reference section 115 BBE as it stands today read as under :-

"115 BBE [(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 69 D 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 clause (a) [and clause (b) of sub-section(1)]*

11. The pre amended section read as under :-

"15. Substituted by the Taxation Laws (Second Amendment) Act, 2016 w.e.f. 01.04.2017. Prior to its substitution, sub-section (1) read as under :

"(1) Where the total income of an assessee includes any income referred to in section 68, section 69, section 69A section 69B or section 69D the income-tax payable shall be the aggregate of –

- (a) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D at the rate of thirty per cent;*
- (b) 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 (a)".*

12. A perusal of the above show that the amendment is applicable from 01.04.2017. In our considered view whether the amendment is prospective

or retrospective is a highly debatable issue and, therefore, cannot be a subject matter of rectification u/s. 154 of the Act.

13. Considering the facts of the case and the law we set aside the findings of the CIT(A) and quash the rectification order dated 05.05.2016 framed u/s.154 of the Act.

14. In the result, the appeal filed by the assessee is accordingly allowed.

Order pronounced in the open court on 03.06.2019.

Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

Dated: 03.06.2019

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	03.06.2019
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	