

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 268/Ind/2019
A.Y. 2015-16

Shri Ritesh Kumar Malviya, Khandwa
PAN – AWJPM0747K :: Appellant

Vs

ITO, Ward-1, Khandwa :: Respondent

| | |
|-----------------------|---|
| Assessee by | Shri Pavan Ved, Adv.(Through Video Conferencing) |
| Respondent by | Shri Ashish Porwal, Sr. DR |
| Date of hearing | 28.05.2020 |
| Date of pronouncement | 28 .05.2020 |

O R D E R

This appeal is filed by the assessee against the order of Id. CIT(A)-II, Indore dated 27.12.2018 pertaining to Assessment year 2015-16. The assessee has raised following grounds of appeal:

- 1. Ld. CIT(A) erred in confirming taxing total income u/s 115BBE of Rs.1,67,050/-*
- 2.The appellant reserves right to add or amend the grounds of appeal ”*

2. The facts in brief are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act 1961(hereinafter called as ‘the Act’) was framed

vide order dated 22.12.2017 while framing the assessment. The assessing officer made following observations:

6. It is therefore clear that whole exercise for .showing such income in the year under consideration has been made to explain source of cash deposited in SBN during demonetization period. On verification of this office record it is noticed that the assessee has deposited cash of Rs.26,81 ,000/- in old notes (SBN) in his bank account with Bank of India Jawar Branch, and PNB Branch Sanawad, during the demonetization period from 09-11-2016 to 31-12-1016. The assessee has filed his reply online explaining the source of cash so deposited. On verification of the reply it is seen that the assessee has claimed that out of total deposit, Rs. 26,59,000/- was deposited out of his past savings. In this context only the case of the assessee was taken up for scrutiny under CASS As discussed above the assessee has failed to substantiate his claim for income from motor revinding charges, and vehicle charges. The assessee was therefore requested to show cause as to why the income which could not be substantiated by him should not be treated as bogus income offered for explaining the money deposited during submitted his reply vide letter dated 22.11.2017 which reproduced as under:

प्रति,

श्रीमान आयकर अधिकारी
वार्ड 1 खंडवा

रितेश मालवीया
सिंगाजी रोड, जावर,
जिला खंडवा

PAN NO- AWJPM0747K
A. YEAR 2015-16

विषय :- करनिर्धारण प्रक्रिया के दौरान चाही गई जानकारी के संबंध में।
महानुभव,

यह कि दिनांक 08/12/2016 से 30/12/2016 तक पुरानी मुद्रा जो खातों में जमा की गई थी, इस संबंध में करदाता द्वारा दिनांक 12/12/2017 को अपना एक लिखित स्पष्टीकरण प्रस्तुत किया जा चुका है, जिसके अनुसार करदाता दिनांक 01/04/2015 से 31/03/2016 को अंतिम पूंजी 33,76,477.44 रु थी जिस पूंजी में से मार्च 2016 में करदाता द्वारा जिला आबकारी अधिकारी खंडवा (बैसिक लाईसेंस फीस) रु 29 लाख का विनियोजन किया जा चुका है, जिसका कि वित्त वर्ष 2015-16 की balance sheet में स्पष्ट उल्लेख है।

उक्त विनियोजित राशि (जिला आबकारी अधिकारी basic license fees) रु 29 लाख रु के प्रतिफल में प्राप्त हुई, LEQURE(STOCK) को विक्रय करने पर जो राशि प्राप्त हुई थी उसी राशि को पुरानी मुद्रा (बंद मुद्रा) एवं बालू मुद्रा के रूप में दिनांक 08/11/2016 से 30/12/2016 तक की अवधि में जमा कराई गई थी।

यह कि करनिर्धारण वर्ष 2015-16 में करदाता द्वारा व्यापार से शुद्ध आय 4,88,657/- रु बताई गई है। यह कि करदाता को संबंधित वर्ष में खाद, बीज, विक्रय, मोटर वाईडिंग और विक्रय किराये से आय प्राप्त हुई है, जो कि सत्य एवं सही है। जिसके संबंध में आय-व्यय का पूर्ण विवरण में दरतावेजी साहय के साथ प्रस्तुत किया जा चुका है। करदाता की मोटर वाईडिंग दुकान एवं विकल भी वास्तविक रूप में थी जिससे कि करदाता को आय प्राप्त होती थी। जिसको करदाता द्वारा संबंधित आयकर विवरणी में दर्शा कर आयकर का भुगतान भी किया गया है।

अतः करदाता की अनुपस्थिति में लिये गये बिना प्रतिपरीक्षण के ~~निर्धारण~~ नहीं है।

इसलिए श्रीमानजी से निवेदन है कि करनिर्धारण वर्ष 2015-16 की आय को मान्य करते हुए कर निर्धारण आदेशाधारित धारित करने का कृष्ट करे।

धन्यवाद

स्थान :- खंडवा
दिनांक :- 22/12/2017

22/12/2017
हस्ताक्षर

7. The reply of the assessee has been duly considered, however, the same is not found to be convincing. The reply is general in nature in which he has just repeated that whatever income shown by him is correct and the statement taken behind his back cannot be relied on. Such explanation on bogus income shown for explaining the source of money deposited during demonetization cannot be accepted.

8. Since the assessee has failed to substantiate his income to the above extent. the whole exercise for showing such income in the year .under consideration is treated as done for explaining the source of cash deposited during demonetization period by paying tax at lower rate in the year under consideration. In view of the detailed discussion made herein above the income from motor rebinding and vehicle income of Rs. 4,30,242/- shown by the assessee in the year under consideration is taxed on protective basis u/s 115BBE of I.T. Act. Since the assessee has failed to substantiate the income during the assessment year under consideration, the credit for the same for explaining the money deposited ir: demonetization period in the A. Y. 2017-18, cannot be allowed. Accordingly, the claim of past year saving to that extent made by the assessee shall be assessed on substantive basis in A. Y. 2017-18 and taxed at the rates prescribed u/s 115BBE of the I.T.Act as applicable for the said Asst Year.,
In view of the above, total income of the assessee is computed as under-

Total income as per return- 8. Since the assessee has failed to substantiate his income to the above extent. the whole exercise for showing such income in the year .under consideration is treated as done for explaining the source of cash deposited during demonetization period by paying tax at lower rate in the year under consideration. In view of the detailed discussion made herein above the income from motor rebinding and vehicle income of Rs. 4,30,242/- shown by the assessee in the year under consideration is taxed on protective basis u/s 115BBE of I.T. Act. Since the assessee has failed to substantiate the income during the assessment year under consideration, the credit for the same for explaining the money deposited ir: demonetization period in the A. Y. 2017-18, cannot be allowed. Accordingly, the claim of past year saving to that extent made by the assessee shall be assessed on substantive basis in A. Y. 2017-18 and taxed at the rates prescribed u/s 115BBE of the I.T.Act as applicable for the said Asst Year,

In view of the above, total income of the assessee is computed as under-

| | |
|--|-----------------------|
| <i>Total income as per return-</i> | <i>Rs. 4,30,242/</i> |
| <i>Assessed Income-(On protective basis u/s 115BBE,-)Rs. 4,30,242/</i> | |
| <i>Agriculture Income</i> | <i>Rs. 1.33.402/-</i> |

Assessed u/s 143(3) of the I.T.Act. 1961 as a total income at Rs. 4,30,242/- on protective basis u/s 11513BI-; Tax & interest chargeable is as per ITNS 150. which is part of this order. Demand notice issued.

3. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A), who dismissed the appeal *ex-parte*.

4. Now the assessee is in appeal before this Tribunal.

5. Ld. counsel for the assessee submitted that the authorities below failed to appreciate the facts in right perspective. He submitted that the ld. CIT(A) has not passed a speaking order on the impugned additions.

6. Ld. Departmental Representative (DR) opposed these submissions and supported the orders of the authorities below.

7. I have heard the rival contentions of Ld. CIT(A) has dismissed the appeal by observing as under:

“2. The case was fixed/adjourned for hearing on 15.10.2018, 26.10.2018 27.11.2018 & 27.12.2018. On the dates of hearing, neither anybody attended nor filed any written submission.

2.1 It seems that the appellant is not interested to pursue its appeal. Therefore this appeal cannot be kept pending adjudication for indefinite period. Mere filing of appeal is not enough rather it requires effective prosecution also. The appellant has also not filed any information with this

office. In view of these facts, I am of the considered view that the appeal of the appellant is liable to be dismissed. This view is supported by many judicial pronouncements which are as under :-

(i) CIT Vs. B. No. Bhattachargee 118 ITR 461

(ii) Estate of late Tukojirao Holkar Vs. CWT 223 ITR 480

(iii) CIT Vs. Multiplan India Ltd. 38 ITD 320 (Del)

2- However, in the interest of natural justice, I have gone through the assessment order and grounds of appeal. After taking into account the totality of the facts and circumstances of the case, grounds of appeal at Sr.No.1 to 3 of grounds of appeal are hereby dismissed for the reasons that the facts and findings brought out by the AO in the assessment order-have not been controverted by the appellant. Therefore, the AO has been found justified in making the various additions as per the assessment order.

*Therefore, all the grounds of appeal are **dismissed**.*

8. From the above it is clear that the Ld. CIT(A) has not given any finding on merit. I, therefore, in the interest of principle of natural justice, set aside the impugned order and restore the grounds of appeal to the file of Ld. CIT(A) and decide the ground raised by the assessee on merits in a fresh speaking order.

9. In result, appeal filed by the assessee is allowed for statistical purposes only.

Order was pronounced in the open court on 28.05.2020.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

Dated : 28 .05.2020

Patel/PS

Copy to:

Appellant/Respondent/Pr.CIT(A)/Pr.CIT/DR, Indore