

आयकर अपीलीय अधिकरण न्यायपीठ जोधपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH

माननीय श्री संदीप गोसाईं, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.419/Jodh/2019

(निर्धारणवर्ष / Assessment Year: 2014-15)

Shri Mahesh Kumar Singhla C/o. Rajendra Jain Advocate 106, Akshay Deep Complex 5th B Road, Sardarpura, Jodhpur Rajasthan-342 001.	बनाम/ Vs.	ACIT–Circle Sri Ganganagar Rajasthan
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. BPSPK-4683-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Raksha Birla (CA) & Shri Rajendra Jain (Advocate)–Ld.ARs.
Revenue by	:	Shri K.C. Badhok- Ld. CIT- DR

सुनवाई की तारीख/ Date of Hearing	:	06/11/2020
घोषणा की तारीख / Date of Pronouncement	:	21/12/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2014-15 contest the order of Ld. Commissioner of Income-Tax(Appeals), Bikaner, [in short referred to as 'CIT(A)],

Appeal No.472/2016-17 dated 24/09/2019 on following effective grounds:-

1. That on the facts and in the circumstances of the case, the Id CIT (A) erred in upholding the provision of section 115BBE in respect of excess cash of Rs.5,00,000/- which was surrendered in the return of income.
2. That on the facts and in the circumstances of the case, the Id CIT (A) erred in treating the excess cash surrendered by the assessee at the time of survey outside the business income particularly when the excess cash found at the time of survey is part of business activities carried out by the assessee.
3. That on the facts and in the circumstances of the case, the Id CIT (A) erred in not considering explanation and judicial decisions referred before him.

As evident the assessee is aggrieved by invocation of the provisions of Sec. 115BBE against surrendered income of Rs.5 Lacs.

2. We have carefully heard the rival submissions and perused relevant material on record including written submissions and documents placed in the paper book. The judicial precedents as relied upon during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter would be as given in succeeding paragraphs.

3. The assessee being resident individual derived business income from proprietorship concern namely M/s Singla Cotton Industries. An assessment was framed for the year under consideration u/s 143(3) accepting returned income of Rs.29.91 Lacs. The assessee's business premise was subjected to survey proceedings u/s 133A on 18/02/2014 wherein the assessee surrendered aggregate income of Rs.25.03 Lacs which was on account of excess stock for Rs.20.03 Lacs and another Rs.5 Lacs on account of excess cash. The Ld. AO, while accepting the same,

opined that the same would be taxable at maximum marginal rates in terms of Section 115BBE as against the taxes paid at normal rates. The assessee's submissions could not find favor with Ld. AO who denied slab benefit to the assessee and directed him to pay tax against the same @30% straight.

4. Upon further appeal, Ld. CIT(A) concurred with assessee's submissions that stock of Rs.20.03 Lacs would not be covered u/s. 69 and therefore, the provisions of Section 115BBE would not be applicable. However, excess cash of Rs.5 Lacs would not be business income and therefore, the same would be taxed @30%. Aggrieved, the assessee is in further appeal before us.

5. Upon due consideration, we find that the surrender was made by the assessee during survey proceedings at business premises. During the survey action, discrepancies in stock as well as cash were found by the authorities and to make up the same the assessee made a surrender of the same and duly declared the same in his return of income. It is to be noted that the cash discrepancies were found at the business premises. The assessee does not have any other source of income. Therefore, the cash discrepancies would be nothing but the business receipts for the assessee. It could not be said that the said income arose from undisclosed sources since the source of the same was to be accepted as business receipts and nothing else. Therefore, Ld. CIT(A), in our considered opinion, was not correct in upholding the action of Ld. AO in taxing the same as per Section 115BBE. We

hold that the said receipts would constitute business income to be taxed as per slab rates. We order so.

6. The appeal stands allowed in terms of our above order.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal)
Rules, 1963.*

Sd/-
(Sandeep Gosain)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/12/2020
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Jodhpur
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, जोधपुर / ITAT, Jodhpur.