

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI RAJPAL YADAV HON'BLE VICE PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.98/Ind/2021
Assessment Year:2015-16**

Shri Manohar Singh Morya Khargone (Appellant)	<u>बनाम/</u> Vs.	ITO Khargone (Respondent)
P.A. No.BYFPM6568P		
Appellant by	Shri S.N. Agrawal, AR	
Respondent by	Shri Amit Soni, Sr. DR	
Date of Hearing:	10.11.2021	
Date of Pronouncement:	26.11.2021	

आदेश / O R D E R

PER MANISH BORAD:

The above captioned appeal at the instance of Assessee is directed against the order of Ld. Commissioner of Income Tax(Appeals)-III, (in short 'CIT(A)'), Indore dated 04.03.2021 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') framed by ITO, Khargone. The assessee has raised following grounds of appeal:

1. *That on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in maintaining addition of Rs.1,42,320/ - as made by the assessing officer by invoking the provision of section 115BBE of the Act in respect of Mini bus plying income of Rs.13800/ - even when the appellant has proper Justify the said income with supporting documents and explanation.*
2. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in maintain the addition of Rs.1,42,320/ - as made by the assessing officer under section 115BBE of the Act even when the said addition was not made by the assessing officer either under section 68, 69, 69A, 69B, 69C and 69D of the Income Tax Act.*
3. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in maintaining addition of Rs.1,42,320/ - as made by the assessing officer under section 115BBE of the Income Tax even when the said income has already been included in the return of total income and the same was duly offered for tax by the appellant himself.*
4. *That on the facts and in the circumstances of the case and in law the Ld. AO grossly erred in taxing the said amount of income of Rs.1,42,320/- in the ASSESSMENT YEAR 2017-18 on Substantive basis even when the assessment is pending before the AO was for the A.Y.2015-16 and therefore direction as given related to the ASSESSMENT YEAR 2017-18 is uncalled for and therefore required to be expunged from the Ld. AO.*

2. From perusal of the above grounds, the sole grievance of the assessee is that Ld. CIT(A) erred in maintaining the addition of Rs.1,42,320/- made by the Ld. AO invoking the provisions of section 115BBE of the Act.

3. We have heard rival contentions and perused the records placed before us and also gone through the synopsis and paper book filed by the Ld. counsel for the assessee containing 22 pages. Facts in brief are that the assessee declared income of Rs. 2,60,690/- in the

return of income filed on 25.02.2017 for A.Y. 2015-16. Assessee claims to derive income from Mini Bus playing, Income of Rs.2,60,690/- declared in the return of income which included income from Mini Bus playing at Rs.1,28,520/- and income from interest at Rs.13,800/-. Ld. AO called for the source of income but was not satisfied with the submissions filed by the assessee. Before Ld. CIT(A) also assessee filed the details but could not find any favour.

4. On perusal of the paper book page 13, we find that the assessee was issued Road permit for playing Mini Bus No. MH05AZ0059 along with relevant details including allowing of two return trips daily. This certificate bearing No. 12000337703 was issued on 2nd June 2014. This vehicle was also purchased by the assessee on 23.04.2014. These evidences are sufficient enough to prove that the assessee was engaged in the business of playing Mini Bus and the income shown for the financial year 2014-15 has been genuinely earned from Mini Bus playing.

5. Under these given acts we find no justification in the finding of both lower authorities applying the provisions of section 115BBE of the Act on the assessee since the alleged income is duly explained

by the assessee and does not fall under any of the provisions of section 68 to 69D of the Act which is necessary to invoke the provisions of section 115BBE of the Act. Since no other addition has been made by the ld. AO except treating the income of Rs.1,42,320/- on protective basis u/s 115BBE of the Act, we, *set aside* the finding of Ld. CIT(A) and allow ground No.1,2, 3 & 4 raised by the assessee holding that Ld. CIT(A) erred in maintaining the addition of Rs.1,42,320/- made by the Ld. AO invoking the provisions of section 115BBE of the Act.

6. In the result, Appeal of the Assessee in ITANo.98/Ind/2021 is allowed.

Order pronounced as per Rule 34 of I.T.A.T., Rules 1963 on ... 26.11.2021.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 26/11/2021

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore