

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 538/JP/2019
निर्धारण वर्ष / Assessment Year : 2013-14

M/s. SMS-AAMW Tollways Pvt. Ltd. B-39, Farmers Aparment, Sector-13 Rohini, Delhi- 85	बनाम Vs.	The DCIT Central Circle-3 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPCS 7418 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 631/JP/2019
निर्धारण वर्ष / Assessment Year : 2013-14

The ACIT Central Circle-3 Jaipur	बनाम Vs.	M/s. SMS-AAMW Tollways Pvt. Ltd. B-39, Farmers Aparment, Sector-13 Rohini, Delhi- 85
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPCS 7418 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal, CA
राजस्व की ओर से / Revenue by: Shri Prithviraj Meena, CIT

सुनवाई की तारीख / Date of Hearing : 28/06/2022
उदघोषणा की तारीख / Date of Pronouncement: 13 /07/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

Both these appeals are cross appeals filed against the order of the ld. CIT(A)-4, Jaipur dated 28-02-2019 for the assessment year 2013-14 wherein both the parties have raised following grounds of appeal.

ITA No. 538/JP/2019 – Assessee

“1. On the facts and in the circumstances of the case, the Id. CIT(A) has grossly erred in confirming that the unexplained income of Rs.21,00,00,000/- is covered by the provisions of Section 115BBE of the Income Tax Act, 1961 by upholding the action of AO in invoking the provisions of Section 69A in the instant case. Thus the action of the Id. CIT(A) deserves to be held bad in law and the income declared by the assessee company deserves to be taxed as per normal income,.

2. On the facts and in the circumstances of the case, the AO has grossly erred in initiating penalty proceedings u/s 271AAB of the Income Tax Act, 1961.

ITA No.631/JP/2019 - Revenue

“1. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in holding that the provisions of Section 115BBE are not applicable on undisclosed income of Rs.27.46 Crores from toll receipts for the A.Y. 2013-14.

2. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in holding that the provision of Section 115BBE is not applicable ignoring the fact that had there been no search in this case, the amount of undisclosed toll receipts would not have been taxed.”

Brief facts of the case are that the assessee, a private limited company, is engaged in activity of collection of toll from the commercial vehicles entering in the state of Delhi. Search and seizure action was conducted on MRS group on 17.07.2013, wherein assessee company is also one of the member. During the course of search statement of Shri Megh Raj Singh Shekhawat, one of the key person, was recorded wherein he admitted undisclosed income in the different

hands inter-alia including undisclosed income totalling Rs. 35 crores in the hands of assessee company (Rs. 14 crore for A.Y. 2012-13 and Rs. 21 crore for A.Y. 2013-14), on the basis of various documents found and seized during the course of search. Since, due date of filing of the return u/s 139(1) was not expired as on the date of search, no regular return was filed and therefore in compliance to notice u/s 153A, return of income declaring total income of Rs. 25,62,45,560/- was filed which included Rs. 21 crore as additional income being profit out of undisclosed toll receipts of Rs. 48,46,54,112/-. After scrutinizing the case, the assessment was completed at the same income as filed by the appellant. However, AO observed that undisclosed income is the unexplained money within the meaning of section 69A and invoked the provisions of section 115BBE.

2. Appellant filed appeal before Id. CIT(A) who passed order dated 28.02.2019 holding that AO has correctly observed that provisions of section 69A are applicable and thereby provision of section 115BBE are invoked on additional income of Rs. 21 crores disclosed by the appellant in the return of income. Present appeal has been filed by the assessee against such observation of Id. CIT(A) and department is in appeal against the observation of Ld CIT(A) that provisions of section 115BBE has been made applicable only on Rs. 21 crore and not on entire undisclosed toll receipts treated as income by AO, being Rs. 48,46,54,112/-.

3. Taking up the departmental appeal first, the ld. DR has argued that AO has treated undisclosed toll receipts of Rs. 48,46,54,112/- as undisclosed income and accordingly provisions of section 115BBE are applicable on entire amount.

4. On the other hand ld. AR of the assessee has argued that the aforesaid amount of Rs. 48,46,54,112/- is the undisclosed receipts and same cannot be treated as undisclosed income in toto because expenditure are necessarily incurred for earning the aforesaid receipts and thereby only profit element embedded in it is to be treated as undisclosed income. The appellant has already disclosed Rs. 21 crore as additional income out of these undisclosed toll receipts for the year under consideration.

5. We have considered the arguments of both the sides. The issue whether entire undisclosed receipts have to be considered as undisclosed income or not, was before us in the appeal of the assessee for A.Y. 2012-13. After carefully considering the arguments of both the sides and facts and in the circumstances of the case as well as considering the legal position on the issue, we have held that undisclosed receipts cannot be considered as undisclosed income in toto and it is the profit element embedded therein which is to be considered as income. Moreover since the appellant has already declared additional income in the return for AY 2012-13 of Rs. 14 crore which is quite more than the estimation of undisclosed income so made by the ld. CIT(A), no separate addition is called for

over and above Rs. 14 crore so declared by the appellant company in its return of income filed in response to notice u/s 153A. Considering the aforesaid decision in the appellant's own case in AY 2012-13, in the year under consideration also whole of the undisclosed receipts cannot be considered as undisclosed income and accordingly ground so taken by the department on this issue that entire undisclosed receipts be considered for the purpose of section 115BBE totally lacks merit and is rejected.

6. Now coming to the appeal of the assessee, it has been argued that provisions of section 69A are not applicable in respect of undisclosed income so offered to tax by the appellant and accordingly provisions of section 115BBE has been incorrectly invoked. The ld. AR has reproduced the relevant portion of section 69A and has argued that when during the course of search assessee is found to be owner of money, bullion or jewellery and same is not explained then only provisions of section 69A can be invoked. In the instant case, neither any money nor any bullion nor any jewellery was found during the course of search and accordingly provisions of section 69A could not be made applicable. The AO has incorrectly observed that additional income earned out of undisclosed receipts comes within the category of 'money' within the meaning of section 69A. It was argued that the word 'money' used in section 69A refers to the physical money / cash being found

and in no way the undisclosed income out of undisclosed receipts can be considered as ‘money’.

7. The ld. DR relied on the orders of authorities below.

8. We have considered the arguments and also the material available on record.

It is seen from the perusal of the relevant portion of the assessment order that the AO has just observed that undisclosed receipts fall in the category of ‘money’ within the meaning of section 69A without giving any reasoning, any rationale and any argument in favour of same. From perusal of section 69A, it is quite evident that the section refer to ‘money’, ‘bullion’, ‘jewellery’ or ‘other valuable article’. These are all tangible assets and if anyone or more of such assets are found to be owned by the assessee and assessee is not able to explain the source of the same, then provisions of section 69A are attracted. For the purpose of section 69A, the word ‘money’ connotes the physical form i.e. cash. Accordingly, the undisclosed business income out of undisclosed receipts cannot in anyway be considered as ‘money’ within the meaning of section 69A and accordingly the section 69A cannot be said to be applicable in respect of the income out of suppressed toll receipts so offered to tax by the appellant in response to notice u/s 153A. Since ld. AO has observed to invoke the provisions of section 115BBE on the basis that income so disclosed falls u/s 69A and as we have held that provisions of section 69A are not applicable on the income so disclosed in the return of income by the

appellant, consequently finding of the ld. AO about invoking the provisions of section 115BBE which has also been confirmed by ld. CIT(A), deserves to be reversed and held to be not applicable in the instant case of the appellant. Thus, ground so taken by the appellant company is allowed on this issue.

9. During the course of hearing, the ld. AR has not pressed the Ground No. 2. Hence, the same is dismissed being not pressed.

10. In the result appeal filed by the assessee is partly allowed and that of the revenue is dismissed.

Order pronounced in the open court on 13 /07/2022

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13 /07/2022

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. SMS Tollways Pvt. Ltd.
2. प्रत्यर्थी / The Respondent- DCIT/ ACIT, Central Circle- 3, Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 538/JP/2019)

आदेशानुसार / By order,

Asstt. Registrar