

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

ITA Nos. 150/Jodh/2022
(Arising out of ITA No. 150/Jodh/2022)
(ASSESSMENT YEARS- 2017-18)

Neeraj Rangwani 39, Shakti Nagar, Jodhpur.	V s	Income Tax Officer, Ward-3(1),
(Appellant)		(Respondent)
PAN NO. AWJPK 4497 Q		

Stay Application Nos. 07/Jodh/2022
(Arising out of ITA No. 150/Jodh/2022)
(ASSESSMENT YEARS- 2017-18)

Neeraj Rangwani 39, Shakti Nagar, Jodhpur.	V s	Income Tax Officer, Ward-3(1),
(Appellant)		(Respondent)
PAN NO. AWJPK 4497 Q		

Assessee By	Shri Amit Kothari –C.A.
Revenue By	Ms. Nidhi Nair, JCIT-DR
Date of hearing	20/01/2023
Date of Pronouncement	13/03/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

This is an appeal filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi (herein after referred as “NFAC”], Ld. CIT(A) for the assessment years 2017-18 dated 03.11.2022. The assessee has also filed stay application seeking stay of collection of outstanding demand.

2. The assessee has raised the following ground:-

“1. The ld. CIT(A) has erred in confirming the assessment order made by ld. AO which is bad in law and bad on facts.

2. The ld. CIT(A) has erred in confirming the addition of Rs. 40,00,000/- for alleged unexplained deposit in bank account. The addition is bad in law and bad on facts which was trading receipts.

3. The ld. CIT(A) has erred in charging of tax u/s 115BBE at special rates on the additions made. The tax so charged at special rates is bad in law and bad on facts.

4. The ld. CIT(A) has erred in sustaining interest charged u/s 234A, 234B and 234C.

5. The appellant crave liberty to add, amend, alter, modify or delete any of the ground of appeal on or before its hearing before your honours.”

3. Briefly the facts of the case are that the return of income for the assessment year 2017-18 was e-filed on 17.07.2017 declaring total income of Rs. 5,03,860/-. The case was selected for scrutiny u/s 143(3) of the I.T. Act, 1961 by CASS. First notice u/s 143(2) of the I. T. Act was issued on 26.09.2018. Thereafter the fresh notices u/s 142(1) of the I.T. Act, 1961 were issued from and the assessee was requested to furnish relevant details/information during the assessment proceedings online electronically through his E-filing account in incometaxindiaefiling.gov.in. The case was selected for limited scrutiny, and issues identified for examination as per notice u/s 143(2) for as per CASS, are (i) cash deposit during the year and (ii) cash deposit during demonetization period. The notices u/s 142(1) were issued by this office to the assessee by this office asking for the details. In these Notice assessee was requested to furnish details e.g. All the bank statements, Explanation of all the cash deposits in bank account during the demonetisation period along with relevant evidences and to explain the timing, amount and frequency of Cash Deposits. To furnish Stock Register, etc. The assessee vide his reply furnished details however It is seen that the reply filed by the assessee was incomplete and without the relevant evidences as called for. In response to these notices assessee filed his reply dated 11-06-2019 vide this reply, assessee submitted that he is dealing mainly in Fruit

business and his income is mainly in the form of commission. The assessee also submitted that he does not need to maintain any books of accounts as assessee has Income on presumptive basis u/s 44AD.

4. In the aforesaid order, the AO issued notice to the assessee and re-adjudicated the matter. The relevant part of the assessment order is reproduced as under:-

“ Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the 4 Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.]”
(Addition - Rs. 43,00,000/- u/s 69A)

he Tax on this income is to be calculated as per section 115BBE of the 1.T Act, 1961. Penalty proceedings u/s 271 AAC of the Act in respect of this addition of unexplained income is also hereby initiated.

7. Further, There are several credit entries by Cash as well as Cheque/RTGS by the in the bank account of the assessee, and The assessee might have camed profit/income on these as well. As a substantial addition has already been u's 69A as discussed above. Being lenient as warranted due to principal of Natural Justice, No separate addition is being done in this regard.

Subject to the above discussion, Total Income of the assessee is assessed u/s 143(3) of the Act as under:

Returned Income	5,03,860/-
Add: Addition u/s 69A	43,00,000/-
TOTAL INCOME	48,03,860/-

8. Assessed at Rs. 48,03,860/- u/s 143(3) of the Income Tax Act, 1961

Details of credit for pre-paid taxes are given in Computation Sheet, appended to this order, which forms part of this order. Demand Notice is attached Penalty Notice u/s 271AAC is being issued separately for the reasons mentioned in the body of order.”

5. Being aggrieved by the AO the assessee preferred an appeal before the Id. CIT(A) and the findings are reproduced as under:-

“ 6.1 During the appellate proceedings the appellant has not given any supporting evidence to explain the source of cash deposit of Rs.43,00,000/-. In Para 1.6 of the reply, it is stated that when the commission @ 5% is Rs.16,99,762/- the collection would be more than 3.40 Crores. As per Para E1 of the Schedule of BP of ITR the gross turnover or gross receipts is declared at only Rs16,99,762/-. Thus the appellant is trying to mislead the department. Most of the replies are on the provisions of section 69A & 115BBE and no effort has been made to explain the source of cash deposit with the help of supporting documents. Appellant has not filed copy of bank statement, cash flow statement etc. to explain the availability of cash on the date of deposit. Before AO it was stated that the appellant is not required to maintain books of account as the income is declared u/s 44AD but actually the income is shown from commission business. Again, the appellant has tried to mislead the department. The addition has been rightly made by AO u/s 69A of the Act. Further the appellant has raised the issue of applicability of section 115BBE for AY 2017-18. As per the appellant as the amended provision is effective from 01/04/2017 it cannot be applicable for AY 2017-18. Reliance have been placed on certain decisions of courts. As per the Gazette of India dated 14/05/2016 in Chapter I of the Finance Act, 2016, it is specifically mentioned that section 2 to 115 of Finance Act shall be deemed to have come into force on the 1st day of April 2016. Section 54 of the Finance Act 2016 is regarding amendment in section 115BBE of the I. T. Act. Thus, as per Finance Act 2016, the section 115BBE is

deemed to have come into force on 1st day of April 2016, i.e., for FY 2016-17 relevant to AY 2017-18.

6.2 Thus the addition made by AO u/s 69A and applicability of 1158BE is held as correct. In the absence of any evidence and looking to turn over and total income, the appellant has miserably failed to explain the source of cash deposit of Rs. 43 lakh. Various courts have given allowance in similar cases for past savings. Thus, for the sake of equity and justice allowance of Rs. 3 lakh is given for past savings and withdrawals. Accordingly, the addition is restricted to Rs. 40 lakh and the grounds of appeal are 'Partly Allowed'.

6. Now the assessee is in appeal.

7. The ld. DR relied upon the orders of the lower authorities and raised objection to remand back to the file of the ld. AO.

8. We have heard both the parties, perused materials available on record. The Bench noted that the ld. AR for the assessee has not pressed for the stay application hence, the stay application is being dismissed. Further, the ld. AR for the assessee submits that the books of account and additional evidences are required to be verified by the Assessing Officer. He also submitted that the assessee would seek to raise certain legal grounds. Accordingly, he prayed that all issues may be restored to the file of the AO for examining them afresh. We find merit in the prayer of Ld A.R. Accordingly, we set aside the order of the ld. CIT(A) and restore all issues to the file of the AO for examining them afresh, by providing adequate opportunity of being heard to the assessee.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes as per direction mentioned above. The stay application filed by the assessee is dismissed.

Order pronounced on 13/03/2023.

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 13/03/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench