

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**176/Jodh/2019**  
(ASSESSMENT YEAR- 2015-16)

Shri Sumit Gahlot, House No.22, Ganesh Colony, Gulpura, Bhilwara <b>(Appellant)</b>	Vs	The ITO Ward-1, Bhilwara <b>(Respondent)</b>
<b>PAN NO. BQAPG9853L</b>		

<b>Assessee By</b>	Shri Amit Surana, CA
<b>Revenue By</b>	Shri S.M. Joshi, JCIT-DR
<b>Date of hearing</b>	22/03/2023
<b>Date of Pronouncement</b>	24 /03/2023

**ORDER**

**PER: SHRI MANISH BORAD, AM**

This is an appeal filed by the assessee against the order of the Id. CIT(A), Ajmer dated 05-06-2018 for the assessment year 2015-16 raising therein following grounds of appeal:-

“The appellant prefers an appeal against the 1<sup>st</sup> appeal order passed by Ld. CIT(A), Ajmer dated 05/06/2018 on following amongst other grounds each of which are without prejudice to any other :-

1.0 A humble prayer is condone the delay of 169 days in filing of the appeal being caused under the bonafide reasons of compelling circumstances beyond my control of the appellant;

2.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the addition u/s 68 of Rs.2,79,134/- and taxing @ 30% u/s 115BBE on ignoring the fact that such income is derived from profits of retail trade covered u/s 44AD of the Act;

2.1 On facts and circumstances of the case and in Law, Ld. CIT(A) ought to have appreciated the fact that the profit from the business cannot be brought to tax u/s 115BBE r.w.s.68, rather is taxable u/s 28(1) of the Act;

3.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the addition u/s 68 of Opening capital balance of Rs.67,463/-and on ignoring the fact that the opening capital balance cannot be brought to tax in impugned year;

4.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the addition u/s 68 of closing balance of alleged unproved creditors of Rs.28,964/- on ignoring the fact that no funds had been received during the year, rather the creditor balance corresponds to the purchase of goods;

5.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the disallowance of deduction u/s 80C of Rs.15,217/-.

The appellant craves leave to add, amend, alter and/or withdraw any of the grounds of appeal at the time of hearing.”

2.1 At the outset of hearing the Bench noted that there is delay 169 days in filing the appeal by the assessee for which the assessee filed an application for condonation of delay on the ground that his aged father being patient of cancer was hospitalized in Bhagwan Mahaveer

Cancer Hospital and therefore, this delay took place in late filing the appeal. This delay was beyond his control.

2.2 On the other hand, the ld. DR objected to such delay but prayed that the Court may decide the issue as deem it fit and proper in the case .

2.3 We have heard both the parties and perused the materials available record. The Bench noted that the delay of 169 days took place in filing the appeal by the assessee because of hospitalization of his aged father in the Bhagwan Mahaveer Cancer Hospital which does not indicate that there is deliberate delay on the part of the assessee. Hence keeping in mind the decision of Hon'ble Supreme Court in the case of Collector, Land & Acquisition vs Mst. Katiji & Others (1987) 167 ITR 472, the delay is condoned.

3.1 The grievance of the assessee in the grounds of appeal raised is against the findings of the ld.CIT(A) in confirming the additions made by the AO at Rs.67,463/- for the unexplained opening capital balance, Rs.28,964/- for the unexplained creditors and denying of deduction u/s 80C amounting to Rs.15,217/-.

3.2 At the outset of the hearing, the ld. Counsel for the assessee prayed that the alleged additions may be deleted and referred to the written submissions filed before the lower authorities.

3.3 On the other hand, the ld. DR supported the orders of the authorities below.

3.4 We have heard the rival contentions and perused the materials available on record. We notice that the assessee is an individual and in engaged in the business of trading. The income of Rs.2,63,920/- declared in the ITR for the assessment year 2015-16 on 9-03-2017. The assessee offered the income u/s 44AD of the Act on presumptive basis. The case of the assessee selected for scrutiny under CASS followed by service of notice u/s 143(2) and 142(1) of the Act. Learned Assessing Officer (for short "Ld. AO") carried the necessary enquiry about the income shown by the assessee u/s 44AD of the Act, called for the details of sundry debtors and creditors and the assessee being unable to satisfy on certain issues made additions which have been confirmed by the ld CIT(A) and now in dispute before us.

3.5 The assessee has offered income on presumptive basis u/s 44AD of the Act is not required to maintain regular books of account. Ld. AO has not disputed the amount of revenue/gross receipt declared by the assessee by placing any contrary material. The details called for by the AO mainly include the sundry debtors and creditors. In this case, the assessee is not required to maintain proper books of accounts since he has opted for presumptive taxation u/s 44AD of the Act. Under these given facts and circumstances of the case, firstly we fail to find any merit in the action of Ld. AO calling for the details of sundry creditors and further making addition u/s 68 of the Act for unexplained creditors of Rs.28,964/-. Section 68 of the Act comes into operation only where any sum is found credited in the books of the assessee maintained in the previous year and the assessee offers no explanation about the nature and source thereof or explanation offered by him, is not in the opinion of the AO satisfactory then such sum so credited may be charged to tax as income of the assessee. Since the assessee is admittedly not required to maintain the books of account, therefore, there is no basis for invoking the provision of

section 68 of the Act. Thus we delete the addition of Rs.28,964/- made for unexplained sundry creditors and allow Ground No. 4.

3.6 As regards the addition for opening capital balance of Rs.67,463/-, we fail to find any merit in the action of the AO because the minimum amount not taxable for the preceding years i.e A.Y. 2014-15 and A.Y. 2013-14 was Rs.2.00 lacs and the assessee files return regularly and having regular source of income from the business and, therefore, can safely presume that he had sufficient accumulated profits to explain the opening capital balance of Rs.67,463/-. We thus delete the addition for opening capital balance and allow Ground No. 3.

3.7 As regards the denial of deduction u/s 80C of the Act for life insurance premium payment, we find that assessee failed to file any proof before the lower authorities and before us for payment of LIC premium and in absence thereof such claim cannot be allowed. We thus confirm the findings of the Id CIT(A) not allowing the claim of the assessee u/s 80C of the Act. Thus Ground No 5 is dismissed.

3.8 As regards the invoking the provisions of Section 115BBE of the Act, we fail to find any merit in the action of the AO since in the

instant case we have held that provision of Section 68 cannot be invoked as the assessee was not required to maintain the books of account. Since Section 115BBE comes into operation only in case of income referred in Section 68/69/69A/69B/69C and 69D of the Act which is not applicable on the issues raised in the instant case, therefore, there is no justification for invoking the provisions of Section 115BE of the Act. Thus Ground No. 2 of the assessee is allowed.

4.0 In the result, the appeal of the assessee is partly allowed

Order pronounced in the open Court on 24/03/2023.

Sd/-

(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

Dated : 24/03/2023

*\*Mishra*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The DR
5. Guard File

Assistant Registrar

Jodhpur Bench