

**IN THE INCOME TAX APPELLATE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)**

**BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA No.164/GTY/2019
Assessment Year: 2015-16**

Siba Prasad Baruah House No. 6, MRDS Road, Chandmari, Guwahati-03. PAN: ABWPB 3397 G (Appellant)	Vs.	ACIT, Circle-1, Guwahati. (Respondent)
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Present for:

Appellant by : Shri Kishor Jain, FCA
Respondent by : Shri N.T. Sherpa, JCIT

Date of Hearing : 05.04.2023

Date of Pronouncement : 27.04.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals) – Guwahati-1, (hereinafter the 'Id. CIT(A)' dated 07.01.2019 for Assessment Year 2015-16 against the order passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by ACIT, Circle-1, Guwahati, dated 27.12.2017.

2. Grounds taken by the assessee are as under:

i. For that the assessment order is not based on correct facts and findings and is erroneous on points of law.

ii. For that on the facts and circumstances of the case as well as on the points of law the AO erred in making an addition of Rs. 23,01,612/- u/s 68 of the Income Tax Act and the Ld. CIT(A) also erred in confirming the same.

iii. For that on the facts and circumstances of the case as well as on the points of law the AO erred in making an addition of Rs. 3,15,066/-

being investment in FDR as deemed income u/s 69A of the Income Tax Act and the Ld. CIT(A) also erred in confirming the same.

iv. For that on the facts and circumstances of the case as well as on the points of law the AO erred in making an addition of Rs. 28,40,277/- u/s 69 of the Income Tax Act and the Ld. CIT(A) also erred in confirming the same.

v. For that any other ground/grounds may kindly be allowed to be urged at the time of hearing.”

3. Brief facts of the case are that assessee filed its return of income on 21.03.2017 reporting total income at Rs. 17,20,290/-. In the course of assessment proceedings, certain additions were proposed to be made by the ld. AO u/s 68, u/s 69A and section 69 of the Act. In this respect, assessee furnished a written submission dated 22.12.2017, stating that he has disclosed Rs. 1,21,61,475/- u/s 183 of the Finance Act, 2016 in respect of the Income Declaration Scheme, 2016 (IDS), 2016. It was stated that against the aforesaid declaration in IDS, assessee has deposited the tax thereon and furnished the copy of challans. He submitted that the proposed additions had already been included in the declaration made by him in the IDS, 2016 and thus proposed additions made by the ld. AO will amount to taxing same amount twice. Assessee thus requested that the proposed additions by the ld. AO should be withdrawn. However, ld. AO observed that certificate of declaration under IDS, 2016 has not been produced by the assessee to establish the claim so made. In absence of valid certificate under IDS, 2016 ld. AO rejected the claim of the assessee and completed the assessment by making additions as proposed by him.

3. Aggrieved, assessee went in appeal before the ld. CIT(A) who by referring to notification no. 59/2016 dated 20.07.2016 dismissed the appeal of the assessee. For want of final certificate in Form 4 under IDS, 2016, the appeal of the assessee was dismissed. Ld. CIT(A) also observed that the last installment of tax, surcharge and penalty under

IDS 2016 was due by 30.09.2017 which assessee had paid only on 21.12.2017 for an amount of Rs. 27,36,334/-.

4. Aggrieved, assessee is in appeal before the Tribunal.

5. Ld. Counsel for the assessee, at the outset, submitted that all the documents in Form No. 1 for making declaration under the IDS 2016, Form No. 2 for acknowledgement of declaration made in respect of IDS, 2016, Form No. 3 for intimation of payment of tax, surcharge and penalty in respect of IDS, 2016 and copies of prayer made for issuance of Form No. 4 under IDS, 2016 dated 20.01.2023 are placed on record. He further referred to another Notification No. 103/2019 dated 13.12.2019 which had extended the due date for payment of tax along with interest and penalty in respect of IDS, 2016.

6. Originally, the due dates prescribed for IDS, 2016 were A, B & C:-

“(A) 30.11.2016, for deposit of 25% of tax, surcharge and penalty

(B) 31.03.2017, for amount paid 50% of tax, surcharge and penalty as reduced by amount paid in A above,

(C) 30.09.2017, for the whole amount payable under IDS, 2016 as reduced by amount paid under Clause A and B above.”

7. Thus, the due date for payment of the last installment was 30.09.2017. This last date was extended to 31.01.2020 vide notification no. 103/2019 issued on 13.12.2019, for making payment along with interest on such amount. Ld. Counsel for the assessee submitted that assessee had made a declaration under IDS, 2016 for an undisclosed income of Rs. 1,21,61,472/- on 28.09.2016. Against this declaration, Form No. 2 was issued on 29.09.2016, assessee then deposited the amount of tax, surcharge and penalty on various dates as under:

Sl No.	Date	Amount
1	30.11.2016	4,89,000/-

2	30.11.2016	4,89,000/-
3	29.11.2016	3,91,200/-
4	29.03.2017	5,00,000/-
5	28.03.2017	5,00,000/-
6	29.03.2017	3,69,200/-
7	21.12.2017	27,36,334/-

8. After the final payment on 21.12.2017, Form No. 3 was filed on 22.01.2020. Ld. Counsel asserted that the last date for payment of amount payable under the IDS, 2016 was extended upto 31.01.2020, against which assessee had already deposited the entire amount by 21.12.2017 which is much before the extended last date, more so even before the issuance of the said notification which was issued on 13.12.2019. Despite this compliance, Form No. 4 under the IDS, 2016 has not been issued to the assessee, for which a prayer has been put on record vide letter dated 20.01.2023 in the office of Id. Pr. CIT, Guwahati. Assessee claims that there is no interest liability on the assessee to be paid on the amount under IDS, 2016 as stated in Notification No. 103/2019. However, in the prayer made by him before the Id. Pr. CIT, Guwahati, assessee has submitted that he is aggregable to make the payment of interest also, if applicable, after which Form No. 4 may be issued.

9. Per contra, Id. Sr. DR placed reliance on the order of Id. CIT(A) who has objectively dealt with the provisions of IDS, 2016. Since there is a non-compliance of deposit of tax and interest by the assessee as required under the IDS, 2016 and the assessee is seeking telescoping benefit for the amount declared under the IDS, 2016 towards the additions made by the Id. AO, Id. CIT(A) has rightfully dismissed the appeal of the assessee.

10. We have heard the rival contentions and perused the material on record. At the outset, we take note of the fact that assessee is claiming telescoping of the amount on undisclosed income declared by him in

the IDS, 2016 for the additions made by the ld. AO in the impugned assessment. We note that the claim of telescoping has not be objected upon at any stage of the proceedings, thus, it is important to delve into the compliance requirement of IDS, 2016 by the assessee. Facts relating to the declaration made by the assessee in IDS, 2016 and deposit of tax, surcharge and penalty thereon is already noted above. The entire dispute is in respect of deposit of amount due under the IDS, 2016 after the due date of 30.09.2017 that is on 21.12.2017. We take note of the Notification No. 103/2019 dated 13.12.2019 which has extended the due date for payment of tax under the IDS, 2016 along with interest and penalty in respect of income declared under the IDS, 2016 to 31.01.2020.

11. Considering the fact of deposit of tax payable under the IDS, 2016 by the assessee though after the original due date but much prior to the extended due date as well as prior to the issuance of Notification No. 103/2019, we find it proper to remit the matter back to the file of ld. AO for the purpose of verification of these facts and compute the interest if, applicable, in terms of the notification referred above. We also direct that if no interest is payable in respect of last installment deposited by the assessee on 21.12.2017, then the benefit due to the assessee under the notification extending the due date to 31.01.2020, be given. It is important to note that assessee has discharged his tax liability in respect of declaration made by him under the IDS, 2016. Having done so, the benefits available under the IDS, 2016 should be given to the assessee. The Central Government itself relaxed the condition for making the payment of last installment by extending the dates from 30.09.2017 to 31.01.2020. Further, in the explanatory memorandum to Notification No. 103/2019, it is certified that no person is being adversely affected by giving retrospective effect to this notification. Thus, the intention of the Central Government is in no way to adversely

affect any person in relation to IDS, 2016. In the present case, assessee has duly discharged its tax liability under the IDS, 2016 which is prior to the extended due date as well as before the notification itself and, therefore, there is no occasion to put him in an adverse situation.

12. Considering the above facts and the notification, we allow the appeal of the assessee in terms of observations made above by remitting the matter to the file of ld. AO.

13. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27.04.2023.

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

Kolkata, Dated: 27.04.2023.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Siba Prasad Baruah.
2. The Respondent: ACIT, Circle-1, Guwahati.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata