

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 196/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2015-16)

Anjaneer Vijetha Kasturi, Kurnool [PAN No. BJFPK4116E]	Vs.	Asst. Commissioner of Income Tax, Circle-1, Kurnool
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.A. Sai Prasad, AR
राजस्व द्वारा/Revenue by: Shri A.G.V. Prasad, DR

सुनवाई की तारीख/Date of hearing: 03/05/2023
घोषणा की तारीख/Pronouncement on: 09/05/2023

आदेश / ORDER

Aggrieved by the order dated 20/02/2023 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Anjaneer Vijetha Kasturi ("the assessee") for the assessment year 2015-16, assessee preferred this appeal.

2. The legality of the order dated 09/04/2019 passed under section 154 of the Income Tax Act, 1961 (for short "the Act"), invoking the provisions under section 115BBE of the Act, is challenged in this appeal by the assessee.

3. Brief facts are that assessee is an individual, earning income from salary and other sources. There was a survey in the business premises of the assessee on 19/02/2015. At that time, a statement of Shri Kasturi Skanda Kumar was recorded under section 131 of the Act. In such statement, Shri Skanda Kumar offered an additional income of Rs. 20 lakhs in the hands of the assessee. Subsequently, assessee filed return of income on 30/12/2015 admitting an income of Rs. 23,62,650/- incorporating Rs. 20 lakhs additional income that was offered during the survey. Having issued notice under section 143(2) of the Act and considering the impounded material, books impounded in relation to survey and other documents produced after due scrutiny, the learned Assessing Officer by order dated 07/09/2017 accepted the return of income and concluded the proceedings under section 143(3) of the Act.

4. Subsequently, learned Assessing Officer proposed rectification of the assessment order. He considered the objections raised by the assessee for such proposed rectification. By order dated 09/04/2019, learned Assessing Officer recorded that the additional income of Rs. 20 lakhs was to be taxed at flat rate at 30% under section 115BBE instead of slab rates and, therefore, such an unaccounted money had to be brought to tax under section 115BBE of the Act. He passed order dated 09/04/2019 accordingly.

5. Assessee aggrieved by such action of the learned Assessing Officer, preferred appeal before the learned CIT(A). Learned CIT(A) by way of the impugned order recorded that when once an income was brought to light in the course of proceedings under section 133A of the Act, it would necessarily be unexplained income which may fall under section 68, section 69, section 69A, section 69B, section 69C or section 69D of the Act etc., and, therefore, merely because a particular section was not specifically invoked, it does not change the character of being the unexplained or undisclosed. On this premise, learned CIT(A) held that the

action of the learned Assessing Officer falls in the category of rectification of mistake apparent from record and accordingly, dismissed the appeal.

6. Assessee is, therefore, aggrieved and filed this appeal. Learned AR contends before me that the learned CIT(A) was not correct in confirming the order under section 154 of the Act since the issue involved is a debatable issue and not amenable for rectification under section 154 of the Act. He placed reliance on the decisions of Hari Narain Gattani vs. DCIT, [2021] 123 taxmann.com 8 (Jaipur – Trib.), ACIT vs. Shri Sudesh Kumar Gupta in ITA No. 976/JP/2019 (AY.2014-15), dated 09/06/2020 and M/s. Kothari and Brothers vs. ITO in ITA No. 2637/Bang/2017 (AY. 2012-13), dated 14/11/2018.

7. Learned AR further submitted that in the matters where a similar survey was conducted on 19/02/2015, the learned CIT(A) had taken a different view in the cases of Shri Lagiseti Viswanatham and Pradeepa Lagisetty. He submits that on a similarly placed facts and circumstances involving survey on 19/02/2015, the department cannot take two stands, one in the case of assessee and other in the case of others. Want of consistency in quasi-judicial proceedings is against the principles of natural justice.

8. Per contra, learned DR placed reliance on the Memorandum explaining the Finance Bill, 2012 and argued that in order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, section 115BBE of the Act was proposed to be inserted in respect of the unexplained credits, money, investment, expenditure etc., it was deemed as income under section 68, section 69, section 69A, section 69B, section 69C or section 69D of the Act. He, therefore submits that learned CIT(A) rightly observed that when once certain income was brought to light in the course of proceedings under section 133A of the Act, it would necessarily be unexplained income, which may fall under

section 68, section 69, section 69A, section 69B, section 69C or section 69D of the Act and merely because the section was not specifically invoked, it does not change the character of income or the applicability of section 115BBE to such proceedings.

9. I have gone through the record in the light of the submissions made on either side. Coming to the admitted facts, there was a survey in the business premises of the assessee on 19/02/2015. In the statement recorded under section 131 of the Act, one Shri Kasturi Skanda Kumar offered an additional income of Rs. 20 lakhs in the hands of the assessee for the assessment year 2015-16. Subsequently, when the assessee filed the return of income for the assessment year 2015-16 on 30/12/2015, such declared additional income was incorporated therein. Learned Assessing Officer by order dated 07/09/2017 considered this fact in the light of the impounded material, books impounded in relation to survey and other documents produced, during the scrutiny, accepted the return of income. Learned Assessing Officer did not invoke the provisions of section 115BBE of the Act nor did he levy the tax at 30% thereunder. He only adopted slab rates. He, however, invoked the provisions of section 115BBE of the Act through an order dated 09/04/2019, proposing to rectify the mistake apparent from record under section 154 of the Act, which the assessee is challenging in this appeal.

10. Assessee submits that when once the learned Assessing Officer does not invoke section 115BBE of the Act in the assessment order passed under section 143(3) of the Act and simply accepted the additional income offered, there is no mistake apparent from record in respect of the rates of tax. Such a thing will be available to the learned Assessing Officer if he invokes the provisions of section 115BBE of the Act, but levies the tax at a different rate by mistake. For this, he relied on the decisions cited above.

11. In the cases of Hari Narain Gattani vs. DCIT (supra), ACIT vs. Shri Sudesh Kumar Gupta (supra) and M/s. Kothari and Brothers vs. ITO (supra), the facts are that there was a survey, recording of statement, wherein the additional income was declared, such an additional income declared was incorporated in the return of income that was filed and the learned Assessing Officer accepting the same without invoking the provisions of section 115BBE of the Act. In all these cases, the learned Assessing Officer invoked section 115BBE of the Act in exercise of powers under section 154 of the Act to rectify the mistake apparent from record. The judicial opinion in all these cases is unequivocal and unanimous that if the learned Assessing Officer accepted the return of income and levied the tax on the undisclosed income as per the slab rates taxation, and without determining such income as the income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D of the Act in the order passed under section 143(3) of the Act, then subsequent exercise of powers under section 154 of the Act to invoke section 115BBE of the Act for rectification of the so-called mistake is bad under law. It is further held that the provisions of section 115BBE of the Act are contingent on the decision of the learned Assessing Officer as to the requirement of sections mentioned in section 115BBE of the Act and, therefore, without recording such a satisfaction in the assessment order, the learned Assessing Officer cannot say that there was error apparent on record and has to be rectified under section 154 of the Act to invoke section 115BBE of the Act. In all these decisions, the decisions of Co-ordinate Benches of this Tribunal and the decisions of higher fora are noticed.

12. A perusal of section 115BBE of the Act clearly contemplates that it is only when the total income of the assessee includes any income referred to in sections 68, section 69, section 69A, section 69B, section 69C or section 69D of the Act or so determined by the Assessing Officer, then income tax has to be calculated under such section. A reading of section

68, section 69, section 69A, section 69B, section 69C and section 69D of the Act shows that for invoking such provisions, the learned Assessing Officer shall reach a conclusion that the assessee has not offered any explanation about the nature and source of the unexplained money or the explanation offered by him is not to his satisfaction. Therefore, it is only when the learned Assessing Officer requires and records that the explanation is either not offered or even if offered it is not to his satisfaction then only the provisions under section 68, section 69, section 69A, section 69B, section 69C or section 69D of the Act could be invoked in determination of income.

13. In the case on hand, there is no specific allegation of the learned Assessing Officer that he sought any explanation from the assessee and the assessee did not offer any explanation or that the explanation if any, offered by the assessee is not to his satisfaction. In the absence of such a satisfaction, if an order under section 143(3) of the Act is passed accepting the return of income, then it is difficult to presume that such an order was passed in respect of any income determined under section 68, section 69, section 69A, section 69B, section 69C or section 69D of the Act or that the tax has to be levied under section 115BBE of the Act. Unless and until such a compliance is there in the assessment order, it cannot be said that there was any mistake apparent from record or that the proceedings are amenable to the jurisdiction of the learned Assessing Officer under section 154 of the Act. Having not recorded any such satisfaction as required under law, the learned Assessing Officer cannot be allowed to contend that the provisions of section 115BBE of the Act are applicable to the case of the assessee and, therefore, the error in respect of leviable rates has to be rectified under section 154 of the Act.

14. With this view of the matter, I am of the considered opinion that consistent view taken by the Co-ordinate Benches of this Tribunal referred to above is applicable to the facts of the case on hand on all force.

Accordingly, I hold that exercise of jurisdiction under section 154 of the Act by the learned Assessing Officer is bad in law and consequently the proceedings under section 154 of the Act are liable to be quashed.

15. In the result, appeal of assessee is allowed.

Order pronounced in the open court on this the 9th day of May, 2023.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 09/05/2023

TNMM

Copy forwarded to:

1. Anjaneer Vijetha Kasturi, C/o. Katrapati & Associates, 1-1-298/2/B/3,
1st Floor, Ashok Nagar, Street No. 1, Hyderabad.
2. Asst. Commissioner of Income Tax, Circle-1, Kurnool.
3. DR, ITAT, Hyderabad.
4. GUARD FILE.

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ITAT, HYDERABAD