

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 207/KOL/2023
Assessment Year: 2017-2018**

***M/s. Guruji Mercantile Pvt. Limited,.....Appellant
C/o. Rajesh Mohan & Associates,
Unit no. 18, 5th Floor, Bagati House,
34, Ganesh Chandra Avenue,
Kolkata-700013
[PAN: AABCG7743G]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-6(2), Kolkata,
Aayakar Bhawan, 6th Floor,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Abhishek Bansal, FCA, appeared on behalf of the
assessee*

*Smt. Ranu Biswas, Addl. CIT, DR, appeared on behalf of
the Revenue*

Date of concluding the hearing : April 27, 2023

Date of pronouncing the order : June 01, 2023

O R D E R

Per Shri Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income

Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 9th March, 2023 passed for assessment year 2017-18.

2. The assessee has taken six grounds of appeal. However, its grievance is that ld. CIT(Appeals) has erred in confirming the addition of Rs.5,64,863/- in the total income of the assessee.

3. Brief facts of the case are that the assessee has filed its return of income under section 139(1) of the Income Tax Act declaring total income of Rs.71,404/-. The CPC while exercising the powers under section 143(1) determined the total taxable income at Rs.6,36,267/-. In this adjustment, CPC has made an addition of Rs.5,64,863/-, which is an interest receipt from M/s. Mohan Impressions Pvt. Limited. According to the revenue, TDS was not deducted by the payer of the interest and, therefore, total interest income is to be included in the taxable income of the assessee. The assessee filed application contending therein that it has computed Rs.32,07,748/- under the head "income from other sources" and in this income, the interest received from M/s. Mohan Impressions Pvt. Limited has been included. The assessee has also placed on record the rectified Form 26AS exhibiting the fact that TDS was also made on this interest. The assessee has filed the

complete details of Form 26AS and how CPC has disallowed it while processing the return under section 143(1) and rejecting the application under section 154.

4. The ld. CIT(Appeals) while considering the contentions of the assessee has observed that the assessee has income from 'Winnings from Lottery' or 'Crossword Puzzles'. According to him, section 115BB prescribes a different tax regime and tax is charged @ 30% flat. Apart from this, no deduction, allowance or loss is allowed to be set off against such income as per section 58(4) of the Act. Hence this Winning is taxed at a straight rate of 30%. In other words, instead of deciding the issue whether interest income from M/s. Mohan Impressions Pvt. Limited has to be included in the income from other source or not, ld. CIT(Appeals) has totally changed the colour by holding that all these aspects are to be ignored only gross income from Winnings of Lottery or 'Crossword Puzzles' are to be taxed @ 30%.

5. It is to be observed that this was not the subject matter of appeal and ld. CIT(Appeals) has not issued any notice for enhancement. If all these are to be looked into, then the case of the assessee ought to have been selected for scrutiny assessment. The dispute before us is, whether addition of Rs.5,64,863/- is sustainable or not.

Instead of addressing this issue, Id. CIT(Appeals) went into altogether new issue and for that it has no jurisdiction. Therefore, we allow this appeal of the assessee and delete the addition made by the CPC.

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

Order pronounced in the open Court on June 1st, 2023.

**Sd/-
(Rajesh Kumar)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President(KZ)**

Kolkata, the 1st day of June, 2023

Copies to : (1) ***M/s. Guruji Mercantile Pvt. Limited,
C/o. Rajesh Mohan & Associates,
Unit no. 18, 5th Floor, Bagati House,
34, Ganesh Chandra Avenue,
Kolkata-700013***

(2) ***Income Tax Officer,
Ward-6(2), Kolkata,
Aayakar Bhawan, 6th Floor,
P-7, Chowringhee Square,
Kolkata-700069***

(3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

(4) *Commissioner of Income Tax ,*

(5) *The Departmental Representative*

(6) *Guard File*

TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.