

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA No.175/Hyd/2023		
Assessment Year: 2019-20		
Shri Anne Rajeswara Rao Hyderabad PAN:ABLPA4688A (Appellant)	Vs.	A.C.I.T Central Circle 1(4) Hyderabad (Respondent)
ITA No.176/Hyd/2023		
Assessment Year: 2019-20		
Shri Anne Manoj Chowdary Hyderabad PAN:AINPC5963B (Appellant)	Vs.	A.C.I.T Central Circle 1(4) Hyderabad (Respondent)
ITA No.177/Hyd/2023		
Assessment Year: 2019-20		
Shri Vallabhaneni Srinivas Chowdary Hyderabad PAN:AEIPV3757R (Appellant)	Vs.	A.C.I.T Central Circle 1(4) Hyderabad (Respondent)
Assessee by:	Shri K. Vijay Kumar, Advocate	
Revenue by:	Smt.K. Haritha, DR	
Date of hearing:	01/08/2023	
Date of pronouncement:	30/08/2023	

ORDER

Per Bench:

The above appeals filed by the respective assesseees are directed against the separate orders dated 23.01.2023 of the

learned CIT (A)-11, Hyderabad, relating to A.Y.2019-20. Since identical grounds have been raised by the respective assessees, therefore, all these appeals were heard together and are being disposed of by this common order.

ITA No.175/Hyd/2023 – Shri Anne Rajeswara Rao

2. Although a number of grounds have been raised by the assessee in this appeal, however, these all relate to the order of the learned CIT (A) in confirming the action of the Assessing Officer in taxing the additional income of Rs.24,00,000/- made u/s 69A r.w.s. 115BBE of the I.T. Act.

3. Facts of the case, in brief, are that the assessee is an individual and derives income from salary, commission, house property and other sources. A search and seizure action u/s 132 of the Act was conducted in the case of M/s. Subhagraha Projects (India) Pvt. Ltd along with its group companies and connected concerns/individuals on 5.10.2018 during which the case of the assessee was also covered. The assessee filed his return of income u/s 139(1) of the Act for the A.Y 2019-20 on 31.08.2019 declaring total income of Rs.1,14,7,060/- including an amount of Rs.24.00 lakhs which was offered as additional income in course of search. The assessee had also returned an amount of Rs.80,000/- towards agricultural income and Rs.3,40,774/- as exempt income.

4. During the course of assesment proceedings, the Assessing Officer observed that total gold jewellery weighing at 3239 grams including gold jewellery pertaining to his other family members was found. The assessee could not submit any relevant documentary evidences in support of ownership of the gold

jewellery found in the bank locker and at his residence. Therefore, the excess gold jewellery weighed at 1390 grams, which was valued at Rs.40,39,700/-, was seized. After considering the number of family members as per CBDT's Instruction No.1916. Accordingly, the assessee Sri Anne Rajeswara Rao in his statement recorded u/s 132(4) on 1,12.2018 had admitted Rs.24,00,000/- in his hands and also admitted an amount of Rs.21,00,000/- including unexplained cash of Rs.4,00,000/- and gold jewellery in the hands of his son i.e Sri Anne Manoj Chowdary. Accordingly, the total admission made in the hands of the assessee Shri Ann Rajeswara Rao for the AY under consideration is Rs.24,00,000/- towards unexplained jewellery seized during search. The assessee has included this additional declaration of Rs.24,00,000/- in the return of income filed in response to notice issued u/s 153A and paid the taxes thereon. Hence the said amount of Rs.24,00,000/- was treated by the Assessing Officer as unexplained gold jewellery u/s 69A of the Act and accordingly brought to tax @ 60% u/s 115BBE.

5. In appeal, learned CIT (A) upheld the action of the Assessing Officer by observing as under:

6. Decision:

In the instant case, assessment u/s. 143(3) was completed by accepting the income returned by the appellant but an income of Rs.24,00,000/- admitted during the Search operation was treated as unexplained u/s. 69A of the Act.

The facts of the case are that search operation u/s. 132 was conducted in the residence of the appellant and during the course of search operation, cash of Rs.4,00,000/- and total gold jewellery of 3239 gms was found. Out of the total gold jewellery, the jewellery weighing 1390 gms was determined as excess after considering the relevant guidelines of the CBDT. Accordingly, the appellant in the statement recorded u/s. 132(4) during the course of Search operation on 01.12.2018, admitted additional income of Rs.24,00,000/- in his hands and Rs.21,00,000/- (including the cash found of Rs.4,00,000/-) in the hands of his son Sri Anne Manoj Choudary.

Accordingly, the appellant and his son have filed the returns of income including the additional incomes admitted during the Search. However, the appellant has offered the said additional income of Rs.24,00,000/- under the head Income from other sources and computed tax on the same according to normal slab rates applicable for the individuals. Whereas the Assessing Officer held the same as unexplained u/s. 69A and taxed the same according to the provisions of 115BBE of the Act. Thus, the core issue under consideration is the taxation of the additional income of Rs.24,00,000/- admitted during the Search i.e. whether the said income is to be taxed as per normal rates of tax or special rate of tax as per 115BBB, as applied by the Assessing Officer.

The appellant during the course of appeal proceedings, contended that his family members for the purpose of computing the eligibility of possessing gold jewellery are 12 in number, 6 males and 6 females and as per the Instruction no. 1916 of the CBDT, the family members are eligible to hold more gold than the gold jewellery found in the residence of the appellant. The appellant written at length about the holding the permissible gold jewellery and contending that the additional income cannot be made as unexplained jewellery etc. and the appellant has also relied on some case laws regarding the gold jewellery holding.

It is important to look at the statement of the appellant recorded on 01.12.2018, in this context, as the admission was made by the appellant vide the said statement. The relevant part of the sworn statement of the appellant is reproduced as under:

Q.14. Please produce the vouchers and other documents in support of your claim made in the financial statements / the books of accounts / expenditure claimed in respect of the companies M/s V S Engineering Pvt Ltd., and M/ s V S Eco blocks Pvt Ltd. Also produce the details of unsecured loans and other investments made by the directors in the previous six financial years and till date in the current financial year.

Ans. All the previous years were under scrutiny assessments and for which we have submitted required vouchers and documents and in some assessment years additional were also made and tax was paid accordingly.

To purchase peace with the department, we voluntarily declare Rs. One crore towards additional income offered to tax for the current Assessment Year in the following names:

- | | |
|----------------------------------|--------------|
| 1. Mr. Anne Rajeswar Rao | Rs.20,00,000 |
| 2. Mr. Manoj Chowdary- | Rs.15,00,000 |
| 3. Mr V. Srinivas Chowdary - | Rs.35,00,000 |
| 4. M/ s V S Eco Blocks Pvt Ltd - | Rs.30,00,000 |

We will produce detailed note on unsecured loans and other investments along with the source of income in two to three days".

As seen from the above, the appellant disclosed the additional income of Rs. 1,00,00,000/- in the hands of persons mentioned therein.

The appellant is arguing that the jewellery stood explained to the extent of the allowance of family members but same is of no consequence at all for the issue under consideration as the appellant has admitted additional income in the return and the only issue is whether the same has to be taxed u/s. 115BBE or not? Thus the issue remains in the present case, thus, is with regard to the source and nature of the said quantum of income.

The contents of Sec. 69A of the IT Act are brought out as under:

"Unexplained money, etc.

69A. 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 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."

In the present case, the appellant admitted an amount of Rs.24,00,000/- as Income from other sources. The onus lies on the appellant to prove that said the nature and source of such income as mandated in the section above and the failure on part of the appellant automatically classifies the income under the said section.

The appellant has not furnished any explanation, either during the assessment proceedings or during the appeal proceedings, as to how such income would have been earned or to what sources that income would be attributed to. In the absence of any bonafide explanation from the appellant, the additional income admitted in the return of income would continue to be unexplained and nothing is on record to treat the same as the income otherwise. Therefore, in view of the above, the additional income admitted in the return of Rs.24,00,000/- attracts the provisions of Sec. 69A of the Act in the absence of any bonafide explanation and the action of the Assessing

Officer in taxing the same as per the provisions of Sec.115BBE is held correct. Accordingly, the ground no. 1 to 4 are dismissed.

The ground no. 5 is general in nature and needs no separate adjudication.

To sum up, the appeal is **dismissed**.

6. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

7. The learned Counsel for the assessee strongly objected to the order of the learned CIT (A) in confirming the action of the Assessing Officer in taxing the additional income of Rs.24.00 lakhs declared in the 132(4) statement recorded during the course of search u/s 69A r.w.s. 115BBE. He submitted that although the assessee had offered additional income of Rs.1,00,00,000/- in his hands and in the hands of his family members, in the statement recorded u/ 132(4) during the course of search, however, such offer was not based on any incriminating material found at the time of search. The assessee in order to buy peace with the Department had offered the additional income of Rs.1.00crore. Further, the jewellery found at the time of search from the premises and locker belonging to various family members totaling to (10) and if the CBDT instruction 1996 is followed, then the entire jewellery stands fully explained. Further, the various family members have declared exempt income being agricultural income, the details of which are as under:

A.Y	Anne Ranga Prasanna (Wife)	Anne Manoj Chowdary (Son)	Anne Srinija (Daughter)	Total
2015-16	40,500	1,80,000	80,000	3,00,500
2016-17	40,500	1,80,000	80,000	3,00,500
2017-18	40,000	1,80,000	80,000	3,00,000
2018-19	40,000	1,80,000	80,000	3,00,000
Total				12,01,000

7.1 He submitted that the family members have purchased part of the gold jewellery out of such income. Therefore, merely because the assessee in his statement recorded u/s 132(4) has declared the additional income of Rs.1.00 crore to buy peace of mind, the same should not be taxed u/s 69A r.w.s. 115BBE.

8. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A). He submitted that when the assessee is unable to explain the source of such additional income, the learned CIT (A) was fully justified in upholding the action of the Assessing Officer in taxing the additional income of Rs.24.00 lakhs u/s 69A r.w.s. 115BBE.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find during the course of search operation u/s 132 of the I.T. Act in the case of the assessee, cash of Rs.4.00 lakhs and total gold jewellery of 3239 gms were found. Out of the total gold jewellery, the jewellery weighing 1390 gms was determined as excess after considering the relevant guidelines of the CBDT. In the statement

recorded u/s 132(4) the assessee declared an amount of Rs.1.00 crore as additional income in his hands and in the hands of his family members and accordingly admitted an additional income of Rs.24.00 lakhs in his return of income and filed the return of income admitting total income of Rs.1,14,75,060/-. Although the Assessing Officer has accepted the return of income declared at Rs.1,14,75,060/-, however, he treated the amount of Rs.24.00 lakhs as unexplained gold jewellery u/s 69A of the I.T. Act and brought the same to tax under the provisions of section 115BBE.

10. We find the learned CIT (A) upheld the action of the Assessing Officer in bringing the same to tax u/s 69A r.w.s. 115BBE. It is the submission of the learned Counsel for the assessee that when no incriminating material was found during the course of search and the assessee to buy peace with the Department has admitted additional income of Rs.1.00 crore in his hands and in the hands of his family members, therefore, bringing the additional income of Rs.24.00 lakhs to tax by applying the provisions of section 115BBE is not justified. It is his submission that family members of the assessee are also taxpayers and apart from regular income are also deriving agricultural income which is exempt from tax and therefore, the excess gold jewellery stands fully explained out of such regular source of income which is utilized for purchase of a part of jewellery.

11. A perusal of the statement recorded u/s 132(4) from Shri Anne Rajeswara Rao on 01.12.2018 shows that the value of 1390 gms of gold which according to the Revenue remained unexplained is only valued at Rs.40,39,700/-. The relevant

questions and answers of the statement recorded u/s 132(4) read as under:

Q8. As per the CBDT instruction No. 1916, married women can hold 500 grams of Jewellery and a male member can hold 100 grams of Jewellery. Considering the number of family members consisting of yourself, your wife, Son, Daughter in law, mother, father and your daughter's family, you can hold a maximum of 1850 grams. In your case total gold jewellery of 3239 grams (net weight) was found. As the jewelry exceeds the maximum limit of 1389 grams in your case, the excess gold of grams (net weight) is being seized. Please offer your comments on the jewellery found vis-à-vis

CBDT instruction No. 1916. Also please state why the jewelry found and valued should not be seized.

A. I would like to submit that the jewelry found in lockers and at my residence consists of the jewelry of my family members and the family of my daughter.

Q. 9. Please produce the sources for the investments into gold jewellery and silver articles found at your residence and in Lockers.

Ans. Most of the items belong to my parents and grand parents. At the time of my marriage and my son's marriage, we have received the gold jewellery as gifts. The remaining is gold to the tune of 1389 Grams which is above the permissible limits. This was purchased out of my and my wife's savings made out of income offered to tax in the previous years. However, to purchase peace of mind we are prepared to pay the required tax to the Government in the name of Smt. Anne Prasanna, my wife.

Q. 10. Out of the total jewellery found in the 3 lockers and gold jewelry found in your residence which have been valued at 3239 grams (net), jewelry weighing 1849 grams has been released to you and the jewelry 1390 grams which is in excess of maximum limit is being seized. The silver articles weighing 37 KG (net) have also been released to you. Please confirm.

A. I confirm that we have received back jewelry weighing 1849 grams (net) valued at Rs.91,82,510/- out of the Jewellery including precious stones found after considering the equivalent value of the Silver articles weighing 37 KGs valued at Rs.12,20,500/-, as the same are within exemption limits as per CBDT instruction No.1916. I confirm that the jewelry weighing to 1390 Grams (net) and valued at Rs. 40,39,700/- is seized as per the seizure valuation report dated 01.12.2018 by the approved valuer.

Q. 11. On 05.10.2018 at Q. No. 6 & 7 it was sought that to produce the returns of income of your family members along with the bank account details and it was stated that the same will be produced later. Please furnish the same.

Ans. The details of bank accounts and statements are already submitted by me. As the details of computation of income and the annexures of returns are not readily available now, I will produce them on 03.12.18.

Q. 12. Please furnish the details of all the movable and immovable properties held in your name and your family members names.

Ans. Please permit me to produce the same on 03.12.2018.

Q. No. 13. Please state what is the relation between V S Engineering Pvt. Ltd. and the companies M/s. NSR Housing Pvt. Ltd., M/s. subhagraha Projects (India) Pvt. Ltd. and Subhagraha Infrastructures Pvt. Ltd.?

Ans. I will submit a detailed note on 03.12.2018.

Q: No. 14. Please produce the vouchers and other documents in support of your claim made in the financial statements / the books of accounts / expenditure claimed in respect of the companies M/s. V S Engineering pvt. Ltd. and M/s. V S Ecoblocks pvt. Ltd. Also produce the details of unsecured loans and other investments made by the directors in the previous six financial years and till date in the current financial year.

Ans. All the previous years were under scrutiny assessments and for which we have submitted required vouchers and documents and in some Assessments years additions were also made and tax was paid accordingly.

To purchase peace with the department, we voluntarily declare Rs. One crore towards additional income offered to tax for the current Assessment Year in the following names :

1. Mr. Anne Rajeswar Rao	-	Rs.20,00,000
2. Mr. Manoj chowdary	-	Rs.15,00,000
3. Mr. V. Srinivas Chowdhary	-	Rs.35,00,000
4. M/s. V S Eco Blocks Pvt. Ltd.	-	Rs.30,00,000

We will produce detailed note on unsecured loans and other investments along with the source of income in two to three days.

Q:15. Do you want to say anything else?

A. We have co-operated with the department by paying taxes from time to time. We request you to release the gold which was purchased from our savings in the previous years and even we are prepared to pay the required tax by offering the income in the current financial year on the difference of gold over and above the

limits prescribed to hold and seized during the course of search and seizure operation. Also, I have come forward and declared as stated above, I request you to consider our case on sympathetic grounds.

12. We therefore, are of the opinion that merely because the assessee has admitted an amount of Rs.1.00 crore in his hands and in the hands of various family members to buy peace of mind, bringing the amount of the additional income declared by the respective assesseees to tax at higher rate as per the provisions of section 115BBE is not justified especially when no other incriminating material was found. In view of the above discussion, we are of the considered opinion that although the additional income declared by the assessee can be brought to tax, however, the same cannot be taxed at special rate under the provisions of section 115BBE. We therefore, set aside the order of the learned CIT (A) and direct the Assessing Officer to tax the additional income declared at Rs.24.00 lakhs under the normal provisions and not under the provisions of section 115BBE. The grounds raised by the assessee are accordingly allowed.

13. In the result, appeal filed by the assessee is allowed.

ITA 176/Hyd/2023 – Shri Anne Manoj Chowdary

14. After hearing both the sides, we find the grounds raised by the assessee in the above appeal are identical to the grounds of appeal in ITA 175/Hyd/2023. Here the assessee has challenged the order of the learned CIT (A) in confirming the action of the Assessing Officer in taxing the additional income declared of Rs.21.00 lakhs at special rate u/s 115BBE. Since we has already decided the appeal in ITA No.175/Hyd/2023 and has held that although the amount can be brought to tax, however, the provisions of section 115BBE are not applicable. Following

similar reasonings, the grounds raised by the assessee in the impugned appeal are allowed.

ITA No.177/Hyd/2023 Sri Vallabhaneni Srinivas Chowdary

15. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT (A) in confirming the action of the Assessing Officer in taxing the additional income of Rs.35.00 lakhs declared during the course of search under the provisions of section 69B r.w.s. 115BBE.

15.1 After hearing both sides, we find the assessee in the return of income filed u/s 139(1) on 31.8.2019 declared total income at Rs.98,03,260/- which included an amount of Rs.35.00 lakhs offered as additional income during the course of search. The Assessing Officer during the course of assesment proceedings noted that an amount of Rs.7.0 lakhs was seized from the assessee in absence of any proper explanation. Further, Shri Anne Rajeswara Rao, assessee's paternal uncle in his statement recorded u/s 132(4) had stated that he is unable to offer explanation for the investment made by the Director of M/s. V.S. Engg. (P) Ltd and M/s. Eco Blocks Pvt. Ltd wherein the assessee is one of the Director. Accordingly, he had admitted additional income of Rs.35.00 lakhs which includes Rs.7.00 lakhs seized during the course of search in the hands of the assessee. In view of the above, the Assessing Officer brought the amount of Rs.35.00 lakhs to tax u/s 69B r.w.s. 115BBE.

16. In appeal, the learned CIT (A) upheld the action of the Assessing Officer.

17. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

18. The learned Counsel for the assessee submitted that since the search party did not find any incriminating material during the course of search and there is neither any unexplained investment nor any unexplained expenditure or any unexplained assets found during the course of search, therefore, the amount of Rs.35.00 lakhs admitted as additional income in the return of income can at best be treated as income from other sources but cannot be brought to tax u/s 69B r.w.s. 115BBE.

19. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A).

20. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case filed the return of income admitting total income at Rs.98,03,260/- which included an amount of Rs.35.00 lakhs offered as additional income in the statement recorded u/s 132(4) during the course of search. The amount of Rs.35.00 lakhs included cash found of Rs.7.00 lakhs and the balance amount on account of investment in various companies where the assessee is one of the Director. We find the Assessing Officer brought the amount of Rs.35.00 lakhs to tax u/s 69B r.w.s. 115BBE which has been upheld by the learned CIT (A) on the ground that the assessee could not furnish any explanation as to how such income has been earned and the

assessee failed to prove the nature and sources of such income. It is the submission of the learned Counsel for the assessee that the admission of additional income was not relevant to the seized material but put to an end to the litigation in respect of the search issues as a whole. It is his argument that the additional income admitted at Rs.35.00 lakhs may at best be treated as income from other sources u/s 56 of the I.T. Act and taxed as such but definitely not u/s 69A r.w.s. 115BBE. It is also his argument that there was neither any unexplained investment nor any unexplained expenditure or any unexplained asset found during the course of search. Therefore, the surrender of Rs.35.00 lakhs can be said to have been offered to cover up the discrepancy in respect of likely disallowance, if any.

21. Apart from the cash of Rs.7.00 lakhs found during the course of search, we find no other incriminating material has been found nor any unexplained investment or unexplained expenditure or unexplained asset were found. Under these circumstances, merely because the assessee has admitted total income of Rs.35.00 lakhs which includes cash found of Rs.7.00 lakhs, the provisions of section 69A/69B/115BBE in our opinion, cannot be applied to the entire amount. In our opinion, the provisions of section 69B r.w.s. 115BBE at best can be applied to the amount of Rs.7.00 lakhs of cash found during the course of search but not to the remaining Rs.28.00 lakhs. We therefore, modify the order of the learned CIT (A) and direct the Assessing Officer to apply the provisions of section 115BBE to the amount of Rs.7.00 lakhs and to tax the remaining amount of Rs.28.00 lakhs at normal rate. The grounds raised by the assessee are accordingly partly allowed.

22. In the result, ITA 175/Hyd/2023 & 176/Hyd/2023 are allowed and ITA No.177/Hyd/20243 is partly allowed.

Order pronounced in the Open Court on 30th August, 2023.

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 30th August, 2023.

Vinodan/sps

Copy to:

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5	Guard File

By Order