

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.461/PAN/2018
निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Abbas Shabuddin Saheb, 1042, Neharu Chowk, Nipani- 591237. PAN : AAEFA4370K	Vs.	ITO, Ward-1, Nipani.
Appellant		Respondent

Assessee by : Shri A. S. Patil
Revenue by : Smt. Ashwini Hosmani

Date of hearing : 05.09.2023
Date of pronouncement : 25.09.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals), Belagavi [‘the CIT(A)’] dated 30.11.2018 for the assessment year 2014-15.

2. Briefly, the facts of the case are that the appellant is a partnership firm engaged in the business of purchase of Raw Tobacco from the farmers and converting the same into Jaradi Tobacco and sale thereafter. The Return of Income for the

assessment year 2014-15 was filed on 14.11.2014 declaring total income of Rs.58,48,272/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-1, Nipani ('the Assessing Officer') vide order dated 13.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.1,57,95,455/-. While doing so, the Assessing Officer held that the income declared during the course of survey proceedings of Rs.1,45,00,000/- be assessed to tax under the provisions of section 115BBE of the Act. The brief facts of the case are as under :

Survey operations u/s 133A of the Act were conducted on the business premises of the appellant firm on 19.06.2013. During the course of survey proceedings, it was found that purchases of raw tobacco prior to survey operations were recorded into two note books. These note books were impounded by the Department during the course of such survey proceedings. However, it was contended that all the purchases were recorded in regular books of accounts. However, the appellant had agreed to make a disclosure of Rs.1,45,00,000/- during the course of survey proceedings, which was confirmed as undisclosed business income. Even during the

course of recording of statement u/s 131 of the Act, the same was shown in the return of income filed by the assessee. In the circumstances, the Assessing Officer was of the opinion that the income disclosed during the course of survey proceedings constitutes income from business and, therefore, subject to tax u/s 115BBE of the Act. Further, the Assessing Officer was of the opinion that the income disclosed during the course of survey proceedings does not qualify for the purpose of book profits to compute the eligible partner's remuneration u/s 40(b)(v) of the Act.

3. Being aggrieved by the above order of assessment, an appeal was filed before the Id. CIT(A), who vide impugned order confirmed that the undisclosed income u/s 69 is subject to tax u/s 115BBE of the Act and also confirmed that the undisclosed income u/s 69 does not form part of the book profits for the purpose of computing the partner's remuneration u/s 40(b)(v) of the Act.

4. Being aggrieved, the appellant is in appeal before us in the present appeal.

5. We heard the rival submissions and perused the material on record. The first issue in the present appeal relates to the

applicability of provisions of section 115BBE of the Act in respect of income declared during the course of survey proceedings and offered to tax in the return of income filed by the appellant. There is no dispute about the quantum of addition to be made nor was there any dispute regarding the head of income under which the same was to be assessed to tax. The dispute is only with regard to the applicability of the provisions of section 115BBE of the Act. Admittedly, the income offered, during the course of survey proceedings, was credited to the Profit & Loss Account and it was stated that the additional income is derived from the business of sale of tobacco carried on by the appellant. Admittedly, the assessee had offered such additional income under the head "income from business" and the Assessing Officer also assessed the same under the head "income from business". Thus, it cannot be said that the source for additional income remains unexplained. Therefore, the provisions of section 115BBE have no application to the facts of the present case. Thus, this ground of appeal filed by the assessee stands allowed.

6. As regards to the addition u/s 40(b)(v), in the light of above discussion the income declared during the course of survey proceedings and credited to the Profit & Loss Account is assessable under the head “business income” and the same should form part of the book profits for the purpose of computing the eligible partner’s remuneration u/s 40(b)(v) of the Act. Thus, this ground of appeal filed by the assessee stands allowed.

7. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 25th day of September, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25th September, 2023.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), Belagavi.
4. The Pr. CIT, Belagavi.
5. DR, ITAT, Panaji.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.