

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 3807/DEL/2019 [A.Y. 2014-15]

Shri Mahesh Chand Singhal
B-10/6-7, Ground Indl. Area
Wazirpur, Delhi

Vs. The A.C.I.T.
Circle - 35(1)
New Delhi

PAN - AAEPD 0617 P

(Applicant)

(Respondent)

Assessee By : Shri Kapil Goel, Adv

Department By : Shri Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing : 01.02.2024

Date of Pronouncement : 07.02.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 12, New Delhi dated 18.01.2019 pertaining to A.Y. 2014-
15.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the assessment order wherein the Assessing Officer has made addition of Rs. 20,54,688/- and Rs. 19,45,312/- u/s 69A and 69C respectively r.w.s 115BBE of the Act.

3. Briefly stated, the facts of the case are that the assessee filed his original return of income on 22.09.2014. Search and seizure operation was carried out on 28.10.2015. The date of expiry of time limit of notice u/s 143(2) of the Act expired on 30.09.2015. Therefore, the year under consideration is an unabated A.Y.

4. During the search operation, statement u/s 132(4) of the Act was recorded in which the assessee surrendered lumpsum of Rs. 40 lakhs for alleged long term capital gains earned from sale of shares as additional income. However, when the assessee filed revised return on 19.11.2015, he returned Rs. 20,54,688/- as income from other sources and claimed that no long term capital gain existed in the name of his wife amounting to Rs. 19,45,312/-.

5. The Assessing Officer completed assessment by recharacterizing the income surrendered by the assessee as income u/s 69A of the Act and made addition of Rs. 20,54,688/- and further made addition of Rs. 19,45,312/- u/s 69C of the Act being long term capital gain in the hands of the wife of the assessee.

6. When the addition was challenged before the Id. CIT(A), he dismissed the appeal holding that the assessee has retracted from the statement given by him u/s 132(4) of the Act.

7. Before us, the Id. counsel for the assessee vehemently stated that the Assessing Officer could not have recharacterised the income returned by the assessee under the heard 'income from other sources' and there is no such capital gain in the hands of wife and, therefore, the entire addition of Rs. 19,45,312/- is uncalled for.

8. Further, reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell* 459 ITR 212 claiming that statement u/s 132(4) of the Act as not incriminating material.

9. Per contra, the ld. DR strongly supported the findings of the Assessing Officer/ld. CIT(A) and vehemently stated that the assessee cannot be allowed to retract from his statement.

10. We have given thoughtful consideration to the orders of the authorities below and have carefully considered the relevant documentary evidence brought on record. It is equally true that while giving answer to Question No. 29, exhibited at page 4 of the assessment order, the assessee admitted that he has earned long term capital gain of Rs. 40 lakhs alongwith his wife which has been claimed as exempt income and offered the same for taxation.

11. However, the assessee realized that actual gain earned by him was Rs. 20,57,590/- and no such gain was earned by his wife. Immediately the return was revised. Since the assessee himself has declared income as income from other sources, we do not find any merit in recharacterising the same as income u/s 69A of the Act. Further, on verification of the return of the wife of the assessee, we find that she has not earned any long term capital gain and the entire addition has been made only on the basis of surrender made by the assessee at the time of search.

12. On identical set of facts, the coordinate bench in ITA No. 1344/DEL/2021 had the occasion to adjudicate similar issue. The relevant findings read as under:

"9. Having held so, we may further add that a reading of section 115BBE of the Act makes it clear that the special rate of tax provided under the said provisions shall be applicable under two conditions. Firstly, where the total income includes any income referred to in 6 ITA Nos. 1344 /Del/2021- AY: 2017-18 sections 68, 69A, 69B, 69C or 69D and reflected in the return of income under Section 139 of the Act. Secondly, if the income determined by the Assessing Officer includes any income referred to, in sections 68, 69, 69A, 69B, 69C or 69D, if such income is not covered under the first condition. In the facts of the present appeal, admittedly, assessee has not offered the income under Section 69A of the Act. Even, the Assessing Officer has not made any separate addition under Section 69A of the Act. He has merely re-characterized the nature of income offered by the assessee. Thus, in our considered opinion, the provisions of sections 115BBE would not be applicable to the facts of the present appeal."

13. Considering the facts in totality, we do not find any merit in the impugned addition. We, accordingly direct the Assessing Officer to delete the same.

14. In the result, the appeal of the assessee in ITA No. 3807/DEL/2019 is allowed on the ground argued before us.

The order is pronounced in the open court on 07.02.2024.

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 07th FEBRUARY, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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