

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 143/JP/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Smt. Priyanka Gupta, 09, Keshav Nagar, Scheme No. 13, Alwar	बनाम Vs.	ACIT, Central Circle, Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: APXPG 2562 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal, CA
राजस्व की ओर से / Revenue by : Sh. Arvind Kumar, CIT

सुनवाई की तारीख / Date of Hearing : 30/04/2024
उदघोषणा की तारीख / Date of Pronouncement: 22/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-4, Jaipur dated 29/12/2023 [here in after Id. CIT(A)] for assessment year 2017-18 which in turn arise from the order dated 31.12.2019 passed under section 153C of the Income Tax Act, by ACIT, Central Circle, Alwar.

2. In this appeal, the assessee has raised following grounds: -

“1. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 17,63,000/- u/s 68 of the Act by treating the cash deposit in the capital account of assessee in its proprietary concern M/s Pooran Filing Station as unexplained cash credit.

2. The Id. CIT(A) has erred on facts and in law in taxing the alleged unexplained cash credit u/s 115BBE@60% instead of taxing the same @ 30% by ignoring that section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 which received the assent of President on 15.12.2016 and made applicable from 01.04.2017 is not applicable to AY 2017-18.

3. The appellant craves to alter, amend and modify any ground of appeal.

4. Necessary cost be awarded to the assessee.”

3. Succinctly, the fact as culled out from the records is that a search and seizure action u/s 132 of the Income Tax Act, 1961 ("the Act") was carried out by the Income Tax Department on the members / concerns of Gupta Group, Alwar on 22/09/2017 of which the Assessee is one of the members. During the course of the above referred action(s), cash, jewellery, valuables, stock-in-trade, documents, books of account and/or loose papers were found and/or seized from the premises of the members of the Gupta Group of which one such member happens to be the Assessee. Thereafter, the jurisdiction over the case was assigned to Central Circle, Alwar by the Pr. Commissioner of Income Tax, Alwar by means of an Order u/s 127 of the Act circulated vide Pr.CIT/Alwar/ITO(Tech.)/T-1015Trf of case u/s 127/2019-20/1762 dated 18/09/2019. Notice under section 153C

of the Act was issued and served upon the Assessee on 24/09/2019 requiring her to file a true and correct return of income as prescribed under Rule 12 of the Income Tax Rules, 1962 within 15 days of the service of the said notice. The assessee filed its return of income u/s 139 on 2/11/2017 vide Ack. No. 284113421021117 declaring income of Rs. 13,86,520/-. In response to the said notice, a return declaring an income of Rs. 13,86,520/ was e-filed by the Assessee vide acknowledgement No. 211445911221019 on 22.10.2019. The Assessee is proprietor of M/s Pooran Filling Station, a petrol pump owned by her and primarily derives its income from Business, House Property & Other Sources. The proceedings of assessment of income were initiated by issuing of notices u / s 143(2) & 142(1) of the Act on 31-10-2019 and served online on the e-mail of the assessee. Notice u / s 142(1) dated 31-10-2019 was issued to the assessee and information and details pertaining to the case of the Assessee relevant to assessment of his income were called for u/s 142(1) of the Act by means of a questionnaire. Further, queries were raised vide notices under section 142(1) of the Act from time to time.

3.1 During the course of assessment proceeding the assessee vide notice dated 31/10/2019 asked to refer to page no. 16 of Exhibit-12 seized

from the residential premises of Sri Ashok Gupta. The heading of the page is mentioned as “Madanlal uncle Ji ka hisaab”. The total amount of transactions mentioned in the page is ₹41,17,965/-. Vishal Gupta in his statements recorded on 22/09/2017 in reply to question number 43 stated that the paper was related to M/s. Pooran Filling station which is the proprietary concern of the assessee, as no satisfactory explanation was offered during search as well as post search proceedings in respect of the transaction. Therefore the assessee in a show cause required to explain the nature of transaction mentioned on the said document and also to verify the same from the regular books of account of the concern of the assessee. If the assessee failed to do so with documentary evidence, then it was proposed to be considered as the unexplained income of the assessee for an amount of Rs. 41,17,965/-. In response the written submission was filed on 05/11/2019 stating that the page no. 16 of Exhibit-12 seized from the residential premises of Shri Ashok Gupta with a heading “Madan Uncle ji ka hisab” and total amount of transaction is Rs. 41,17,965/-. The assessee contended that all the transactions mentioned on this page are verifiable from regular books of accounts and the same was placed on record. The reply filed by the assessee has been perused along with the evidences. The Id. AO based on the record noticed that Ms. Priyanka

Gupta has received the amount of Rs. 8,00,000/- from Pooran Filling station through bank on 29/06/2016 and deposited the amount of Rs. 5,00,000/- in Pooran Filling Station on 11/11/2016. The bank statement of Priyanka Gupta indicates that no withdrawals were made by her between these two dates. Also, the balance in her bank account on 11/11 / 2016 is Rs. 38,707/-. The assessee is taking plea that the deposit with Pooran Filling Station was made by Priyanka Gupta out of cash withdrawals, however, as per the fact Priyanka Gupta did not have so much of cash available with her. It was also submitted by the assessee that personal cash book was not maintained by Priyanka Gupta. Thus, the reply of the assessee is not acceptable as she fails to prove the availability of cash with her. The assessee increases her capital account in Pooran Filling Station by way of introducing unaccounted money lying in old currency notes. The assessee also conspicuously failed to explain whether the amount of Rs. 17,63,000/- introduced in capital account of Pooran Filling Station was in old currency notes or in new currency. It is clear that the amount of Rs. 17,63,000/- introduced by the assessee is her unaccounted old currency notes which she wants to exchange through petrol pump bank account. Therefore, addition of Rs. 17,63,000/- is being made in the total income of

the assessee as unexplained cash credits in terms of provisions of section 68 r.w.s. 115BBE of the Act.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“5.2 I have considered the facts of the case and written submissions of the appellant on both the grounds of appeal as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

Ground number 1 and ground number 2 are taken up together for adjudication as the factual background involved in the case are common for both the grounds of Appeal.

During the search action page no. 16 of Exhibit-12 was seized with the heading Madan Uncle Ji ka Hisab and total amount of transactions is Rs. 41,17,965/-- The copy of the document found during the course of search and seizure action has been perused and alongside the cash book submitted by the appellant has also been perused. It is seen that all the entries of cash deposit and withdrawal from the petrol pump by / or on behalf of the appellant are duly recorded date wise and are matching date wise total in the document handwritten document seized during the course of search and seizure action. Except one entry of withdrawal of cash from the petrol pump on the date of 25-06-2016. Even the non cash entries in other words bank transactions entries are also matching date wise and amount wise in the ledger account and the handwritten document seized. In conclusion all the funds transfers entries whether in cash or through banking channel are matching in the ledger account with the document found in search and seizure action except one entry of Rs. 5 lakhs on the date of 25-06-2016.

It may not be out of place to state that nowhere in the earlier replies during the assessment proceedings as extracted in the assessment order the appellant has claimed that the cash deposit of rupees 5,00,000 with the petrol pump on the date of 05-11-2016 is out of the earlier withdrawal of rupees 5 lakhs on the date of 25-06-2016. It has been the stand of the appellant that the deposit of rupees 5 lakhs made by the appellant on 05-11-2016 in the capital account in the petrol pump was out of the withdrawal of rupees 8 lakhs on the date of 29-06- 2016. In this

regard an undisputed finding is that even though the amount was withdrawn in banking channel by the appellant on this date however from the bank account of the appellant no cash has been withdrawn subsequently to support the further deposit of cash of rupees 5 lakhs on the date of 05-11-2016. As seen on page 5 and 6 of the assessment order, in the reply dated 24-12- 2019, during the assessment, the appellant has inter-alia submitted as under:-

"ii) It is submitted that date wise position of cash withdrawals & cash deposit in firm along with available balance with assessee out of fund of Pooran Filing Station is as under:

x		x		x
	x			

There is no reference to the claimed withdrawal of rupees 5 lakhs on the date of 25-06-2016 in the submissions of the appellant as extracted in the assessment order.

It is a settled law that the document found during search has to be considered as such in its entirety i.e. it cannot be accepted in part and rejected in part. Further the document found is to be treated as correct. Hence if the appellant claims that one entry was not recorded in the document found during the search action, the onus is on the appellant to prove with the sterling evidences that the document seized during the search which though is further also corroborated with the ledger account is incorrect.

In view of the totality of above discussion, entry of withdrawal of rupees 5 lakhs on the date of 25-06-2016 from petrol pump is held to be incorrect and afterthought and the same is to be ignored.

Appellant's cashbook submitted during the appeal proceedings is rejected. Similarly the cashbook of the petrol pump which reflects this transaction as discussed above is also rejected. Since the appellant is the controlling party on the petrol pump the correctness of the cash books as submitted cannot be considered as independent.

Further cash withdrawal entries on 03-11-2016 (Rs. 2,06,665 - narration - paid to Ibrahim) and on 05-11-2016 (Rs. 62,000 narration paid to Vijay) are to be ignored to the extent that this cash is not available with the appellant as the source of future deposits of cash in the petrol pump as these are payments made to third persons and the amounts are very specific (not round figures) and are expected to have been spent for some specific purpose. These are also held to be not the source of future deposits of small demonetaion notes in the petrol pump.

The three claimed entries of cash withdrawal from petrol pump on 25-06-2016, 03-11-2016 and 05-11-2016 have been discussed in pre-paragraph. Entries of Rs. 10,000 each on 14-07-2016 and 30-07-2016 are prima-facie in the nature of

withdrawal for immediate expenses considering the smallness of amount and periodicity and no other withdrawals to meet household / personal expenses. These are also held to be not the source of future deposits of small demonetaion notes in the petrol pump.

In view of the above discussion, the addition is further taken upon merits. In the assessment order both the cash withdrawals by the appellant from the petrol pump and the cash deposit done by the appellant in the petrol pump have been added to the income of the appellant. The withdrawals have been taxed as unexplained expenditure as the appellant has not been able to show for what purpose and where such cash was spent by the appellant and further the cash deposits in the petrol pump have been taxed as unexplained cash credits.

The claim of the appellant is that the cash deposits in the petrol pump capital account are out of the earlier withdrawal of cash from the capital account in the petrol pump. The learned assessing officer has treated both deposits and withdrawals separately in the assessment order. in the assessment order there is no information regarding how and where the cash withdrawn from the petrol pump has been spent or utilized thereby it can be treated as not available for the purposes of cash deposits by the appellant in the petrol pump. It has been held in the assessment order that it is not known where the cash amount withdrawn have been spent and thus the same has been treated as unexplained expenditure. This approach in the assessment order cannot be accepted as for the purposes of application of section 69C with respect to unexplained expenditure first of all the expenditure needs to be identified and the same needs to be analyzed whether the same is explained or unexplained regarding the source or otherwise. However in the present case no such expenditure has been identified and nothing is in this regard is on record. The addition has been done on the cash withdrawn by the appellant from the petrol pump. Accordingly, this addition is hereby held to be deleted. Accordingly, Ground of Appeal no. 2 is hereby allowed.

It is the claim of the appellant that the cash withdrawn from the petrol pump was available and was used for the purpose of deposit of cash by the appellant in the petrol pump. During the assessment proceedings, from the replies extracted in the assessment order, it is seen that the appellant had submitted before the learned assessing officer that the cash given by the appellant to the petrol pump was of small denomination notes as during the demonetization there was shortage of such currency notes and the appellant from her personal funds gave such small denomination valid currency notes to the petrol pump. It is submitted durng the assessment proceedings that there was huge hue & cry and there were long queue at petrol pump. Customers were giving notes of Rs. 1000/- or Rs. 500/- and assessee was facing big problem in giving change to them. Customers were brining SBN but in change they were not taking SBN.

Accordingly time to time fund small denomination notes lying at home has been deposited by assessee in Pooran Filing Station, so that change could be provided

to customers. In this background the withdrawal of the cash by the appellant from the petrol pump cannot be in small currency notes as there was extreme shortage of small currency notes as per the appellants submission and accordingly the cash withdrawn from the petrol pump was not deposited back with the petrol pump as the petrol pump was in need of small currency notes and the appellant gave such small currency notes from own personal funds. In regard to the cash deposited with the petrol pump, it is clearly stated by the appellant during assessment proceedings that "Thus all the currency which has been deposited by assessee during demonetization period is of small denomination notes which are not part of demonetization". This factual background presents a clear demarcation between the cash withdrawn by the appellant from the petrol pump and cashed advanced by the appellant to the petrol pump and there is no linkage between the two.

In this regard, the part of the reply of the appellant dated 24-12-2019 as extracted on page 6 of the assessment order is reproduced below:-

*"v) It is submitted that in Petrol Pump mostly sales is in cash. Cash, sale proceeds is received in small denomination notes as well as high denomination notes. Normally high denomination currency are easily deposited by banker but they are creating problem in depositing small denomination currency. Accordingly, small denomination currency are normally carried by home by assessee and usually this fund is lying with at home. However immediately after announcement of demonetization on 08-11-15, there is huge hue & cry and there is long queue at petrol pump. Customers are giving notes of Rs. 1000 / (- o) * r Rs. 500/- and assessee is facing big problem in giving change to them. Customers are bringing SBN but in change they are not taking SBN. Accordingly time to time fund small denomination notes lying at home has been deposited by assessee in Pooran Filing Station, so that change can be provided to customers. Thus all the currency which has been deposited by assessee during demonetization period is of small denomination notes which are not part of demonetization".*

In view of the above discussion, it is to be held that the cash given by the appellant to the firm petrol pump is not out of the claimed cash withdrawn by the appellant from the petrol pump. Accordingly the peak formula cannot be applied. In view of this discussion the cash deposited by the appellant with the petrol pump during the demonetization period is held to be out of her own cash funds available already for which the source is unexplained and thus the same is held to be unexplained credit u / s 68 / unexplained money u/s 69A, of the appellant. Further, where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the department to locate its exact source CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623(SC) / A Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC). Accordingly, the Ground no. 1 of the Appeal is hereby dismissed.

6. The last ground of appeal is that the appellant craves right to add, alter or amend any of the grounds of appeal.

6.1 The appellant has not added or altered any of the above mentioned grounds of appeal. Accordingly such mention by the appellant in its ground is treated as general in nature, not needing any specific adjudication and is accordingly treated as disposed off.

7. In the result, the appeal of the appellant is partly allowed.”

5. Feeling dissatisfied with the finding of the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the assessee, Id. AR of the assessee has filed the written submissions and the same is reproduced herein below:

“Facts:-

1. The assessee is an authorized dealer of Hindustan Petroleum, running a petrol pump in the proprietary concern of M/s Pooran Filling Centre. A search and seizure action u/s 132 of the Act was carried out on 22.09.2017 at various premises of Madan Lal Gupta & Group, Alwar. Assessee is daughter of Madan Lal Gupta. Assessee filed the return u/s 139 of the Act on 02.11.2017 declaring total income of Rs.13,86,520/- and the same income is repeated in the return filed in response to the notice u/s 153C dt.24.09.2019 (PB 07).

2. In search a paper at page 16 of Exhibit 12 was seized from the residential premises of Ashok Gupta. This paper is scanned at Page 7 of the assessment order. The heading of the paper is “Madan Uncle ji ka Hisaab”. In this paper transactions during the period 29.06.2016 to 20.03.2017 between the assessee and her proprietary concern M/s Pooran Filling Centre (hereinafter referred to as “petrol pump”) is noted. The paper is in the handwriting of the accountant of the concern. The amount mentioned under the heading “Nam Diya” represents amount given to the assessee by M/s Pooran Filling Centre and the amount mentioned under the heading “Aaya - Jama” represents the amount received by Pooran Filling Centre from the assessee. The total of the amount given is Rs.41,17,965/- and the total of amount received is

Rs.22,29,300/-. Some of the amounts mentioned on this paper are through banking channel.

3. During the course of assessment proceedings, assessee was required to explain the transactions of payment of Rs.24,80,500/- and receipt of Rs.17,63,000/- noted on the paper which falls during the demonetization and the source thereof. In response to same, the assessee filed explanation vide letters dated 05.11.2019, 20.12.2019 (PB 43-45) and 24.12.2019 (PB 46-49) which are reproduced at page no. 3 to 7 of the assessment order. It was explained that the cash transactions noted on the paper are duly recorded in the cash book (PB 8-40) and in the capital account of the assessee in its proprietary concern. The AO however at Page 8 of the order observed that amount of Rs.8,00,000/- noted on 29.06.2016 on the paper is not the cash given to the assessee. Thus assessee has increased her capital account in Pooran Filling Centre by introducing unaccounted money lying in old currency notes. The assessee also failed to explain whether the amount of Rs.17,63,000/- introduced in the capital account of Pooran Filling Centre was in old currency notes or in new currency. Therefore he made addition of Rs.17,63,000/- u/s 68 r.w.s. 115BBE of the Act. He further made addition of Rs.24,80,500/- u/s 69C r.w.s. 115BBE for the reason that assessee failed to explain the purpose and utilization of this amount.

4. The Ld. CIT (A) at Para 5.2 of its order held that during the assessment proceedings assessee claimed that source of Rs.5,00,000/- deposited in Pooran Filling Centre on 11.11.2016 is out of withdrawal of Rs.8,00,000/- made on 29.06.2016 but before him it is claimed to be out of withdrawal of Rs.5,00,000/- made on 25.06.2016. There is no reference of the withdrawal of Rs.5,00,000/- on 25.06.2016 in the submission made before the AO. Accordingly he rejected the cash book submitted by the assessee and treated withdrawal of Rs.5,00,000/- on 25.06.2016 from petrol pump as incorrect and afterthought. He further held that withdrawal entries on 03.11.2016 of Rs.2,06,665/- and on 05.11.2016 of Rs.62,000/- are to be ignored as it is paid to the third party which cannot be considered as cash available with the assessee as source of further cash deposit in the petrol pump. Further small entries of withdrawal of Rs.10000 each on 14.07.2016 & 30.07.2016 are prima-facie in the nature of personal withdrawal and therefore cannot be held to be the source of future deposit in the petrol pump. Accordingly he confirmed the addition of Rs.17,63,000/- but deleted the addition of Rs.24,80,500/- by holding that in the absence of identification of any expenditure, section 69C is not applicable.

Submission:-

1. It is submitted that all the amounts noted at Page 16 of Exhibit 12 as scanned at Page 7 of the assessment order are duly recorded in the books of Pooran Filling Centre. In support of the same assessee has filed the cash book (PB 8-40) and the capital account of the assessee (PB 41-42) in the books of M/s Pooran Filling Centre before the assessing officer.

2. From the capital account of the assessee (PB 41-42) in the books of Pooran Filling Centre it can be noted that the cash deposit by the assessee and the cash withdrawal by the assessee from Pooran Filling Centre during F.Y. 2016-17 is as under:

Date	Withdrawn from Pooran Filing Centre	Deposit in Pooran Filing Centre	Balance
25-06-16	500000		500000
14-07-16	10000		510000
30-07-16	10000		520000
03-11-2016	206665		726665
04-11-2016	62000		788665
11-11-16		500000	288665
14-11-16	230000		518665
17-11-16	150000		668665
23-11-16	150000		818665
24-11-16		200000	618665
02-12-16	30000		648665
02-12-16		500000	148665
03-12-16	217500		366165
07-12-16	200000		566165
11-12-16		563000	3165
12-12-16	463000		466165
19-12-16	540000		1006165
26-12-16	500000		1506165
06-02-17	282500		1788665
14-02-17	10000		1798665
21-02-17	100000		1898665
20-03-17	156300		2054965
Total	38,17,965	17,63,000	

From the above table it can be noted that all the cash transactions noted at Page 16 of Exhibit 12 are duly recorded in the books of accounts of Puran Filling Centre. Further the RTGS/Bank transactions noted on the paper are also verifiable form the capital account of the assessee. Therefore it is incorrect on part of the CIT (A) to reject the cash book which has been maintained in normal course of business.

3. The Ld. CIT(A) has not allowed the set off of the amounts withdrawn by the assessee from Pooran Filling Centre against the deposits made by the assessee in Pooran Filling Centre mainly for the reason that before the AO assessee has claimed that withdrawal of Rs.8,00,000/- made on 29.06.2016 is in cash whereas subsequently before him it is claimed that withdrawal of Rs.8,00,000/- made on 29.06.2016 is by

cheque and that assessee made cash withdrawal of Rs.5,00,000/- from Pooran Filling Centre on 25.06.2016 which is the source of cash deposit on 05.11.2016. It is submitted that in the reply filed before the AO assessee has wrongly considered withdrawal of Rs.8,00,000/- on 29.06.2016 as cash withdrawal whereas the cash withdrawal was made on 25.06.2016 of Rs.5,00,000/-. This fact was evident from the cash book and capital account of the assessee in the books of Pooran Filling Centre. Further the amount of Rs.2,06,665/- on 03.11.2016 and Rs.62,000/- on 05.11.2016 noted in the name of Ibrahim & Vijay has been explained in letter dt.19.12.2019 (PB 43-44) as given to the relative / employee of the assessee who have in turn has given it to the assessee. Similarly the withdrawal of Rs.10,000/- each on 14.07.2016 and 30.07.2016, without any material on record cannot be presumed to have been utilized for household / personal purposes. Thus the source of cash deposit of Rs.17,63,000/- with Pooran Filling Centre is fully verifiable from the cash withdrawal made from Pooran Filling Centre.

4. It may be noted that the Ld. CIT(A) at Page 12, last para has observed that in the assessment order there is no information regarding how and where the cash withdrawn from the Petrol Pump has been spent / utilized thereby it can be treated as not available for the purpose of cash deposits by the appellants in the petrol pump. Thus when there is no evidence on record that cash withdrawn from the petrol pump has been spent or utilized elsewhere, the same needs to be considered against the cash deposit made in the petrol pump. It may also be noted that even the Ministry of Finance vide notification dt.08.11.2016, 14.11.2016 & 24.11.2016 has stated that specified bank notes shall not be seized to be a legal tender w.e.f. 09.11.2016 until 15.12.2016 if the transaction is for purchase of petrol, diesel and gas at the stations operating under the authorization of public sector oil marketing companies. Therefore the petrol pumps were even allowed to deposit the specified bank notes in the bank account till 15.12.2016.

In view of above the addition confirmed by the CIT(A) be directed to be deleted.

Ground No.2

The Ld. CIT(A) has erred on facts and in law in taxing the alleged unexplained cash credit u/s 115BBE @ 60% instead of taxing the same @ 30% by ignoring that section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 which received the assent of President on 15.12.2016 and made applicable from 01.04.2017 is not applicable to AY 2017-18.

Facts & Submission :-

The AO taxed the addition of Rs.17,63,000/- u/s 115BBE @ 60%. It is submitted that substituted section 115BBE by Taxation Laws (Second Amendment Act), 2016 received the assent of President on 15.12.2016. The section is made applicable w.e.f. 01.04.2017. Hon'ble ITAT, Jabalpur Bench in case of ACIT Vs. Sandesh Kumar Jain ITA 41/JAB/2020 order dt. 31.10.2022 at Para 4.2 of the order while interpreting the amendment made in section 115BBE which received the assent of President on 15.12.2016 held as under:-

4.2 As regards the assessee's second, without prejudice, argument, i.e., qua nonretrospectivity, we find considerable force therein. Section 1(2) of the Amending Act provides that save as otherwise provided therein, it shall come into force „at once“. The same only conveys the intent for, except where a later date is specified, the legislation to take immediate effect, i.e., as soon the assent of the Hon'ble President of India is received, by signing the same. The words „at once“ convey an urgency, so that the same represents the earliest point of time at which the same is to take effect, i.e., 15/12/2016 itself, and which also explains the same being enacted during the course of the fiscal year, tax rates for which stand already clarified at the beginning of the year per the relevant Finance Act (FA, 2016). The said words „at once“ would lose significance if the provisions of the Act are to, as stated by the Id. CIT(A), be read as effective 01/04/2017, implying AY 2018-19. The same, for substantive amendments, as in the instant case, represents the first day of the assessment year, i.e., AY 2017-18, which explains the assessee's grievance of it being thus effective for fy 2016-17 or, w.e.f. 01/4/2016. Enacting it mid-year and, further, making it applicable „at once“, becomes meaningless if the same is to take effect retrospectively, or is made effective from a later date (01/4/2017), which could in that case be by Finance Act, 2017. True, the amendment, where so read, does give rise to a peculiar situation inasmuch as two tax rates would obtain for the current year, i.e., one from 01/04/2016 to 14/12/2016, and another from 15/12/2016 to 31/03/2017, but, then, that is no reason to read retrospectivity where the applicable date is clear and, further, there is nothing to suggest retrospectivity. Further, extraordinary and supervening circumstance of the Demonetization Scheme, 2016, brought out by the Government of India in November, 2016, explains the urgency in bringing an amendment mid-year. Further, the tax rate being in respect of incomes which are imputed with reference to a transaction/s, it is possible to administer the same, another aspect of the matter that stands considered by us. That is, a tax rate for transactions made up to 14/12/2016, and another for those thereafter. Subsequent mention of the applicability of the amended provisions of ss. 271AAB and 271AAC with reference to the date on which the Presidential assent to the Act is received, further corroborates this view, which is based on the clear language of the Amending Act, as well as the principle that a substantive amendment is to be generally prospective. We draw support from the decision in *Vatika Township Pvt. Ltd.* (supra), reiterating the settled law of the rule against retrospectivity. The tax rate applicable to the impugned income would, therefore, be at 30%, i.e., the rate specified in sec. 115BBE as on 30/11/2016, the date of the surrender of income per statement u/s 133A (PB-1, pgs.35-44). This, it may be noted, is also consistent with our view that the income is liable to be assessed u/s. 69B (see para 4.1).

In the present case, the addition of Rs.17,63,000/- made by the AO is in respect of the deposit made between 11.11.2016 to 11.12.2016. Thus the amount was deposited prior to 15.12.2016 and therefore even if it is held that amount is taxable u/s 68 of the Act, tax rate applicable u/s 115BBE would be 30% and not 60%. Hence in case the addition is sustained then AO be directed to tax the same at 30% and not at 60%.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records:

S. No.	Particulars	Pg No.	Filed before
1.	Copy of submission filed before Ld. CIT(A)	1-5	CIT(A)
2.	Copy of index of paper book filed before Ld.	6	CIT(A)
3.	Copy of acknowledgment of return dt. 22.10.2019 filed in response to notice issued	7	Both
4.	Copy of cash book of Pooran Filling Station	8-40	Both
5.	Copy of ledger account of assessee in the books of Pooran Filling Station	41-42	Both
6.	Copy of reply dt. 19.12.2019 filed during the course of assessment proceedings	43-45	Both
7.	Copy of reply dt. 24.12.2019 filed during the course of assessment proceedings	46-49	Both

7. The Id. AR of the assessee submitted that amount at Page 16 of Exhibit 12, are the transaction duly recorded in the in the books of Pooran Filling Centre. In support of the same assessee has filed the cash book (PB 8-40) and the capital account of the assessee (PB 41-42) in the books of M/s Pooran Filling Centre before the assessing officer. He drawing attention from the capital account of the assessee (PB 41-42) in the books of Pooran Filling Centre it can be noted that the cash deposit by the assessee and the cash withdrawal by the assessee from Pooran Filling Centre during F.Y. 2016-17 is duly recorded. Not only that bank transaction recorded in that loose paper found is also verifiable from the capital account of the assessee. Therefore, the finding of the Id. CIT(A) in rejection of the audited

books of account is on incorrect appreciation of facts. Even the Id. CIT(A) has not allowed the set off of the amounts withdrawn by the assessee from Pooran Filling Centre against the deposits made by the assessee in Pooran Filling Centre only for the reason that before the AO the assessee has claimed that withdrawal of Rs. 8 lac made on 29.06.2016 is in cash whereas the same was by banking transactions. He also contended that assessee made cash withdrawal of Rs. 5 lac from Pooran Filling Center on 25.06.2016 which is the source of cash deposit on 05.11.2016. The assessee on this aspect of the matter filed the reply before the Id. AO stating that the assessee has wrongly considered withdrawal of Rs.8,00,000/- on 29.06.2016 as cash withdrawal whereas the cash withdrawal was made on 25.06.2016 of Rs.5,00,000/-. This fact was evident from the cash book and capital account of the assessee in the books of Pooran Filling Centre. Further the amount of Rs.2,06,665/- on 03.11.2016 and Rs.62,000/- on 05.11.2016 noted in the name of Ibrahim & Vijay has been explained in letter dt.19.12.2019 (PB 43-44) as given to the relative / employee of the assessee who have in turn has given it to the assessee. Similarly the withdrawal of Rs.10,000/- each on 14.07.2016 and 30.07.2016, without any material on record cannot be presumed to have been utilized for household / personal purposes. Thus the source of cash

deposit of Rs.17,63,000/- with Pooran Filling Centre is fully verifiable from the cash withdrawal made from Pooran Filling Centre. Without prejudice he also submitted that when there is no evidence on record that cash withdrawn from the petrol pump has been spent or utilized elsewhere even after the search, the same needs to be considered against the cash deposit made in the petrol pump. It may also be noted that even the Ministry of Finance vide notification dt.08.11.2016, 14.11.2016 & 24.11.2016 has stated that specified bank notes shall not be seized to be a legal tender w.e.f. 09.11.2016 until 15.12.2016 if the transaction is for purchase of petrol, diesel and gas at the stations operating under the authorization of public sector oil marketing companies. Therefore the petrol pumps were even allowed to deposit the specified bank notes in the bank account till 15.12.2016. Therefore, the addition made is on account of wrong appreciation of facts required to be deleted.

8. Per contra, we have heard the Id. DR also, who has relied on the findings of the lower authorities. The Id. Sr. DR vehemently argued that the assessee is mainly relied upon the cash book but the transaction were detached from the loose paper and the cash book found not be matching with the records and that why the Id. CIT(A) rejected the cash book of the

assessee. It is also not clear that the money were in the SBN or non -SBN and therefore, the transaction recorded has rightly been added excluding those which are reflected in the books of the assessee and therefore, no further relief can be given to the assessee.

9. We have heard the rival contentions and perused the material placed on record. The bench noted that the dispute revolved on the two additions made by the Id. AO based on the page 16 of Exhibit-12. In this paper heading shows that "Madan Uncle Ji Ka Hisab". This paper is claimed to be maintained by the accountant of the assessee. The Id. AO has not disputed the transactions reflected in the said page which are through the banking channel but has disputed the transaction having done in cash. The total of the transactions reflected on this page wherein the total amount given is for an amount of Rs. 41,17,965/- and total amount recorded as received amount to Rs. 22,29,300/-. Out of the total amount recorded as received Rs. 22,29,300/- Id. AO added a sum of Rs. 17,63,000/- being the transaction recorded in cash u/s. 68 of the Act. Whereas out of the total amount given for an amount of Rs. 41,17,965/- the Id. AO has considered Rs. 24,80,500/- as unexplained expenditure u/s. 69C of the Act. In the first appeal the Id. CIT(A) has not believed the explanation of the assessee that

the transaction was recorded in duly reflected in the cash book and he rejected the relied upon cash book and confirmed the addition made by the Id. AO for an amount of Rs. 17,63,000/- and at the same time considered the explanation of the assessee for an amount of Rs. 24,80,500/- and deleted the addition made by the Id. AO for an amount of Rs. 24,80,500/-

9.1 The assessee has challenged the order of the Id. CIT(A) before us so far as the addition confirmed by the Id. CIT(A) for an amount of Rs. 17,63,000/- being the unexplained credit of the assessee recorded in the seized material. The facts as emerges from the record that at page 16 of Exhibit 12 a lose paper titled as "Madan Uncle ji ka Hissab" found wherein it is written by the accountant that a sum of Rs. 22,29,300/- has been received and out of that amount since a sum of Rs. 17,63,000/- being alleged to be received in cash has not been considered and added u/s. 68 as unexplained credit. The assessee consistently relying on the cash book submitted that the transaction recorded on this page is duly sourced from the cash book found and submitted to the Id.AO. Even the Id. CIT(A) except for one entry admitted that the transaction are recorded are matching in the ledger account with the document found. The relevant finding is reproduced for the sake of convenience of reading;

categorically submitted before the Id. CIT(A), who has not allowed the set off of the amounts withdrawn by the assessee from Pooran Filling Centre against the deposits made by the assessee in Pooran Filling Centre mainly for the reason that before the AO assessee has claimed that withdrawal of Rs.8,00,000/- made on 29.06.2016 is in cash whereas subsequently before him it is claimed that withdrawal of Rs.8,00,000/- made on 29.06.2016 is by cheque and that assessee made cash withdrawal of Rs.5,00,000/- from Pooran Filling Centre on 25.06.2016 (APB-14 submitted by the assessee wherein this withdrawal is reflected in cash book) which is the source of cash deposit on 11.11.2016(APB-25-being the cash book). It is submitted that in the reply filed before the AO assessee has wrongly considered withdrawal of Rs.8,00,000/- on 29.06.2016 as cash withdrawal whereas the cash withdrawal was made on 25.06.2016 of Rs.5,00,000/-. Thus, merely on the one entry the assessee has wrongly processed the fact cannot be a base to reject the books of account which are regularly maintained and in fact the except this all the entries recorded in the loose paper are matching is the finding of the Id. CIT(A) and same is not disputed by the revenue before us and therefore, the we are of the considered view that merely mentioning the date by the assessee will not be a base to reject the cash book regularly maintained by the assessee and is audited by the

independent chartered accountant. Based on these observation ground no. 1 raised by the assessee is allowed.

9.2 Ground no. 2 raised by the assessee is charging tax @ 60% on the addition made by the Id. AO. Since we directed to delete the addition this ground becomes educative in nature and does not require our adjudication. Ground no. 3 & 4 also being general in nature does not require our adjudication.

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

Order pronounced in the open court on 22/07/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/07/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Smt. Priyanka Gupta, Alwar
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle, Alwar
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 143/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar