

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 110/Ind/2024
Assessment Year : 2017-18

Late Manoharasingh (Through Legal Heir Shri Suraj Mandloi), 34, Village Begam Kheri, P.O.Burana Kheri, Indore.	<u>बनाम/</u> Vs.	Income-tax Officer, 1(1), Indore.
(Assessee/Appellant)		(Revenue/Respondent)
PAN : BLSPM9380B		
Assessee by	Shri Ashish Goyal and Shri N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	23.07.2024	
Date of Pronouncement	30.07.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 06.12.2019 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 06.12.2019 passed by learned ITO-1(1), Indore ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal.

2. The background facts leading to present appeal are such that the assessee filed return of AY 2017-18 on 30.03.2018 declaring aggregate

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income of Rs. 7,39,140/- consisting of taxable income of Rs. 3,02,220/- from other sources and agricultural income of Rs. 4,36,920/-, which was subjected to "limited scrutiny" assessment through CASS to examine "cash deposits during demonetization period". Accordingly, the AO issued notices u/s 143(2)/142(1) from time to time. During assessment-proceeding, when the AO show-caused assessee to explain the source of deposits, the assessee made submission which did not satisfy AO. Ultimately, the AO completed assessment vide order dated 06.12.2019 u/s 143(3) after making an addition of Rs. 11,35,500/- treating the deposits made by assessee as unexplained u/s 69A. The AO also applied higher rate of tax @ 60% + Surcharge + Cess u/s 115BBE. Aggrieved, the assessee carried matter in first-appeal but could not get any success. Now, the assessee has come in next appeal before us.

3. The assessee has raised following grounds in appeal-memo:

- "1. The Id. AO was not justified in passing the order, which is bad in law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
- 2. The Id. CIT(A) was not justified in confirming the order, which is bad in law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
- 3. The Id. CIT(A) was not justified in confirming the addition of Rs. 11,35,500/- without considering the facts and circumstances of the case.*
- 4. The Ld. CIT(A) erred in confirming the rate of tax @ 60% u/s 115BBE."*

Ground No. 1 & 2:

4. During hearing before us, Ld. AR for assessee did not make any submission qua Ground No. 1 & 2. Therefore, these grounds are taken as non-pressed and dismissed.

Ground No. 3:

5. In this ground, the assessee challenges the addition of Rs. 11,35,500/- made by AO and upheld by CIT(A).

6. During assessment-proceeding, when the AO required assessee to explain the source of deposits in bank a/c during demonetization-period of 09.04.2016 to 31.12.2016, the assessee submitted reply claiming that he had an opening cash balance of Rs. 2,43,400/- on 01.04.2016. Further, during pre-demonetization period (01.04.2016 to 08.11.2016), there were (i) cash-receipts from sale of agricultural products amounting to Rs. 10,79,900/- consisting of Rs. 9,12,300/- for crops sold during current year and Rs. 1,67,600/- received from opening debtors, (ii) There was income of Rs. 1,82,100/- from other sources activities, and (iii) There were expenses of Rs. 3,05,000/- for agriculture. Accordingly, the assessee explained that he had cash balance of Rs. 11,85,200/- on 08.11.2016 and out of such cash balance, the deposits of Rs. 11,35,500/- were made in bank a/c during demonetization period. The assessee also submitted that he was an agriculturist holding 27 bighas of land. The assessee also filed copies of

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Bhuadhikar and Rin Pustika of agricultural lands to AO. The assessee submitted that he had earned net agricultural income of Rs. 4,36,920/- during current financial year 2016-17 which had been declared in return. The assessee provided following data of current year's agricultural income:

Particular	Agricultural income in Rs.
Sales of Soyabean	4,28,100/-
Sales of wheat	6,64,200/-
Gross agricultural income	10,92,300/-
Less : agricultural expenses incurred	6,65,380/-
Net agricultural income	4,36,920/-

7. The AO considered assessee's reply and again show-caused assessee vide notice dated 28.11.2019 to file documentary evidences. In response, the assessee filed reply dated 06.12.2019. The AO considered assessee's reply but rejected entire explanation made by assessee and made addition by passing following order:

"3. In response, the assessee has uploaded a reply on 06.12.2019. I have considered the facts of the case and replies filed by the assessee. The assessee has furnished copies of some self-made vouchers regarding sale of agricultural produces which clearly appears as after-thoughts and are not acceptable. The assessee had deposited total cash of Rs. 11,35,500/- in IDBI Bank in the period of demonetization in the F.Y. 2016-17.

*3.1 The assessee has tried its best to justify the source of cash deposited during the period of demonetization. However, the explanations on various queries raised as regards the genuineness of the source of the cash deposited are not found to be acceptable as the assessee has never furnished copies of evidences in respect of his reply. **In normal circumstances, the explanation of the assessee could have been considered but cash deposited during the period of demonetization calls for the in-depth probe and examination being an extraordinary circumstance.** One cannot undermine the fact that huge cash has been deposited by the assessee during the period of demonetization. The demonetization was declared on the evening of 08/11/2016, if the assessee had any genuine cash, it could have been and should have been deposited immediately after declaration of*

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demonetization. The assessee could not give reasons for depositing the cash in multiple instances but none is found to be convincing and acceptable. Specially there is no reason it would deposit the cash almost every day and other day during the period of demonetization.

3.2 Here it is to be mentioned that one cannot ignore the human behavior and probability while dealing with economic and taxation matters. Reference may kindly be made to the decision of the Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT, 214 ITR 801 (SC).

It would also be pertinent here to refer to the judgement of Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More, 82 ITR 540, wherein it has been held as under:-

"It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recital made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not real. He taxing authorities were not required to put on blinkers whole looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents."

4. The assessee has explained that the cash deposits made out of opening cash in had and agricultural income but never furnished copies of supporting documents and evidences. The assessee has furnished copies of some self-made vouchers/bills in respect of sale of agricultural produces which are not acceptable. Given the above, the explanation given by the assessee as regards the source of the cash cannot be accepted and it is held that the assessee has introduced his unaccounted cash during the period of demonetization. Considering the facts, the sum of Rs. 11,35,500/- is treated as unexplained cash credit u/s 69A and is being taxed at special rate u/s 115BBE. Further penalty u/s 271AAC are being initiated separately in view of the additions being made u/s 69A read with 15BBE."

8. During first-appeal, the CIT(A) upheld AO's action by passing following order:

"6. **DECISION:**

6.1 During the appeal proceedings the appellant was given enough opportunity to explain the source of cash credited in bank account(s) but the

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appellant has failed to provide supporting evidences. Appellant has just submitted form P-II which pertains to F.Y. 2014-15, Bhu-Adhikar and Rin-Pustika.

6.2 The documents submitted by the appellant do not substantiate the cause of the appeal instituted by the appellant. In view of the detailed discussion above it is considered that the evidences in support of the cash deposited during the Demonetization period have not been demonstrated either before the AO or before the undersigned. Since, there is no documentary evidences were produced to substantiate the grounds raised by the appellant, the AO's order is upheld."

9. Before us, Ld. AR for assessee made oral as well as written submission. Ld. AR basically submitted that the assessee was aged about 50 years at the relevant time. He submitted that the assessee and two family members [Shri Suraj Mandloi, son and Smt. Usha Mandloi, wife] were regular return-filers. Ld. AR has given PAN data of assessee and his family members and filed the data of incomes declared by them in their respective returns of AY 2017-18 under consideration as well as preceding AYs 2016-17 and 2015-16. Drawing our attention to same, Ld. AR submitted that the assessee and two family members have disclosed aggregate income of Rs. 16,39,520/-, Rs. 12,46,710/- and Rs. 17,47,300/- in AY 2017-18, 2016-17 and 2015-16 (including incomes of Rs. 7,39,140/-, Rs. 5,64,150/- and Rs. 9,17,125/- respectively for those three years declared by assessee). These income figures consist of their taxable incomes as well as agricultural incomes. Ld. AR submitted that the assessee-family is predominantly agriculturist and derives income from total land holding of 5.493 hectares (13.57 acres). Copies of documents in the form of Bhuadhikar/Rin Pustika and Khasra are filed in Paper-Book. Thus, Ld. AR submitted, the impugned

deposits in assessee's bank a/c were made out of savings/incomes of assessee and family members. Ld. AR submitted that it is ironical that the AO has taken savings at Rs. Nil and treated entire deposits of Rs. 11,35,500/- as unexplained; such an approach of AO is grossly arbitrary and absurd. Finally, Ld. AR submitted that the large amounts of incomes declared by assessee and family members in current year and preceding years have been accepted and assessed by AO without any objection, therefore in such a situation the small deposit of just Rs. 11,35,500/- in bank a/c cannot be said to be unexplained. Ld. AR submitted that the assessee had to deposit his accumulated savings/incomes in bank a/c during demonetization period because of compulsion and necessity of demonetisation. With these submissions, Ld. AR prayed to delete the addition.

10. Per contra, Ld. DR for revenue firstly submitted that the claim of past savings cannot *ipso facto* lead to the opening balance as on 01.04.2016. Then, he submitted that we are concerned with the deposits made by assessee in his bank a/c and the claim of income earned by family members as projected by assessee/Ld. AR cannot be accepted. He submitted that the family members of assessee would also be having their separate bank a/cs which is prima facie discernible from assessee's own bank statement filed in Paper-Book from which funds have been transferred to the bank a/c of Shri Suraj Mandloi, son of assessee. He submitted that the assessee has made a

claim of recovery from opening debtors but no evidence has been filed to show the same. Unless some document or evidence is filed, it remains a story only. Ld. DR went on submitting that the bank a/c of assessee filed in Paper-Book also shows that the assessee has taken gold loan. It is unlikely that the assessee will take loan and suffer interest burden even while holding cash in possession. Lastly, he submitted that the assessee has not filed any evidence before AO to prove the source available for making impugned deposits. With these submissions, Ld. DR strongly prayed to uphold the addition made by AO.

11. We have considered rival submissions of both sides and perused the documents held on record including the orders passed by lower-authorities. At first, we find that before lower-authorities, the assessee claimed that he had a cash balance of Rs. 11,85,200/- as on 08.04.2016 which was utilized for making impugned deposits during demonetization period. The assessee also submitted the sources/components which made up the balance of Rs. 11,85,200/-. Now, the assessee/Ld. AR has filed data of incomes of assessee and two family members in an attempt to impress upon us that there was a very high income disclosed by entire family in income-tax returns as compared to the impugned deposit made by assessee in bank a/c. This submission made before us is liable to outright rejection for the simple reason that it was nowhere a claim of assessee before lower-authorities that the income/savings of family members were utilized for making impugned

deposits. In fact, the assessee submitted to AO the details of his personal sources with amounts utilized for making deposit. Therefore, the assessee's claim of family members made before us is completely contrary to what was submitted before AO. Hence rejected.

12. Therefore, we would only examine the genuineness of sources claimed by assessee before AO. At first, we agree that the Ld. AR has strength in his argument that the AO was not justified in assuming as if the assessee had 'Nil' cash balance. On a careful consideration, we find that the assessee is a regular return-filer and showing income from agriculture as well as other sources and assessee's returns have been accepted and assessed by AO. For AY 2017-18 itself under consideration, the assessee has declared taxable income of Rs. 3,02,220/- and agricultural income of Rs. 4,36,920/- and these incomes have been accepted and assessed by AO without any objection. So far as the source of impugned bank-deposits is concerned, we give our understanding qua the different sources claimed by assessee before AO, as under:

- (i) The first source claimed by assessee is that he had an opening cash balance of Rs. 2,43,400/- as on 01.04.2016. Considering the level of income of Rs. 5,64,150/- and Rs. 9,17,125/- declared by assessee and accepted by department in preceding AYs 2016-17 and 2015-16 respectively, the opening balance of Rs. 2,43,400/- as on 01.04.2016 is acceptable.

- (ii) The second source claimed by assessee was that he received proceeds of agriculture-sale made during current year amounting to Rs. 10,79,000/- and incurred expenses of Rs. 3,05,000/-. This leaves a net agricultural income of Rs. 7,74,000/-. However, the assessee has declared net agricultural income of Rs. 4,36,920/- only in current year which is also accepted by AO. Therefore, we restrict assessee's claim to Rs. 4,36,920/-.
- (iii) The third source claimed by assessee was the recovery of Rs. 1,67,600/- from old debtors. The assessee has not submitted even the names of debtors from whom recovery was made much less any proof. Thus, the assessee has completely failed to prove his claim, therefore the same is rejected.
- (iv) The last source claimed by assessee was receipt of Rs. 1,82,100/- from other sources activities. The AO has accepted income from other sources for whole year at Rs. 3,02,220/-. Having regard to same, we accept this source explained by assessee.

13. Thus, we accept that the assessee can be said to have a cash balance of Rs. 2,43,400 (+) Rs. 4,36,920 (+) Rs. 1,82,100 = 8,62,420/- from explainable sources. During arguments, Ld. AR standing at the Bar in the present of Ld. DR, categorically submitted that the assessee is not contributing much for household expenses, other family members are contributing. Giving credit to Ld. AR's submission, we estimate a total of Rs.

62,420/- as outflow by assessee for household and other personal purposes.

That leaves us to conclude that the assessee was having a cash balance of Rs. 8,00,000/- as on 08.04.2016 for making impugned deposits of Rs. 11,35,500/-. Accordingly, we direct the AO to delete addition by Rs. 8,00,000/-. The excess addition of Rs. 5,35,500/- is upheld. The assessee succeeds partly in this ground.

Ground No. 4:

14. In this ground, the assessee has challenged the application of higher rate of tax @ 60% + Surcharge + Cess u/s 115BBE to the addition made.

15. Although the Ld. AR did not make any oral submission qua this ground, he has made a written-submission in Para 7 of his synopsis. The contention by assessee is such that the higher rate of 60% + Surcharge + Cess was prescribed in section 115BBE through **Taxation Laws (Second Amendment) Act, 2016** from 15.12.2016 but the assessee has made impugned deposits in bank a/c before 15.12.2016. He has submitted that the amendment in section 115BBE was not applicable retrospectively and therefore the AO is wrong in charging tax @ 60%+ Surcharge + Cess. In this regard, we find that the Indore Bench of ITAT has already adjudicated this issue against assessee in **Narendra Kumar Shantilal Jain HUF Vs. PCIT, ITA No. 124/Ind/2022, order dated 23.12.2022** and in **Shri Gaurav Ajmera Vs. DCIT, ITA No. 71/Ind/2022, order dated 01.09.2023**. In coming to such a conclusion, the ITAT, Indore has followed the decision of

Hon'ble Kerala High Court in WA No. 984 of 2019, Maruthi Babu Rao Jadav Vs. The Assistant Commissioner of Income-tax, Central Circle, Kozhikode, dated 23.09.2020 wherein it was held that the amendment though made on 15.12.2016, would apply to the whole previous year 2016-17 relevant to AY 2017-18. The relevant paras of order are re-produced below:

*"13. Having said so, we now turn to Ground No. 7 wherein the assessee raises an alternative claim that the present case of Assessment-Year 2017-18 relates to the Previous-Year 2016-17 and the rate of tax u/s 115BBE was 30%+3% Cess as on first day of the Previous-Year i.e. 01.04.2016, therefore the tax-rate of 30%+3% Cess shall apply to the present case and not the higher rate, hence the assessment-order does not cause prejudice to the interest of revenue. The reason of projecting such a claim by assessee is that the higher rate of tax was prescribed in section 115BBE through an amendment made vide Taxation Laws (Second Amendment) Act, 2016 and the said amendment received assent of the President of India on 15.12.2016 and therefore the amendment shall apply prospectively w.e.f. 15.12.2016 and not retrospectively. The assessee claims that survey in assessee's case was conducted on 19.09.2016 which is prior to 15.12.2016 and therefore the higher rate of tax is not applicable to it, the tax-rate of 30%+3% Cess as existing in section 115BBE as on 01.04.2016 shall apply. To resolve this controversy, a lengthy discussion on the scheme of Income-tax Act, 1961; particularly the framework of previous year, assessment-year, the parliamentary system of prescribing tax-rates, etc. is required; but we have the benefit of a direct decision rendered by **Hon'ble Kerala High Court in WA No. 984 of 2019 – Maruthi Babu Rao Jadav Vs. The Assistant Commissioner of Income-tax, Central, Circle, Kozhikode, dated 23.09.2020** in which the Hon'ble High Court has already analysed such framework at length and was pleased to decide that the higher rate of tax would apply to whole Previous-Year 2016-17 related to Assessment-Year 2017-18. The relevant paragraphs of the decision are reproduced below:*

"The writ petition sought for a declaration that the amendments made by the Taxation Laws (Second Amendment) Act, 2016, to Section 115BBE of the Income Tax Act, 1961 enhancing the rate of income tax, for specified incomes which are unexplained, to 60% and the surcharge provided in the Finance Act, 2016 to 25% for income covered under Section 69A, to be prospective. The above referred enactments are herein after referred to as the '2nd Amendment Act', 'IT Act' and the 'Finance Act'. The 2nd Amendment Act was dated 15.12.2016 and the amendment to Section 115BBE was specified to be effective from 01.04.2017. The amendment enhancing the rate of tax was incorporated in the I T Act and that of

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surcharge in the Finance Act. On declaration, consequential relief is sought against Ext.P2 assessment order levying tax at the enhanced rate of 60% and surcharge @25% on the 'advance tax'. The learned Single Judge rejected the writ petition by a cryptic judgment relying on Commissioner of Income Tax v. S.A.Wahab.((1990) 182 ITR 464 (KER)).

2. The learned Counsel Sri.Vishnu S Arikattil appearing for the appellant would contend that even going by the decision in Karimtharuvi Tea Estate Ltd. v. State of Kerala (AIR (1966) SC 1385) an amendment made on the 1st day of April of any financial year would apply to the assessments of that year. That is, if an amendment is brought into force on 01.04.2017, as is the case here, it can only apply to the assessment made in 2018-2019 (Assessment Year) of the income accrued for the previous financial year; which is 2017-2018. The learned Counsel would seek to draw a distinction in so far as a modification of the rate as brought out in the Finance Act and a substantive provision altering accrued rights or creating new liabilities, on the 1st of April of an year. In the former, it could apply to the assessments of the previous year, made in that financial year, but a substantive amendment not relating to the rates, could only be applied to the assessments of that financial year and not of the previous year. Reliance is placed on the Constitution Bench decision of the Hon'ble Supreme Court in C.I.T Vs. Vatika Township Private Ltd. (2015) 1 SCC 1. The learned Counsel would also place before us a number of decisions of the Hon'ble Supreme Court in Kesoram Industries v. Commissioner of Wealth Tax, [AIR 1966 SC 1385], Guffic Chem P. Ltd v. C.I.T [2011(4) SCC 245], C.I.T v. Sarkar Builders [(2015) 375 ITR 392 (SC)], Shiv Raj Gupta v. C.I.T [(2020) 425 ITR 420(SC)] and State of Kerala v. Alex George [(2004) 271 ITR 290(SC), to further buttress his arguments. Reliance is also placed on the Full Bench decision of the Patna High Court in Loknath Goenka v. C.I.T [2019 417 ITR 521(Patna)].

11. Before we look at the amendments carried out, on facts, there were two seizures of cash made on 02.08.2016 and 03.11.2016 respectively of Rs.1,05,03,500/- and Rs.1,24,68,750/- both in the F.Y 2016-2017. The persons from whom the cash was seized as also the appellant herein admitted that it belonged to the appellant who carries on trading in gold bullion. The appellant not having produced any books of accounts or cash flow statements failed to establish the source of the money seized; which was included in the total income under Section 69A of the IT Act. The writ petition or the appeal does not challenge such inclusion. On the said amounts tax was imposed @60% under Section 115BBE and surcharge @25%. The amendments to the Finance Act were by the 2nd Amendment Act dated 15.12.2016. The enhancement of tax under Section 115BBE was made effective only from 01.04.2017; the commencement of the assessment year 2017-2018, in which the assessments of the previous year are carried out.

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12. The assessee contends that the seizures were made prior to the amendment. The affidavits admitting the ownership of amounts seized were also submitted prior to the amendment. The assessee was not aware of the enhanced tax liability when the admissions were made before the authorities. The assessee has also made an attempt to relate the amendments to the demonetization of the specified currencies announced on 08.11.2016 which contention we reject at the outset. The subject amendments which are relevant for our consideration have no direct link with the demonetization introduced or the taxation and investment regime of Pradhan Mantri Garib Kalyan Yojana 2016 brought in under Chapter IX A of the 2nd amendment Act. The 2nd amendment Act as is clear from the Statements of Objects and Reasons, was to curb, evasion of tax and black money as also plug loopholes in the IT Act and to ensure that defaulting assesseees are subjected to higher tax and stringent penalty provision. Both the measures spoken of herein were to further the said objects and there cannot be any nexus assumed nor is it discernible.

13. Section 115BBE was inserted by Finance Act 2012 w.e.f 01.04.2013. As on 01.04.2016 the financial year in which the subject seizures occurred Section 155BBE provided for 30% tax on income referred to in Sections 68, 69, 69A, 69B, 69C and 69D. The same was amended by the 2nd Amendment Act; w.e.f. 01.04.2017, enhancing the rate to 60%. Hence there was no new liability created and the rate of tax merely stood enhanced which is applicable to the assessments carried on in that year. The enhanced rate applies from the commencement of the assessment year, which relates to the previous financial year.

14. Likewise it was by Chapter II with heading 'Rates of Income Tax', as provided in the Finance Act 2016, that a surcharge was introduced by way of the 3rd proviso of Section 2(9) of that Finance Act. This comes into effect from the Financial Year 2016-2017; which is the year in which the subject seizures were occasioned. The proviso refers to various provisions where the advanced tax computed under the first proviso stands increased by a surcharge for the purpose of the Union. Section 115BBE is one of the provisions referred to in the 3rd proviso and in the case of individuals the surcharge was @15% where the total income exceeds one crore, as on 01.04.2016. By the 2nd Amendment Act Section 2 of the Finance Act, 2016 stood amended by which 115BBE was omitted from the 3rd proviso. After the 6th proviso yet another proviso was inserted which provided for the 'advance tax' computed under the first proviso, in respect of any income chargeable to tax under Section 115BBE(1)(i), to be increased by a surcharge for the purposes of the Union, calculated @25%. Hence there is no new liability of surcharge created and it is a mere enhancement of the rate of surcharge.

15. In the financial year 2016-17 itself the tax as provided under section 115BBE and the surcharge on advance tax was available as discernible

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from the IT Act and Finance Act, 2016 as it stood on 1.4.2016 itself. A major misdemeanor leading to assessment of income as accrued under Section 69A invites the consequences of Section 115BBE and surcharge provided under Section 2(9) of the Finance Act, 2016. When it stands enhanced from 01.04.2017, for every assessment carried out in that year, related to the previous year, the rates as applicable on 01.04.2017 has to be applied. There being no new liability created or obligation imposed, the arguments raised by the appellant's counsel fails. The appellant cannot have a contention that he committed the misconduct on the expectation that if he were caught he would have to shell out only lesser amounts as tax and surcharge. There is no right accrued on the assessee to commit an offence on the expectation of a lesser penalty.

16. It was also argued that Income Tax at the rate or rates specified, as prescribed in any Central Act to be charged for any assessment year, shall be so charged in respect of the total income of the previous year as per Section 4 of the IT Act. However, there is no such provision to enable a surcharge to be so taxed, on the Finance Act prescribing an enhanced rate at the commencement of an year. The said contention however, cannot be sustained especially looking at the decision of the Hon'ble Supreme Court in CIT Kerala v. K Srinivas. [(1972) 4 SCC 526]. The facts are not relevant to the issue raised here and we need only look at the declaration as to the nature of a surcharge imposed in the Finance Act. The legislative history with respect to the concept of surcharge was traced by the Court, which, for the first time was found to have been recommended, in the report of the Committee on Indian Constitutional Reforms Volume I Part I. The word surcharge was used compendiously for the special addition to taxes on income imposed in September 1931. It was held so in paragraph 7 and 8.

7. The above legislative history of the Finance Acts, as also the practice, would appear to indicate that the term "Income tax" as employed in Section 2 includes surcharge as also the special and the additional surcharge whenever provided which are also surcharges within the meaning of Article 271 of the Constitution. The phraseology employed in the Finance Acts of 1940 and 1941 showed that only the rates of income tax and super tax were to be increased by a surcharge for the purpose of the Central Government. In the Finance Act of 1958 the language used showed that income tax which was to be charged was to be increased by a surcharge for the purpose of the Union. The word "surcharge" has thus been used to either increase the rates of income tax and super tax or to increase these taxes. The scheme of the Finance Act of 1971 appears to leave no room for doubt that the term "Income Tax" as used in section 2 includes surcharge.

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8. According to Article 271 notwithstanding anything in Article 269 and 270 Parliament may at any time increase any of the duties or taxes referred to in those Articles by a surcharge for the purpose of the Union and the whole proceeds of any such surcharge shall form part of the consolidated Fund of India. Article 270 provides for taxes levied and collected by the Union and distributed between the union and these states. Clause (1) says that tax on income other than agricultural income shall be levied and collected by the Government of India and distributed between the Union and the states in the manner provided in clause (2). Article 269 deals with taxes levied and collected by the Union but assigned to the States. The provisions of Articles 268 which is the First one under the heading distribution of revenue between the union and the states relate to duties levied by the Union but collected and appropriated by the states. Thus these Articles deal with the levy, collection and distribution of the proceeds of the taxes and duties mentioned therein between the Union and the state. The Legislative power of Parliament to levy taxes and duties is contained in Articles 245 and 246(1) read with the relevant entries in list I of the Seventh Schedule.

17. In the instant case surcharge was imposed by Finance Act, 2016 and the rate stood enhanced by Finance Act 2017. The Income Tax even as per the Finance Act has to be at the rate specified in Part I of the 1st Schedule which shall be increased by surcharge for purposes of the Union. Surcharge hence partakes the character of Income tax and Article 271 itself empowers the Parliament, at any time to increase any of the duties or taxes by a surcharge for the purpose of the Union and it forms part of the consolidated fund. So when a surcharge is imposed it is in effect an enhancement of the tax or duty. The provisions in the Finance Act also employ the words 'the income tax computed ... shall be increased by a surcharge. Section 4 of the IT Act squarely applied to the surcharge imposed.

The judgement of the Learned Single judge is affirmed for the reasoning herein above and the writ appeal would stand dismissed without any order as to costs."

14. We are consciously aware of the judicial hierarchy and discipline according to which the Hon'ble High Court of Kerala, though non-jurisdictional, is higher than ITAT. Hence, respectfully following the aforesaid decision of Hon'ble Kerala High Court, we are inclined to hold that the higher rate of tax prescribed in section 115BBE is applicable to the whole previous year 2016-17 relevant to assessment-year 2017-18 and there is no merit in the contention raised by assessee."

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16. Respectfully applying the same view, we find that the AO was very much correct in applying higher rate of tax @60% + Surcharge + Cess. Therefore, we do not find any merit in the ground raised by assessee. Rejected therefore.

17. Resultantly, this appeal is partly allowed.

Order pronounced in open court on 30.07.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 30.07.2024

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore