

आयकर अपीलीय अधिकरण  
कोलकाता 'सी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

श्री संजय शर्मा, न्यायिक सदस्य  
एवं  
श्री संजय अवस्थी, लेखा सदस्य  
के समक्ष  
Before

**SRI SONJOY SARMA, JUDICIAL MEMBER  
&  
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 881/KOL/2024  
Assessment Year: 2017-18**

**Anjana Chaudhury.....Appellant  
[PAN: BDHPC 3618 M]**

**Vs.**

**ACIT, Cir.-1(1), IT, Kolkata.....Respondent**

**Appearances:**

**Assessee represented by:** S.S. Gupta, AR.

**Department represented by:** Prabhakar Prakash Ranjan, Addl. CIT, Sr. DR.

Date of concluding the hearing : July 22<sup>nd</sup>, 2024

Date of pronouncing the order : August 12<sup>th</sup>, 2024

**ORDER**

**Per Sanjay Awasthi, Accountant Member:**

In this case, the appellant had filed the return of income on 19.03.2018 for the AY 2017-18 at a total income of Rs. 2,50,21,980/-. An assessment was framed after this case was selected for scrutiny but ostensibly on account of non-attendance before the Assessing Officer (hereinafter referred to as ld. 'AO') an order u/s 144 of the Income Tax Act, 1961 (in short the 'Act') was passed. In this order the Ld. AO is seen to have accepted the returned income of Rs. 2,50,31,974/- but an amount of Rs. 1,47,00,000/- was treated as unexplained income u/s 68 of the Act and tax u/s 115BBE of the Act was levied resulting in demand of Rs. 1,59,46,787/-. As already mentioned, on

account of non-compliance before the AO, the assessment order was framed u/s 144 of the Act with the said treatment of the impugned amount u/s 68 of the Act.

1.1. Aggrieved with this action of the ld. AO the assessee approached ld. CIT(A) and there also the action of ld. AO was upheld, leading to the present appeal before the Tribunal.

1.2. Before us this matter has been agitated through the following grounds of appeal:

*“1. That in the facts and circumstances of the case, the Ld. Assessing Officer was not justified in arbitrarily treating Rs. 1,47,00,000/- as unexplained cash credit. The Ld. CIT (A) has erred in confirming the action of Assessing Officer.*

*2. That in the facts and circumstances of the case, the Ld. Assessing Officer was not justified in treating amount of Rs. 1,47,00,000/- under section 68 of the Act when no books of accounts was maintained by the appellant. The action of the Assessing Officer is against the decided judicial view that only credit entry in the books of accounts can be subject matter of additions under section 68 of the Act. The Ld. CLI (A) has erred in confirming the action of Assessing Officer.*

*3. That in the facts and circumstances of the case, the Ld. Assessing Officer was not justified in subjecting income of Rs. 1,47,00,000/-, being taxable at 60 percent and levying surcharge thereon @ 25 percent. Such change in the rate to 60 percent was introduced in terms of Taxation Second Amendment Act. 2016 which received the assent of President of India on 15.12.2016. Thus, any income prior to 15.12.2016 cannot be subject to rate of tax notified by subsequent amendment.*

*4. That in the facts and circumstances of the case, the Ld. Assessing Officer was not justified in taxing income of Rs. 1,47,00,000/- twice. The first being taxable as per normal provisions and the second being taxable at special rate under section 115BBE of the Act. The Assessing Officer has not disputed the quantum of income though while passing the assessment order, he has made addition of Rs. 1,47,00,000/- under section 115BBE of the Act though the said amount was already forming part of income as per normal provisions. The Ld. CIT (A) has erred in confirming the action of Assessing Officer.*

*5. That in the facts and circumstances of the case, the impugned ex-parte order of assessment was passed in violation of principles of natural justice. Further, the Ld. CIT (A) also violated the principle of natural justice by not*

*judicially considering the submissions of the appellant and without allowing an opportunity of being heard.*

*6. That in the facts and circumstances of the case, the Learned Assessing Officer has erred in levying interest under section 234A and 234B of the Act and/or the calculation of tax and interest thereon is incorrect.*

*7. That the appellant humbly craves leave to add, alter, withdraw grounds of appeal at the time of hearing.”*

2. Before us, the ld. Counsel for the assessee pointed out some facts which were placed before the ld. CIT(A) also, in as much as that the appellant after the death of her husband in December, 2003 in USA, visited India four times in FY 2013-14 & 2016-17. During such visits she was made aware of a corpus in the nature of cash and cash equivalents to the tune of Rs. 1.50 Crore. At this point the sequence of events becomes relevant as this amount was deposited in the bank account on 25.08.2016 and advance tax of Rs. 74,80,575/- was paid on 21.09.2016. The ld. A/R took pains to point out that all of this was done well before the announcement of demonetisation on 08.11.2016. The ld. A/R stressed on the following points for our consideration:

- a) The impugned amount would not have been treated u/s 68 of the Act as no books of accounts were maintained by the appellant, which is an essential ingredient if at all Section 68 of the Act is to be applied.
- b) The impugned amount was already offered to tax as income from other sources, with necessary tax deposited on the same.
- c) The ld. AO has assessed the taxable income as per the returned income itself but has subjected the impugned amount to tax on two occasions; firstly, as per the normal tax rate prevailing at the time and secondly, again under the provisions of Section 115BBE of the Act.
- d) The impugned amount has been taxed at the enhanced rate of 60% (with a surcharge of 25%) under the amended provisions of Section 115BBE of the Act introduced in the Taxation Second Amendment Act, 2016 which had received the assent of President of India on 15.12.2016.

It has been averred that any income prior to 15.12.2016 cannot be subject to any rate of tax modified by a subsequent amendment.

2.1. During the course of arguments, the Id. A/R relied on a number of authorities to canvass the point that a penal provision such as Section 115BBE of the Act will have to be prospective and not a retrospective in its operations. The leading case on this issue of *CIT vs. Vatika Township (P.) Ltd.* reported in [2014] 367 ITR 466 (SC) was relied upon.

2.2. The Id. D/R vehemently argued that the amendment to Section 115BBE of the Act was applicable to the entire AY 2017-18 and not for a part of the year.

3. We have considered the rival submissions and carefully perused the documents filed through a paper book running into 44 pages and the authorities relied upon by the Id. A/R. It is seen that the provisions of Section 115BBE of the Act are triggered only when the provisions of Section 68 of the Act are applied. Therefore, it is critical to understand whether, on the facts of this case, Section 68 of the Act would apply or not. To understand the issue, it is important to recall that Section 68 of the Act begins with the phrase “Where any sum is found credited in the books (Emphasis added) of an assessee maintained for any previous year”. Thus, it is important to understand whether the primary requirement leading to a triggering of action under this Section, being the presence of books, is present or not in this case. In this regard, it is seen that books or books of account were inserted into the definition portion of the Act through Section 2(12A) of the Act with effect from 01.06.2001 only. The said Section reads as under:

*“books or books of account” includes ledgers, day-books, cash books, account-books and other books, whether kept 4[in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in] a floppy, disc, tape or any other form of electro-magnetic data storage device;”*

3.1. While through the case of *CIT vs. Bhaichand N. Gandhi* reported in [1983] 141 ITR 67 (Bombay), it is understood that a bank pass book would not pass muster as "books of account" but it is felt that this case pre-dates the

insertion of definition of books as per Section 2(12A) of the Act and hence, it needs to be clearly pin-pointed whether at all the preliminary requirement u/s 68 of the Act regarding the presence of books is fulfilled or not. Admittedly, the assessment order was passed in an *ex-parte* manner and unfortunately, the Id. CIT(A) has chosen to adjudicate on this issue in spite of the fact that this point has been raised with respect to ground nos. 7 & 8 [i.e. before the Id. CIT(A)] and in the written submissions the fact that the assessee was not required to maintain any books of accounts was duly brought to his notice. It is also seen that the Id. CIT(A) has not given any finding on the fact that the impugned amount has been subjected to taxation twice over, in as much as it has been taxed at normal rates once and thereafter u/s 115BBE of the Act a second time.

3.2. It is felt that this whole case turns on the issue of whether Section 68 of the Act can be applied, after investigating whether 'books' as mentioned in Section 68 of the Act and defined in Section 2(12A) of the Act exist or not. Since there is no finding of fact in this regard, we deem it fit to remand back this matter to the file of Id. AO with a direction to examine whether the provisions of Section 68 of the Act would apply, especially with regard to any books that may or may not be there. Secondly, the Id. AO would give a clear finding on the tax due, if any, keeping in view that there is no scope for any double taxation.

4. In the result, the appeal filed by the assessee is partly allowed.

***Order pronounced in the open Court on 12<sup>th</sup> August, 2024.***

*Sd/-*

**[Sonjoy Sarma]**  
Judicial Member

*Sd/-*

**[Sanjay Awasthi]**  
Accountant Member

Dated: 12.08.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Anjana Chaudhury, Rani Bari, Kaliram Medhi Road, Panbazar, Guwahati, Assam, 781001.**
2. **ACIT, Cir.-1(1), IT, Kolkata.**
3. CIT(A)-22, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata