

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य के समक्ष।
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं / ITA No. 273/Ahd/2024
निर्धारण वर्ष / Assessment Year: 2017-18

Manoj Mohandas Sukhwani, 103, 104, 1 st Floor, Elegance Arcade, Nr. Bank of India, Station Road, Maninagar, Ahmedabad-380008 PAN : BAYPS 0941 P	बनाम Vs.	The Income Tax Officer, Ward-6(1)(3), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
निर्धारिती की ओर से / Assessee by :	Shri S K Sadhwani, AR	
प्रत्यर्थी की ओर से / Revenue by:	Shri Hrishikesh Hemant Patki, Sr DR	

सुनवाई की तारीख / **Date of Hearing** : 30/07/2024
घोषणा की तारीख / **Date of Pronouncement**: 28/08/2024

आदेश / O R D E R

The present appeal has been filed by the assessee against the order passed by the learned Commissioner of Income Tax (Appeals)-11, Ahmedabad [in short referred to as "ld. CIT(A)"] under section 250 of the Income Tax Act, 1961 [in short referred to as "the Act"] dated 19.12.2023, pertaining to Assessment Year (AY) 2017-18.

2. Grounds raised by the assessee are as under:-

"1.0 The Ld. CIT(A) has erred both in law and on facts by confirming the addition of Rs. 16,00,000/- made by AO to the income of appellant, as an unaccounted income u/s 69A rws 115BBE, solely based on statement of appellant recorded by Ld. AO wd. 6(1)(2) during the course of survey u/s 133A on 02.03.2017/03.03.2017 at his business premises of his proprietary concern M/s Kashish Selection [engaged in the business of readymade dress and dress material] in complete disregard of explanation furnished by the appellant that he had manually recorded transactions in LIC diary for his convenience as accountant was not available. These transactions amounting

to Rs. 4.73 lakhs are subsequently recorded in books and duly reflected in audited books of account. The disclosure is not supported by any corroborative material/adverse finding brought on the record by Ld. AO.

1.1 Without prejudice to above, both the Ld. authorities are unjustified and have erred both in law and on facts in not appreciating the fact that, the addition cannot be solely founded on the statement recorded during the course of survey proceedings u/s 133A at business premises of appellant by Ld. AO wd. 6(1)(2), which commenced from evening of 02.03.2017 and was concluded on 03.03.2017 at 10.30 pm ie at late night hours, when appellant was confined to the shop for about more than 28 hours, fully exhausted, and not taken any rest and during the interrogation he was confronted with 49 questions. Ld. CIT(A) ought to have appreciated that above statement recorded during course of survey by AO does not have any evidentiary value.

1.2 Without prejudice to the other grounds of appeal, Ld. CIT(A) is unjustified and erred both in law and on facts in confirming the impugned addition of Rs. 16,00,000/- by treating the same as income from undisclosed sources u/s 69A and charging tax thereon u/s 115BBE at special rate. The entire addition is founded on the statement recorded during the course of survey at business premises of M/s. Kashish Selection, relating to the discrepancies in the diary, without bringing on record any evidence that the said income was not connected with the business income of assessee. The Ld. AO is unjustified in invoking the deeming fiction u/s 69A without identifying any other/separate source of income during the course of survey at appellant's business premises. Appellant is not found to be the owner of any money, bullion, jewellery, or other valuable articles which is not recorded in books of account.

1.3 Both the Ld. Authorities have failed to appreciate that during the survey at business premises, appellant has surrendered total income of Rs. 50 lakhs for cash deposit out of sale proceeds, in the demonetized notes in his bank accounts duly reflected in books of account and deposited the tax thereon under the under Paradhan Mantri Garib Kalyan Yojana.

2. Ld. CIT(A) is unjustified and has erred in law in not appreciating the fact that, before making the above addition Ld. AO has not issued proper Show Cause Notice [SCN] in order to afford the appellant just and fair opportunity of explanation. The SCN issued on 25.10.2019 by Ld. AO was not supported by any evidence/material, as required by para 4 of CBDT Instruction no. 20/2015. Even the copy of statement recorded during the course of survey on 03.03.2017 was provided the appellant in the month of September, 2017 at the

request of appellant. Thus, ass. order is passed in violation of principles of natural justice.

3. Ld. CIT[A] has erred in law and fact in confirming the action of AO in initiating the penalty u/s 271AAC(1) of I.T. Act, 1961."

3. The brief facts relating to the case are that addition to the tune of Rs.16 lakhs was made to the income of the assessee on the basis of surrender made by him during survey conducted on the assessee. The assessment order reveals that against question No.44 raised to the assessee during course of survey, the assessee had agreed to disclose Rs.16 lakhs as unaccounted income in the current financial year. The assessment order also reveals that the assessee was asked to explain the contents of diary, i.e. LIC Diary 2017, to which the assessee admitted there was some discrepancies and some unaccounted income entered in the diary, and accordingly agreed to disclose Rs.16 lakhs as unaccounted income of the impugned year. The relevant question and answer, which were reproduced by the Assessing Officer in his order at paragraph No.3 of the order, are as under:-

"Q.44 You have not given the satisfactory reply about the LIC Diary 2017 which is asked in question no 9 to 17 earlier. Please explain the same.

Ans 44. I accept that there are some discrepancies as well as some unaccounted income has been entered in this LIC Diary 2017. Based on these entries I will agree to disclose Rs 16,00,000/- as unaccounted income in the current financial year. The disclosed amount will be considered over and above my regular income and I will paid hundred percent tax on this amount."

4. The Assessing Officer noted, however, that the assessee had not disclosed the surrender so made in the return of income, and despite the assessee explaining to him the contents of the diary as all being duly accounted for in the books of the assessee, the Assessing Officer, however,

rejected the explanation finding discrepancies in the same and made addition of the income so surrendered by the assessee of Rs.16 lakhs and the same was confirmed by the Id. CIT(A).

5. The contention of the Id. Counsel for the assessee before us was to the effect that both the Revenue Authorities had grievously erred in making this addition of alleged surrendered income when the fact on record before them was that the assessee had already surrendered undisclosed income to the tune of Rs.53,27,500/- being the cash found deposited in his bank account during demonetization period and paid taxes thereon in terms of the provisions of "Pradhan Mantri Garib Kalyan Yojana, 2016" ["PMGKY-2016" in short], which provided for the disclosure of undisclosed income deposited during demonetization in cash in banks. The Id. Counsel for the assessee contended that the assessee had been granted a certificate accepting the assessee's disclosure of Rs.53.27 lakhs made under the PMGKY-2016 Scheme. Copy of the same was placed before us at paper-book page No. 54. The contention of the Id. Counsel for the assessee was that when the assessee had already declared undisclosed income of Rs.53.27 lakhs and paid taxes thereon, the Revenue Authorities ought to have telescoped the undisclosed income found during survey against the same and made no addition on account of the same.

6. Since this argument was not taken by the assessee before any of the authorities below, the Id. DR was asked to verify the genuineness of the certificate given to the assessee under the PMGKY-2016 Scheme, and the Id. Counsel for the assessee was asked to explain the scheme so floated by the Government. An Order-sheet Entry to this effect was passed on 24.07.2024; and thereafter on 30.07.2024 when the matter came up for hearing, Id. DR

confirmed the veracity of the certificate furnished to the assessee under PMGKY-2016 Scheme. He agreed that the assessee had disclosed all the cash deposited in his bank account amounting in all Rs.53.27 lakhs as its undisclosed income and paid due taxes thereon as prescribed under the Scheme and also invested 25% of the undisclosed income in the PMGKY-2016 Scheme as prescribed under the Scheme.

7. The Id. Counsel for the assessee furnished before us a circular issued by the CBDT explaining the provisions of the taxation and investment regime for Pradhan Mantri Garib Kalyan Yojana, 2016 as contained in Chapter IX-A of the Finance Act, 2016 issued vide Circular No. 43 of 2016 dated 27.12.2016. Referring to the same, it was pointed out that the Scheme was notified in the Finance Act, 2016 and provided an opportunity to persons having undisclosed income in the form of cash or deposit in an account maintained with a bank or post office to declare such income and paid tax, surcharge and penalty totaling in all to 49.9% of such income. Besides, it was pointed out the Scheme provided that a mandatory deposit of not less than 25% of such income was to be made in the deposits scheme of the said Scheme. The contents of the Circular are reproduced hereunder:-

“EXPLANATORY NOTES ON PROVISIONS OF THE TAXATION AND INVESTMENT REGIME FOR PRADHAN MANTRI GARIB KALYAN YOJANA, 2016 AS CONTAINED IN CHAPTER IX-A OF THE FINANCE ACT, 2016

Introduction

1. The Taxation Laws (Second Amendment) Act, 2016 has been enacted by Parliament on 15.12.2016. The said Act has inter alia amended the provisions of Finance Act, 2016 and inserted a new Chapter on, ‘The Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 (hereinafter ‘the Scheme’) in the Finance Act, 2016.

6

2. The Scheme provides an opportunity to persons having undisclosed income in the form of cash or deposit in an account maintained with a specified entity (which includes banks, post office etc.) to declare such income and pay tax, surcharge and penalty totaling in all to 49.9 per cent. of such declared income. Besides, the Scheme provides that a mandatory deposit of not less than 25% of such income shall be made in the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 (hereinafter 'the PMGKY Deposit Scheme') which has separately been notified by the Department of Economic Affairs. The Scheme has commenced on 17.12.2016 and shall remain open for declarations/deposit upto 31.03.2017.

Scope of the Scheme

3. A declaration under the aforesaid Scheme may be made in respect of any income in the form of cash or deposit in an account maintained by the person with a specified entity, chargeable to tax under the Income-tax Act for any assessment year commencing on or before the 1st day of April, 2017. No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed against the income in respect of which a valid declaration is made under the Scheme.

Tax, surcharge, penalty & deposit under the Scheme

4. The person making a declaration under the Scheme would be liable to pay tax at the rate of thirty per cent. of the undisclosed income as increased by surcharge to be called the Pradhan Mantri Garib Kalyan Cess calculated at the rate of thirty-three per cent. of such tax. In addition, penalty at the rate of ten per cent. of the undisclosed income shall be payable.

The declarant shall also be required to deposit an amount not less than twenty-five per cent. of the undisclosed income in the PMGKY Deposit Scheme. The deposit shall bear no interest and the amount deposited shall have a lock-in period of four years.

Time limits for declaration and making payment

5. A declaration under the Scheme can be made anytime on or after 17th December, 2016 but on or before 31st March, 2017. The tax, surcharge and penalty payable under the Scheme and deposit to be made in the Deposit Scheme, shall be paid/made before filing of declaration under the Scheme. The declaration shall be accompanied with proof of payment made in respect of tax, surcharge and penalty payable under the Scheme and proof of deposit made in the PMGKY Deposit Scheme.

Form for declaration

6. A declaration under the Scheme in Form-1 as prescribed in the Rules may be made at any time on or before 31.03.2017. After such declaration has been furnished, the notified Principal CIT/ CIT will issue an acknowledgment in Form-2 to the declarant within 30 days from the end of the month in which the declaration under Form-1 is made.

Filing of declaration

7. A declaration under the Scheme can be filed:

(i) Electronically under digital signature with CIT(CPC) Bengaluru or jurisdictional Principal CIT/CIT notified under section 120 of the Income-tax Act, 1961.

(ii) Electronically through Electronic Verification Code (EVC) or in print form with jurisdictional Principal CIT /CIT notified under section 120 of the Income-tax Act, 1961.

Declaration not eligible in certain cases

8. The provisions of this Scheme shall not apply –

(a) in relation to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 subject to the conditions specified under the Scheme.

(b) in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988, the Prohibition of Benami Property Transactions Act, 1988 and the Prevention of MoneyLaundering Act, 2002;

(c) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;

(d) in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Circumstances where declaration shall be invalid

9. A declaration shall be void and shall be deemed never to have been made where a declaration has been made by misrepresentation or suppression of facts or without payment of tax and surcharge or penalty or without depositing the requisite amount in the PMGKY Deposit Scheme, and in such cases all the

8

provisions of the Income-tax Act, including penalties and prosecutions, shall apply accordingly.

Tax, etc., not refundable

10. Any tax, surcharge or penalty paid under the Scheme shall not be refundable under any circumstances.

Effect of valid declaration

11. Where a valid declaration as detailed above has been made, the following consequences will follow:

(a) The amount of undisclosed income declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;

(b) A declarant under this Scheme shall not be entitled, in respect of undisclosed income or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957, or to claim any set-off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment

(c) The contents of the declaration shall not be admissible in evidence against the declarant for the purpose of any proceeding under any Act other than the Acts referred in Para- 8 above.

(Dr Thakur Singh Mapwal)

Under Secretary to the Government of India"

8. Considering the above, it is an admitted fact on record that the assessee had already disclosed undisclosed income of Rs.50 lakhs pertaining to the impugned assessment year as per the Scheme introduced by Finance Act, 2016 of PMGKY-2016. The Id.counsel for the assessee is seeking telescoping of surrender of Rs.16 lakhs made on account of entries in "LIC Diary" against undisclosed income surrendered of Rs.50 lakhs.

The orders of the authorities below do not throw any light on the nature of contents of the diary. The same is revealed in the statement recorded of the assessee during the survey at his business premises. Copy of

which was placed before me in PB Page No.28 to 53. The statement reveals that in response to the query raised to the assessee, as to where the assessee recorded expenses incurred by it in cash, in question no.9, the assessee stated that all the expenses were recorded in the LIC diary blue colour. The relevant question no.8 wherein the assessee was asked, whether he recorded expenses incurred in his computation, to which he responded in negative, and in question no.9, asking where he recorded expenses incurred in cash to which, he responded by stating that the same were recorded in his LIC diary are reproduced hereunder:

प्रश्न. 8 आप cash में जो खर्च करते हैं क्या वो computer में लिखा गया है?

उत्तर:- नहीं

प्रश्न. 9 तो फिर cash में खर्च का record कहीं ओर रखते हैं?

उत्तर:- जी हाँ, मैने LIC 2017 Diary (Blue colour) में खर्च का ब्यौरा लिखा है।

Admittedly, therefore, the contents of the diary revealed expenses incurred by the assessee.

10. In the light of these facts, therefore, I have no hesitation in holding that the assessee should be given benefit of telescoping of the surrender made on account of entries in the diary against undisclosed income surrendered by the assessee of Rs.50 lakhs, since it can be safely presumed, in the absence of any evidence to the contrary, that these expenses recorded in the diary were incurred out of the undisclosed income of the assessee.

11. The Revenue Authorities, therefore, in the light of the said fact, I hold, are not justified in making a separate addition of Rs.16 lakhs discovered during survey on account of the contents of a diary found, i.e. LIC Diary 2017,

10

with the assessee remaining unexplained. As rightly pointed out by the ld. Counsel for the assessee, this undisclosed income of Rs.16 lakhs surrendered by the assessee on account of the contents of the diary is to be telescoped against the undisclosed income of Rs.50 lakhs already disclosed by the assessee. In view of the same, the addition of Rs.16 lakhs made to the income of the assessee is directed to be deleted. The appeal of the assessee is allowed in above terms.

12. In effect, the appeal of the assessee is allowed.

Order pronounced in the open Court on 28/08/2024 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
(□ न्नपूर्णा गुप्ता, लेखा सदस्य)

Ahmedabad, dated 28/08/2024