

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES “B”, HYDERABAD**

**BEFORE**

**SHRI LALIET KUMAR, JUDICIAL MEMBER  
AND  
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

ITA Nos.315 to 317/Hyd/2024		
Assessment Years: 2017-18 to 2019-20		
Dushyanth Reddy Janampally, Villa No.2, Green Villa, Gandipet, Hyderabad – 500075, Telangana.  PAN : AHNPJ0767D.	Vs.	The Assistant Commissioner of Income Tax, Central Circle 3(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri A. Srinivas, C.A.	
Revenue by:	Shri S. Mookambikeyan, Sr.AR.	
Date of hearing:	12.11.2024	
Date of pronouncement:	13.11.2024	

**ORDER**

**PER LALIET KUMAR, J.M.**

These three appeals filed by the assessee are directed against separate, but identical orders of Commissioner of Income Tax (Appeals) – 12, all dated 24.01.2024 and relevant to the assessee for A.Ys. 2017-18 to 2019-20. Since, the facts are identical and issues are common but for the figures, for the sake

of convenience, these three appeals were heard together and are being disposed of, by this consolidated order.

2. All the appeals filed by the assessee are barred by limitation by 7 days. The assessee has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeals for hearing.

2.1 The assessee has more or less raised common grounds for all the assessment years, therefore, for the sake of brevity, grounds raised in ITA No.315/Hyd/2024 for A.Y. 2017-18 read as under :

*“1. The order of the Appellate Commissioner is contrary to law, facts and circumstances of the case.*

*2. The Appellant Commissioner ought not to have confirmed the order of A.O, who changed the income offered under the head "Business Income" by the Assessee to unexplained investments under section 69B.*

*3. The Appellate Commissioner ought not to have confirmed the rate of taxation at the rate specified in Section 115BBE, when the Assessee has declared the income under the head "business income".*

*4. The Appellate Commissioner, ought to seen that the A.O, without giving an opportunity and reasoning had changed the rate of taxation from regular rate to the rate prescribed under section 115BBE.*

*5. The Appellate Commissioner ought not to have changed the section referred by A.O under section 69B to section 69 of the Income Tax Act.*

6. *The Appellate Commissioner erred in not giving a notice when the section was changed from section 69B to section 69 of the Income Tax Act.”*

3. The brief facts of the case are that assessee, an individual, having income from house property and other sources income, filed his return of income for the assessment year 2017-18 on 31.03.2018, declaring total income of Rs.1,45,610/-. Search and seizure operations u/s 132 of the I.T. Act were carried out in the case of M/s. Laboratories Group cases on 24.02.2021 and the assessee's premises was also covered u/s 132 of the Act. Consequent to search, a notice u/s 153A dated 12.10.2021 was issued to the assessee through online ITBA. In response to the notice issued, the assessee filed his return of income for A.Y 2017-18 on 22.01.2022 declaring total income of Rs. 1,96,010/-. Subsequently, the case was taken up for scrutiny and notice u/s 143(2) dt. 09.02.2022 was issued. Thereafter, notices u/s 142(1) along with questionnaire were issued to the assessee calling for information. In response to the same, the assessee filed the submissions as called for.

3.1. On verification of the details submitted by the assessee, Assessing Officer observed that the assessee had made an investment of Rs.50,000/- during the FY 2016-17 in M/s. Saketh Agros & Dairy Products Pvt Ltd and when the assessee was asked to explain the sources for the said investment, he was unable to explain the sources and had admitted the amount of Rs.50,000/-

as his additional income for the FY 2016-17 relevant to the AY 2017-18. In line with the above admission, the assessee has filed return of income by admitting the additional income of Rs.50,000/- for the AY 2017-18 and the same was brought to tax u/s.69B of the IT Act, 1961. Finally, the Assessing Officer completed the assessment interalia making addition of Rs.50,000/- u/s 69B and thereby assessed the total income of the assessee at Rs.1,96,010/- and passed assessment order u/s 153A of the Act dt.31.03.2022.

4. Aggrieved with such assessment order, assessee filed an appeal before the LD.CIT(A), who dismissed the appeal of assessee.

5. Aggrieved with the order of LD.CIT(A), the assessee is now in appeal before us.

6. Before us, ld.AR submitted that the Assessing Officer has wrongly changed the income offered under the head "Business Income" by the assessee to the unexplained investment u/s 69B of the Act and the Assessing Officer even not granted the opportunity before changing the head of income and while changing the rate of taxation from regular rate to the rate prescribed under section 115BBE of the Act. Even the LD.CIT(A) has wrongly confirmed the order of Assessing Officer and changed the section from section 69B to Section 69 of the Income Tax Act.

7. Per contra, the ld.DR relied upon the orders of lower authorities.

8. We have heard the rival submissions and perused the material on record. In the present case, as the assessee failed to explain the sources for the investment of Rs.50,000/- in M/s. Saketh Agros and Diary Products Pvt. Ltd., Assessing Officer treated the same as unexplained investment u/s 69B of the Act during the course of search action and invoking of provisions of section 115BBE of the Act. However, in the appellate proceedings, the LD.CIT(A) opined that the provisions of Section 69 of the Act are applicable in the present case, as against 69B as invoked by the Assessing Officer.

9. Before us, ld.AR for the assessee contended that before changing the head of income i.e., making the addition u/s 69 instead of u/s 69B of the Act, the LD.CIT(A) should have issued show cause notice to the assessee to that effect. On perusal of the record, we find that the LD.CIT(A) had changed the provision of law from 69B to 69 of the Act in his order and while doing so, the LD.CIT(A) has not issued any show cause notice to the assessee. In our considered opinion, Section 251 of the Income-tax Act, 1961, empowers the LD.CIT(A) to confirm, reduce, enhance or annul the addition entirely when making a decision on an appeal. Merely change of provision from Section 69B to 69 cannot be fatal to the present case, as it is within the power of LD.CIT(A) to do so.

For the above said purposes, we may fruitfully rely upon the decision of Hon'ble Supreme Court in various cases. But we are of the considered opinion that though the LD.CIT(A) is having power to change the head of income or section of law, however, before doing so, the LD.CIT(A) is required to issue show cause notice to the assessee and seek the response of the assessee as to the applicability of section under which the assessee is sought to charge. In case, the assessee was able to demonstrate the reasons for the non applicability of the section altered by the LD.CIT(A) stating that necessary and requisite conditions are not fulfilled then the LD.CIT(A) may not apply the same provisions. In light of the above, we are of the opinion that for this limited purpose, this matter is required to be remanded back to the file of LD.CIT(A) with a direction that the LD.CIT(A) shall issue a show cause notice to the assessee showing his intention of changing the provisions from section 69B to 69 of the Act and call for response of the assessee to the said notice. On receipt of the notice, assessee shall file the reasons why Section 69 of the Act cannot be invoked and after receiving reply from the assessee, the LD.CIT(A) shall pass speaking order dealing with the contentions of the assessee on this aspect in accordance with law. We are not making any comments on other issues as the assessee has not argued the same before us and it is open for the assessee to raise all his pleas before the first appellate authority. Thus, the matter is remanded back to the file of LD.CIT(A) on this limited issue with the above directions.

Accordingly, the appeal of the assessee is allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

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10. Since identical issues were raised by the assessee in the remaining appeals, therefore, following our reasoning given in ITA No.315/Hyd/2024 mutatis mutandis, we allow the appeals of assessee for statistical purposes.

11. To sum up, all the appeals of assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 13<sup>th</sup> November, 2024.

**Sd/-**

**Sd/-**

<b>(MADHUSUDAN SAWDIA)</b> <b>ACCOUNTANT MEMBER</b>	<b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 13.11.2024.

***TYNN/sps***

Copy to:

S.No	Addresses
1	Dushyanth Reddy Janampally, Villa No.2, Green Villa, Gandipet, Hyderabad – 500075, Telangana.
2	The Assistant Commissioner of Income Tax, Central Circle 3(1), Hyderabad.
3	Pr.CIT (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*