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

<table>
<tr><td colspan="3">ITA No.500/Hyd/2023</td></tr>
<tr><td colspan="3">Assessment Year: 2017-18</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td>Spectra Equipment Private Limited,
Hyderabad.

PAN No.AACCS8677C.</td><td>Vs.</td><td>The Income Tax Officer,
Ward 3(1),
Hyderabad.</td></tr>
<tr><td>(Appellant)</td><td></td><td>(Respondent)</td></tr>
<tr><td>Assessee by:</td><td colspan="2">Ms. Akanksha, C.A.
for Shri Sunil Kumar Jain, C.A.</td></tr>
<tr><td>Revenue by:</td><td colspan="2">Ms. Narmada, CIT-DR
for Shri Madan Mohan Meena, Sr.D.R.</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td>Date of hearing:</td><td colspan="2">11.12.2024</td></tr>
<tr><td>Date of pronouncement:</td><td colspan="2">18.12.2024</td></tr>
</table>

O R D E R

PER LALIET KUMAR, J.M:

This appeal is filed by the assessee feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 22.08.2023 for the AY 2017-18.

2. The solitary ground raised by the assessee reads as under :

> *"The Commissioner of Income Tax (Appeals) has erred in upholding the addition made by the Assessing Officer of Rs.1,30,50,000/- u/s 68 of the Income Tax Act, 1961."*

3. The brief facts of the case are that the assessee filed its return of income for the assessment year 2017-18 on 31.10.2017, declaring a loss of Rs.1,07,26,510/-, which was processed under Section 143(1) of the Act. The case was selected for scrutiny under CASS, and notices under Sections 143(2) and 142(1) of the Act were issued. During the demonetization period, the assessee deposited Rs.50,000/- on 23.12.2016 and Rs.1,50,00,000 on 30.12.2016 in Rs.500/- and Rs.1,000 notes into its bank account. During the course of assessment, the assessee was asked to explain the source of these deposits but failed to provide satisfactory evidence. Summons under Section 131 of the Act and letters under Section 133(6) were issued to various parties, out of them, two parties, namely, Sunil Forging & Steel Industries and Diamond Steel and Engineering Company, denied giving any cash to the assessee and a third party, Sree Spectra Media, claimed to have provided cash but did not furnish complete information. Other parties did not respond. After verifying all the information available on record, the Assessing Officer completed the assessment treating the total amount of Rs.1,30,50,000/- as unexplained cash deposits under Section 68 and added it to the income of the assessee and thereafter, levied tax at 60% under

Section 115BBE of the Act and accordingly, passed assessment order u/s 143(3) of the Act dt.23.12.2019.

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

> *"5. Decision:*
>
> *5.1 The assessee filed its return of income on 31.10.2017. The case was selected for scrutiny. During the course of scrutiny proceedings the AO raised the issue that appellant has deposited cash of Rs. 1,50,00,000 on 30.12.2016 in specified bank notes during the demonetisation period. When asked about the source of the same, the assessee replied that the same has been reported to the Income Tax Department vide Cash Transactions 2015. As the assessse contented that the cash deposits was out of sales proceeds of earlier years, the AD asked for various details of the sales parties. In response to the same, the assessee replied by giving list of entities from whom cash realised during the year. The list hea already been detailed in para 3 above. Regarding the amount of Rs. 20,00,000 out of Rs. 1,50,00,000, the assessee repiled that it was out of Opening Cash balance as on 01.04.2016. As the assessee expressed its inability to produce confirmation from the parties, the AO issued summons/notices to all the parties to explain the nature of transactions, to produce the ledger extract of the assessee in their books for the F.Y. 2015-16 and 2016-17, mode of payment, copy of ITR for A.Y. 2017-18 and to confirm that cash payment have been made.*
>
> *5.2 In response to above summons/notices, two parties namely Sunil Forging & Steel Industries Unit II and Diamond Steel and Engineering Company replied that they have not purchased anything from the assessee and have indeed supplied goods to them. The third party Sree Spectra Media replied that it has given cash to the assessee during the F.Y. 2016- 17 but did not furnish any further details. The summons/notices to all the other parties remained unanswered. As the assessee failed to prove the source of cash deposits, the AD treated the amount of Rs. 1,30,50,000 as unexplained cash credit u/s 68 of the Act and taxed them the rate as mentioned in Section 115BBE of the Act. Aggrieved by the addition, appellant is in appeal before this forum.*
>
> *5.3 The appellant, in its various submissions again reiterated that it t the cash deposits were made from realisation of Sundry Debtors of previous*

years. In support, the appellant produced cash book for the year and other details like Bank Account Statement, I.T. Return, Financial statements etc It is the contention of the appellant that the amounts has already been offered for taxation as sales proceeds during the previous years and taxing them again will amount to double taxation, It was also the contention of the appellant that & is the responsibility of the AO to prove that the credits are unexplained. In its reliance, appellant has quoted the Hon'ble Supreme Court decision in the case of CIT vs Orissa Corporation (P) Ltd. 159 ITR 78 and Mis Essan Remedies Ltd. vs DCIT ITA No. 256/Del/04.

5.4 I have carefully considered the facts of the case and the contention of the appellant. The Govt. of India announced the demonetisation scheme on 08.11.2016 and the last date for depositing specified bank notes was 30.12.2016. It is seen that appellant has deposited a huge amount of Rs. 1,50,00,000 on 30.12.2016 in its account with Andhra Bank. When asked for explanation as to the huge deposits of cash during the demonetisation period, the appellant has been repeatedly claiming that they were from realisation of Sundry Debtors and names of the Sundry Debtors were also furnished. The appellant has produced the cash book for the year which shows huge credits from various parties. The cumulative cash credits and deposits in bank accounts during the various months of the F.Y. 2016-17 are as follows :

** Table left intentionally.*

From the above table, it is clear that even though appellant claims to have realised cash receipts from sundry debtors from April, 2016 onwards, it has deposited meagre amounts till November 2016 and has deposited a huge amount of Rs 1,50,00,000 in one day i.e., on 30.12.2016, which was the last date for accepting Specified Bank Notes by the Banks as stipulated in the demonetisation scheme. Hence it raises serious doubts about the claim of collection of money from sundry debtors during the period. The deposit of huge amount of money on the last date of the scheme gives credence to the stand of the Ld. AO that these amounts were actually unaccounted income of the appellant hitherto undisclosed and the appellant has only raised a smoke screen as to create an impression that they are actually realisation of sale proceeds of earlier years. 5.5. In order to create the smoke screen, the appellant has furnished the names of 20 parties before the Ld. AO and shrugged off the responsibility to produce concrete evidences which are basic to prove that they are indeed genuine. In response to the notices issued by the AO, two of the parties have already responded to the AO saying that they did not have any purchases from the appellant and has only made sales. None of the other parties except Sree Spectra Media have confirmed cash payments to the appellant during the year. It is well known that section 40A(3) of the I.T. Act prohibits payment in cash exceeding Rs 20,000 in the course of purchase. It is improbable that so many parties would make

payments to the appellant thereby attracting the rigours of section 40A(3) upon themselves. Hence, realisation of cash from them is illogical and appears to be fabricated by the appellant in its books of accounts.

5.6. On examination of the Balance Sheet of the appellant, it is seen that Trade receivables on 31.12.2016 is Rs. 2,18,73,573 and that as on 31.03.2017 is Rs 2,12,28,940. The difference in trade receivables is Rs. 6,44,633 which means that there has been no major change in realisation of trade receivables of earlier years if we assume that sundry debtors for the current year is negligible. It is the appellant's responsibility to prove that the negligible change in sundry debtors as per closing balance sheet dates despite claim of huge realisation during the year is due to accumulation of sundry debtors for the current year. No sales ledger has been produced by the appellant neither before the AO nor in present appeal proceedings.

5.7. The appellant has relied on the Hon'ble Supreme Court decision in the case of CIT vs. Orissa Corporation (P) Ltd. 159 ITR 78 and also the Hon'ble Delhi ITAT bench decision in the case of M/s Essan Remedies Ltd. vs DCIT ITA No. 256/Del/04. In the former case, the Hon'ble Apex Court upheld the action of the lower authorities in deleting the addition as the assessee has produced before the Department letter of confirmation, the discharged hundis and particulars of the different creditors and general index numbers. No such confirmations have been produced by the appellant. Two of the parties responded to the AO that they have indeed not paid cash to the appellant and there was only sales made by them. Hence the said case law is not applicable to appellant's case. Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad More 82 ITR 540 (SC) has held that the onus of proving credits in its book of accounts lies squarely on the assessee and such proof consists of proving the identity of the subscriber or creditor, capacity of such creditor or subscriber to make payment and also to prove the genuineness of the transaction. It is only when the assessee discharges this primary onus, that onus shifts to the Department. Merely establishing the identity of the creditor is not sufficient.

5.8. Further in the case of Sumati Dayal v. Commissioner of Income-tax, 80 Taxman 89 (SC) the Hon'ble Supreme Court has held as follows: It is, no doubt, true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. But in view of section 68, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is prima facie evidence against the

assessee, viz., the receipt of money, and if he fails to rebut the same, the said evidence being unrebutted, can be used against him by holding that it is a receipt of an income nature. 5.9. The credits have appeared in the books of the appellant, so it is the responsibility of the appellant to conclusively prove that they are genuine, the parties are identifiable and they had the creditworthiness, but in this case the appellant shrugged off the onus cast upon it to produce details like confirmation, creditworthiness etc., of the parties. Having failed to do so, onus has not been discharged and the credits remained unexplained. 5.10. Thus, respectfully following the above decisions of the Hon'ble Apex Courts and various other courts on the issue and also considering the facts of the case, the action of the Ld. AO in treating the cash deposits as unexplained and assessing the same under section 68 with applicable tax rates is upheld.

Accordingly, the grounds of appeal enumerated in the forgoing paragraph 2 are dismissed.

6. In the result, for statistical purpose, the appeal of the appellant is dismissed. Order passed u/s 250 r.w.s 251 of the I.T. Act, 1961."

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

6. Before us, the ld.AR for the assessee has submitted that the Assessing Officer has charged the higher rate of taxes as provided u/s 115BBE of the Act despite the fact that the amendment in the Act came into effect from 01.04.2005. For these purposes, he has drawn our attention to para 3.5 of the order passed by the Assessing Officer, which is to the following effect :

"3.5 Tax rate applicability in the present case: As per the provisions of section 115BBE of the Income-tax Act, 1961, where the total income of an assessee determined by the assessee includes any income referred to in section 69A, the income tax payable shall be the aggregate of the amount of income tax payable shall be the at the rate of 60%. Accordingly, the tax payable on the total income determined is levied at 60%."

7. The ld.AR further submitted that, on appeal, the LD.CIT(A) has also upheld the applicability of the higher rate of taxes. The ld.AR further submitted that the above issue has been considered by various Benches of ITAT and various High Courts and submitted that instead of higher rate of taxes, the normal rate of taxes is required to be applied.

8. Per contra, ld.DR submitted that the issue is covered in favour of the Revenue by the decision of Hon'ble Kerala and Karnataka High Courts and also by the decision of Indore Bench of ITAT in the case of Chandan Garments Private Limited Vs. Pr.CIT, Indore (ITA No.125/Ind/2022 dt.02.12.2022) wherein identical issue was examined. The Tribunals / High Court after examining the issue, has come to a conclusion that higher rate of tax is required to be applied for A.Y. 2017-18 (Previous year 2016-17). It was further submitted that Section 115BBE is not a charging provision but merely provides the rate of tax at which the income earned by the assessee during the year 2016-17 is required to be taxed. The relevant portion of the order of ITAT, Indore in the case of Chandan Garments Private Limited (supra) is to the following effect :

> *"12. Ld. AR has placed reliance on certain decisions including the decision of Hon'ble Co-ordinate Bench of ITAT, Indore in Rakesh Khandelwal Vs. PCIT, ITA No. 204/Ind/2019 dated 29.01.2020 to canvas that (i) where the AO has adopted one of the permissible view, the assessment-order cannot be said to be erroneous; or (ii) where the AO has conducted enquiry during assessment proceeding but not discussed the outcome in assessment-order, the PCIT cannot make revision u/s 263 to substitute his own view. We certainly agree with such views but the facts of present appeal are different and do not warrant application of those decisions for the very reason that the Ld. DR carried*

us to the assessment-order wherein the Ld. AO has made following reporting on the impugned issue:

"Survey u/s 133A had been carried out in the case on 19.09.2016. Unaccounted income of Rs. 10,89,490/- was disclosed during the survey on account of excess cash found of Rs. 9,21,460/- and excess stock found Chandan Garment of Rs. 1,68,030/- has been incorporated as taxable income by the assessee in the ITR filed besides its regular income for the year under consideration."

We are in agreement with Ld. DR that the Ld. AO has simply stated that the assessee has incorporated the excess-cash and excess-stock in the ITR. Needless to mention that the function of assessing authority is not only of adjudicator but also of investigator. In the present case, it is quite apparent from assessment-order that the Ld. AO has not made requisite enquiry to ascertain the nature and tax implications of the impugned incomes, he has simply shut the point by saying that the assessee has incorporated incomes in ITR. Therefore, the decisions relied upon by Ld. AR do not support the assessee's stand. 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 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 Arikkattil 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 insofar 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 Chandan Garments P. Ltd. ITANo.125/Ind/2022 Assessment Year 2017-18 Page 12 of 16 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.

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 Pradhaan 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 assessees 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 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.

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. Caluse (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 enhances 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 consolidate 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 employs 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 nonjurisdictional, 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.*
>
> *15. In view of above discussions and for the reasons stated above, we are of the view that the Ld. PCIT has rightly termed the assessment-order as erroneous-cum-prejudicial to the interest of revenue and therefore the revision order passed by Ld. PCIT is a valid order in terms of section 263. We are thus inclined to dismiss all grounds raised by assessee in present appeal. We order accordingly.*
>
> *16. In the result, this appeal of assessee is dismissed."*

9. We have heard the rival submissions and perused the material on record. We find that the co-ordinate Bench of the Tribunal of Indore, while adjudicating a similar issue, has followed the decision of Hon'ble Kerala High Court in the case of Maruthi Babu Rao Jadav Vs. ACIT (W.A.No.984 of 2019 dt.23.09.2020) which was referred in its order. Even otherwise, if we look into the provisions of Income Tax Act, the rate of taxes as per the Schedule of the Income Tax Act, are applicable for A.Y. 2017-18 and

undoubtedly, the present year under consideration falls within A.Y. 2017-18. The provisions of the Act are required to be read in light of various decisions considered by the co-ordinate Bench of the Tribunal, and it will be repetitive, if we reproduce the same. However, for the purpose of completeness, it is essential to mention here the definition of "rate or rates in force" in relation to F.Y. has been defined under Section 2(37A) of the Act, which provides as under :

> *Section 2(37A) in The Income Tax Act, 1961*
>
> *(37A) "rate or rates in force" or "rates in force", in relation to an assessment year or financial year, means—*
>
> *(i) for the purposes of calculating income-tax under the first proviso to sub-section (5) of section 132, or computing the income-tax chargeable under sub-section (4) of section 172 or sub-section (2) of section 174 or section 175 or sub-section (2) of section 176 or deducting income-tax under section 192 from income chargeable under the head "Salaries" or computation of the "advance tax" payable under Chapter XVII-C in a case not falling under section 115A or section 115B or section 115BB or section 115BBB or section 115E or section 164 or section 164A or section 167B, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year, and for the purposes of computation of the "advance tax" payable under Chapter XVII-C in a case falling under section 115A or section 115B or section 115BB or section 115BBB or section 115E or section 164 or section 164A or section 167B, the rate or rates specified in section 115A or section 115B or section 115BB or section 115BBB or section 115E or section 164 or section 164A or section 167B, as the case may be, or the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year, whichever is applicable ;*
>
> *(ii) for the purposes of deduction of tax under sections 193, 194, 194A, 194B, 194BB and 194D, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year ;*
>
> *(iii) for the purposes of deduction of tax under section 194LBA or section 194LBB or section 194LBC or section 195, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year or the rate or rates of income-tax specified in an agreement entered into by the Central Government under section 90, or an agreement notified by the*

Central Government under section 90A, whichever is applicable by virtue of the provisions of section 90, or section 90A, as the case may be;

10. If the above said definition is applied in the context of the assessment made by the Assessing Officer for the A.Y. 2017-18, then it is abundantly clear that the rate of taxes as applied by the Assessing Officer is in accordance with the tax provisions of the Act, and therefore, we do not find any error in the orders passed by the Assessing Officer or the LD.CIT(A).

11. Even in the absence of decision of Hon'ble High Court of Kerala in the case of Maruthi Babu Rao Jadav (supra), the bare provision of the Act - 2(37A) read with other provisions of the Act i.e., Section 68 and Section 115BBE of the Act, make it clear that the rate of taxes at which the deemed income of the assessee is required to be taxed, would be taxed, as notified by the Parliament in the Schedule of Income Tax Act for A.Y. 2017-18. In view of the above, the objection of the ld.AR is devoid of any merit. Furthermore, we may point out that the co-ordinate Bench of the Tribunal, Indore, has already been held that Section 115BBE is only a machinery provision and it does not lay down any new law. The liability, if any, has been examined by the Assessing Officer / LD.CIT(A) by a reference to the bunch of sections 68, 69, 69A, 69B, 69C and 69D and Section 4 of the Income Tax Act and whereas Section 115BBE is merely a computation and machinery provision providing the rate of taxes to be applied on the income / deemed income declared by the assessee or assessed by the Assessing

Officer. It is also settled proposition that the charging provision cannot be applied retrospectively, whereas the machinery / applicability of the rate of tax is charged in accordance with the Schedule of Income Taxes as declared by the Parliament on a year-to-year basis. In view of the above and respectfully, following the decision of ITAT, Indore Bench in the case of Chandan Garments Private Limited Vs. PCIT – 1, Indore, (supra), we do not find any merit in the appeal of the assessee and we are inclined to hold that the higher rate of tax prescribed in Section 115BBE of the Act is applicable to the whole previous year 2016-17 relevant to A.Y. 2017-18. Accordingly, the appeal of the assessee is dismissed.

12. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 18th December, 2024.

Sd/-	**Sd/-**
(MADHUSUDAN SAWDIA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 18.12.2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Spectra Equipment Private Limited, 10-5-64/5/B11, Patancheru, S.O. Patancheru, Medak – 502319, Telangana.
2	The Income Tax Officer, Ward 3(1), Hyderabad.
3	Pr.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order