

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA Nos. 40 & 41/Agr/2023
Assessment Years: 2016-17 & 2018-19

DCIT, Central Circle, Aligarh.	Vs.	Jai Bankey Bihari Perfumers Pvt. Ltd., Gali No.2, Girraj Colony, Hathras.
PAN : AAACJ9760B		
(Appellant)		(Respondent)

With
C.O. No. 01/Agr/2023
(in ITA No. 41/Agr/2023
Assessment Year: 2018-19

Jai Bankey Bihari Perfumers Pvt. Ltd., Gali No.2, Girraj Colony, Hathras.	Vs.	DCIT, Central Circle, Aligarh.
(Appellant)		(Respondent)

Assessee by	Sh. Mridul Pathak, C.A.
Department by	Sh. Sukesh Kumar Jain, CIT(DR)

Date of hearing	13.02.2025
Date of pronouncement	13.02.2025

ORDER

Per Satbeer Singh Godara, Judicial Member:

These Revenue's twin appeals ITA Nos. 40 & 41/Agr/2023 for assessment years 2016-17 and 2018-19, arise against the Commissioner

of Income Tax(Appeals)-4 [in short the "CIT(A)], Kanpur's separate orders in Appeal Nos. CIT(A)-IV/KNP/10690/2015-16 and CIT(A)-IV/KNP/10982/2017-18, both dated 27.12.2022, involving proceedings under section 143(3) r.w.s. 153A and 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), respectively. The assessee has also filed cross objection C.O. No. 01/Agr/2023 in ITA No. 41/Agr/2023.

2. Heard both the parties at length. Case files perused.

ITA No. 40/Agr/2023:

3. It emerges during the course of hearing that the learned Assessing Officer has framed section 153A r.w.s. 143(3) assessment in assessee's case for A.Y. 2016-17; in furtherance to the search action herein dated 30.11.2017, making section 68 read with section 115BBE additions, which were nowhere found to be based on any seized/incriminating material, which has been held as no more sustainable going by Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxman.com 399(SC). We make it clear that going by the clinching date of search, i.e., 30.11.2017, no assessment could be held as pending which could be treated as an "abated" one u/s. 153A(1) 1st proviso. We thus find no merit to revive learned Assessing Officer's action in making the impugned addition. This Revenue's appeal ITA No. 40/Agr/2023 fails accordingly.

4. The Revenue's latter appeal ITA No. 41/Agr/2023 raises the following substantive grounds :

"1. The Ld. CIT(A) has erred in law and on facts in allowing the claim of the assessee for splitting the seized cash across multiple assessees and multiple assessment years, ignoring the facts brought on records by the assessing officer.

2. The Id. CIT(A) has also erred in considering part of the undisclosed cash (to the extent of 60%) as deemed to have generated from unaccounted flower trade, as business income and directing the taxation of the same at normal rates, without appreciating the facts that the assessee could not established any nexus between the business operations and the seized cash, whatsoever.

3. That the Ld. CIT (A), has erred in law and on facts in allowing the claim of the Assessee ignoring the fact that the Assessee Company itself has disclosed unaccounted cash sales of flower of Rs. 26,00,000/- in SOF as well as in computation of income for the relevant assessment year. This amount is clearly over and above the seized cash of Rs. 3,53,00,000/- found and seized during the course of search proceedings and surrendered subsequently as unaccounted income as undisclosed sources. Further, the Assessee could not establish any nexus between the business operations and the disclosed cash, whatsoever.

4. The Ld. CIT(A) has erred to consider the amount of Rs. 2,68,00,000/- for relevant A, Y.-2018-19 as business income, liable to be taxed at normal rates, (u/s 41(1) of the Act, without appreciating the facts that he assessee company failed 16 furnish any cogent evidence to prove nexus between the remitted liability of the sundry creditors and the business operation."

5. Suffice to say, the Revenue's first and foremost substantive ground seeking to invoke section 115BBE in assessee's case for rate purposes of 60%, deserves to succeed in light of SMILE Microfinance Ltd. vs. ACIT, W.P. (MD) No. 2078 of 2020 & 1742 of 2020 dated 19.11.2024 (Mad) that the same applies on the corresponding transactions on or

after 01.04.2017 only. We thus find merit in the instant ground to be followed by necessary computation.

6. Next issue pressed in the Revenue's instant appeal is sec. 41(i) cessation of liability addition of Rs.2,68,00,000/- wherein no actual cessation has been formed in assessee's books hardly carries any merit in light of CIT v/s Sugauli Sugar Works (P) Ltd. (1999)236 ITR 518(SC). This latter substantive ground is rejected therefore. This Revenue's appeal ITA No. 41/Agr/2023 is partly accepted.

7. Learned counsel does not press for the assessee's C.O. No. 01/Agr/2023 as we have already decided section 115BBE issue hereinabove. Dismissed as not pressed.

8. To sum up, the Revenue's twin appeals ITA No. 40 & 41/Agr/2023 are dismissed and partly allowed, respectively and the assessee's cross-objection C.O. No. 01/Agr/2023 is dismissed as not pressed, in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 13TH February, 2025.

**Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER**

**Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

Dated: 13TH February, 2025.

*aks/-