

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM

(HYBRID HEARING)

श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.363/VIZ/2024
(निर्धारणवर्ष/ Assessment Year: 2017-18)

Manju Vani Chigurupati #16, K.C.P. Colony Kanuru, Vijayawada-520007 Andhra Pradesh [PAN: AAZPC9498B]	v.	ACIT – Circle -2(1) C.R. Building, 1 st Floor Annex M.G. Road, Vijayawada – 520002 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व / Assessee Represented by	:	Shri C. Subrahmanyam, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	17.02.2025
घोषणा की तारीख / Date of Pronouncement	:	07.03.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is Filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order

No.ITBA/NFAC/S/250/2024-25/1067139681(1) dated 30.07.2024 for the A.Y.2017-18 arising out of the order passed under section 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 29.12.2019.

2. Brief facts of the case are that, assessee is an individual filed her return of income on 11.08.2017 admitting a total income of Rs. 17,71,080/- and agricultural income of Rs. 80,000/-. Assessee derived her income from House property and income other sources. The case was selected for limited scrutiny and accordingly notices under section 143(2) and 142(1) of the Act were issued and served on the assessee calling for details. In response, assessee submitted her reply on 16.12.2019 explaining the sources of cash deposits, but has failed to explain the continuous cash deposits and withdrawals in her bank account. Thereafter a show-cause notice dated 18.12.2019 was issued to the assessee to explain the sources of cash available with her and proposing additions in case of non-compliance. She filed an explanation dated 24.12.2019 wherein the Ld.AO has not accepted the submissions and treated an amount of Rs. 53,75,000/- as unexplained income under section 69A r.w.s. 115BBE of the Act.

3. On being aggrieved by the order of the Ld. Assessing Officer [hereinafter in short "Ld. AO"], assessee filed an appeal before Ld. CIT(A). Before Ld.CIT(A), assessee reiterated the submissions made before Ld. AO. Assessee also raised a legal ground before Ld. CIT(A) regarding the applicability of section 115BBE of the Act for the A.Y. 2017-18 with respect to the transactions

entered into on or before 01.04.2017. Ld. CIT(A) after examining the submissions, dismissed the appeal of the assessee.

4. On being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising the following grounds of appeal : -

“1. That on the facts and circumstances of the case and in law, the order u/s 143(3) of the IT Act, dt. 29.12.2019, as upheld by the Ld. CIT(A), NFAC vide orders passed u/s 250 dt. 30.07.2024, are contrary to the facts of the case and the provisions of law.

2. The learned CIT (A) ought to have appreciated the fact that when assessee has explained the sources before the AO for the deposits made in bank account, with cogent reasons, the learned CIT(A) should have deleted the addition made under section 69A of the IT Act of Rs.53.75 lacs.

3. The Learned CIT(A) upheld the assessment order in which the Assessing Officer made an addition based on conjecture and suspicion. In doing so, the CIT(A) disregarded the assessee's explanation, which provided clear and logical reasons that the bank deposits were made from the funds available to the assessee.

4. The Learned CIT(A) overlooked and failed to consider certain judicial decisions cited by the assessee, wherein the courts have held that the assessing officer cannot reject the explanation regarding the source of bank withdrawals and loans without concrete evidence. In this case, the assessee had explained that the funds deposited in the bank were sourced from earlier withdrawals and loans received.

5. For these and other reasons that may be urged at the time of hearing, the appellant prays that the orders passed u/s 250 of the Income Tax Act be set aside and the additions made by the Assessing Officer be deleted.”

5. Assessee also raised an additional legal ground as follows: -

“1. The Finance Act 2017 introduced an amendment to Section 115BBE of the IT Act, which set a higher tax rate of 60% through the Taxation (Second Amendment) Act, 2016. This amended rate is applicable only for assessments conducted from 01.04.2017 onward. Therefore, it is not permissible to apply the revised rate to the assessment year in question.”

6. With respect to original grounds wherein the only issue contested by the assessee is with respect to addition of Rs. 53,75,000/- under section 69A r.w.s. 115BBE of the Act. On this issue, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the assessee has made cash withdrawals on various dates which was deposited subsequently. Ld.AR also submitted that assessee has not made any cash deposits during the demonetization period. He therefore submitted that since the assessee is in the habit of frequently withdrawal of cash and depositing into the account depending upon the purposes for which it was withdrawn. The sources of cash deposits remain explained and hence addition under section 69A of the Act shall not be warranted.

7. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] relied on the orders of the Revenue Authorities.

8. We have heard both the sides and perused the material available on record. It is an admitted fact that the assessee has made cash deposits and cash withdrawals on various dates during the impugned assessment year and has shown the opening balance of cash of Rs. 32,25,000/- as on 07.11.2016. The contention of the Ld. AO is opening balance of cash of Rs. 32,25,000/- was not deposited during the demonetization period wherein the assessee has retracted her own statement regarding the availability of cash as on 07.11.2016. Ld. AO therefore did not consider the reply of the assessee regarding the availability of cash as on 07.11.2016. Further Ld. AO has also observed that when the

assessee held huge cash questioned the necessity of withdrawal of further cash by the assessee from the bank accounts. Ld. CIT(A) in Para No. 6.11 and 6.12 held as follows: -

“6.11 In the present case, the appellant has not been able to discharge her initial burden of proof. The fact that she had to retract her own statement regarding availability of cash as on 07.11.2016 clearly shows that the appellant was not being truthful in the matter. Also, the contention that be as it may, the cash available with her as on 07.11.2016 was from her known sources of receipt and therefore, no addition was warranted is baseless. The addition has been made by holding that the cash deposited in the bank account was generated out of undisclosed sources of income. With the explanation offered by the appellant that the same was out of her earlier withdrawals being discredited and not backed by any explanation or evidence regarding necessity of the same, the source of cash remains unexplained, and as such, the A.O. was correct in taxing the same u/s 69A of the Act.

6.12 In view of the above, I am of the considered view that the Assessing Officer was justified in making addition of Rs. 53,75,000/- in his order passed u/s 143(3) of the Act, and accordingly, the grounds of appeal no. 1, 2, 3, 4, 5, 6, 7 of the appellant are "Dismissed".”

9. Even before us, no documentary evidences have been produced for verification. We therefore find no infirmity in the order of the Ld. CIT(A) and hence no interference is required.

10. With respect to the additional ground raised by the assessee, assessee placed reliance on the order of the Co-ordinate Bench of the Ahmadabad Tribunal in the case of Naranbhai Samatbhai Bharwad v. ITO in ITA No. 272/AHD/2024 dated 03.01.2025. The contention of the assessee is section 115BBE of the Act was amended with respect to the tax imposing from 30% to 60% w.e.f 01.04.2017 onwards. The Ld.AR contended that therefore the

imposing of tax @60% was applicable only to the transactions from 01.04.2017 onwards and cannot be applied retrospectively.

11. Per contra, Ld. DR relied on the orders of the Revenue Authorities.

12. We have heard both the sides and perused the material available on record regarding the additional ground. In the case of Naranbhai Samatbhai Bharwad v. ITO (supra) relied on by the assessee, we find that the Co-ordinate Bench of Tribunal in Para No. 12 held as follows: -

“12. We find that the issue stands settled by the order of the Hon’ble High Court of Madras in the case of SMILE Microfinance Limited Vs. the Assistant Commissioner of Income Tax. The relevant extract of the order is reproduced as under: -

“16. The next contention raised by the Learned Senior Counsel is that the under section 115BBE the rate of tax imposed is increased from 30% to 60% and the same is applicable with effect from 01.04.2017 onwards as per the amendment. Therefore, the same is applicable to any transaction from 01.04.2017 onwards and nor prior to any transactions prior to 01.04.2017. Since in the present case all alleged transactions are for the period from 08.11.2016 to 30.12.2016, hence the erstwhile rate of tax 30% only is applicable. But the contention of the revenue is that the amendment was with effect from 01.04.2017 and hence the same is applicable for the financial year 2016-2017 and the assessment year 2017-2018. Further the amendment to section 115BBE is directly 15 of 26 <https://www.mhc.tn.gov.in/judis> related to demonetization which would be evident from objects and reasons for such amendment. In order to consider the same, the objects and reasons of Taxation Laws (Second Amendment) Bill 2016 is extracted hereunder:

Press Information Bureau

Government of India

Ministry of Finance

28-November-2016 15:56 IST

Taxation Laws (Second Amendment) Bill, 2016 introduced in Lok Sabha; A scheme namely, 'Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY) proposed in the Bill.

Evasion of taxes deprives the nation of critical resources which could enable the Government to undertake anti-poverty and development programmes. It also puts a disproportionate burden on the honest taxpayers who have to bear the brunt of higher taxes to make up for the revenue leakage. As a step forward to curb black money, bank notes of existing series of denomination of the value of Rs.500 and Rs. 1000 [Specified Bank Notes(SBN)] have been recently withdrawn the Reserve Bank of India.

Concerns have been raised that some of the existing provisions of the Income-tax Act, 1961 (the Act) can possibly be used for concealing black money. The Taxation Laws (Second Amendment) Bill, 2016 ('the Bill') has been introduced in the Parliament to amend the provisions of the Act to ensure that defaulting assesseees are subjected to tax at a higher rate and stringent penalty provision.

Further, in the wake of declaring specified bank notes "as not legal tender", there have been suggestions from experts that instead of allowing people to find illegal ways of converting their black money into black again, the Government should give them an opportunity to pay taxes with heavy penalty and allow them to come clean so that not only the Government gets additional revenue for undertaking activities for the welfare of the poor but also the remaining part of the declared income legitimately comes into the formal economy.

In this backdrop, an alternative Scheme namely, 'Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY) has been proposed in the Bill. The declarant under this regime shall be required to pay tax @30% of the undisclosed income, and penalty @10% of the undisclosed income. Further, a surcharge to be called 'Pradhan Mantri Garib Kalyan Cess' @33% of tax is also proposed to be levied. In addition to tax, surcharge and penalty (totaling to approximately 50%), the declarant shall have to deposit 25% of undisclosed income in a Deposit Scheme to be notified by the RBI under the 'Pradhan Mantri Garib Kalyan Deposit Scheme, 2016'. This amount is proposed to be utilised for the schemes of irrigation, housing, toilets, infrastructure, primary education, primary health, livelihood, etc., so that there is justice and equality.

An overview of the amendments proposed in the Bill are placed below;

Overview of Amendments Proposed

PARTICULARS	EXISTING PROVISIONS	PROPOSED PROVISIONS
<i>General Provision For penalty</i>	<i>PENALTY (Section 270A) Under-reporting - @50% of tax Misreporting- @50% of tax (Under-reporting/ Misreporting income is normally difference between returned income and assessed income)</i>	<i>No changes proposed</i>

PARTICULARS	EXISTING PROVISIONS	PROPOSED PROVISIONS
<i>Provisions for & of taxation penalty unexplained credit, investment, cash and other assets</i>	TAX (section 115BBE) <i>Flat rate of tax @30% surcharge + cess</i> <i>(No expense, deductions, set-off is allowed)</i>	TAX (Section 115BBE) <i>+ Flat rate of tax @60% surcharge @25%] tax (i.e 15% of such income). So total incidence of tax is 75% approx.</i> <i>(No expense, deductions, set-off is allowed).</i> <i>PENALTY (Section 271AAC)</i> <i>If Assessing Officer determines income referred to in section 115BBE, penalty @10% of tax payable in addition to tax ("including surcharge) of 75%.</i>
<i>Penalty for search Seizure cases.</i>	<i>Penalty (271AAB)</i> <i>(i) 10% of income, if admitted, returned and taxes are paid</i> <i>(ii) 20% of income, if not admitted but returned and taxes are paid</i> <i>(iii) 60% of income in any other case</i>	<i>Penalty (271AAB)</i> <i>(i) 30% of income, if admitted, returned and taxes are paid</i> <i>Not (ii) 60% of income in any other</i>
<i>Taxation Investment Regime and for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY)</i>	<i>New Taxation and Investment Regime</i>	<i>Undisclosed income in the form of cash & bank deposit can be declared</i> <i>(A) Tax, Surcharge, Penalty Payable tax @ 30% of income declared Surcharge @33% of Penalty @10% of income declared Total @50% of Income (approx.)</i> <i>(B) Deposit 25% of declared income to be deposited in interest. Free Deposit scheme for four years.</i>

17. In the aforesaid objects and reasons nowhere it is stated that due to "demonetization" the unaccounted money ought to be charged 60% rate of tax. It only states that step had been taken to curb black money by withdrawing Specified Bank Notes of denomination of Rs.500 and Rs.1000. And also states the people may find illegal ways of converting their black money into black again, hence as per experts advice heavy penalty ought to be levied. From the language of the object "that instead of allowing people to find illegal ways of converting their black money into black again", it is evident that the government is intended to impose the same for future transactions. Especially the use of word "again" in the object would clearly indicate it is for future transactions i.e. from 01.04.2017. Therefore this Court is of the considered opinion that the revenue is empowered to impose 60% rate of tax for the transactions from 01.04.2017 onwards and not prior to the said cut-off date. And for prior transaction the revenue is empowered to impose only 30% rate of tax.

Thus, respectfully following the above decision of Hon'ble High Court of Madras, the ground of appeal of the assessee on the issue of section 115BBE of the Act is hereby allowed."

13. Respectively following the decision of the Hon'ble Madras High Court relied on by the Co-ordinate Bench of Ahmadabad Tribunal, we allow this ground of appeal raised by the assessee on the issue of section 115BBE of the Act.

14. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 07th March, 2025.

Sd/-
(के.नरसिम्हाचारी)

(K.NARASIMHA CHARY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 07.03.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :-

1. निर्धारिती/ The Assessee : **Manju Vani Chigurupati**
#16, K.C.P. Colony
Kanuru, Vijayawada-520007
Andhra Pradesh
2. राजस्व/ The Revenue : **ACIT – Circle -2(1)**
C.R. Building, 1st Floor Annex
M.G. Road, Vijayawada – 520002
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam