

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री ललित कुमार, न्यायिक सदस्य एवं श्री कृणवन्त सहाय, लेखा सदस्य
BEFORE: SHRI. LALIET KUMAR, JM & SHRI. KRINWANT SAHAY, AM

आयकर अपील सं. / ITA No. 442/Chd/ 2022
निर्धारण वर्ष / Assessment Year : 2017-18

Anupam Sanjivni Hospital, St. No. 6, Guru Teg Bahadur Nagar, Barnala, Punjab- 148101	बनाम	The ITO Barnala
स्थायी लेखा सं. / PAN NO:AAXPA3359B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sarabjit Garg, C.A
राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR (Virtual)

सुनवाई की तारीख/Date of Hearing : 25/03/2025
उदघोषणा की तारीख/Date of Pronouncement : 09.06.2025

आदेश/Order

PER KRINWANT SAHAY, A.M:

This is an appeal filed by the Assessee is directed against the order passed by the Ld. Pr. CIT, Patiala under section 263 of the Income Tax Act, 1961 dated 25/03/2022, pertaining to the Assessment Year 2017-18.

2. In the present appeal Assessee has raised the following grounds:

1. *That on the facts and in circumstances of the case and in law, Id PCIT has erred in passing the order under section 263 of the Income-tax Act, 1961 (the Act), by holding that the Assessment Order passed by the Deputy Commissioner of Income Tax, Circle, Sangrur (hereinafter referred to as AO) u/s, 143(3) of the Act*

dated 06.06.2019 is erroneous and prejudicial to the interest of the revenue.

2. *That on the facts and in circumstances of the case and in law, Id PCIT has in erred in passing the order under section 263 of the Income-tax Act, 1961 (the Act), without appreciating that a statute which affects substantive rights is presumed to be prospective in operation.*
3. *That on the facts and in circumstances of the case and in law, Id PCIT has in erred in passing the order under section 263 of the Income-tax Act, 1961 (the Act), without appreciating that the law applicable for computation of income tax for any year is the law that stands on the first day of the financial year*
4. *That on the facts and in circumstances of the case and in law, Id PCIT has in erred in passing the order under section 263 of the Income-tax Act, 1961 (the Act), without appreciating that amendments which create a new/higher liability or obligation or are penal in nature have to be read prospectively.*
5. *That the assessee craves leave to amend or delete any of the grounds of appeal, and take additional grounds before the appeal is finally heard or disposed off.*

3. Briefly, the facts of the case are that the assessee is a medical professional, filed his return of income for AY 2017-18 on 19/06/2017, declaring an income of Rs. 90,19,200/- after claiming deductions under Chapter VI-A of the Act. The case was selected for scrutiny under compulsory manual selection due to a survey conducted under section 133A of the Act on 26/09/2016. During the survey, the

assessee surrendered a total amount of Rs. 95,00,000/- under the heads of unexplained advances and loans of Rs. 61,00,000/-, unexplained cash in hand of Rs. 9,00,000/-, and unexplained investment in hospital renovation of Rs. 25,00,000/-. The Ld. Assessing Officer accepted the returned income after due verification of the books of accounts and relevant documents. However, the PCIT, in exercise of revisional jurisdiction under section 263, set aside the assessment order, holding that the AO failed to examine the nature of the surrendered income and erroneously accepted it as business income instead of taxing it under section 115BBE at the higher rate of 77.25%.

4. Against the order of the Ld. PCIT the assessee preferred an appeal before the Tribunal.

5. During the course of hearing the Ld. AR filed written submission contents of which read as under:

Sub.: Written Submissions - as to why Taxation Laws (Second) Amendment Act 2016 is not applicable in this appeal.

Hon'ble Sir,

The aforesaid appeal was heard by this Hon'ble Bench on 25.03.2025. After hearing Hon'ble Bench had directed both the parties i.e. Appellant and Respondent, to give their written submissions on various points of contention..

The appellant hereby most respectfully and humbly makes brief submissions as to why provisions of Taxation Laws (Second) Amendment Act 2016 are not applicable on the facts and circumstances in this appeal, as under:-

Legal Grounds

1. That only dispute in this case is whether income surrendered should be taxed @60% or @30%. This issue has been decided by the Hon'ble Madras High Court (Madurai Bench) in case of S.M.I.L.E. Micro Finance P. Ltd. Vs ACIT in W,P. (MD) No. 2078 of 2020 and W.M.P (MD) No. 1742 of 2020 vide order dated 19.11.2024, wherein it has been held as under:-

"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."

That judgment in case of in case of S.M.I.L.E. Micro Finance P. Ltd. Vs ACIT dated 19.11.2024, will prevail over the judgment in case of Maruthi Babu Rao Jadav vs ACIT in WA No. 984 of dated 23.09.2019 relied upon by revenue due to the following reasons:-

- i) In this judgment all the case law on the subject including judgment in case of Maruthi Babu Rao Jadav has been considered;
- ii) In Maruthi Babu Rao Jadav objects and reasons for Taxation Laws (Second) Amendment Bill 2016 have not been considered. It is settled law that courts must interpret the provisions of law after considering objects and reasons thereof so that it meets the objectives of public policy.
- iii) It is settled law that when there are two conflicting judgments of different High Courts on an issue, one in favour of assessee and other in favour of revenue, the judgment in favour of assessee will prevail.

2. That this decision has been followed by this Hon'ble Bench in case of *Vidya Sagar Narinder Kumar vs. ITO* in ITA No. 836/Chd/2024 for A.Y. 2017-18 vide order dated 11.02.2025 with the following words:-

"4..3 In the present fact the assessee has laid emphasis on date of survey and surrender i.e., on 16th June, 2016 and has inter alia contended that this date precedes 15th Dec, 2016 the day provisions of 115BBE were amended w.e.f. 1st April, 2016. Our attention was invited to the judgement of Hon'ble Madras High Court in case of *SMILE Microfinance Ltd. vs. Asstt. CIT in Writ Petn. (MD) No. 2078 of 2020* and *Writ Misc. Petn. (CHD) No. 1742 of 2020*, dt. 19th Nov., 2024 wherein with regard to s. 115BBE following is held: "Therefore this Court is of the considered opinion that the revenue is empowered to impose 60 per cent rate of tax for the transactions from 1st April, 2017 onwards and not prior to the said cut-off date. And for prior transaction the revenue is empowered to impose only 30 .per cent rate of tax."

We concur with the aforesaid."

In view of the aforesaid decisions, foregoing the question of deciding the nature of income surrendered has only become academic and does not carry any legal sanctity.

3. That Section 1 of the Taxation Laws (Second) Amendment Act 2016 reads as under :-

(1) This Act may be called the Taxation Laws (Second Amendment) Act, 2016.

(2) Save as otherwise provided in this Act, it shall come into force at once.

The words used in the Act "**at once**" means, it will come into force immediately i.e. 15.12.2016, when it received the assent of President of India and not before that.

Hence, it cannot have retrospective application and amended provisions of Section 115BBE enhancing rate of tax to 60% cannot be applied to transactions concluded before that.

4. That the appellant relies on decision of -large Bench judgment of Hon'ble Supreme Court in case of *CIT vs. Vatika Township P. Ltd.* as reported in [2014] 49 *taxmann.com* 249 (SC)/[2014] 227 *Taxman* 121 (SC)/[2014] 367 *ITR* 466 (SC)/[2014] 271 *CTR* 1 (SC)[15- 09-2014] whereby the Hon'ble Court laid down General Principles concerning retrospectivity, para 31 of which reads as under:-

"31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the- law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips v. Eyre* [1870] LR 6 QB 1, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law."

Viewed in this context, in this case the appellant made surrender on the basis of law prevailing on the date of survey i.e. 27.09.2016. Hence subsequent amendment ought not to change the character of past transactions carried on upon the faith of the then existing law, particularly when intention of amendment is to regulate future transactions as per decision of Madurai Bench of Hon'ble Madras High Court (Supra)

On Facts

Provisions of Section 115BBE are reproduced hereunder:-

[1] 115BBE. Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D

[2][1] Where the total income of an assessee, -

(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a),

the income-tax payable shall be the aggregate of —

(1) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent.; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).]

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance [3] [or set off of any loss] shall be allowed to the assessee under any provision of this Act in" computing his income referred to in clause (a) [4] [and clause (b)] of sub-section (1).

NOTES -

[1] Inserted vide Finance Act, 2012, Effective from 1-4-2013. .

[2] Substituted sub-section (1) vide The Taxation Laws (Second Amendment) Act, 2016, Effective from 1-4-2017. Before substitution, it read as under:

(1) Where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of--

(a) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of thirty per cent; and

(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to.in clause (a).

[3] Inserted vide Finance Act, 2016, Effective from 1 -4-2017.

[4] Inserted vide Finance Act, 2018, with retrospective effect from 1-4-2017.

A plain reading of the aforesaid law would reveal that provisions of Section 115BBE can be applied only under the following circumstances:-

- i) The assessee has income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and .
- ii) The assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of assessing officer satisfactory.

In this case survey was carried out at the business premises of the assessee on 26.09.2016. During the course of survey, assessee surrendered a sum of Rs. 75.00 lacs vide surrender letter dated 27.06.2016. In the surrender letter it was clearly stated that it is on account of "unaccounted professional receipts". The survey team found the amount surrendered to be in accordance with the level of professional activities of the assessee. Moreover, no other source of income was found except medical professional receipts. Therefore, it was accepted by the survey team.

That' the assessee thereafter filed his return of income for the relevant year on 19.06.2017 at an income of Rs. 90,19,920/- which included income of Rs. 75,00,000/- as surrendered during the survey proceedings. The surrendered income was declared as "Income from Other Sources" in the return and not credited to Profit & Loss Account because it was not entirely earned during the year under assessment, it was accumulated amount of unrecorded professional receipts from the start of practice till date, which was found by the survey team.

Then the case of the case was selected for compulsory scrutiny under CASS. During the course of assessment proceedings various notices u/s 142(1) dated 31.12.2018, 20.01.2019 and 21.05.2019 were issued to the assessee seeking information/explanation of the assessee on various issues. Books of accounts and other relevant documents were produced and test checked by Ld. AO and after discussion, income returned by the assessee was accepted by Ld. AO in order u/s 143(3).

It appears that after the judgment of Kerala High Court in case of Maruthi Babu Rao Jadav vs ACIT in WA No. 984 of dated 23.09.2019, the department swung into action and started Section 263 proceedings in all survey cases including this case, where notice u/s 263 was issued on 08.11.20219, without even calling the file of the

assessee, which is evident from the fact that all observations therein are against facts on record.

In the assessment order post Section 263 proceedings, it has been observed by Id. AO as under: -

*"The assessee has explained about the surrender amount which was found and accepted by the assessee as **unaccounted professional receipts** and certain discrepancies in respect of entries belonging to construction of hospital building during the course of inspection of documents/diaries in the Survey proceedings at assessee's clinic/business premises on 26.09.2016 and ITR filed for A.Y. 2017-18 and also paid taxes @30% in respect of this unaccounted professional receipts during the year under consideration"*

A review of the aforesaid observation would reveal that Ld. AO has admitted that the assessee has explained about the source of income surrendered as unaccounted professional receipts. He has nowhere said that he is not satisfied with the explanation offered by the assessee. Hence on facts also the question of application of Section 115BBE does not arise.

6. Per contra, the Ld. DR relied on the order of the Ld. PCIT.
7. We have heard the rival contentions and perused the material available on record. In the present case, we find that the Ld. PCIT exercised his revisionary jurisdiction u/s 263 of the Act by setting aside the assessment order passed by the Assessing Officer holding that the Assessing Officer has failed to examine the nature of the surrendered income and erroneously accepted it as business income.
8. During the proceedings before us, Id. Counsel for the Assessee has brought it on record that during the assessment proceedings the Assessing Officer had specifically asked regarding the nature of surrendered income of Rs. 95,00,000/- during the survey operation

conducted at the Assessee and it was very clearly replied by the Assessee that such income was earned out of medical profession/ business of the Assessee and that the Assessee had already declared it in its income tax return. The Counsel further argued that neither during the assessment proceedings the AO brought it on record any other source of income of the Assessee from where such additional income could be declared / surrendered nor during the 263 proceedings the Id. PCIT could pinpoint any other source of income other than the one declared by the Assessee.

9. We have considered the arguments of the Id. Counsel for the Assessee and written submissions filed by the Counsel of the Assessee. We have also gone through the order passed u/s 263 of the Act by the Id. PCIT and the arguments made by the Id. DR during the proceedings before us. We find that neither during the assessment order passed by the Assessing Officer nor during the proceeding u/s 263 by the PCIT, any other source of income has been pointed out or brought on record to show that the surrendered income during the survey operation was from other than the business or profession declared by the Assessee. The Assessee was also not confronted by the Revenue in the recording of statement during survey operation and subsequently asked it. However, from the records, it is clear that during the assessment proceedings, the Assessee has brought on record that the surrendered income was only from the business and profession declared by the Assessee. Keeping in view all these facts,

arguments, papers / documents filed by the AR of the Assessee, we are of this considered view that the Revenue could not bring on record any other source of income other than one declared by the Assessee. Therefore, taxing all the surrendered income u/s 115 BBE of the Act cannot be sustained. Accordingly, Assessee's appeal on this issue is allowed.

10. In the result, Assessee's appeal is allowed.

Order pronounced in the open Court on 09.06.2025.

Sd/-

**ललित कुमार
(LALIET KUMAR)**

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

**कृणवन्त सहाय
(KRINWANT SAHAY)**

लेखासदस्य/ ACCOUNTANT MEMBER

AG

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायकपंजीकार/ Assistant Registrar