IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI

BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 180/PAN/2023

Assessment Year : 2017-18

Shashikala Bhimacharya Malagi
0, Soubhagya,
Kalyan Housing Colony,
Gokak, Belgaum-591307
PAN : BDYPM3708B . . . . . .*Appellant*

V/s

Income Tax Officer,
Ward-1, Gokak. . . . . *Respondent*

Appearances

Assessee by : Mr Himanshu Gandhi ['Ld. AR']
Revenue by : Mr Narendra Reddy ['Ld. DR']
Date of conclusive Hearing : 08/04/2025
Date of Pronouncement : 09/04/2025

ORDER

PER G. D. PADMAHSHALI;

The captioned appeal of the assessee impugns DIN & Order No. 1055706480(1) dt. 04/09/2023 passed by the National Faceless Appeal Centre, Delhi ['Ld. NFAC' hereinafter] u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] which in turn arisen out of order of assessment dt. 20/12/2019 passed u/s 143(3) of the Act anent to assessment year 2017-18 ['AY' hereinafter].

2. Tersely stated facts of the case are that; the assessee an individual filed her return of income on 15/07/2017 declaring income of ₹3,34,640/-. The case of the assessee selected for scrutiny u/s 143(2) of the Act to examine 'large value cash deposit during demonetization compared to returned income'. Finding assessee's explanation about nature & source of special bank note ['SBN' hereinafter] worth ₹10,46,000/- & ₹7,50,000/- deposited by her into Karnataka Bank & Syndicate Bank accounts respectively, unsatisfactory the Ld. AO culminated the proceeding by bringing to tax entire deposits u/s 69A r.w.s. 115BBE of the Act as unexplained money & framed consequential assessment u/s 143(3) of the Act. Aggrieved by the additions the assessee instituted an appeal thereagainst before Ld. NFAC, which also came to be dismissed on equi-reasons. Aggrieved thereby the assessee is in appeal before us on a dual substantive ground of merits and inapplicability of provisions of section 115BBE of the Act.

3. We have heard the rival party's submission and subject to rule 18 of ITAT-Rules 1963 perused material placed on record, considered the facts in the light of settled position of law and case laws pressed into service which are forewarned to the respective rival party.

4. We note that, the appellant assessee primarily derives income from family pension and interest on deposit-investment kept with bank. The appellant not being accessed to tax regularly until declaration of demonetisation period, as there was no taxable income requiring her to comply with the provision of section 139(1) of the Act. In the year under consideration upon declaration of demonisation by the Hon'ble Prime Minister, the appellant deposited SBN worth ₹10,46,000/- into her Karnataka Bank account & ₹7,50,000/- into saving bank account maintained with Syndicate Bank accounts respectively and filed returns of income for preceding two assessment years as well.

5. When return of the year was subjected to scrutiny the appellant was put to notice to explain; (i) nature & source such SBN deposits and (ii) co-relate large SBN deposits with that of income returned for the year under consideration. The appellant's twofold explanation that (a) SBN represents accumulated balance of past cash withdrawal from financial year 2012-13 to 2016-17 and (b) saving from cash received from family members for her upkeepment, did fail to inspire any confidence to the Ld. AO, hence treated the same as unexplained money u/s 69A and brought to tax u/s 115BBE of the Act. When matter travelled up in appeal, the Ld. NFAC countenanced the addition echoing with the views of his tax authority below. While disbelieving the explanation tendered by the appellant, the tax authorities below of the view that, a pattern of regular cash withdrawal over a period of five explicitly demonstrates that those were for appellant's personal/household expenses and as such nothing could have left for depositing into banks.

6. The pattern of cash withdrawal placed on page-8 of paper book perused. The appellant maintained three bank accounts viz; Karnataka Bank, Syndicate Bank and Mahalaxmi Co-op. Bank. The total cash withdrawal from these three bank accounts over a period of five years worked out to ₹10,53,000/- The tax authorities for making/sustaining impugned addition disbelieved that appellant had barely left with any cash out of the former withdrawal as such were withdrawn for day-to-day expense. We are mindful to state that, in reality the amount of cash out of such saved and accumulated is neither in correctly known to either party nor they could establish with cogent evidences. Dislodgment by the Revenue authorities that entire SBN deposits of the appellant was exclusively out of her cash withdrawal may finds strength, but no amount out of such withdrawal could have left with the appellant for depositing them during demonetisation period could hardly be believed owning to unique Indian money saving habits.

7. As such there is no yardstick in the law nor with judicial officer to trace back the exact percentile of saving one could have in any given pattern of cash handling, may it be out of earnings or withdrawals from bank. The Indian Citizen/resident are totally different from rest of the world in terms of their financial habits & behaviour. For them though earning is essential, but saving is always preferred first from spending out of such earning. The combination of prudence, innovation, and family values in Indian culture inherently influential for saving habits for uncertain economic circumstances. This in turn persuades us to dismantle the tax authorities believe that, nothing could out of the five years cash withdrawal have left with appellant for depositing into her bank accounts during demonetisation period. However as we already stated of having no rock-solid yardstick to work out correct amount or percentile of cash balance left to ceased the dispute, we are left best with applicable judicial precedents to rely-on.

8. We note that, where assessee not having satisfactorily proved source & nature of amount which is encased on demonetization, revenue authorities perfectly justified in drawing an inference that said sum was an income and liable to be taxed accordingly. This view finds fortified in *'Chunilal Rastogi Vs CIT'* [1955, 28 ITR 341 (Pat.)], *'Anil Kumar Singh Vs CIT'* [1972, 84 ITR 307 (Cal.)], *'M. L. Tewary Vs CIT'* [1955, 27 ITR 630 (PAT.)] *Per contra*, if assessee prove of having sufficient SBN balance in hand prior to such demonetisation deposits, then succeeds in explaining nature & source in view of 'Narendra G. Goradia vs. CIT [1998] 234 ITR 571 (Bom)]. Since neither party proved their version of contention which could pass test of reasonability for acceptance, therefore to balance the rival concern; we are of considered view that neither the explanation of appellant could be disbelieved in its entirety nor of the respondent believe that nothing could left with the appellant out of such pattern cash withdrawal.

9. In view of aforestated discussion, having regard to peculiar feature of the facts & circumstances of the extant case, we accept rival party's respective contentions that; (i) entire SBN deposits could not be out of accumulated of cash withdrawal of the appellant and (ii) not nothing could have been left with the appellant out of such previous cash withdrawal. In view therefore, unarguably a reasonable credit to the extent of 1/3 amount of total cash withdrawal made by the appellant [Placed at Pg-8 of P/b] could be linked to SBN deposited by the appellant during demonetisation. As this reasonable credit would meet the end of justice in view of the ratio laid in 'Shivcharan Dass Vs CIT' [1980, 126 ITR 263 (P&H)], respectfully following the same, we therefore set-aside the impugned order and direct the Ld. AO to allow credit to the extent of 1/3 amount of total cash withdrawn of ₹10,53,000/-and treat it as pre-available for deposits as SBN and restrict the addition accordingly. The ground thus stands partly allowed.

10. Now next comes to a challenge of applicability of section 115BBE of the Act. The appellant denies the addition to be tax at accelerated rate of 60% as against 30% rate of tax which was prevalent till 31/03/2017. *Per contra*, the Revenue contended that, the provision of section 115BBE of the Act brought into statute first time by Finance Act, 2012 and made applicable prospectively w.e.f. 01/04/2013. As such Finance Act, 2016 substituted the provisions with higher rate of tax which came into effect w.e.f. 01/04/2017, thus operational prospectively from AY 2017-18. Therefore, any addition made u/s 68 to 69D of the Act is liable be taxed in terms thereof from AY 2017-18. The CBDT vide its circular 11 of 2019 dt. 19/06/2019 has also clarified that, substituted provisions of section 115BBE of the Act came into operation w.e.f. 01/04/2017 and accordingly applicable from assessment year 2017-18. In view thereof the appellant ground & contention is meritless and contrary to law, therefore deserves to be dismissed.

11. Without reproducing stock barrel & lock of provisions of section 115BBE of the Act it shall suffice to state that, at the relevant time the provisions of section 115BBE of the Act had/has twofold prescriptions viz; (A) as at the FA, 2012 applicable w.e.f. 01/04/2013; it prescribed 30% special rate of tax and also barred from claiming any deduction of any expenditure from such income assessed to tax u/s 68 to 69D of the Act. (B) as at the FA, 2016 applicable w.e.f. 01/04/2017; it prescribed 60% special rate of tax and also barred from claiming any deduction of expenditure & set-off of losses from such income assessed to tax u/s 68 to 69D of the Act. The dispute herein has arisen between the rival parties *'as to whether the effective date of operation of enhanced 60% rate of taxation is with respect (a) to date transactional income offered/assessed to tax u/s 68 to 69D of the Act* ***or*** *with respect to assessment year?* The former proposition settles the dispute in favour of appellant and the later in favour of the Revenue.

12. It is trite law that, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability or imposes new taxes, such legislation or amendments have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We find that, aforestated proposition has been clearly elaborate and emerged from in the decision of Hon'ble Apex Court in the case of *'CIT v. Vatika Township (P.) Ltd.'* [2014, 367 ITR 466 (SC)].

13. We further note that, precisely on the subject matter as to whether operation of section 115BBE of the Act prospective, or retrospective finds answer in *'CIT Vs Prakash Chand Lunia' [2023 (4) TMI 1057 (SC)]*. wherein their Hon'ble Lordship concluded that; section 115BBE, introduced by the Finance Act 2012 & came into effect

from 01/04/2013 thus effective from assessment year 2013-14, cannot be applied to earlier assessment years.

14. Respectfully following the ratio laid in former judicial precedents, we hold that, the substituted provisions of section 115BBE of the Act is operational from effective date mention therein which relates to assessment year commencing from 01/04/2017 and such date cannot be read as the date of incidence or occurrence of transaction or income liable to be taxed u/s 68 to 69D of the Act. In view thereof we find merits in the action of tax authorities below, therefore no interference with the rate of taxation is applied by the Revenue is called for. The second substantive ground therefore stands dismissed.

15. In result, the appeal is partly allowed in aforestated terms.
In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

-S/d-	**-S/d-**
PAVAN KUMAR GADALE	**G. D. PADMAHSHALI**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Panaji/Dt: 09th April, 2025.

Copy of the Order forwarded to :

1. The Appellant. 2. The Respondent. 3. The CIT(A)/NFAC Concerned
4. PCIT Concerned 5. DR, ITAT, Panaji Bench, Panaji 6. Guard File

By Order,
Sr. Private Secretary / AR ITAT, Panaji.