

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench, Visakhapatnam

Before Shri Ravish Sood, Judicial Member
and
Shri Balakrishnan S., Accountant Member

आ.अपी.सं /ITA No.581/Viz/2025
(निर्धारण वर्ष/Assessment Year: 2017-18)

Bonthula Hari Venkata Krishna, Visakhapatnam. PAN: AGFPB8358K (Appellant)	Vs.	The Asst. Commissioner of Income Tax, Circle-4(1), Visakhapatnam. (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri GVN Hari, Advocate	
राजस्व द्वारा/Revenue by:	Dr. Aparna Villuri, Sr. AR	
सुनवाई की तारीख/Date of Hearing:	03/12/2025	
घोषणा की तारीख/Date of Pronouncement:	19/12/2025	

आदेश / ORDER

PER. RAVISH SOOD, JM :

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 22/07/2025, which in turn arises from the order passed by the Assessing Officer (for short, "AO") under Section 143(3) of the Income-tax Act, 1961 (for short, "Act"), dated 21/12/2019, for the Assessment Year 2017-18.

2. The controversy involved in the present appeal lies in a narrow compass, i.e., the claim of the assessee that the re-characterization of the assessee's commission income of Rs.60,52,302/- as an unexplained cash credit under section 68 of the Act has resulted to a double addition in the hands of the assessee.

3. Shorn of unnecessary details, the assessee had filed his return of income for AY 2018-19 on 03/10/2017, declaring an income of Rs.1,24,80,020/-. Thereafter, the case of the assessee was selected for "limited scrutiny" under CASS for verifying "large increase in capital in a year".

4. During the course of the assessment proceedings, the AO observed that the assessee had credited commission income of Rs.82,02,302/- in his Profit & Loss account for the subject year, which as claimed by him was received for extending Government services, viz., providing services for preparing licenses, Aadhar cards, transport permits, caste certificates etc. On being queried, the assessee submitted that commission income of Rs.40 lakhs pertained to the Government Services provided by him. As the assessee failed to provide any explanation for the balance commission receipts of Rs.20,52,302/- (i.e.,

Rs.60,52,302/- – Rs.40,00,000/-), the AO added the same to his returned income as unexplained cash credit under section 68 of the act.

5. Apart from that, as the assessee had failed to substantiate his claim that the commission income of Rs.40 lakhs (supra) was received for extending Government Services, therefore, the said amount was also held by the AO as unexplained cash credit under section 68 of the Act.

6. Accordingly, the AO vide his order under section 143(3) of the Act, dated 21/12/2019, determined the income of the assessee at Rs.1,85,32,322/-.

7. Aggrieved, the assessee carried the matter in appeal before the CIT(A) but without success.

8. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

9. We have heard the Learned Authorized Representatives of both parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

10. Admittedly, it is a matter of fact discernible from the record that the assessee in his Profit & Loss account for the subject year had, inter alia, credited commission income of Rs.82,02,302/- (which includes the subject commission income of Rs.60,52,302/-). Although, the AO had in the absence of supporting documentary evidence recharacterized the commission receipts of Rs.60,52,302/-, viz., unexplained cash credits: Rs.20,52,302/-; and (ii) unsubstantiated receipts: Rs.40,00,000/-, as an unexplained cash credit under section 68 of the Act, but while computing the income of the assessee vide his order under section 143(3) of the Act, dated 21/12/2019 had not reduced the income returned by the assessee by the aforementioned amount, which, thus, had resulted to a double addition of the subject amount in the hands of the assessee. We, thus, concur with the Ld. AR that the authorities below while sustaining the re-characterization of commission income of Rs.60,52,302/- as an unexplained cash credit under section 68 of the Act ought to have reduced the same from the “business income” that was disclosed by the assessee by the said amount.

11. Accordingly, we herein direct the AO to recompute the business income of the assessee after reducing from the same the aforementioned amount of unexplained/unsubstantiated receipts of Rs.60,52,302/-.

12. Apropos, the Ld. AR's claim that the subject addition of Rs.60,52,302/- made by the AO under section 68 of the Act ought to have been taxed @ 30%, we concur with the same. We say so, for the reason that as per The Taxation Laws (Second Amendment) Bill, 2016, the revenue is empowered to impose 60% of the tax from the transactions 01/04/2017 onwards and not prior to the said cut off date. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Madras in the case of S.M.I.L.E Microfinance Limited vs. The Assistant Commissioner of Income Tax, WP (MD) No.2078 of 2020, dated 19/11/2024. Also, we find that our aforesaid view is supported by the order of the Tribunal in Sathi Mangayamma vs. ITO, Ward-2, Kakinada in ITA No.119/Viz/2025, 30/06/2025, wherein it was held as under:

"18. We find that on the issue of the year of applicability of the post-amended section 115BBE of the Act, i.e., as had been made available on the statute vide the Taxation Laws (Second Amendment) Act, 2016 w.e.f. 01.04.2017 there are conflicting views of the non-jurisdictional High Courts. On the one hand the Hon'ble High Court of Kerala in the case of Maruthi Babu Rao Jadav Vs. The Assistant Commissioner of Income-tax, Central Circle 1, Kozhikode, WA No. 984 of 2019, dated 23.09.2020 while dealing with the issue as to whether or not the enhanced rate of tax liability contemplated in the post-amended Section 115BBE of the Act as made available on the statute vide the Taxation Laws (Second Amendment) Act, 2016, dated 15.12.2016 w.e.f. 01.04.2017 will apply to Assessment Year 2017-18, has answered in the affirmative; but on the other hand the Hon'ble High Court of Madras in the case of S.M.I.L.E Microfinance Limited Vs. The Assistant Commissioner of Income-tax, WP (MD) No. 2078 of 2020, dated 19.11.2024, has after referring to the Taxation Laws (Second Amendment) Bill, 2016, inter alia, concluded 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. It was further observed by the High Court that for the prior transactions the revenue is empowered to impose only 30% rate of tax.

19. Considering the aforesaid conflicting views of the non-jurisdictional High Courts, we are guided by the judgment of the Hon'ble High Court of Bombay in the case of K. Subramanian & Ors.Vs. Siemens India Ltd. & Anr. (1985) 156 ITR 11 (Bombay) that in case of conflicting views of the non-jurisdictional High Courts the view that was favorable to the assessee and not against him is to be adopted. We thus, based on the aforesaid position of law respectfully follow the view taken by the Hon'ble High Court of Madras in the case of S.M.I.L.E Microfinance Limited Vs. The Assistant Commissioner of Income-tax (supra), and direct the AO to determine the tax liability on the addition of Rs. 20 lac (supra) made in the hands of the assessee u/s 69A of the Act by applying the tax rate of 30% as was contemplated in the pre-amended Section 115BBE of the Act. The additional ground of appeal is allowed in terms of our aforesaid observations.”

13. Accordingly, we herein direct the AO to tax the addition of Rs.60,52,302/- under section 68 of the Act @ 30% instead of 60%.

14. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 19th December, 2025.

Sd/- (BALAKRISHNAN S.) ACCOUNTANT MEMBER	Sd/- (RAVISH SOOD) JUDICIAL MEMBER
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Hyderabad,
Dated: 19th December, 2025
OKK / SPS

Copy to:

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2	Asst. Commissioner of Income Tax, Circle-4(1), O/o. ITO, Pratyakshakar Bhavan, MVP Colony, Visakhapatnam, Andhra Pradesh-530017.
3	The Pr. Commissioner of Income Tax, Visakhapatnam.
4	The DR, ITAT, Visakhapatnam Bench
5	Guard File

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ITAT, VISAKHAPATNAM