

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2203/Chny/2025

निर्धारण वर्ष/**Assessment Year: 2017-18**

Shanmuga Sundaram Govindaraj,
19 AL, Mudali Street,
Nehru Nagar,
Velachery,
Chennai – 600 042.

v.

DCIT,
Non Corporate Circle 19(1),
Chennai.

[**PAN:AIDPG 5262 F**]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

:

Mr. N. Arjun Raj, Advocate

प्रत्यर्थी की ओर से /Respondent by

:

Mr. Guru Prasad, Addl. CIT

सुनवाईकीतारीख/Date of Hearing

:

13.01.2026

घोषणाकीतारीख /Date of Pronouncement

:

11.03.2026

आदेश / ORDER

PER MANU KUMAR GIRI, JM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals) [CIT(A)] for the Assessment Year 2017-18 arising out of the assessment framed by the Assessing Officer under the provisions of the Income-tax Act, 1961.

2. Facts of the Case are that the assessee filed the return of income for the Assessment Year 2017-18 on 29.03.2018 declaring a total income of Rs.6,53,060. Subsequently, information was received by the Assessing Officer ('AO') that the assessee had made a declaration under the Income Declaration Scheme, 2016 declaring undisclosed income of

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Rs.25,62,000. The tax liability on such declaration amounted to Rs.11,52,900. It was noticed by the AO that the assessee had paid only Rs.5,76,451/- towards the tax liability under the said scheme and had failed to pay the balance amount within the time prescribed under the scheme. Based on this information, the AO formed a belief that income chargeable to tax had escaped assessment and initiated reassessment proceedings u/s. 147 of the Income-tax Act, 1961. During the course of reassessment proceedings, notice u/s. 142(1) of the Income-tax Act, 1961 was issued calling for details from the assessee.

2.1 The assessee filed submissions contending that the income declared under the scheme related to Assessment Year 2006-07. However, the Assessing Officer was not satisfied with the explanation furnished by the assessee. The Assessing Officer held that since the assessee had failed to pay the full tax liability under the scheme within the prescribed time, the declaration under the scheme became invalid. Accordingly, invoking the provisions of Section 69 of the Income-tax Act, 1961 read with Section 115BBE of the Income-tax Act, 1961, the Assessing Officer treated the amount of Rs.25,62,000/- as unexplained investment and added the same to the income of the assessee. The total income was thus assessed at Rs.32,15,060/- vide assessment order dated 25.03.2022.

3. Aggrieved by the said order, the assessee preferred an appeal before the Id.CIT(A), who dismissed the appeal and confirmed the addition made by the Assessing Officer.

4. Aggrieved by the order of the CIT(A), the assessee is now in appeal before the Tribunal.



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5. The Id. Authorised Representative (AR) for the assessee submitted that the addition made by the AO and confirmed by the Id.CIT(A) is not sustainable either on facts or in law. It was submitted that the assessee had filed a declaration under the Income Declaration Scheme, 2016 in Form-1 on 26.09.2016 declaring undisclosed income of Rs.25,62,000/-. The declaration specifically stated that the undisclosed income pertained to Assessment Year 2006-07. The Id. AR submitted that the assessee had made partial payments under the scheme by paying two instalments amounting to Rs.5,76,451/- and had filed Form-3 evidencing such payments. However, due to financial constraints, the final instalment could not be paid within the prescribed time. It was contended that the AO erred in bringing the declared income to tax in Assessment Year 2017-18 by invoking the provisions of Section 69 of the Income-tax Act, 1961. According to the Id.AR, Section 69 can be invoked only where an investment is made in the relevant financial year and the source thereof remains unexplained. In the present case, the investment admittedly relates to Financial Year 2005-06 relevant to Assessment Year 2006-07 and not to Assessment Year 2017-18.

6. The Id. AR further submitted that the AO incorrectly relied upon the provisions of Section 197 of the Finance Act, 2016 while treating the declared income as taxable in Assessment Year 2017-18. It was argued that the said provision would apply only in cases where no tax, surcharge and penalty have been paid under the scheme. In the present case, the assessee had already paid two instalments of the tax liability and therefore the said provision would not apply.

7. The Id. Departmental Representative (DR), on the other hand, supported the orders of the lower authorities. It was submitted that



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under the provisions of the Income Declaration Scheme, 2016, the declarant was required to pay tax, surcharge and penalty within the time prescribed under the scheme. In the present case, the assessee failed to discharge the entire tax liability. The Id. DR submitted that as per the provisions of Section 187 of the Finance Act, 2016, if the declarant fails to pay the tax, surcharge and penalty within the time prescribed, the declaration made under the scheme shall be deemed never to have been made. Further reliance was placed on Section 197(b) of the Finance Act, 2016, which provides that where a declaration has been made under the scheme but no tax, surcharge and penalty have been paid within the time specified, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which the declaration is made. It was therefore contended that the Assessing Officer was justified in bringing the income to tax in Financial Year 2016-17 relevant to Assessment Year 2017-18. The Id. DR also relied upon the decision of the Tribunal in the case of M/s Nandu Atmaram Vajekar v. ITO (ITAT Pune), wherein similar principles were applied.

8. We have heard the rival submissions and perused the material available on record. The issue that arises for consideration is whether the AO was justified in taxing the amount of Rs.25,62,000/- declared under the Income Declaration Scheme, 2016 as unexplained investment u/s. 69 of the Income-tax Act, 1961 in Assessment Year 2017-18.

9. We have carefully considered the rival submissions and the material placed on record. It is an undisputed fact that the assessee had filed a declaration under the Income Declaration Scheme, 2016 declaring undisclosed income of Rs.25,62,000. It is also not in dispute that the assessee had failed to pay the entire tax liability under the



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scheme within the prescribed time. As per the provisions of Section 187(3) of the Finance Act, 2016, where the declarant fails to pay the tax, surcharge and penalty within the specified time, the declaration made under the scheme shall be deemed never to have been made.

10. Further, Section 197(b) of the Finance Act, 2016 provides that where a declaration has been made but the tax, surcharge and penalty have not been paid within the time specified, the undisclosed income shall be chargeable to tax under the provisions of the Income-tax Act in the previous year in which the declaration is made.

11. In the present case, the declaration under the scheme was made during the Financial Year 2016-17. Therefore, in view of the above statutory provisions, the undisclosed income becomes chargeable to tax in Financial Year 2016-17 relevant to Assessment Year 2017-18. The contention of the assessee that the undisclosed income relates to Assessment Year 2006-07 cannot be accepted in view of the specific provisions contained in the Finance Act governing the consequences of non-payment under the scheme. Further, once the declaration under the scheme is rendered invalid due to non-payment of taxes, the assessee is required to explain the source of the investment. In the present facts and circumstances of the case, the assessee has failed to furnish any satisfactory explanation regarding the source of the investment of Rs.25,62,000/-. Accordingly, we find no infirmity in the action of the AO in invoking the provisions of Section 69 of the Income Tax Act hence, order of the Id.CIT(A) confirming the addition of Rs.25,62,000 is upheld. However, bringing the said amount to higher tax of 60% u/s.115BBE of the Income-tax Act, 1961 is not justifiable. The jurisdictional High Court in S.M.I.L.E. Microfinance Ltd. vs. ACIT (2024) ruled that the 60% tax rate on unexplained income under



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Section 115BBE (amended via Taxation Laws Second Amendment Act, 2016) is not retrospective. This means the higher 60% rate (plus surcharge) only applies from April 1, 2017 (AY 2018-19), while a 30% rate applies prior to this date.

12. In view of the foregoing discussion, we direct the AO to compute the rate of tax @30% in the light of the case referred supra. In the result, the appeal of the assessee is partly allowed in terms above order.

Order pronounced in the open court on 11th day of March, 2026 at Chennai.

Sd/-
(एस. आर. रघुनाथा)
(S.R. Raghunatha)
लेखा सदस्य / Accountant Member

Sd/-
(मनु कुमार गिरि)
(Manu Kumar Giri)
न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai,

दिनांक/Dated: 11th March, 2026.

SP

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF



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