

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 155/JP/2022
निर्धारण वर्ष/Assessment Year :2017-18

Shri Sandeep Sethi 417, Sethi Bhawan, Hanuman Ji Ka Rasta, Jaipur.	बनाम Vs.	Deputy Commissioner of Income Tax, Central Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGWPS 6940 H		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 154/JP/2022
निर्धारण वर्ष/Assessment Year :2017-18

Shri Rajiv Nigotiya 3954, Nigotiya House, MSB Ka Rasta, Johari Bazar, Jaipur.	बनाम Vs.	Deputy Commissioner of Income Tax, Central Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABOPN 1358 D		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Rajeev Sogani (CA) &
Sh. Rohan Sogani (C.A.)
राजस्व की ओर से/ Revenue by : Sh. Sanjay Dhariwal (CIT)

सुनवाई की तारीख/ Date of Hearing : 14/12/2022
उद्घोषणा की तारीख/Date of Pronouncement: 08/02/2023

आदेश / ORDER

PER BENCH

These are two appeals filed by the assessee and is arising
out of the orders of the Learned Commissioner of Income Tax

(Appeals)-4, Jaipur both dated 17.02.2022 [hereinafter referred to as (CIT(A)] for assessment years 2017-18 respectively.

2. Since the issues involved in these two appeals of the assessee are almost identical and were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR submitted that the matter pertaining to Shri Sandeep Sethi in ITA No. 155/JPR/2022 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are exactly identical except the difference in the amount. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 155/JPR/2022 is taken as a lead case.

4. Based on the above arguments we have also observed that ground no. 1 & 2 in ITA NO. 154 /JPR/2022 and ground no. 2 & 3 in ITA No. 155/JPR/2022 were common and ground no. 1 in ITA 155/JPR/2022 more thus, except these on the two grounds for

both the appeals grounds are similar, facts are similar, arguments were similar and therefore, were heard together the parties and are disposed the case by taking lead case facts, grounds and arguments from the folder in ITA No. 155/JPR/2022.

5. Before moving towards the facts of the case we would like to mention that the assessee has assailed this appeal in ITA No. 155/JPR/2022 before us on the following grounds;

“1. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO, in making additions of Rs. 4,55,639 towards alleged unexplained investment in jewellery. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire such addition of Rs. 4,55,639/- made by the Id. AO and sustained by the Id. CIT(A).

2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO, in invoking the provisions of Section 115BBE by applying the higher rate of tax i.e. 60% as introduced by the Taxation Laws (Second Amendment) Act, 2016, on the income surrendered by the assessee, during the search conducted on 21.07.2016, at a time when such amended provisions of Section 115BBE were not in force. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the amended provisions of Section 115BBE done by the Id. AO and confirmed by the Id. CIT(A).

3. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO, in invoking the provisions of Section 115BBE without providing any opportunity to the assessee and discussing anything, in this regard, in the assessment order. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of the amended provisions of Section 115BBE as done by the Id. AO and confirmed by the Id. CIT(A).

4. The assessee craves his right to add, amend or alter any of the grounds on or before the date of hearing.”

6. The fact as culled out from the records is that a search and seizure operation u/s 132(1) of the Income Tax Act, 1961 was carried out on 21.07.2016 at the various premises of Shanti Kumar Sethi Group, Jaipur. Residential premises of the assessee at 417, Hanuman Ji Ka Rasta, Tripolia Bazar, Jaipur was also covered. Consequent to search action the case of the assessee was centralized to this Circle by Pr. CIT/1/ITO(Hqrs.)/JPR/u/s127/2016-17/1550 dated 09.09.2016. The assessee has declared Income from Salary from M/s Nine Jewels Pvt. Ltd., Income from house property, Remuneration & Interest Income from M/s Nine Jewellery (50.00% Share), Income from short term capital gain, Interest Income from saving bank A/c and parties & Interest Income from minor Shaurya sethi & Kashvi during the year.

7. Accordingly notice u/s 142(1) of the Act was issued to the assessee on 14-09-2017 which was duly served. In response to notice issued u/s 142(1) the assessee furnished his return of income on 31-10-2017 declaring total Income of Rs. 1,77,10,650/-. It includes the surrendered income of Rs. 89.05 lacs which had been accepted by the assessee during the course of search. Penalty proceedings u/s 271AAB(1)(a) of the Income-tax Act, 1961 is being initiated for undisclosed income which was unearthed

“5.5 During the course of search, silver articles were also found. Considering the status of the assessee silver utensils and silver jewellery weighing 10 kg. is considered is explained. Therefore, the remaining silver jewellery i.e. 19,500 gram is treated as unexplained.

	Found	Treated as explained	Remained unexplained	value
Gold	2947 gram	1450 gram	1497 gram	Rs.3380226/-
Stones	Rs.1921250/-	-	Rs.19,21,250/-	Rs. 19,21,250/-
Silver	29500 gram	10000 gram	19500 gram	Rs. 8,56,245/-
Total				Rs.61,57,721/-

****Silver price as per valuation report is 43910 per kg.”**

Difference added Rs. 5,52,241/-

“Ground No. 1 before Id. CIT(A)

(iv) have considered the impugned order and the submissions made in this regard. I find that in view of CBDT instruction no. 1916 dated 11-05-

1994, the AO found the gold jewellery weighing 1450 gms as allowable in the case of Shri Sandeep Sethi and his family members and the balance gold jewellery weighing 1497 gms valued at Rs. 33,80,226/- was considered as unexplained as no evidence such as bills and vouchers of purchase or source of investment could be furnished by the appellant. Further no wealth tax return has been filed by the appellant. Therefore in view of the above facts and the fact that during the course of search, the appellant has himself surrendered the aforesaid jewellery in his statement recorded u/s 132(4) of the Act; the AO considered 1497 gms of gold jewellery as unexplained.

(v) As regards the investment of the appellant in silver items and valuable stones, it is observed that AO treated them to be unexplained in view of the fact that no evidence such as bills and vouchers of purchase or source of investment in them could be furnished by the appellant. Neither any wealth tax return was filed by the appellant to prove the source of investment in the said items. However the AO treated 10,000 gms of silver items as explained and treated the balance 19,500 gms as unexplained which was valued at Rs. 8,56,245/-. As far as the contention of the appellant regarding the incorrect weight of silver items at 29.50 Kgs considered by the AO as against the correct weight of 27.3 Kgs valued by the Departmental Valuer, I find that the contention of the appellant is correct and the weight of silver items is to be considered at 27.03 Kgs. Accordingly the undisclosed investment in silver items of 27.03 Kgs is worked out at Rs.11,86,887/- as against Rs. 12,95,345/- worked out by the AO in respect of 29.5 Kgs., by applying the silver price at Rs.43,910/- as per valuation report and as also considered by the AO. Since the AO has himself considered 10,000 gms as explained, therefore the undisclosed investment in silver items is considered at 17,300 gms at Rs.7,59,643/- as against Rs.8,56,245/- for 19,500 gms considered, as unexplained, by the AO.

(vi) Further, the contention of the appellant that the silver items were found to be explained during the course of search is not found to be acceptable in view of the fact that during the course of assessment nor during the current appellate proceedings, the appellant has been able to furnish any evidence regarding the source of acquisition of the aforesaid jewellery. In fact, considering the status of the appellant, the AO has already considered silver items worth 10 Kg as explained. Further since the aforesaid circular of CBDT is silent on the issue of silver jewellery/utensils and valuable stones and in absence of any evidence for acquisition of the aforesaid silver items and colour stones and the fact that already 1450 gms of gold jewellery has been considered as reasonable possession in view of the CBDT Instruction No. 1916 dt. 11-05-1994, therefore I am of the opinion that the silver items at 17,300 gms valued at Rs. 7,59,643/-, gold jewellery weighing 1497 gms valued at Rs. 33,80,226/- and colour stones worth Rs. 19,21,250/-, are considered as unexplained, which totals to Rs. 60,61,119/- as against Rs. 61,57,721/- considered by the AO. Since the appellant has already surrendered and disclosed jewellery worth Rs. 56,05,480/- in his return of income, therefore the differential amount of Rs. 4,55,639/-(Rs. 60,61,119 Rs. 56,05,480) is treated as unexplained.

(vii) Therefore the addition to the extent of Rs. 4,55,639/- is sustained instead of Rs. 5,52,241/- made by the assessing officer and the balance addition of Rs. 96,602/- (Rs. 5,52,241/-minus Rs. 4,55,639/-) is deleted. Accordingly, the Ground No. 1 stands partly allowed.”

Ground No. 2 before Id. CIT(A)

(vii) Further in regard to the contention of the appellant that the provisions of section 115BBE have been invoked without any opportunity provided by the AO, it is held that the CIT(A) holds concurrent jurisdiction with that of the AO. Due opportunity has been provided to the appellant by me on this issue, in compliance to which the Ld. A/R of the appellant has filed detailed submissions which have been considered before finalizing this appeal. Therefore lapses, if any, on the part of the AO have been meted out at the appellate stage.

(viii) In view of the aforesaid discussion, I find that the provision of section 115BBE appeared to be in the nature of compensatory provisions applicable to incomes, which were not recorded or correctly recorded at the first place but disclosed subsequently in the returns filed u/s 153A of the Act and therefore I find that the AO was justified in taxing such undisclosed income at the higher tax rate at 60% u/s 115BBE of the Act. Accordingly, the Ground of Appeal No. 2 is dismissed.”

9. As the assessee not finding favour with the order of the Id. CIT(A), has filed an appeal before this tribunal on the grounds as raised here in above. In this appellant proceeding the Id. AR of the assessee submitted following written submission to support the various grounds raised before us. The written submission filed by the assessee is reiterated here in below:-

“I. Assessee, an individual, for the relevant previous year, earned salary income from Nine Jewels Pvt. Ltd. Assessee also earned income from House Property, remuneration from partnership firm, short term capital gains etc.

II. Search and seizure operation, under section 132(1), of the Income Tax Act, 1961 (“ITA”) was carried out on 21.07.2016 at the business and residential premises of the assessee. (AO Order Page 1)

III. For the relevant previous year, assessee furnished his return of income on 31.10.2017, declaring total income of Rs. 1,77,10,650, out of which Rs. 89.50 lacs pertained to income surrendered during the course of search.

Ground No. 2-3: Invoking provisions of Section 115BBE

1. ASSESSING OFFICER & COMMISSIONER OF INCOME TAX (APPEALS)

- 1.1. During the course of search assessee, on his own, offered Rs. 89,05,480 for tax, for the year at hand. Subsequently, in the assessment proceedings, Id. AO added Rs. 5,52,241, in the hands of the assessee, as unexplained jewellery (Silver Items). Id. AO for the purpose of calculating tax, on the amount surrendered by the assessee of Rs. 89,05,480, and also the additions made by him in his order of Rs. 5,52,241, applied rate of 77.25%, as prescribed u/s 115BBE of the ITA.
- 1.2. Thereafter, during the first appellate proceedings, elaborate submissions were made before Id. CIT(A) that Id. AO had erred in invoking the provisions of Section 115BBE and applying higher rate of tax of 77.25% on the income surrendered by the assessee and also on the additions made by the Id. AO. Submissions made before Id. CIT(A), in this regard, have been reproduced by her, in her order, from pages 6 to 10. Id. CIT(A) upheld invocation of Section 115BBE by the Id. AO.

2. SUBMISSIONS

- 2.1. Apropos invocation of Section 115BBE by the Id. AO and upheld by Id. CIT(A), as regards the income surrendered by the assessee, during search, amounting to Rs. 89,05,480, and also accepted by the lower authorities, following submissions are made:-
 - A. Invocation of Section 68, 69 etc, sine qua non for invocation of Section 115BBE
 - B. Where any non-income is converted by AO to income, as per Section 68 to 69B then only Section 115BBE can be made applicable. In the present case, assessee himself offered amount for taxation, which was even accepted as it is by the AO.
 - C. At the time of search or at the time of making surrender, by the assessee, on 21.07.2016, the amended provisions were not in place. The amendment to Section 115BBE, being onerous on the assessee, should not be given a retroactive effect.
 - D. Intention of the amendment to Section 115BBE was to cover cases of concealment of income, pursuant to demonetization, which was not the case of the assessee.

Each of the aforementioned contentions are elaborated hereunder.

 - A. Invocation of Section 68, 69 etc, sine qua non for invocation of Section 115BBE
 - A.1. Section 115BBE refers to the income under Section 68 to 69D. Provisions of Section 115BBE can be invoked only when addition has been made under Section 68 to 69D. For making additions in the said sections, satisfaction has to be recorded by the Id. AO and opinion has to be formed by him for invoking such

sections. Thereafter, once such sections are involved Assessing Officer can resort to invoking Section 115BBE.

- A.2. However, in the present case, as regards the income surrendered by the assessee, there is no discussion in the assessment order passed by Id. AO. Id. AO has not made addition of the income surrendered by the assessee, under Section 69 or any other similar section.
- A.3. Assessee came to know of the application of the higher rate of 77.25% under Section 115BBE only through the computation of income, annexed with the assessment order. Hence, there is no satisfaction recorded by the Id. AO for the purpose of invocation of Section 69 on the assessee. Under such circumstances invoking Section 115BBE is not justified.
- A.4. In this regard, reliance is placed on the below mention judicial pronouncements of the Hon'ble ITAT, Jaipur Bench, the relevant extracts of which are set out hereunder for the sake of ready reference:-
- A.4.1. Sudesh Kumar Gupta [2020] 117 taxmann.com 178 (Jaipur - Trib.)
“...In the instant case, as we have noted above, the return of income so filed has been accepted by the Assessing officer without making any adjustment/variation to the income so offered by the assessee and the assessment has been completed u/s. 143(3) of the Act. Further, there is nothing on record which shows that the Assessing officer has called for any Explanation of the assessee regarding the nature and source of such investment during the course of assessment proceedings and any formation of opinion and recording of satisfaction by the Assessing officer which is required before invoking the provisions of section 69 of the Act. Though the Assessing officer has issued a show-cause as to why penalty proceedings u/s. 271(1)(c) may not be initiated in respect of such investment, however, he has not issued any show-cause for invoking provisions of section 69 of the Act or has called for any Explanation of the assessee regarding the nature and source of such investment. In fact, the assessment order so passed by the Assessing officer is silent about invoking the provisions of section 69 of the Act. Where the provisions of section 69 have not been invoked by the Assessing officer while passing the assessment order u/s. 143(3), going by the plain language of section 115BBE, the latter cannot be invoked in the instant case...”
- A.4.2. Hari Narain Gattani [2021] 123 taxmann.com 8 (Jaipur - Trib.)

“..In this regard, we have gone through the return of income as well as the assessment order so passed by the Assessing officer u/s 143(3) and find that in the return of income, tax liability on the undisclosed income has been determined as per slab rate of taxation applicable to an individual and not at the rate of 30% as per 115BBE of the Act. Similarly, in the assessment order passed u/s 143(3), we find that firstly, there is no finding by the Assessing officer that the income so surrendered has been determined as income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and secondly, in the computation of tax liability, the tax liability on the undisclosed income has been determined as per slab rate of taxation applicable to an individual and not at the rate of 30% as specified in section 115BBE. Thus, both the income so offered by the assessee as well as rate of taxation has been accepted by the Assessing officer and in fact, we find that there is a specific finding by the Assessing officer in the assessment order that the assessee has also paid all due tax with interest in respect of the undisclosed income. There is thus, no finding that any of the aforesaid provisions so referred in section 115BBE have been invoked by AO during the assessment proceedings and therefore, we find that the contention of the Assessing officer that during the assessment proceedings, the tax rate has been charged @ 30% on surrendered income u/s 115BBE of the Act is not factual correct as not borne out of assessment records and thus, the action of the Assessing officer in rectifying and increasing the rate of taxation from 30% to 60% and surcharge and cess on such undisclosed income doesn't come within the purview of section 154 of the Act....” [Emphasis Supplied]

Thus, having not invoked Section 69 or not recorded any satisfaction in this regard, lower authorities was not justified in invoking the provisions of Section 115BBE.

- B. Where any non-income is converted by AO to income, as per Section 68 to 69B then only Section 115BBE can be made applicable. In the present case, assessee himself offered amount for taxation, which was even accepted as it is by the AO.

- B.1. Furthermore, provisions of Section 68 to Section 69D can only be invoked in cases where an assessee is unable to explain the source of a particular receipt, money, investment, expenditure, etc or part thereof to the satisfaction of the Assessing Officer. These provisions have no application in case where an amount already disclosed by the assessee as his income, while filing the Return of Income on which no further addition has been made by the Id. AO, during the course of assessment proceedings.

B.2. Sections 68 and 69A create certain deeming fictions, whereby certain amounts which are not considered as income by the assessee, are deemed to be income of the assessee. A deeming fiction of income cannot apply to an item which is already treated as income by the assessee himself. The question of deeming an item to be income can only arise if the item is not otherwise an income. Section 68 or Section 69 converts non-income into income and has no application where income is already offered for tax. Section 69 is reproduced below:-

“Where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.”

B.3. Hon'ble Delhi High Court, in the case of Keshav Social and Charitable Foundation (2005) 278 ITR 152, considered a situation where the assessee, a charitable trust, had disclosed donations received by it as its income, and claimed exemption u/s. 11. The Assessing Officer, on finding that the assessee was unable to satisfactorily explain the donations and the donors were fictitious persons, held that the assessee had tried to introduce unaccounted money in its books by way of donations and, therefore, the amount was to be treated as cash credit u/s. 68. The Delhi High Court held that section 68 did not apply, as the assessee had disclosed such donations as its income.

B.4. This view is also supported by the income tax return forms, where Schedule SI – Income Chargeable to Tax at Special Rates, does not include section 115BBE, though it includes section 115BB [Winning from Lotteries, crossword puzzles etc.].

Thus, as per the facts of the present case, provisions of Section 115BBE cannot be invoked as the income has been voluntarily declared by the assessee, in his return of income

C. At the time of search or at the time of making surrender, by the assessee, on 21.07.2016, the amended provisions were not in place. The amendment to section 115BBE, being onerous on the assessee, should not be given a retroactive effect.

C.1. The provisions of Section 115BBE were inserted in the ITA by Finance Act, 2012, with effect from 1.04.2013. Section 115BBE taxed the unexplained credits, money, investment, expenditure, etc., which were deemed as income under Section 68, Section 69, Section 69A, Section 69B, Section 69C or Section 69D, at the rate of 30% (plus surcharge and cess), without allowing any deduction for any expenditure or allowance.

C.2. Thereafter, the provisions of sub-section (1) of Section 115BBE were substituted by Taxation Laws (Second Amendment) Act, 2016, w.e.f 1.04.2017 i.e. AY 2017-18 ("Amendment -115BBE"). Although, Taxation Laws (Second Amendment) Act, 2016 received the assent of the President of India only on 15.12.2016. Search on the assessee was carried out on 21.07.2016.

C.3. Chronology of various events, as discussed hereinbefore, is as under :-

Particulars	Date
115BBE Introduced for the first time in the Income Tax Act. Rate of Tax 30%	01.04.2013
Search conducted on the assessee	21.07.2016
Amendment -115BBE introduced in Lok Sabha	28.11.2016
Amendment -115BBE passed by Lok Sabha	29.11.2016
Amendment -115BBE received President assent	15.12.2016

C.4. Thus, the law, applied by the Id. AO did not see the light of the day, when the search was conducted on him. The said law for the first time was introduced on 28.11.2016, i.e. after a gap of about 4 months of the taxing event having taken place.

C.5. On comparison of the amended provision with the earlier provision, it is clear that the above-stated clause (a) of sub-section (1) of section 115BBE retains the essential features of the earlier provision with the difference that the rate of tax is ENHANCED from 30% to 60%. Simultaneously, Section 2(9) of Chapter II of the Finance Act, 2016 was amended by inserting the Seventh proviso to provide for a levy of surcharge at the rate of twenty five per cent of tax u/s.115BBE. Thus, the rate of tax after the amendment to Section 115BBE was 77.25% [60% + 25% Surcharge + 3% Cess], as against 30%.

C.6. As per the settled Principles of Interpretation, where the legislature makes an amendment validating any provision, which might have been found to be defective, the legislature seeks to enforce its intention which was already there by removing the defect or lacuna. However, withdrawal or modification of provision with retrospective effect, depriving the assessee of the vested statutory right or which has the effect of imposing a levy with retrospective effect for the PERIOD for which there was no such levy, unless there be strong and exceptional circumstances justifying such modification, cannot be held to be reasonable or rational.

C.7. The amendment, to Section 115BBE, cannot, in any way, be considered to be introduced to overcome any defects of the law, previously in place, nor it can be considered to be clarificatory in nature, explaining the intention of the law already in place. Per

contra, such amendment has resulted into increase in tax burden on the assesseees.

- C.8. Hon'ble Supreme Court in the case of Vatika Township (P) Ltd. [2014] 367 ITR 466 (SC) observed that 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, which is based on the principle of law known as *lex prospicit non respicit* : law looks forward not backward. Thus, legislation which modify accrued rights, or which imposes obligation or impose new duties or attach a new disability have to be treated as prospective, unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation.
- C.8.1. Hon'ble Apex Court, in the said case was considering the time period, (within the relevant previous year) of applicability of the new inserted proviso to Section 113 levying surcharge over and above the tax rate of 30% in case of block assessments;
- C.8.2. Proviso was introduced vide Finance Act, 2002, with effect from 1.06.2003. Thus, the law stood enacted as on 1.04.2003 and, accordingly, as per normal principles should have applied on all searches carried out during Financial Year 2002-03 (AY 2003-04).
- C.8.3. Hon'ble Apex Court was pleased to hold that amendment would apply prospectively and would be applicable on searches conducted after 1.06.2002.
- C.8.4. The facts of the issue involved in the present appeal are identical. Therefore the issue is squarely covered by the judgement of Hon'ble Supreme Court in Vatika Township (P) Ltd (Supra). Accordingly, the amended provision of Section 115 BBE should apply on incomes accruing after the law having received assent of the President.
- C.9. In the case of Govind Das(1976) 1 SCC 906 (SC), following observation was made by the Hon'ble Supreme Court while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force:-
 "...11. Now it is a well-settled Rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general Rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that
 'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie

prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.....”
[Emphasis Supplied]

- C.10. Hon’ble Delhi High Court in the case of New Skies Satellite BV [TS-64-HC -DEL (2016)] held that amendments though originally notified as clarificatory may turn out to be substantive in fact and such a substantive amendment is incapable of being given retrospective effect. Relevant extracts of the said order is reproduced hereunder for the sake of ready reference:-

“...Undoubtedly, the legislature is competent to amend a provision that operates retrospectively or prospectively. Nonetheless, when disputes as to their applicability arise in court, it is the actual substance of the amendment that determines its ultimate operation and not the bare language in which such amendment is couched. A clarificatory amendment presumes the existence of a provision the language of which is obscure, ambiguous, may have made an obvious omission, or is capable of more than one meaning. In such case, a subsequent provision dealing with the same subject may throw light upon it. Yet, it is not every time that the legislature characterizes an amendment as retrospective that the Court will give such effect to it. This is not in derogation of the express words of the law in question, (which as a matter of course must be the first to be given effect to), but because the law which was intended to be given retrospective effect to as a clarificatory amendment, is in its true nature one that expands the scope of the section it seeks to clarify, and resultantly introduces new principles, upon which liabilities might arise. Such amendments though framed as clarificatory, are in fact transformative substantive amendments, and incapable of being given retrospective effect. An important question, which arises in this context, is whether a “clarificatory” amendment remains true to its nature when it purports to annul, or has the undeniable effect of annulling, an interpretation given by the courts to the term sought to be clarified. In other words, does the rule against clarificatory amendments laying down new principles of law extend to situations where law had been judicially interpreted and the legislature seeks to overcome it by declaring that the law in question was never meant to have the import given to it by the Court? The general position of the courts in this regard is where the purpose of a special interpretive statute is to correct a judicial interpretation of a prior law, which the legislature considers inaccurate, the effect is prospective. Any other result would make the legislature a court of last resort. *United States v. Gilmore* 8 Wall [(75US) 330 19LEd396 (1869)] *Peony Park v. O’Malley* [223F2d668 (8th Cir 1955)] It does not mean that the legislature does not have the power to override judicial decisions which in its opinion it deems as incorrect, however to respect the separation of

legal powers and to avoid making a legislature a court of last resort, the amendments can be made prospective only[Ref County of Sacramento v State (134 Cal App 3d 428) and In re Marriage of Davies (105 Ill App 3d 66)]...”

- C.11. Section 92B of the ITA setting out the meaning of International Transaction was introduced by Finance Act, 2001 w.e.f. 01.04.2002. Subsequently, an explanation was added to section 92B, increasing the scope of “International Transaction” by Finance Act, 2012 with retrospective effect from 01.04.2002. As such Explanation increased the scope of section 92B, it was considered, in the below mentioned judgments, to have a prospective effect even though introduced with a view to give a retrospective effect:-
- C.11.1. Rusabh Diamonds (2016) 158 ITD 0564 (Mumbai)
 - C.11.2. Hiraco Jewellery (India) Pvt. Ltd., I.T.A. No.7297/Mum/2014 (Mumbai)
 - C.11.3. Gitanjali Exports Corporation Limited (2016) 178 TTJ 529 (Mumbai)
 - C.11.4. Siro Clinpharm Private Limited (2016) 177 TTJ 609 (Mumbai)
- C.12. Hon’ble ITAT, Jaipur Bench, in the case of KGK Enterprises [2017] 88 taxmann.com 264 (Jaipur - Trib.) accepted the above proposition and held that Explanation to section 92B enhancing its scope to be applicable from A.Y. 2013-14 onwards.
- C.13. It is submitted that when the assessee made surrender of his income, during the course of search, on 21.07.2016, the amended provisions of section 115BBE were not in existence.
- C.14. Where an amendment, as under 92B, although was introduced having a retrospective effect, was held, by the courts, to have a prospective effect, by the same analogy, an amendment to Section 115BBE, putting additional burden on the assessee, introduced on 15.12.2016, w.e.f 01.04.2017(A.Y 2017-18), should not be made applicable on any act committed between 01.04.2016 to 14.12.2016.
- C.15. The amendment to Section 115BBE is penal in nature, which aims to penalize the assessee, if additions referred to in Section 68 to 69A are made. Penal statutes which create offences or which have the effect of increasing penalties for existing offences will only be prospective by reason of the constitutional restriction imposed by ARTICLE 20 of the CONSTITUTION OF INDIA. Therefore, if an Act creates a new offence, it will bring into its fold only those offenders who commit all ingredients of the offence after the Act comes into operations. This rule of construction against retroactivity of penal laws is not restricted to criminal offences punished with imprisonment, but also applies to laws which provide for other penal consequences, such as fines and penalties.
- C.16. Attention is also drawn towards the decision of Full Bench of Hon’ble Patna High Court in the case of Loknath Goenka [2019] 417 ITR 521 (Patna) (FB)

- C.16.1. Hon'ble High Court held the tax is charged on the point of time of accrual of income;
 - C.16.2. In the case before Hon'ble High Court, the substantial question of law for decision was whether law relating to clubbing of minor son's share of income under Section 64(1)(iii) which was introduced by Taxation Law (Amendment) Act, 1975, w.e.f 1.04.1976 would be applicable for previous years coming to an end on 10.08.1975 and on 31.12.1975
 - C.16.3. Those were the years where there was no law prescribing uniform previous year. In the case before the Hon'ble High Court, the issue was related to Assessment Year 1976-77. The precise issue was whether newly introduced law, although applicable for the relevant assessment year, could be made applicable on the previous years relevant to the same assessment year, but ending well before the introduction of law.
 - C.16.4. Hon'ble High Court was pleased to decide at Para 17 of the order:-
 "...Under the new provision, i.e. Section 64(1)(iii) a new liability has been prescribed and not the rate for ascertaining the liability. Such new liability under the Income Tax Act, 1961 cannot be given a retrospective effect..."
 - C.16.5. Hon'ble High Court held that tax rate existing as on the point of time of accrual of income would be relevant for charging the tax on such accrued income.
- C.17. Hon'ble Rajasthan High Court in the case of Niharika Jain [2019] 107 taxmann.com 272 (Rajasthan) held that Benami Transactions (Prohibition) Amendment Act, 2016, amending provisions of Benami Property Transactions Act, 1988, enacted with effect from 1.11.2016 cannot have retrospective effect. Apropos retrospectively and prospectively of any amendment it was held by the Hon'ble High Court that :-
- C.17.1. It is well settled law that unless a contrary intention is reflected, a legislation is presumed and intended to be prospective. For in the normal course of human behaviour, one is entitled to arrange his affairs keeping in view the laws for the time being in force and such arrangement of affairs should not be dislodged by retrospective application of law.
 - C.17.2. The principle of law known as *lex prospicit non prospicit* (law looks forward not backward), is a well known and accepted principle. The retrospective legislation is contrary to general principle for 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 out in the faith of the then existing law.

C.17.3. Thus, the principle against retrospectivity is the principle of 'fairplay' and unless there is a clear and unambiguous intendment for retrospective effect to the legislation which affects accrued rights or imposes obligations or casts new duties or attaches a new disability is to be treated as prospective

Thus, act of the assessee, of surrendering certain amount, u/s 132(4), on 21.07.2016, cannot be penalized with a higher rate of tax, of 77.25% as against 30%, by way of an amendment brought about in the Statute Book subsequently.

D. Intention of the amendment to Section 115BBE was to cover cases of concealment of income, pursuant to demonetization, which was not the case of the assessee.

D.1. The Taxation Law (Second Amendment) Act, 2016 got the assent of the President on 15.12.2016, just after Demonetization on 08.11.2016, wherein bank notes of existing series of denomination of the value of five hundred rupees and one thousand rupees then issued by the Reserve Bank of India ceased to be legal tender, from the said date.

D.2. In the Statement of Objects and Reasons accompanying the Taxation Laws (Second Amendment) Bill, 2016, the Government stated as follows:

"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 five hundred rupees and one thousand rupees (hereinafter referred to as specified bank notes) issued by the Reserve Bank of India have been ceased to be legal tender with effect from the 9th November, 2016. 2. Concerns have been raised that some of the existing provisions of the Income-tax Act, 1961 could possibly be used for concealing black money. It is, therefore, important that the Government amends the Act to plug these loopholes as early as possible so as to prevent misuse of the provisions. The Taxation Laws (Second Amendment) Bill, 2016, proposes to make some changes in the Act to ensure that defaulting assesseees are subjected to tax at a higher rate and stringent penalty provision." [Emphasis supplied]

D.3. Thus, the entire aim of the Government was to prevent people depositing money in the Bank Accounts, pursuant to demonetization, to come clean only by paying tax rate at the rate of 30% as per the earlier provisions of Section 115BBE.

D.4. The intention of the law makers was never to take within the fold of the said amendment even those incomes which were surrendered, in search or otherwise, prior to demonetization.

D.5. The aim of the said amendment was to prevent "concealment" on the part of the assessee of the income in the process of depositing cash in their bank accounts, pursuant to demonetization. However,

in the case at hand, the assessee has made disclosure in his Return of Income and has not tried to “conceal” any particulars of income. This even finds force from the fact that no further additions were made by the Id. AO during the course of assessment proceedings.

- D.6. Having made the disclosure, the assessee clearly doesn't fall in the category, the prevention of which, was the reason for which said amendment was made u/s 115BBE.
 - D.7. Hon'ble Calcutta High Court in the case of Pilani Investments and Industries Corpn. Ltd. [2016] 383 ITR 635/238 Taxman 384/67 Taxman.com 60 held that disclosure and concealment cannot co-exist.
- 2.2. Ld. CIT(A), at Page 12, of her order has stated that if any income is surrendered by the assessee, then it would still be in the nature of income under Section 68 to 69D and thus the provisions of Section 115BBE would be applicable. It is submitted that for applicability of Section 68 to 69D, there is a clear requirement of satisfaction having been recorded by the Assessing Officer. Thus, for invocation of Section 68 to 69D satisfaction has to be recorded by the Assessing Officer and in his opinion the said income should be added under such sections. However, in the present case, no such satisfaction, at all, has been recorded by the Id. AO. Ld. AO without discussing anything in the order and without invoking Section 68 to 69D has applied Section 115 BBE, which is incorrect as per the relevant scheme.
- 2.3. Ld. CIT(A) at Page 13 of her order has relied upon the decision of Hon'ble ITAT, Jaipur Bench in the case of Sanjay Bairathi Gems Ltd, ITA No. 157/JP/2017, for the proposition that the amendment brought about in Section 115BBE is effective from 1.04.2017 and will accordingly apply to AY 2017-18 onwards.
- 2.3.i The decision as relied upon by Id. CIT(A) pertains to AY 2013-14, whereas, the relevant case at hand pertains to AY 2017-18.
 - 2.3.ii Neither the issue of whether such amendment can be applied retrospectively, when having been introduced in December 2016, was argued before the Hon'ble bench nor did the Hon'ble bench adjudicate this precise question of law.
 - 2.3.iii Ld. CIT(A) has cherry picked certain lines from the decision of the Hon'ble Bench, whereas, the fact remains that the Hon'ble Bench adjudicated an issue which was on a completely different footing.
 - 2.3.iv Thus, the present decision as relied upon by Id. CIT(A) is not relevant for the case at hand and does not point out to the concurrence of the Hon'ble Bench in applying the said amendment with retrospective effect.
 - 2.3.v It is a trite law that any judgement rendered by any appellate authority has to be read in the context in which it was rendered. Cherry picking certain portions of the decision is not allowed [Sun Engineering Works (P) Ltd. [1992] 198 ITR 297 (SC)]
- Similar is the case with decision of Hon'ble Supreme Court relied upon by the Id. CIT(A) at Page 13 of her, in the case of Karimtharuvi Tea Estate Ltd. vs. State of Kerala [1966] 60 ITR 262 (SC).

- 2.4. Apropos, addition of Rs. 4,55,639, on account of jewellery, sustained by Id. CIT(A), it submitted that as the said jewellery was found from the residential premises of the assessee on 21.07.2019, amended provisions of Section 115BBE cannot be applied, for the same reasons, as set out hereinbefore.[Refer Contention B,C and D above]

In view of the above, the lower authorities have completely erred in law in invoking the provisions of Section 115BBE on the amount of income surrendered by the assessee and also the additions made during the course of assessment proceedings.

GROUND NO. 1: ADDITION OF RS. 4,55,639 TOWARDS UNEXPLAINED INVESTMENT IN JEWELLERY

1. BRIEF FACTS

- 1.1. During the course of search on the assessee, jewellery, consisting of gold items, precious stones and silver utensils/articles, of the value of Rs. 97,88,630 were found from the Residential premises of the assessee, along with the lockers maintained by him (AO Order page 5).
- 1.2. Out of such total value of jewellery, jewellery worth Rs. 41,83,150 was found to be explained, during the course of search proceedings itself (AO Order page 7). In such jewellery, found to be explained, entire Silver utensils/articles, of 27.30 kgs were included (AO Order page 7).
- 1.3. The remaining amount of jewellery, consisting of Gold items and Precious Stones, of Rs. 56,05,480 (Rs. 97,88,630- Rs. 41,83,150), was found to be unexplained, during the course of search (AO Order page 8). Such amount was thus surrendered by the assessee during search itself.
- 1.4. Silver Items were found to be explained, during the course of search itself by the Departmental officers on the field. The same is evident from the SEIZURE MEMO (PB : 6) prepared, during the course of search by the Departmental Officers, which specifies the jewellery amounting to Rs. 56.05 lakhs seized from the residential premises of the assessee. Such seized jewellery doesn't contain the Silver Items, found during search.
- 1.5. However, the Id. AO disregarding the working of the Departmental Officers on the field, during search, considered Silver Items of 29.50 kgs to have been found, as against silver utensils of 27.30 kgs actually found.
- 1.6. Further, Id AO without any basis considered silver items of 19.50 kgs to be unexplained which was completely not in consonance with the working of Department at the time of search and on the basis of which surrender was made by the assessee, which was even accepted by the Departmental Officers on the field. Id. AO only found 10 Kgs of Silver items to be explained.
- 1.7. Accordingly, Id. AO, for no cogent reason, considered 19,500 grms of Silver Items to be unexplained. As a result, Id. AO made addition of Rs. 5,52,241, in the hands of assessee. (AO Order page 9)

2. COMMISSIONER OF INCOME TAX (APPEALS)

- 2.1. Before Id. CIT(A), it was submitted that Id. AO had incorrectly considered total silver items to be 29.50 Kgs in quantity, as against

the actual quantity of 27.30, found during the course of search. Such incorrect working of the Id. AO was rectified by the Id. CIT(A) and relief to the extent of Rs. 96,602 was granted.

- 2.2. However, Id. CIT(A) upheld the additions of Rs. 4,55,639 made by the Id. AO by treating silver items to the extent of 17.30 Kgs to be explained.

3. SUBMISSIONS

- 3.1. It is submitted that the lower authorities have totally ignored the fact that all the Silver Items found with the assessee, during the course of search on him, was found to be fully explained by the officers of the Department conducting search. Accordingly, no Silver Items were seized from the premises of the assessee during search.

- 3.2. Having already been accepted as explained, lower authorities were unjustified in making additions of such amount in the hands of the assessee. Even otherwise, no basis whatsoever has been provided by the Id. AO in his order for making additions on account of Silver Items. This working of the Id. AO has been wrongly upheld by the Id. CIT(A), again without any basis.

- 3.3. Furthermore, following submissions made before the lower authorities have been totally ignored:-

- 3.3.i CBDT Instruction No. 1916 Dated 11.05.1994, clearly specified as under:-

“...(iii) The authorized officer may having regard to the status of the family and the customs and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income-tax/Commissioner authorizing the search all the time of furnishing the search report...”

- 3.3.ii Accordingly, as per CBDT, if having regard to the status of the family and the customs and practices of the community to which the family belongs and considering other circumstances a higher quantity of jewellery and ornaments can be considered to have been explained.

- 3.3.iii Income Tax Authorities are not necessarily required to just consider the limits as prescribed in the CBDT circular to be explained. Even similar ratio has been laid down by Hon'ble Rajasthan High Court in the case of Satya Narain Patni [2014] 46 taxmann.com 440 in which the Hon'ble Court has accepted that owing to different circumstances Jewellery of even of higher quantity can be considered to have been explained.

- 3.3.iv Assessee, Shri Sandeep Sethi lived in his Residential premises with his mother, his wife and two children. (PB : 2)

- 3.3.v Assessee belonged to an affluent Jain family. He has been married since 14 years. Considering his mother to be of the age of 70 years the assessee can be expected to have higher amount of silver items, gifted on various social occasions, including birth of his two children. This was also

stated by the assessee, during search, which was accepted by the Departmental Officers on the field.

In view of the above, silver items against which additions have been made by the Id. AO and sustained by Id. CIT(A) should be considered as explained and additions Rs. 4,55,639 should be deleted.”

10. The assessee also filed another written submissions in this regard which is reproduced as under:-

“1. It is reiterated that, since search in the case of the assessee was carried out by the Income Tax Department on 21.01.2016, when the amended Section 115BBE was not in force, accordingly, tax cannot be levied at a higher rate of 77.25% on the assessee.

2. Attention is drawn towards the below mentioned judicial pronouncements, pertaining to AY 2017-18, wherein, under identical set of facts, it was held that Section 115BBE, amended *vide* Taxation Laws (Second Amendment) Act, 2016, cannot be applied for the period before 15.12.2016, when the same received assent from the President of India.

2.1 Sandesh Kumar Jain, ITA No. 41/JAB/2020 [Date of Order 31.10.2022]
[Copy Enclosed from Pages 1 to 8]

“...As regards the assessee's second, without prejudice, argument, i.e., qua non retrospectivity, we find considerable force therein. Section 1(2) of the Amending Act provides that save as otherwise provided therein, it shall come into force 'at once'. The same only conveys the intent for, except where a later date is specified, the legislation to take immediate effect, i.e., as soon the assent of the Hon'ble President of India is received, by signing the same. The words 'at once' convey an urgency, so that the same represents the earliest point of time at which the same is to take effect, i.e., 15/12/2016 itself, and which also explains the same being enacted during the course of the fiscal year, tax rates for which stand already clarified at the beginning of the year per the relevant Finance Act (FA, 2016). The said words 'at once' would lose significance if the provisions of the Act are to, as stated by the Id. CIT(A), be read as effective 01/04/2017, implying AY 2018-19. The same, for substantive amendments, as in the instant case, represents the first day of the assessment year, i.e., AY 2017-18, which explains the assessee's grievance of it being thus effective for fy 2016-17 or, w.e.f. 01/4/2016. Enacting it mid-year and, further, making it applicable 'at once', becomes meaningless if the same is to take effect retrospectively, or is made effective from a later date (01/4/2017), which could in that case be by Finance Act, 2017. True, the amendment, where so read, does give rise to a peculiar situation inasmuch as two tax rates would obtain for the current year, i.e., one from 01/04/2016 to 14/12/2016, and another from 15/12/2016 to 31/03/2017, but, then, that is no reason to read

retrospectively where the applicable date is clear and, further, there is nothing to suggest retrospectively. Further, extraordinary and supervening circumstance of the Demonetization Scheme, 2016, brought out by the Government of India in November, 2016, explains the urgency in bringing an amendment mid-year. Further, the tax rate being in respect of incomes which are imputed with reference to a transaction/s, it is possible to administer the same, another aspect of the matter that stands considered by us. That is, a tax rate for transactions made up to 14/12/2016, and another for those thereafter. Subsequent mention of the applicability of the amended provisions of ss.271AAB and 271AAC with reference to the date on which the Presidential assent to the Act is received, further corroborates this view, which is based on the clear language of the Amending Act, as well as the principle that a substantive amendment is to be generally prospective. We draw support from the decision in Vatika Township Pvt. Ltd.(supra), reiterating the settled law of the rule against retrospectively. The tax rate applicable to the impugned income would, therefore, be at 30%, i.e., the rate specified in sec. 115BBE as on 30/11/2016, the date of the surrender of income per statement u/s. 133A (PB-1, pgs. 35-44). This, it may be noted, is also consistent with our view that the income is liable to be assessed u/s. 69B (see para 4.1)....”

2.2 Punjab Retail Pvt. Ltd.I.T.A. Nos. 677/Ind/2019 [Copy Enclosed from Pages 9 to

“...Since the search in the case of the appellant was carried out before the amendment the addition ought to have been made in terms of the prevailing provision and therefore, the addition made by the AO invoking Section 115BBE provision of which came into force only on 01.04.2017 is not sustainable....”

In view of the above, the lower authorities have completely erred in law in invoking the provisions of Section 115BBE on the amount of income surrendered by the assessee and also the additions made during the course of assessment proceedings.” In Support, reliance was placed on the following decisions:-

- ACIT vs Sandesh Kumar Jain in ITA No. 41/JAB/2020 dated 31.10.2022.
- DCIT vs. M/s Punjab Retail Pvt. Ltd. in ITA No. 677/Ind/2019 dated 08.10.2021.

11. The Id. AR of the assessee in addition to the above written submission, submitted that the Id. DR has not serviced any other judgment to counter the judgment serviced by him. He further submitted that the provision section 115BBE is penal in nature it

will not apply retrospectively because the increase in rate is after the disclosure made consequent upon the search and that time effective tax rate was 30 % whereas Id. AO has wrongly applied it with retrospective @ 60 % for which the assent to increase the rate received the president assent on 15.12.2016 just after the demonetization on 08.11.2016. This fact is further fortified that the Id. AO has invoked the provision of section 271AAB(1)(a) for the amount disclosed during the search proceeding and no separate notice of his intention to invoke the provision of section 115BBE was given to the assessee and thus the invoking of the provision of section 115BBE is against the principles of nature justice. The assessment order is silent on the invocation of provision of section 115BBE qua the provision of section 68,69,69A,69B,69C or 69D.

12. The Id. DR is heard who has relied on the findings of the lower authorities as regards the addition sustained. As regards the charge of tax u/s. 115BBE he has vehemently argued that provision section 4 being the charging section does not support the contentions of the assessee so raised. Therefore, the relevant provision of section 4 is reiterated here in below:

Charge of income-tax.

4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and

subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person :

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

The rate applied it should be one rate for whole year and there cannot be two rates for one previous year and based on that he submitted that the judgement relied upon by the Id. AR of the assessee is distinguished. The Id. DR also filed a detailed submission on the issue and the same is reiterated here in below:

“May it please your honours,

Kindly refer to the hearing held on 28.09.2022 in respect of clarification raised by the Hon'ble Bench with regard to the applicability of the order of the Hon'ble Indore Bench pronounced in ITA No. 677/IND/19.

The relevant issue dealt in the above order for the present case is date from which tax rate of 60% u/s 115BBE of the Act will be applicable. The Hon'ble Indore Bench has confirmed the finding of the Id. CIT(A) by observing that-

"Since the search in the case of the appellant was carried out before the amendment the addition ought to have been made in terms of the prevailing provision and therefore, the addition made by the AO invoking section 115BBE provision of which came into force only on 01.04.2017 is not sustainable. Therefore, the order passed by the Id. CIT(A) deleting the addition made on the premise in according to us just and proper so as to warrant interference. Hence, the appeal preferred by the Revenue found to be devoid of any merit and is dismissed."

The arguments canvassed by the Department do not find any mention in the aforesaid order. Further, the provisions of the Taxation Laws (Second Amendment) Act, 2016, by which the tax rate of 60% was inserted, have not been discussed in the said order. Unfortunately the aforesaid order also does not mention charging section 4 of the Act. which is very relevant to decide the issue. Therefore, with due respect to the Hon'ble Co-ordinate Bench, the said order is per-incuriam and need not be followed by the Hon'ble Jaipur Bench. This will be clear from the following discussion:

1. As per the provisions of section 4 of the Act, where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates. income tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions in respect of the total income of the previous year of every person.

It is clear from the charging provision that rate of tax is to be determined for whole of the assessment year as per the relevant Central Act. There is no concept of charging of tax at a particular rate for one part of the year and other rate for the other part of the year, unless provided in the Act itself.

2. The Taxation Law (Second Amendment) Act, 2016 came into existence on 15.12.2016. Section 115 BBE has been amended by para-2 of the said Act. Sub-section (1) of section 115 BBE was substituted with new sub-section (1) with effect from 1 day of April, 2017 and rate of 60% was introduced for some specific transactions. It is a settled law that substantive provisions of the Act comes into force from the first day of the assessment year, which is 01.04.2017 in the present case. Thus, the amended provisions are applicable from AY 2017-18 onwards. The Hon'ble Supreme Court in the case of Karimtharuvi Tea Estate Ltd v State of Kerala in 60 ITR 262 had held relying upon its own judgement in the case of CIT v Isthmian Steamship Lines, 20 ITR 572 that though the subject of the charge is the income of the previous year, the law to be applied is that in the force in the assessment year, unless otherwise stated or implied (emphasis supplied). The copy of this judgement has already been submitted during the course of the arguments.

3. If the finding of the Hon'ble Co-ordinate Bench is accepted, then there will be two rates in force in AY 2017-18 for the similar nature of transaction. This will be only on the basis of date of surrender during the course of search/survey. The same is against the provisions of the Act. Further, surrender in itself is not a taxable event, the tax is to be determined on the basis of the total income of the assessee after completion of the previous year and not in the middle of the previous year. Provisions of sub-section (1) of section 115 BBE have been drafted to make this point clear. The manner of computation of income-tax in the cases covered u/s 115BBE has been specified in clause (i) and (ii) of sub- section (1) itself. It is clear from clause (i) that first 60% rate will be applied for the transactions covered in clause (a) or (b) and then income covered in clause (i) will be reduced from total income to reach a deemed figure of total income and tax rates will be applied as per the normal provisions on this reduced amount as per clause (ii). If taxation of clause (i) is done in the middle of the year, then it will not be in accordance with the provisions of the Act. The computational machinery will only become workable after the end of the year.

4. The Hon'ble Co-ordinate Bench has confirmed the findings of the Id. CIT(A), which in turn, are based on various judgements but these judgements are not applicable in the facts of the present case. These judgements deal with the issue of retrospective taxation. The issue in hand is not with regard to retrospective taxation, because Act has been amended in the same year. The only difference is that instead of prior

to 1 April, the Act has been amended after first April of the relevant previous year, although amendment has been made before 1st April, 2017 which is the commencement date of the relevant assessment year. The tax liability will arise after the end of the previous year and on 1st day of the assessment year because return of income is filed after completion of the previous year.

The above issue is dealt with in the case of Bhagvathy Tea Estates Ltd v State of Kerala by the Hon'ble Kerala High Court reported in 50 Taxman 180 (Copy enclosed). The case was related to Kerala Plantation Tax Act, 1960, but legal principles are applicable in the present case also because the contentious issue was similar to the present one. Plantation tax was imposed in the state of Kerala under the Plantation Tax Act and the rates of tax were indicated in the Schedule. Those rates were increased by substituting the Schedule through the Kerala Finance Act, 1987 which came into effect from 01.07.1987. Collection of tax at revised rates was resisted by certain planters. who contended that since the Amendment Act, 1987 became effective from 01.07.1987, the levy was really effective from the next financial year, i.e.. 01.04.1988.

Dismissing the writ petition of the petitioners, the Hon'ble Kerala High Court held that:

".....It is open to the Legislature to completely alter the tax liability by the imposition of a different tariff in the course of the year. The Finance Act of any year is to be applied for the assessment of that year.

In the present case, the Finance Act relevant for the assessment year 1987-88 is the Finance Act, 1987 Substituting the Schedule as for the assessment year 1987-88, the tax liability is competently altered, as it is a case of 'imposition of a different tariff in the course of the year' [Emphasis supplied]. As noted earlier, that was what was clearly proclaimed as the intention of the Government. It is that intention that is specifically postulated in the preamble to the Act. There could, therefore, be no scope for doubt that the Schedule brought in by the Finance Act, 1987 should be employed for the computation of the plantation tax for the year 1987-88.

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30. The assessing exercise could only be by looking at the extent as on the 1st of April and applying the rate as available by the Finance Act. There is little justification for hazarding a conclusion that the budget proposals made by the Government in the month of March and the pronounced intention contained in the preamble to the enactment had been abandoned by the Government and the Legislature halfway through. In essence, section 3 of the Amendment Act itself gives a contra indication. Under that section, the Schedule of the parent Act was itself substituted. Once the Schedule is so substituted by legislative will, the only available Schedule before the assessing authority would be the substituted one and not the pre-existing one. It would then follow that the amended rates are necessarily to be applied from the very commencement of the financial year 1987-88. That was what was intended. That is the effect of the Finance Act, 1987.

31. A Division Bench of this Court in Varkey Thomas v. State of Kerala [1960] KLT 14S considered the applicability of a taxing enactment which came into force on 1-9-1957, in relation to the assessment year 1957-58 (1-4-1957 to 31-3-1958). The contention was that the Act was inapplicable to transactions prior to 1-9-1957. The contention was rejected. The crux of the decision contained in that, brief but brilliant, judgment is contained in the words:

"In other words, the year is the unit and because a few months of the year 1957-58 were anterior to the date on which the Act came into force, it cannot be said that the transactions during those months are exempt from the surcharge leviable under the Act. This does not mean that the Act is retroactive in character. A statute is not retrospective simply because a part of the requisites for its action is drawn from a time antecedent to its passing." (Craies on Statute Law, Fifth end., p. 357). "

It is clear from the above discussion that tax rate applicable in the assessment year is the relevant rate to be applied irrespective of the fact that whether amendment was made in the beginning of the year or in the middle of the year.

5. There is no gainsaying that equitable considerations are not relevant while interpreting a taxing statute, once language of the statute is clear and unambiguous. However, if the appellant has any grievance regarding the date of provision coming into force, the Hon'ble Tribunal is not the right forum to address such grievance when the Legislature has clearly mandated that provisions will be effective from AY 2017-18. If the appellant thinks that move of the Legislature anyway affected its rights, then he could have filed writ petition. The appellate proceedings before the Hon'ble Tribunal is not the right forum to address the issue raised by the appellant."

13. We have considered the rival contentions, perused the material available on record and also gone through the findings of the lower authorities recorded in their respective orders. We have also gone through the various judicial ruling placed before us by both the parties to drive home to their contentions.

13.1 As regards the addition of Rs. 4,55,639/- sustained by the Id. CIT(A) he has recorded his detailed finding and the same is reproduced here in below:

“(vi) Further, the contention of the appellant that the silver items were found to be explained during the course of search is not found to be acceptable in view of the fact that neither during the course of assessment nor during the current appellate proceedings, the appellant has been able to furnish any evidence regarding the source of acquisition of the aforesaid jewellery. Infact considering the status of the appellant, the AO has already considered silver items worth 10 Kg as explained. Further since the aforesaid circular of CBDT is silent on the issue of silver jewellery/utensils and valuable stones and in absence of any evidence for acquisition of the aforesaid silver items and colour stones and the fact that already 1450 gms of gold jewellery has been considered as reasonable possession in view of the CBDT Instruction No. 1916 dt. 11-05-1994, therefore I am of the opinion that the silver items at 17,300 gms valued at Rs. 7,59,643/-, gold jewellery weighing 1497 gms valued at Rs. 33,80,226/- and colour stones worth Rs. 19,21,250/-, are considered as unexplained, which totals to Rs. 60,61,119/- as against Rs. 61,57,721/- considered by the AO. Since the appellant has already surrendered and disclosed jewellery worth Rs. 56,05,480/- in his return of income, therefore the differential amount of Rs. 4,55,639/-(Rs. 60,61,119 - Rs. 56,05,480) is treated as unexplained.

(vii) Therefore the addition to the extent of Rs. 4,55,639/- is sustained instead of Rs. 5,52,241/- made by the assessing officer and the balance of Rs. 96,602/- (Rs. 5,52,241/- minus Rs. 4,55,639/-) is deleted. Accordingly, the Ground No. 1 stands partly allowed.”

13.2 In the proceeding before us the Id. AR of the assessee has contended the search team has considered the explanation granted by the assessee and there is no disclosure or seizure of the silver items itself considered that the search team has considered the explanation of the assessee and those items were considered as explained considering the social status and culture of the family to have such items for their use. The relevant

questions and answer made at the search prove the contentions.

The relevant questions countered to the assessee is reproduced for the sake of clarity:

“प्रश्न 12 : कृपया बतायें कि तलाशी कार्यवाही आज दिनांक 21.07.2016 के दौरान Govt. Registered Valuer द्वारा आपके इस premises पर एवं आपके व आपके परिवार के सदस्यों के नाम से दो बैंक लॉकर यथा ICICI Bank, Malviya Nagar, Jaipur एवं Dena Bank Malviya Nagar, Locker No 320 & 207 है से Gold Jewellery एवं Silver Jewellery / Utensils मिले है इसका Registered Valuer द्वारा मूल्यांकन किया गया है जिसका कुल वजन Gross wt वजन 3809.800 gm एवं शुद्ध वजन 2947.00 gm यानि सोने का वजन आँका गया है। इसी प्रकार चाँदी के बर्तन एवं जेवरों का कुल वजन 29.500 Kg आँका गया है। क्या आप इससे सहमत है ? यह किस किस से संबंधित है ? यह भी बतायें।

उत्तर : जी हाँ श्रीमान आपके विभाग द्वारा करवाई गई Registered Govt. Valuer द्वारा हमारे घर एवं लॉकर से मिले Gold Jewellery with diamonds/stones studs एवं Silver Jewellery / Utensils का मूल्यांकन से मैं पूर्णतः सहमत हूँ। यह उपरोक्त Jewellery मेरे परिवार में मेरी माता, पत्नी, बच्चे एवं मेरी खुद की Jewellery है जो विभिन्न समारोहों में एवं कुछ मेरी savings से purchase की हुई Jewellery हैं।

13.3 On this issue Id. DR only relied upon the fact that relief granted by the Id. AO up to 10 kg is sufficient and no further relief should be granted beyond what has been given by the lower authority.

13.4 Based on the records before us the search team while accepting the disclosure has not countered the question about the reasonableness of the holding of the silver items by the family

considering the family status there is no separate disclosure by the assessee. Even the search team has considering the explanation of the has limited the question relating then jewellery and accepted the explanation of the assessee in question no. 15. The same is reiterated here in below:

“प्रश्न : 15 उपरोक्त प्रश्नों के स्पष्टीकरण मानते हुए लगभग रुपये 42.73 लाख की (रुपये बयालीस लाख तीहत्तर हजार मात्र) Gold Jewellery तथा चाँदी के बर्तन का स्पष्टीकरण मानते हुए बकाया 56.05 लाख (रुपये छप्पन लाख पाँच हजार मात्र) रुपये के स्वर्णाभूषण unexplained पाये गये हैं। कृपया बतायें कि यह 56.05 लाख रुपये के स्वर्णाभूषण आपकी अघोषित आय मानते हुए क्यों न जब्त की जाये ह ? कृपया सम्पूर्ण स्पष्टीकरण प्रस्तुत करें ?

उत्तर:- मैं आपसे पूरी तरह सहमत हूँ तथा उपरोक्त 56.05 लाख रुपये के स्वर्णाभूषण में किये गये निवेश को अपनी अघोषित आय (unexplained income) मानते हुए चालू वित्त वर्ष में आयकर के लिए समर्पित करता हूँ मैं इस मामले में आगे स्पष्टीकरण देना चाहूँगा कि उपरोक्त रुपये 5605000/- का निवेश मैंने अपनी स्वयं की चालू वित्त वर्ष की अघोषित आय मानते हुए आयकर के लिए समर्पित करता हूँ । उपरोक्त जेवरात के संबंध में की गई अघोषित आय का मेरी पत्नि एवं मेरा माता जी से कोई संबंध नहीं है।”

13.5 Considering the fact that once the department officer during the search has considered this silver items as explained and the Id. AO without bringing any contrary finding merely based on the same fact that was before the search team cannot make a separate addition. We find force in the arguments of the Id. AR that once the search team has accepted that silver items were considered as explained and the same is explicitly evident from the question 15 ignoring that primary acceptance by the revenue at the time of

search there is no reason by the Id. AO and Id. CIT(A) and in making and sustaining the addition and based on that primary finding the addition of Rs. 4,55,639/- sustained by the Id. CIT(A) is vacated and the ground no. 1 raised by the assessee is allowed.

14. The next issue before us raised by the assessee in ground no. 2 & 3 is invoking of provision of section 11BBE is while making the tax computation and that too without giving any opportunity of being heard to the assessee. On this issue we have gone through the submission of the assessee and the contentions of the revenue raised before us. The apple of discord is that whether the based on the set of facts presented by the learned assessing officer the charging of tax as per provision of section 115BBE is in accordance with the law and principles of nature justice?

14.1 To examine this issue, we have gone through the record and observed that the search in this case is initiated on 21.07.2016. The provision of section 271AAB & 271AAC deals with the provisions of computing the penalty where the disclosures were made by the assessee disclosing the income in search. While passing the order the Id. Assessing Officer has already decided and invoked the provision of section 271AAB(1)(a) of the Act for

undisclosed income which was unearthed during the course of search. The provision of section 271AAB is reiterated here in below:

Penalty where search has been initiated.

271AAB. (1) The Assessing Officer ²⁰⁻²¹[*or the Commissioner (Appeals)*] may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under [section 132](#) on or after the 1st day of July, 2012 but **before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President,** the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

- (a) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee—
 - (i) in the course of the search, in a statement under sub-section (4) of [section 132](#), admits the undisclosed income and specifies the manner in which such income has been derived;
 - (ii) substantiates the manner in which the undisclosed income was derived; and
 - (iii) on or before the specified date—
 - (A) pays the tax, together with interest, if any, in respect of the undisclosed income; and
 - (B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;
- (b) a sum computed at the rate of twenty per cent of the undisclosed income of the specified previous year, if such assessee—
 - (i) in the course of the search, in a statement under sub-section (4) of [section 132](#), does not admit the undisclosed income; and
 - (ii) on or before the specified date—
 - (A) declares such income in the return of income furnished for the specified previous year; and
 - (B) pays the tax, together with interest, if any, in respect of the undisclosed income;

14.2 As it is evidence from the above provision of law that section 271AAB was in operation till the bill receives the assent of the president and the Id. AO knowingly invoked the provision of section 271AAB and not provision of section 115BBE. The levy of the tax

without giving an opportunity to the assessee is against the principles of nature justice. Not only that once the Id. AO choose to levy the penalty he cannot go beyond what he has proposed in the order. Therefore, the levy of tax u/s. 115BBE beyond the scope of the order when the Id. AO has already initiated penalty u/s. 271AAB provision of section 11BBE is not applicable and that the same is also against the press release of the CBDT. The relevant press release issued by the CBDT is extracted here in below:

New Delhi, 16th December, 2016

Press Release

Sub: Notification of The Taxation Laws (Second Amendment) Act, 2016

The Taxation Laws (Second Amendment) Act, 2016 has come its force an 15th December. 2016 The Taxation and Investment Regime for Pradhan Mantri Garbs Kalyan Yojma, 2016 (the Scheme) introduced vide the said Act shall commence on 17th December, 2016 and shall remains open for declarations up to 31st March, 2017. The rules in this regard have been notified vide Notification No.116 dated 16 December, 2016 and have been placed in public domain. A separate notification has been issued for Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 by Department of Economic Affairs.

The salient features of the Scheme are as under

- (i) Declaration under the Scheme can be made by any person in respect of undisclosed income in the form of cash or deposits in an account with bank or post office or specified entity.
- (ii) Tax @30% of the undisclosed income, surcharge @33% of tax and penalty @10% of such income is payable besides mandatory deposit of 25% of the undisclosed income in Pradhan Mantri Garib Kalyan Deposit Scheme, 2016. The deposits are interest free and have a lock-in period of four years.
- (iii) The income declared under the Scheme shall not be included in the total income of the declarant under the Income-tax Act for any assessment year.
- (iv) The declarations made under the Scheme shall not be admissible as

evidence under any Act (eg. Central Excise Act, Wealth-tax Act, Companies Act etc.). However, no immunity will be available under Criminal Acts mentioned in section 199-0 of the Scheme.

Non declaration of undisclosed cash or deposit in accounts under the Scheme will render such undisclosed liable to tax, surcharge and cess totaling to 77.25% of such income, if declared in the return of income. In case the same is not shown in the return of income a further penalty @10% of tax shall also be levied followed by prosecution. It may be noted that the provisions for levy of penalty for misreporting of income @200% of tax payable under section 270A of the Income-tax Act have not been amended and shall continue to apply with respect to cases falling under the said section.

The Taxation Laws (Second Amendment) Act, 2016 has also amended the penalty provisions in respect of search and seizure cases. The existing slab for penalty of 10%, 20% & 60% of income levied under section 271AAB has been rationalised to 30% of income, if the income is admitted and taxes are paid. Otherwise a penalty @60% of income shall be levied.

The Scheme, Rules and Notifications are available on the official website of the Department www.incometaxindia.gov.in. Any queries/clarifications relating to the Scheme may be emailed at ts.mapwal@nic.in

[Meenakshi J. Goswami
Commissioner of Income Tax
[Media and Technical Policy]
Official Spokesperson, CBDT.

14.3 We carefully considered the submission of the Id. AR and DR and at length arguments of both the parties and also gone through the press release issued by the CBDT dated 16.12.2016 explaining the purpose of increasing in rate the press release clearly isolates the case of non-declaration of undisclosed cash or deposit in accounts under the PMGKY2016. We have also gone through the amendment made in section 271AAB vide The Taxation Laws

(Second Amendment) Act, 2016. The same is also extracted here in below:

रजिस्ट्री सं० डी० एल—(एन)04/0007/2003—16 REGISTERED NO. DL—(N)04/0007/2003—16

भारत का राजपत्र
The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 57] नई दिल्ली, बुधवार, दिसम्बर 15, 2016/ अग्रहायण 24, 1938 (शक)
No. 57] NEW DELHI, THURSDAY, DECEMBER 15, 2016/AGRAHAYANA 24, 1938 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, Thursday, 15th December, 2016/Agrahayana 24, 1938 (Saka)

The following Act of Parliament received the assent of the President on the 15th December, 2016, and is hereby published for general information:—

THE TAXATION LAWS (SECOND AMENDMENT) ACT, 2016

(No. 48 OF 2016)

[15th December, 2016.]

An Act further to amend the Income-tax Act, 1961 and the Finance Act, 2016.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

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

Short title and
commencement.

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

CHAPTER II

INCOME-TAX

43 of 1961.

2. In the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), in section 115BBE, for sub-section (1), the following sub-section shall be substituted with effect from the 1st day of April, 2017, namely:—

Amendment of
section 115BBE.

“(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—

(i) 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).”.

Amendment
of section
271AAB.

3. In the Income-tax Act, in section 271AAB,—

(I) in sub-section (I), after the words, figures and letters “the 1st day of July, 2012”, the words, brackets and figures “but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President” shall be inserted;

(II) after sub-section (I), the following sub-section shall be inserted, namely:—

“(IA) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

(a) a sum computed at the rate of thirty per cent. of the undisclosed income of the specified previous year, if the assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of sixty per cent. of the undisclosed income of the specified previous year, if it is not covered under the provisions of clause (a).”;

(III) in sub-section (2), after the words, brackets and figure “in sub-section (I)”, the words, brackets, figure and letter “or sub-section (IA)” shall be inserted.

Insertion of
new section
271AAC.

4. In the Income-tax Act, after section 271AAB, the following section shall be inserted with effect from the 1st day of April, 2017, namely:—

Penalty in
respect of
certain income.

“271AAC. (I) The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent. of the tax payable under clause (i) of sub-section (I) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income

14.4 On cogent reading of the amendment in both the sections of 115BBE and 271AAB with that of the press release, it is evidently clear that the intention of legislature is to segregate the taxation of income declared in search with that of the other amount found and disclosed by assessee in other than search cases. The search in this case is before the Taxation Laws (Second Amendment) Act, 2016 and it is clear from the press note that 16.12.2016 that the rate of penalty and rate of tax both are separately discussed and the penalty in this case proposed to be levied u/s. 271AAB and the were also amended and discussed in that press release and the amendment made in the Act. Based on the above intention of the legislature clearly evident we are of the considered view that once the Id. AO has already decided based on the fact that this is the case of search addition and amount declared u/s. 132(4) accepted by the assessee and offered the same in the return of income filed the same will be in accordance with the penal provision of section 271AAB and invoking to provision of section 115BBE in this case is not in accordance with the law and is also against principles of nature justice as no such issue is raised, discussed and confronted with the assessee. Thus, we direct the assessing officer to strict the calculation of tax in accordance with the provision of law as discussed here in above and give the relief in tax calculation

accordingly. In terms of these observation, we allow the ground no 2 & 3 raised by the assessee.

15. The fact of the case in ITA No. 154/JPR/2022 are similar to the case in ITA No. 155/JP/2022 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal in ITA No. 154/JPR/2022 are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 155/JP/2022 for the Assessment Year 2017-18 shall apply mutatis mutandis in the case of Shri Rajiv Nogotiya in ITA No. 154/JPR/2022 for the Assessment Year 2017-18.

In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 08/02/2023

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य/Judicial Member

Sd/-
(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 08/02/2023

*Ganesh Kumar

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

1. अपीलार्थी / The Appellant- Shri Sandeep Sethi, Jaipur.
Shri Rajiv Nigotiya, Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 154 & 155/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar