

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH :H: DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT &
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 1344/Del/2021
Assessment Year: 2017-18**

DCIT, Central Circle, Ghaziabad. (PAN:ACGPT1510N)	Vs.	Tapesh Tyagi, R-2/202 Raj Nagar, Ghaziabad
(Appellant)		(Respondent)

Present for:

Department by : Ms. Sapna Bhatia, CIT - DR
Assessee by : Shri Ajay Wadhwa, Adv.

Date of Hearing : 11.10.2023
Date of Pronouncement : 27.10.2023

ORDER

PER SAKTIJIT DEY, VICE PRESIDENT:

This is an appeal by the Revenue against order dated 08.06.2021 passed by the learned Commissioner of Income-Tax (Appeals)-4, Kanpur for the assessment year 2017-18. The solitary dispute arising in the present appeal, as culled out from the grounds raised in revised Form 36 furnished by the Revenue is, in relation to applicability of special tax rate under Section 115 BBE of the Income-Tax Act,1961.

2. Briefly, the facts are, assessee is a resident individual. A search and seizure operation under Section 132 of the Act was carried out on the assessee on 11.08.2016. In course of search and seizure operation, a loose paper/document was found from the wallet of the assessee, wherein, the amount of Rs.30.20 crores was mentioned against the noting "com trade". When the seized document was confronted to the assessee, in a statement recorded under Section 132(4) of the Act, assessee stated that the figures mentioned in the seized document represent profit from offline commodity trading. Accordingly, he surrendered the amount of Rs.30,20,00,000 as income in assessment year 2017-18 and followed it up in the return of income filed for the assessment year under dispute and also paid the taxes thereon.

3. In course of assessment proceedings, the Assessing Officer observed that assessee has calculated his tax liability on the surrendered income of Rs.30,20,00,000 by applying the normal rate. According to the Assessing Officer, income surrendered by the assessee is in the nature of unexplained money in terms of section 69A of the Act. Though, he did not make any separate addition of the said amount in the

assessment order, however, he treated it as income under Section 69A of the Act. However, he did not make any change to the tax rate applied by the assessee. Subsequently, the Assessing Officer passed an order under Section 154 of the Act, wherein, he applied the rate of tax as prescribed under Section 115BBE of the Act.

4. Being aggrieved with the higher tax rate charged under Section 115BBE of the Act, assessee preferred an appeal before learned Commissioner (Appeals). Being convinced with various submissions of the assessee, learned Commissioner (Appeals) held that the income subjected to tax at the rate prescribed under Section 115BBE of the Act cannot be treated as income of the nature provided under Section 69A of the Act. Hence, normal tax rate would be applicable to such income.

5. Being aggrieved with the aforesaid decision of learned First Appellate Authority, the Revenue is before us.

6. We have heard Ms. Sapna Bhatia, learned CIT-DR appearing for the assessee and Shri Ajay Wadhwa, learned counsel for the assessee. Short issue arising for consideration is whether special rate of tax provided under Section 115BBE of the Act would be applicable to the

income surrendered by the assessee in course of search and seizure operation and offered in the return of income.

7. As discussed earlier, in course of search and seizure operation carried out in case of the assessee, a loose paper/document was found from the possession of the assessee, wherein, amount of Rs.30,20,00,000 was mentioned with the description "Com Trade". In the statement recorded under Section 132(4) of the Act in course of search and seizure operation, when the assessee was confronted with the said loose paper/document, the assessee submitted that it indicates profit earned by him from "Commodity Trade". It is a fact that in the statement recorded under Section 132(4), assessee surrendered the amount as income. It is also a fact on record that in the return of income filed for the assessment year under dispute, assessee offered the amount of Rs.30.20 crores as income. Thus, the aforesaid facts clearly establish that at the time of search and seizure operation itself, assessee has explained the source of the amount offered as income to be the profit derived from "commodity trade", which is in the nature of business income. It also appears that the

departmental authorities have no dispute with regard to the explanation of the assessee regarding the source of the surrendered income.

8. As rightly observed by the learned First Appellate Authority, section 69A uses word “may”, which implies that if explanation offered by the assessee regarding source of money, bullion, jewellery or other valuable articles is satisfactory, it cannot be treated as unexplained money under Section 69A of the Act. In the facts of the present appeal, there is nothing on record to suggest that assessee’s explanation regarding the source of the income offered has either been doubted or disputed at the time of search and seizure operation or even during the assessment proceedings. Therefore, in our view, the income offered by the assessee cannot be treated as unexplained money under Section 69A of the Act. Therefore, as a natural corollary, section 115BBE of the Act would not be applicable.

9. Having held so, we may further add that a reading of section 115BBE of the Act makes it clear that the special rate of tax provided under the said provisions shall be applicable under two conditions. Firstly, where the total income includes any income referred to in

sections 68, 69A, 69B, 69C or 69D and reflected in the return of income under Section 139 of the Act. Secondly, if the income determined by the Assessing Officer includes any income referred to, in sections 68, 69, 69A, 69B, 69C or 69D, if such income is not covered under the first condition. In the facts of the present appeal, admittedly, assessee has not offered the income under Section 69A of the Act. Even, the Assessing Officer has not made any separate addition under Section 69A of the Act. He has merely re-characterized the nature of income offered by the assessee. Thus, in our considered opinion, the provisions of sections 115BBE would not be applicable to the facts of the present appeal.

10. In view of the aforesaid, we uphold the decision of learned First Appellate Authority and dismiss the grounds.

101 In the result, the appeal is dismissed.

Order pronounced in the open court on 27 .10.2023.

Sd/- (DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/- (SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 27th October, 2023
Mohan Lal

Copy forwarded to:

1. Applicant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi