आयकर अपीलीयअधिकरण,'बी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपीलसं./**ITA No.: 382/CHNY/2023**

निर्धारण वर्ष/Assessment Year:2017-18

Shri Karthick Natarajan, Plot No.345, Anna Nagar, Madurai – 625 020.	v.	**The DCIT,** International Taxation Circle, Madurai.
PAN: ADHPN 5507B (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओ रसे/Appellant by : Shri T. Vasudevan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 11.07.2023

घोषणा की तारीख/Date of Pronouncement : 11.07.2023

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-16, Chennai in ITA No.78/CIT(A)-16/2019-2020 dated 16.02.2023. The assessment was framed by the ACIT, International Taxation, Madurai for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 18.12.2019.

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming/restricting the addition at Rs.70,00,000/- out of the total addition made by AO at Rs.1,00,00,000/- claiming to be marriage gift and therefore exempt. For this, assessee has raised the following ground No.1 & 2:-

> 1. The learned CIT (Appeals) erred in confirming the addition to extent of Rs.70.00,000/- which was claimed as marriage gifts and therefore exempt.
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> 2. The learned CIT (Appeals) erred in not applying the decision of the Honourable Supreme Court in the case of P,K.Noorjahan 237 ITR 570 merely on the ground that section 69 was the subject matter of addition in the Honourable Supreme Court case but in the case of the assessee section 69A is applicable ignoring the fact that the language employed in both the sections are same.

3. Brief facts are that the assessee is a non-resident individual employed in USA and living outside India since 2004. According to assessee, he is not having any source of income in India since 2004. The assessee being a non-resident and having no source of income in India, as claimed, did not filed any return of income for earlier assessment years. For the relevant assessment year 2017-18, the assessee filed his return of income on 31.03.2018 admitting total income at Rs.96,100/-. The assessee's case was selected for scrutiny assessment under CASS and notice u/s.143(2) of the Act was issued. The AO noticed that during financial year 2016-17 relevant to assessment year 2017-18, the assessee has made cash

deposit to the tune of Rs.2,00,000/- in his Account No.50116330673 maintained with Allahabad Bank, Madurai Anna Nagar Branch and Rs.1,05,00,000/- in his Account No. 601601515869 with ICICI Bank, Madurai K K Nagar Branch. The AO issued show cause notice dated 04.07.2019 calling for explanation for cash deposit in above stated two bank accounts.Either there is adjournment request or no response and finally vide show cause notice dated 25.09.2019, the AO proposed to complete the assessment adding Rs.1.07 crores. The assessee explained that this cash deposit of Rs.7 lakhs was cash given to his mother Smt. Malliga during his visits to India which was deposited and balance of Rs. 1 crore was gift received during marriage. The assessee claimed before AO that the gift of Rs.1 crore received in connection with his marriage celebrated on 07.12.2015, was deposited in his bank accounts, as mentioned above and claimed the same as exempt being gifts received during marriage under the proviso to section 56(1)(vii)(c) of the Act. The AO noted, that, in the instant case, assessee has not furnished any material evidence to substantiate that he has received gift of Rs.1,00,00,000/- during his wedding in December, 2015. The assessee has not produced any material evidence other than the wedding invitation card to prove the genuineness of his claim. The AO accordingly made addition of Rs.1,00,00,000/-, being cash

deposit in assessee's bank accounts with Allahabad Bank, Madurai Anna Nagar Branch and ICICI Bank, Madurai K K Nagar Branch deposited during demonetisation period in financial year 2016-17 relevant to assessment year 2017-18, as unexplained money as per the provisions of section 69A of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) deleted addition of Rs.30,00,000/- by observing as under:-

> The appellant's contention is that the source for the said deposit was the marriage gifts received during his marriage on 07.12.2015 and the same was kept in cash, and the need for the deposit of same into bank account's because of "Demonetization." He has also contended that as he is an NRI he does not have any active/passive source of income and hence the same cannot be treated as unexplained as per the Apex court's decision in the case of P. K.Noorjahan (237 ITR 570).
>
> By way of two acts i.e. (a) Deposit of cash into his own bank accounts (b) Transferring the same for purchase of a property from M/s. Sobha Ltd, the appellant has clearly proved that he is the owner of the money. Thus, the 1st condition which requires satisfaction for application of section 69A stands satisfied.
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> The second condition says that it should not be recorded in books of account, which is also satisfied, partly.
>
> 5.3 The Third and most important condition is, the "nature and source of the said money or valuable article" should remain unexplained. Here, the Ground gets dicey. The claim of the appellant that the cash is sourced out of his marriage gifts remains unproved in view of no demonstable evidence. The case of the A.O is also not strengthened by any evidence. In other words, both the claims remain unsubstantiated.

> 5.4 As mentioned above, the application of Section 69A to any case should be primarily on facts and not on law. As no direct evidence is available in substantiation of both the claims, I am placing reliance on "Theory of preponderance of possibilities." To ask any person to prove gifts received on the occasion of marriage etc., is nearly impossible. No, economic transaction an be divorced from the underlying socio-cultural factors. As widely known, demonetization is a clear accelerant for all cash deposits in certain specified currency notes. The fact that the appellant is an NRI is one of the factors which need to be considered. Nonetheless, it is also one of the factors made use of by many of the non-residents to accommodate entries in their names.
>
> 5.5 Considering the above factors, I direct the A.O. to delete a further amount of Rs. 30, 00,000/- out of Rs. 1,00,00,000/- added as unexplained money u/s 69A. Thus Rs. 70,00,000/- stand sustained as unexplained money u/s 69A.

Aggrieved, now assessee is in appeal before us.

5. We have heard rival contentions and gone through facts and circumstances of the case. As regards to applicability of provisions of section 69A of the Act, the ld.counsel for the assessee Shri T.Vasudevan stated that the assessee has no source of income in India and hence, the decision of Hon'ble Supreme Court in the case of P.K. Noorjahan 237 ITR 570 is applicable to the facts of the case. We want to mention here that the assessee himself has deposited cash in his bank accounts amounting to Rs.1,00,00,000/- and he has tried to explain the sources through the cash gifts received during the occasion of marriage in December 2015. We cannot

accept the arguments of the assessee that the cash deposits made in the accounts of the assessee are not income of the assessee for the simple reason that he himself made deposit in bank accounts during demonetization period and hence, the deeming provisions of section 69A of the Act is clearly applicable to the facts of the case.

6. Before us, the ld.counsel for the assessee argued that a reasonable deduction on the basis of reasonable estimation should be made but he could not produce any sort of evidence to substantiate his claim either the names or their address or anything relating to gift received in cash. The assessee's marriage happened on 07.12.2015, which is an admitted fact and not denied by the Revenue. Even the deletion of Rs.30,00,000/- by the CIT(A) is not challenged by the Revenue in appeal before the Tribunal. Admittedly, this cash was deposited by assessee during demonetization period whereas the claim of assessee is that this was received as gifts in cash in marriage on 07.12.2015. There is no direct evidence available with the assessee to substantiate his claim but going through the customary system in Indian society, we agree with the observations of CIT(A) that no economic transaction can be divorced from the underlying social cultural factors. It is customary in Indian society and according to status one receives

gifts in marriage. Hence, we further want to estimate by looking into the fact that assessee might not have received cash gift of Rs.1,00,00,000/- and CIT(A) has already allowed relief of Rs.30,00,000/-, we want to make a further estimate and delete the amount of Rs.20,00,000/- further. Thereby, the total deletion is i.e., deleted by CIT(A) of Rs.30,00,000/- plus deletion now by the Tribunal of Rs.20,00,000/-, aggregate comes to Rs.50,00,000/-. Hence, we sustain the balance of Rs.50,00,000/- as unexplained money u/s.69A of the Act. In term of the above, the first two grounds raised by the assessee are partly allowed as indicated above.

7. Coming to next issue as regards to applicability of provisions of section 115BBE of the Act. For this, ld.counsel for the assessee raised the following ground No.3:-

> 3. The learned CIT (Appeals) erred in confirming the action of the Assessing officer in levying tax under the amended provisions of section 115BBE @60 and surcharge of 25% without noticing that the amendment is applicable only from AY 2018-19.

8. The ld.counsel for the assessee relied on the following three case laws:-

(i) Hon'ble Supreme Court in the case of Karimtharuvi Tea Estates vs. State of Kerala, C.A. No.980 of 1964 dated 15.12.1965

(ii) Hon'ble Madras High Court in the case of Mercantile Credit Corporation Ltd., vs. CIT, [2000] 245 ITR 245

(iii) ITAT, Indore Bench in the case of DCIT vs. Punjab Retail Pvt. Ltd., in ITA No.677/Ind/2019 dated 08.10.2021

8.1 The ld.counsel for the assessee argued that these deposits i.e., cash deposits were made by assessee in November and December, 2016 and the amendment in Section 115BBE of the Act was brought in amending the finance Act, 2016 by the Taxation Laws (Second Amendment) Act, 2016, w.e.f.01.04.2017. He argued that the amendment in section 115BBE of the Act came into force only on 15.12.2016, when this provision was amended, whereas deposits were made in November and December, 2016 during demonetization. The ld.counsel relied on the decision of the Co-ordinate Bench of Indore Tribunal in the case of DCIT vs. Punjab Retail Pvt. Ltd., in ITA No.677/Ind/2019 and drew our attention to the following findings:-

> "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 Ld. CIT(A) deleting the addition made on that premise is 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."

According to ld.counsel, the addition made u/s.69A of the Act by the AO should have been charged on normal rate of tax and special rate of tax u/s.115BBE of the Act has come into force w.e.f. 01.04.2017.

9. On the other hand, the ld.Senior DR relied on the decision of Hon'ble High Court of Kerala in the case of Maruthi Babu Rao Jadav vs. ACIT, Central Circle, Kozhikode in WA No.984 of 2019.

10. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the Parliament by Taxation Laws (Second Amendment) Act, 2016, w.e.f.01.04.2017 has substituted sub-section (1) which read as under:-

> **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*).

The reliance placed by the ld.counsel for the assessee on the decision of Hon'ble Supreme Court in the case of Karimtharuvi Tea Estates, *supra* was as regards to imposition of surcharge on the ground that the law applicable to assessment for 1957-58 under the provisions of agricultural income-tax was the law enforced on 01.04.1957 and as the Surcharge Act having come into force on 1st September, 1957 did not have any retrospective effect, the surcharge could not be levied for that year. The Hon'ble Supreme Court has finally held as under:-

> The Surcharge Act having come into force on September 1, 1957, and the said Act not being retrospective in operation, it could not be regarded as law in force at the commencement of the year of assessment 1957-58. Since the Surcharge Act was not the law in force on April 1, 1957, no surcharge could be levied- under the said Act against the appellant in the assessment Year 1957-58.

Hence, the decision of Hon'ble supreme court does not apply to the facts of the present case.

10.1 We also noted the case law relied on by the ld.Senior DR, the Hon'ble Kerala High Court in the case of Maruthi Babu Rao Jadav*, supra,* and the Hon'ble Kerala High Court has held as under:-

> 12. The assessee contends that the seizures were made prior to the amendment. The affidavits admitting the ownership of amounts seized were also submitted prior to the amendment. The assessee was not aware of the enhanced tax liability when the admissions were made before the authorities. The assessee has also made an attempt to relate the amendments to the demonetization of the specified currencies announced on 08.11.2016

which contention we reject at the outset. The subject amendments which are relevant for our consideration have no direct link with the demonetization introduced or the taxation and investment regime of Pradhaan Mantri Garib Kalyan Yojana 2016 brought in under Chapter IX A of the 2nd amendment Act. The 2nd amendment Act as is clear from the Statements of Objects and Reasons, was to curb, evasion of tax and black money as also plug loopholes in the IT Act and to ensure that defaulting assessees are subjected to higher tax and stringent penalty provision. Both the measures spoken of herein were to further the said objects and there cannot be any nexus assumed nor is it discernible.

13. Section 115 BBE was inserted by Finance Act 2012 w.e.f 01.04.2013. As on 01.04.2016 the financial year in which the subject seizures occurred Section 155BBE provided for 30% tax on income referred to in Sections 68, 69, 69A, 69B, 69C and 69D. The same was amended by the 2nd Amendment Act; w.e.f. 01.04.2017, enhancing the rate to 60%. Hence there was no new liability created and the rate of tax merely stood enhanced which is applicable to the assessments carried on in that year. The enhanced rate applies from the commencement of the assessment year, which relates to the previous financial year.

10.2 We noted from the taxation law, Second Amendment Act, 2016 that the Income-tax payable shall be the aggregate of the amount of income-tax calculated on the income referred to clause (a) and clause (b) of section 115BBE(1) of the Act at the rate of 60% w.e.f. 01.04.2017 that means from assessment year 2017-18 relevant to financial year 2016-17 rate of tax will be at sixty percent. In our view and as held by Hon'ble Kerala High Court, there was no new liability created and the rate of tax merely stood enhanced which is applicable to the assessment year 2017-18. The enhanced rate applies from the commencement of the assessment

year 2017-18, which relates to previous financial year 2016-17 as the case in the present assessee and not on the date of commencement of the amendment. The reasoning for the same is that the date of amendment on which an amendment comes into force is the date of the commencement of the amendment. It is read as amended from that date. Under the ordinary circumstances, and Act does not have retrospective operation on substantial rights which have become fixed before the date of the commencement of the Act. But, this rule is not unalterable. The legislature may affect substantial rights by enacting laws which are expressly retrospective or by using language which has that necessary result. And this language may give an enactment more retrospectivity than what the commencement clause gives to any of its provisions. When this happens the provisions thus made retrospective, expressly or by necessary intendment, operates from a date earlier than the date of commencement and affect rights which, but for such operation, would have continued undisturbed. This view has been held by Hon'ble Supreme court in the case of Ahmadabad Manufacturing and Calico Printing Co. Ltd. Vs. SG Mehta ITO [1963] 48 ITR 154 (SC).

10.3 Even Hon'ble Kerala High Court in the case of Cf. Bhagavathy Tea Estates Ltd. Vs. State of Kerala [1989] 179 ITR 508 (Ker.) held that the rate or rates prescribed by a Finance Act is or, subsequently, changed by passing a finance (amendment) Act having retrospective effect from the date from which the original Finance Act was passed or enforced. In such circumstances, the changed rate or rates of tax is or to be applied for the relevant Assessment Year.

10.4 As regard to another argument made by Ld. Counsel for the assessee by referring to the provisions of Section 294 of the Act, we after going through the provision noted that it provided that if on the first date of April in any assessment year provision has not been made by a Central Act for the charging of income tax for that assessment year, this act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding assessment year or the provision proposed in the bill then before the Parliament, whichever is more favourable to the assessee, were actually in force. The scope of provision of Section 294 is that the tax is factually imposed not under the Income tax Act but by the annual Finance Act, each year. The Income Tax Act provides a

vehicle to give effect to the provisions of the Finance Act and Section 294 provides that -

> *- if, in any assessment year,*
> *- the Finance Act charging income-tax is not enacted by 1st April of that year, then, this Income-tax Act shall nevertheless have effect until the Finance Act is passed,*
> *- As if the Finance Act of the immediately preceding year was in force for that assessment year*
> *or*
> *- as if the provision in the Finance Bill for that year was duly passed into an Act,*
> *Whichever of these two provisions is more advantageous to the assessee.*

10.5 It means that the provisions of Section 294 of the Act are valid only upto the time of finance bill proposed for the assessment year is duly enacted into law. Hence the argument of Ld. Counsel invoking the provisions of Section 294 of the Act in the present case is without any logic.

11. Accordingly, we are of the view that in the instant case before us the provisions of Section 115BBE of the Act as amended by second amendment Act by the Taxation Laws (second amendment) Act, 2016 will apply w.e.f 01.04.2017 on enhanced rate of tax @60% instead of @30%. The enhanced rates applies from the commencement of the assessment year relevant to previous financial year. In this case, this applies to Financial Year 2016-17 relevant to Assessment Year 2017-18. Hence, we find no force in

the arguments of the Ld. Counsel and hence same are rejected. This issue is decided in favour of Revenue and against assessee.

12. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 11th July, 2023 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	(महावीर सिंह)
(MANOJ KUMAR AGGARWAL)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 11th July, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त /CIT
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