

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

ITA No.680/Coch/2019
Assessment Year: 2014-15

Shri Anees Shareef Kunju, Poovanguvila Veedu, Sadath Nagar 69, Kallumthazham P.O., Kollam-691 004. PAN: CUXPS 3015A]	Vs.	The Assistant Commissioner of Income-tax, Circle-1, Kollam
(Assessee -Appellant)		(Revenue-Respondent)

Assessee by	Shri K.M.V. Pandalai, Adv.
Revenue by	Shri Mritunjaya Sharma, Sr. DR

Date of hearing	11/03/2020
Date of pronouncement	12/03/2020

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the Pr. CIT, Trivandrum passed u/s. 263 of the I.T. Act dated 10/01/2019 and pertains to the assessment year 2014-15.

2. At the outset, there was a delay of 245 days in filing the appeal before the Tribunal. The Ld. AR has filed condonation petition accompanied by affidavit stating the reason for the delay in filing the appeal. The Ld. AR submitted that the order of the Pr. CIT passed u/s. 263 of the I.T. Act dated was received on 25-01-2019. It was submitted that the his ITP R. Prasannan Pillai who was representing his case was seriously ill due to heart ailments and he passed away on 13-05 2019. Meanwhile, it was submitted that the assessing Officer passed an order giving effect to the said order of the Pr. Commissioner of income Tax, on 08-04-2019 and the said consequential order was received by the assessee on 11-04 -2019. It was submitted that as the ITP of the assessee was not in a condition to take necessary action in the matter, he approached another ITP, on whose advice he filed the appeal in time before the CIT(A) on 25 04-2019 against the order dated 08-04-2019 passed by the Assessing Officer. This appeal and stay petition were last posted on 31-10-2019. Only then, the assessee came to know that the correct remedy for him was to challenge the order of the Pr. CIT passed u/sec.263 of the IT Act dt. 10-01-2019. Then, he approached his Authorised Representative. The Ld. AR submitted that there was no willful negligence or laches on the part of the assessee and in case if this delay of 245 days is not condoned, it would cause irreparable harm and injustice to the assessee. Hence, it was prayed that the above delay is condoned and justice rendered to the assessee.

2.1 We have gone through the condonation petition and also heard the rival submissions. We find that there is good and sufficient reasons for filing the appeal belatedly. Accordingly, we condone the delay of 245 days in filing the appeal and admit the appeal for adjudication.

3. The facts of the case are that the Assessee, is a wholesale dealer of Match boxes. He filed the return of income for the Assessment Tear 2014-15 declaring total income of Rs.2,03,060/-. The case was selected for limited scrutiny through CASS for verification of deposits in savings bank accounts of the assessee which was found to be more than the turnover declared. The Assessing Officer completed the assessment u/s 143(3) of the I.T. Act by adding Rs.1,28,190/- with the returned income and thus arrived at a total income at Rs. 3,33,190/-.

3.1 On subsequent verification of records, the Pr. CIT found that the assessee declared turnover for the A.Y.2014-15 at Rs.72,82,235/-. During the previous year relevant to the Assessment Year 2014-13, the assessee deposited Rs.1,24,09,845/- in various savings bank accounts. During the assessment proceedings, the assessee submitted that he frequently withdrew cash from account maintained with SBI and deposited the same in the account with ICICI in order to avail business loan from ICICI as per their insistence. It was also stated that his brothers also gave loans. But since he could not produce any evidence to substantiate his inter-bank

transactions or about the loans obtained from his brothers, the Assessing officer treated the excess cash deposits over the turnover amounting to Rs.51,27,610/- as his deemed turnover and 2.5% of such deemed turnover, being rate of Gross Profit declared, was brought to tax. The Pr. CIT observed that the Assessing Officer should have treated this as unexplained cash credits u/s 68 and charged to tax at a special rate of 30% as per Section 115BEE of the Income Tax Act 1961. Since the Assessing Officer failed to examine the above aspects while completing the assessment u/s 143(3), the Pr. CIT treated the order passed on 07/11/2016 as erroneous and prejudicial to the interests of revenue. Therefore, he set aside the order of the Assessing Officer with a direction to make addition u/s. 68 and apply special rate as per section 115BBE of the Income Tax Act, 1961. The Pr. CIT also directed that this revision u/s 263 is to be done after affording the assessee necessary opportunity of being heard.

4. Aggrieved by the order passed u/s. 263 of the I.T. Act by the Pr. CIT, the assessee is in appeal before us with the following grounds of appeal:

1. The order of the Commissioner of Income tax is against facts, law and circumstances of the case.
2. The Commissioner ought to have found that the amounts in question were either the remittances received by the Appellant -Assessee from his relations abroad through Bank and/or transfer of funds from his one bank account to other resulting in duplication of credits in the Appellant's account.
3. The impugned order passed by the Commissioner is beyond the scope of section 263 of the IT Act 1961.

4. The Appellant was prevented from furnishing the confirmation letters from his relatives to the effect that they had sent the amounts to the Appellant's account from abroad, for the reason that the Appellant was not properly

advised by the ITP who was representing him as the ITP was suffering from serious heart ailment during the relevant time.

5. The Commissioner ought to have found that the Appellant had no sufficient opportunity to produce the confirmation letters due to the lack of proper advice from his tax consultant who represented him.

6. The Commissioner erred in treating the entire cash credits reflected in his bank accounts as his undisclosed turnover and invoking the provisions of section 115BBE of the IT Act, in the facts and circumstances of the case.

7. The Appellant's explanation was that the frequent transfer of same amount from one bank account to another was made to show a higher turnover for availing bank loan. The Commissioner ought to have accepted this explanation in the circumstances of the case.

8. The Commissioner erred in assessing the transfer credits made by the Appellant from his one bank account to another account as cash deposits u/sec.68 of the Act and charged the same at special rates as per section 115BBE even though he offered satisfactory explanation for such credits and transfer of funds.

9. For these and other grounds that may be urged at the time of hearing it is humbly prayed that this Tribunal may be pleased to allow the appeal quashing the impugned order.

5. The Ld. DR relied on the order of the Pr. CIT.

6. We have heard the rival contentions and perused the material on record. The main contention of the Ld. AR is that the Pr. CIT has given a direction to the Assessing Officer to make addition u/s. 68 of the I.T. Act and apply special rate of

tax u/s. 115BBE of the I.T. Act. According to him, the Pr. CIT pre-decided the issue and thereafter, he directed the Assessing Officer to give opportunity of hearing to the assessee. It is appropriate to give effect to the direction of the Pr. CIT after a fair opportunity of hearing is given to the assessee. In our opinion, the provisions of section 115BBE is applicable with effect from 01/04/2013. The additions made u/s. 68, 68, 69B, 69C and 69D of the I.T. Act cannot be set off with loss with effect from 01/04/2017. The direction of the Pr. CIT that addition u/s. 68 of the Act is to be made at special rate of 30% is proper if the addition made u/s. 68 of the Act is sustained by the Assessing Officer. Further, in this case, as rightly pointed out by the Ld. AR, the Pr. CIT had exercised his power u/s. 263 of the I.T. Act and he himself decided about the applicability of section 68 of the Act. Thereafter, he gave direction to the Assessing Officer to give opportunity of hearing to the assessee which is inappropriate. The Pr. CIT pre-decided the issue and thereafter, directed the Assessing Office to give opportunity of hearing to the assessee. We vacate this finding of the Pr. CIT and remit the issue in dispute to the file of the Assessing Officer to examine how the provisions of section 68 of the I.T. Act is not applicable to the assessee's case. The Assessing Officer has to examine whether the provisions of section 68 is applicable to the assessee's case or not. If the assessee is able to prove the identity and capacity of the parties concerned and the genuineness of the transactions to the satisfaction of the Assessing Officer, he shall not make addition u/s. 68 of the Act. With this observation, we remit this issue to

the file of the Assessing Officer for fresh consideration. Thus, this ground of appeal of the assessee is partly allowed for statistical purposes.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 12th March, 2020.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 12th March, 2020

GJ

Copy to:

1. Shri Anees Shareef Kunju, Poovanguvila Veedu, Sadath Nagar 69, Kallumthazham P.O., Kollam-691 004.
2. The Assistant Commissioner of Income-tax, Circle-1, Kollam.
3. The Pr. Commissioner of Income-tax, Trivandrum.
4. D.R., I.T.A.T., Cochin Bench, Cochin.
5. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin

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