

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESEIDENT  
AND  
SHRI PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.423/Bang/2022
Assessment year : 2018-19

Ragavs Diagnostic & Research Centre Pvt. Ltd., 10/804-1, Patalamma Temple Road, Anebande Road, Jayanagar East, Bengaluru – 560 011. <b>PAN: AABCR 1697J</b>	Vs.	The Assistant Commissioner of Income Tax, Central Circle 2(4), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri H.V. Gowthama, Advocate
Respondent by	:	Shri Prithviraj, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	30.08.2022
Date of Pronouncement	:	09.09.2022

**ORDER**

*Per Padmavathy S., Accountant Member*

This appeal by the assessee is against the order of the CIT(Appeals)-11, Bengaluru dated 18.03.22 the assessment year 2018-19.

2. The assessee has raised the following grounds:-

“ 1. The Commissioner of Income Tax (A) erred on facts and the circumstances of the case in dismissing the Appeal filed by the Appellant against the order passed u/s.143(3) of the Income tax Act,

wherein amount declared at the time of Search was taxed as separate income u/s.115BBE of Income tax Act.

2. The Appellant submits that as per the regular return of income, there is substantial loss carried forward against which the amount declared at the time of Search as business income should have been adjusted and loss reduced.

3. The learned Assessing Officer was wrong to treat the above income as separate income and bringing the same to tax at higher percentage as underreported income.

4. The Appellant further submits that due to advanced Cancer of the Finance Incharge of the Appellant Company, the amount of declaration though available on the record of Income tax, given at the time of Search and the same being business income, it should have been adjusted against carry forward loss. The decision of learned Assessing Officer to tax the same as other income is not justified.

5. The learned Assessing Officer was wrong to consider the same as unexplained cash credit and bringing the same to tax u/s.115BBE of Income Tax Act, instead of reducing the same from business loss of the year.

6. For the above and any other grounds that may be advanced at the time of hearing, the Appellant prays that the appeal be allowed.”

3. The assessee is a private limited company engaged in the business of running medical diagnostic centre. The assessee filed the return of income for the year under consideration declaring a loss of Rs.3,88,23,311. There was a search in the premises of assessee u/s. 132 of the Income-tax Act, 1961 [the Act] on 29.11.2017. At the time of search, the assessee agreed to offer an income of Rs.5,39,50,000 spread over from AY 2012-13 till AY 2017-18 i.e. upto the date of search. The assessment for AYs 2012-13 to 2017-18 was completed u/s. 143(3) r.w.s. 153A where the additional income as agreed was

offered and assessed as the business income of the assessee. The residual amount of Rs.53,85,000 pertaining to the AY 2018-19 was erroneously missed to be offered to tax while filing the return of income.

4. The case was selected for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has missed to include the residual additional income agreed to be offered. The assessee submitted that the Chartered Accountant who was taking care of the tax related affairs of the assessee fell sick due to which the mistake of not including the additional income of Rs.53,85,000 occurred. The assessee filed a revised return before the AO including the additional income thereby reducing the loss returned in the original return to that extent. The AO treated the additional income as a separate item of income and taxed the same as per the provisions of section 115BBE and therefore recomputed the business loss to be carried forward without adjusting the additional income. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(Appeals).

5. Before the CIT(Appeals), the assessee submitted that the income of Rs.53,85,000 which was erroneously not included in the original return is not an undisclosed income, but is the residual balance of the additional income which was offered during the course of search proceedings. It was also submitted that the omission is not intentional, but due to the sickness of the key personnel taking care of the tax

related matters of the assessee. However, the CIT(Appeals) confirmed the order of the AO on the basis of sworn statement of Dr. K. Ranganath, Director of the assessee. The CIT(A) held that the provisions of section 69C is attracted and the AO has rightly taxed the amount of Rs.53,85,000 u/s. 115BBEE. Against this, the assessee is in appeal before the Tribunal.

6. Before us, the ld. AR reiterated the submissions made before the lower authorities with respect to offering additional income of Rs.53,85,000 in the revised return manually submitted before the AO. It was submitted that the assessee has only one source of income i.e., business income from running the diagnostic centre and even in the statement recorded during the search proceedings, the additional income was offered from the same source. The ld. AR further submitted in the assessment made u/s. 153A of the Act for the AYs 2012-13 to 2017-18, the revenue authorities have not questioned the source of additional income and have accepted the same to be assessed as business income. He therefore submitted that Rs.53,85,000 which is residual amount out of the total additional income offered during the search proceedings, cannot take a different colour and cannot be taxed u/s. 69C of the Act.

7. The ld. DR supported the orders of the lower authorities.

8. We have considered the rival submissions and perused the material on record. We notice that during the course of search proceedings, a statement u/s. 131 of the Act was recorded from Dr. K.

Ranganath, Director of the assessee. While answering Q.14 Dr. K. Ranganath has admitted that Rs.5.395 crores was paid in cash as referral fees to the Doctors from FY 2011-12 to FY 2017-18 (till 28.11.2017). The relevant extract is reproduced below:-

“Q.14 In the statement of Mr. TS Ranganath recorded U/s. 132 of IT Act, 1961 on 30.11.2017, he had stated that Rs. 5.395 Crores was paid in cash as referral fee to the doctors from FY 2011-12 to FY 2017-18 (till 28.11.2017). Please explain the source for generating this cash.

Ans. Yes, I confirm that Mr. TS Ranganath, in his statement recorded U/s. 132 of IT Act, 1961 on 30.11.2017, stated that Rs. 5.395 Crores was paid, in cash as referral fee to the doctors from FY 2011-12 to FY 2017-18 (till 28.11.2017). The source for this cash expenditure is from the cash receipts from the patients who come to M/s. Ragavs Diagnostic & Research Centre Pvt Ltd for various scans and tests.

I would like to state that some of these cash receipts in the company are not recorded in the books, to the extent of Rs. 5.395 Crores from FY 2011-12 to FY 2017-18 (till 28.11.2017). The some cash was used to make cash expenditure as stated by Mr. TS Ranganath in his statement. Hence I would like to offer Rs. 5.395 Crores as my additional undisclosed income in the hands of M/s. Ragavs Diagnostic & Research Centre Pvt Ltd spread over the years as shown below.

Sl.No.	Financial year	Additional Income admitted (In Rs. Crores)
1.	2017-18 till 28/11/2017	0.5385
2.	2016-17	0.8645
3.	2015-16	0.865
4.	2014-15	0.823
5.	2013-14	0.7805
6.	2012-13	0.736
7.	2011-12	0.736
	<b>Total</b>	<b>5.395</b>

”

9. In Q. 17 of the same sworn statement, Dr. Ranganath agreed to offer the said amount of Rs.5.395 crores as additional income over the years from AYs 2012-13 to 2017-18. From the perusal of the records, it is noticed that the additional income offered is assessed under the head 'business income' while completing the assessment u/s. 143(3) r.w.s. 153A of the Act for AYs 2012-13 to 2017-18.

10. In answer to Q.14 (extracted above), Dr. Ranganath has clearly stated that the source of cash spent for referral fees is the receipts from the patients who come to the assessee company for various scans and tests. It is also stated that these receipts were booked as sales in the books of accounts (in answer to Q.15). From the above, it is clearly established by the assessee that the unaccounted expenditure of Rs.5.395 crores paid towards referral fees is sourced through the business receipts of the assessee during the course of business.

11. The CIT(Appeals) while upholding the order of the AO has observed that the source for unaccounted cash payments is unaccounted cash receipts and that the assessee has not provided the details of patients from whom cash receipts were received and therefore the impugned amount was rightly brought to tax u/s. 69C of the Act.

12. We will look at the provisions of section 69C which are as follows:-

“**69C.** Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such

expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.”

13. From the plain reading of the section, it is clear that when an assessee offers no explanation or the explanation offered is not satisfactory in the opinion of the AO, then the amount of such expenditure is to be taxed as income u/s. 69C of the Act. The satisfaction to be recorded by the AO should not be objective satisfaction exercised at his discretion, but a subjective satisfaction based on the facts of the case. It would then mean that justification for exercise of the power has to be found by the authority by making a subjective satisfaction on the basis of objective material and such satisfaction must be reflected in the reasons recorded in writing while exercising the power. (*Vide: Dee Vee Projects Ltd. v/s. Union of India & Ors., Writ Petition No.2693/2021, dated 11.02.2022 (Bombay High Court)*). In the present case, the assessee is in the business of running a diagnostic centre and the only source of income is the receipts from patients which is stated to be the source for unexplained expenditure. That being the case the AO has not brought any contrary material on record to state that the source for the expenditure was other than from business income and has formed the opinion based on conjectures and surmises. While exercising the quasi-judicial functions, the administrative authorities have to reach satisfaction on the basis of

material available and not on conjectures and surmises. The test of reasonableness has to be satisfied which in our view failed in the case under consideration. Therefore, we are of the view that the additional income offered cannot be taxed u/s. 115BBE and the impugned addition is hereby deleted. Accordingly the assessee is allowed to set off the current year loss against the additional income offered to tax as business income.

14. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 9<sup>th</sup> day of September, 2022.

Sd/-

Sd/-

( N V VASUDEVAN )  
VICE PRESIDENT

( PADMAVATHY S )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 9<sup>th</sup> September, 2022.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.