

Neutral Citation No:
ITA-58-2024(O&M)

2024.PHHC.094331-DB



-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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ITA-58-2024(O&M)
Decided on:25.07.2024

Harjot Singh

.... Appellant

Versus

Principal Commissioner Income Tax-Central, Ludhiana

....Respondent

CORAM:HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Ms. Aakriti, Advocate for the appellant.

SANJEEV PRAKASH SHARMA, J.(Oral)
CM-11859-CII-2024

i) In compliance of the order dated 10.07.2024 passed by this Court, present application has been filed under Section 151 C.P.C. praying for replacing the illegible annexures i.e. Annexure A-7 and A-13 and to place on record the legible copies of the aforesaid annexures.

ii) For the reasons enumerated in the application, same is allowed and the documents i.e. Annexures A-7 and A-13 are taken on record.

ITA-58-2024

1. Present appeal has been filed by the assessee against the order dated 21.08.2023 (Annexure A-13), passed by Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, 'ITAT') confirming the order passed by the Principal Commissioner of Income Central, Ludhiana under Section 263 of the Income tax Act, 1961 (for short, the Act of 1961')



whereby it was held that the order passed by the Assessing Officer in favour of assessee to be erroneous and prejudicial to the interest of the revenue.

2. Learned counsel for the petitioner submitted that the petitioner had surrendered during search operation an additional income of Rs.15,11,555/- on account of excess stock, construction of residential house and renovation of business premises. The AO after hearing, considered the said aspect and had assessed the income from professional usage before depreciation and interest apart from income under Section 44 AD of the Act of 1961 and reached to the conclusion of overall income to be Rs.39,15,840/- for assessment year 2018-19.

3. There was no occasion to interfere with the order passed by the AO by exercising powers under Section 263 of the Act of 1961 and power under Section 263 of the Act of 1961 can only be invoked where the order of the AO is erroneous and prejudicial to the interest of the revenue and not in cases where there can be two opinion related to the assessment.

4. We have carefully considered the submissions that AO has reached to the aforesaid conclusion giving the benefit and considering the income in terms of Section 44AD of the Act. The said aspect was considered by the PCIT under Section 263 of the Act of 1961 and it was noticed as under:

“1.5 In so far as professional receipts of Rs.13,38,500/- and the corresponding expending expenses of Rs.22,88,492/- as well as in respect of retail sale of medicine, It was seen that the assessee had neither got his accounts audited from the accountant nor furnished



report of such audit as per provisions of section 44AB. The assessee's case, prima facie was covered u/s 44ADA of the Act but the return of Income filed was not in accordance with the provisions of section 44ADA of the Act. It is made clear that there is no adverse Inference with regard to Income from Salary, House Property or deduction under chapter VIA. Briefly stated, it was observed that surrendered Income of Rs.15,11,555/- was to be assessed under the head income from other sources at special rate u/s 115BBE, Further, taxability of professional receipts were required to be assessed in accordance with provisions of section 44ADA of the Act @ 50%. In view of the aforesaid order of the AO was found to be erroneous and prejudicial to the interest of the revenue.”

Thus, we find that the assessment under the head income from other sources was to be done under Section 115 BBE, which is reproduced as under:

“115BBE. Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.-

(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).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1).”

5. In view of above, we find that the assessment in accordance with provisions of Section 44 ADA of the Act of 1961 has to be @ 50 % and thus, the AO has erred in making its assessments and consequently, the order is prejudicial to the interest of the revenue. Therefor, the order under Section 263 of the Act of 1961, has rightly been passed and same has been upheld by the Income Tax Appellate Tribunal. Accordingly, this Court does not deem it fit to interfere with the said orders and the present appeal is hereby dismissed.

[SANJEEV PRAKASH SHARMA]
JUDGE

[SANJAY VASHISTH]
JUDGE

25.07.2024
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Whether speaking/reasoned
Whether reportable?

Yes/No
Yes/No