

No Retrospective application of enhanced tax rate under section 115BBE: Hon'ble Rajasthan High Court holds 60% rate applicable only from 01.04.2017 (AY 2018-19)

Facts of the case

- The petitioner, Deepak Maratha, was engaged in the business of jewellery and bullion. During the demonetization period (November-December 2016), he deposited cash amounting to INR 66,17,500 in his bank accounts, claiming it represented business receipts.
- The assessee filed his return for FY 2016-17 declaring income of INR 7,92,860. Subsequently, his case was selected for scrutiny. The Assessing Officer rejected the books of account under Section 145(3) and treated the cash deposits of INR 66,17,500 as unexplained cash credit under section 68.
- The Assessing Officer assessed total income at INR 74,10,360 (INR 7,92,860 + INR 66,17,500) and levied tax at the enhanced rate of 60% under amended section 115BBE on INR 66,17,500, besides initiating penalty proceedings under section 271AAC.
- The Taxation Laws (Second Amendment) Act, 2016 was notified on 15.12.2016. By the amendment in section 115BBE tax rate increased on income covered under sections 68 to 69D from 30% to 60%, along with surcharge and consequential penalty provisions under newly inserted section 271AAC, effective from 01.04.2017.
- The petitioner challenged the application of the amended provisions to transactions relating to FY 2016-17, contending that the amendment was prospective and could not be applied retrospectively.

Contention of the Petitioner (Assessee)

- The amendment to section 115BBE came into force only from 01.04.2017 and was expressly prospective in nature. Therefore, it could not be applied to transactions completed prior to that date.
- The amendment substantially increased the tax burden from 30% to 60% and imposed additional surcharge and penalty. Such a substantive provision creating a higher tax liability could not be given retrospective effect unless the legislature expressly provided so.
- The language of the amendment itself showed that it was intended to operate prospectively. Applying it to income earned before 01.04.2017 would amount to impermissible retrospective taxation.
- The retrospective levy of tax at an effective rate of approximately 83.25% was arbitrary, unreasonable and contrary to settled principles of tax jurisprudence and constitutional protections against arbitrary State action.
- Even assuming the cash deposits were assessable under section 68, they could only be taxed at the pre-amendment rate of 30% applicable during FY 2016-17.

Contentions of the Respondents (Revenue)

- Parliament possesses legislative competence to enact fiscal legislation retrospectively and therefore the amendment could not be challenged merely on the ground of retrospectivity.
- The amendment received Presidential assent and was notified on 15.12.2016, before the end of FY 2016-17. Hence, applying it to income of FY 2016-17 did not amount to retrospective operation.
- The amendment was enacted in the backdrop of demonetization and was intended to curb black money and tax unexplained income at a higher rate. The legislative intent was that the enhanced rate should apply to income arising during FY 2016-17 itself.
- Since the amendment came into force before the close of the financial year, all unexplained income falling under Sections 68 to 69D for FY 2016-17 should be taxed at the enhanced rate of 60%.
- On merits, the revenue contended that there was an abnormal increase in sales and cash balances, the assessee failed to produce supporting bills and vouchers, and therefore the addition under section 68 and rejection of books under section 145(3) were justified.

Ruling of the Rajasthan High Court

- The Rajasthan High Court held that the amendment to section 115BBE enhancing the tax rate from 30% to 60% is a substantive provision imposing a significantly higher fiscal burden and therefore cannot be applied retrospectively in the absence of clear legislative intent.
- Relying upon the Supreme Court decision in **Karimtharuvi Tea Estate Ltd. vs State of Kerala (Civil Appeal No. 979/1964)** wherein the Hon'ble SC held that *"The Income-tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year would not apply to the assessment for that year, even if the assessment is actually made after the amendments have come into force."*
- Further, in case of **CIT vs Vatika Township Pvt. Ltd. (Civil Appeal No. 8750, 8762, 8764 & 8773 of 2014)**, the Hon'ble Supreme Court held that *"the addition of the said proviso, is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors"*.



- The High Court emphasized the principle “**lex prospicit non respicit**” (i.e., the law looks forward and not backward) and held that legislation imposing a new burden or enhancing an existing liability is presumed to be prospective.
- The High Court found that neither the text of the amendment nor the Statement of Objects and reasons disclosed any intention to apply the enhanced rate retrospectively. The amendment itself specifically stated that it would take effect from 01.04.2017.
- Therefore, High Court allowed the assessee's challenge on the issue of retrospectivity and held that the **amendment** made by the Taxation Laws (Second Amendment) Act, 2016 to section 115BBE is **prospective** in operation. Therefore, **unexplained income pertaining to FY 2016-17 could not be taxed at the enhanced rate of 60%;only the pre-amendment rate of 30% was applicable.**



In view of the above judgment, it would be advisable for taxpayers to challenge the assessment and prefer an appeal in cases where additions have been subjected to tax under section 115BBE at the enhanced rate of 60% (plus applicable surcharge and cess, if any) for FY 2016-17, a strong case exists for contesting such assessments and pursuing appellate remedies on the ground that only the pre-amendment rate of 30% (plus applicable surcharge and cess, if any) was legally applicable.

Source : Hon'ble Rajasthan High Court (Writ Petition No. 3625/2020) in the case of Deepak Maratha vs Union of India dated 27.05.2026

Contact Details

3rd Floor, MJ Tower,
55, Rajpur Road,
Dehradun - 248001

T: +91.135.2743283, +91.135.2747084

E: info@vkalra.com

W: www.vkalra.com



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