

IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH, JODHPUR

BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

ITA. No. 21/JODH/2021  
Assessment Year: 2015-16

Shri Ram Kumar Soni, Ward No. 4, Suratgarh.	Vs.	The Pr. CIT-1, Jodhpur.
PAN/GIR No.: CBGPS 5698 D		
Appellant		Respondent

Assessee by : Shri Rajendra Jain (Adv.)  
Revenue by : Smt. Sanchita Kumar (CIT)

Date of Hearing : 11/08/2021  
Date of Pronouncement : 07/09/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Ld. Pr.CIT, Jodhpur dated 18.03.2021 challenging the order passed U/s 263 of the IT Act pertaining to assessment year 2015-16.

2. During the course of hearing, the Id. AR has taken us through show cause notice issued by the Id. Pr. CIT and the findings recorded in the impugned order which read as under:-

" (i) *Issue/Point: during the course of survey U/s133A, excess stock of gold jewelry of Rs. 24,82,886/- and silver jewelry of Rs.*

*9,18,000/- aggregating to Rs. 34,00,886/- was found at the business premises of the assessee. However, in the trading account, the assessee has enhanced the gold jewelry and silver jewelry by Rs. 56,85,200/- and Rs. 10,72,912/-, respectively. The total enhancement made by the assessee comes to Rs. 67,58,112/-. In this way, the assessee has enhance the stock of gold and silver jewelry in the trading amount, in excess by sum of Rs. 33,57,226/-. The AO failed to examine and verify the reason of enhancement in the trading amount.*

*The AO is directed to examine and verify the documents, stock inventory and statements of the assessee recorded during the course of survey, gold and silver jewelry surrendered during the course of survey vis-a-vis gold and silver jewelry stock shown in the trading account.”*

3. It was submitted that during the course of survey conducted on 09.12.2014, there was a difference in the physical stock and the stock recorded in the books of accounts amounting to Rs. 67,58,112/- and therefore, the assessee in his return of income has offered an amount of Rs. 70,00,000/- for the discrepancies so found during the course of survey. It was submitted that there is a categorical finding recording by the Assessing Officer wherein he has stated that the assessee while filing his return of income has offered additional income of Rs. 70,00,000/- for the discrepancies pointed out at the time of survey and the same has been included as income from other sources in the computation of income and thereafter tax @ 30% has been levied invoking provisions of Section 115BBE of the IT Act. It was accordingly

submitted that discrepancies in the stock at the time of survey has been duly examined and taken into consideration by the Assessing Officer and the same found a clear mention in the assessment order so passed by him. It was further submitted that the Id. Pr. CIT has wrongly stated that during the course of survey, excess stock of Gold Jewellery of Rs. 24,82,886/- and silver jewellery of Rs.9,18,000/- aggregating to Rs. 34,00,886/- has been found at the business premises of the assessee. It was submitted that the said figure relates to the stock which was recorded in the books of accounts as on the date of the survey as apparent from the trading account for the pre survey period. It was accordingly submitted that the excess stock which was found during the course of survey was Rs. 67,58,112/- and the stock of gold and silver in the trading account has been corresponding increased in the trading account by the assessee and the same has been duly examined by the Assessing Officer. It was accordingly submitted that the matter was duly examined by the Assessing Officer and the order so passed by the Assessing Officer cannot be held as erroneous and prejudicial to the interest of the Revenue.

4. Per contra, Id. DR relied on the findings of the Id. Pr. CIT and our reference was drawn to his findings which we have already take note of supra and have not been reproduced again for the sake of brevity.

5. We have heard the rival contentions and perused the material available on record. On perusal of statement of Shri Ram Kumar Soni recorded u/s 133A dated 9.12.2014, it is noted that in response to question no. 6, he has offered an amount of Rs 70 lacs to tax towards

difference in stock and other deficiencies and during the course of assessment proceedings, there is a clear affirmation by the Assessing officer that the assessee has offered additional income of Rs 70 lacs for stock and other discrepancies pointed out during the course of survey as income in his return of income and the same was brought to tax at the rate of 30% under section 115BBE of the Act as is clear from the following findings recorded in the assessment order:

*"3. Taxation in view of section 115BBE of the IT Act, 1961-*

*The assessee while filing his return of income for A.Y. 2015-16 has included the amount of Rs. 70,00,000/- as income from other sources in his computation of income. However while calculating that tax on this income, due taxes has been paid at normal rates instead of tax payable @ 30% payable in view of the provisions of section 115BBE of the I.T. Act,1961 applicable during this year. Vide order sheet entry dated 30.11.2017, the assessee was pointed out the applicability of section 115BBE for taxing income of Rs. 70,00,000/- surrendered of @30%, which relates to section 69/69A/69B/69C/69D of the Income-tax Act, 1961.*

*The surrender was made in this case by the assessee in view of the discrepancies in the "Difference in cash physically found and as per books of account, On account of excess stock found, On account of unexplained advances and Loose paper" which is admitted in the statement recorded during the survey and affidavit duly signed by the assessee filed letter. The assessee has offered the income for taxation as the*

*transactions recorded in the loose papers were not recorded in the books and stands unexplained. Since the assessee has failed to explain the source of income disclosed on the basis of incriminating documents/papers, these transactions come in the ambit of section 69/69A/69B/69C/69D of the Income-tax Act, 1961. The taxes are to be paid in view of provisions of section 115BBE of the IT Act, 1961 which is applicable in the instant year. The A/R of the assessee also has objected to applying provisions of section 115BBE in the case of assessee. It is pertinent to mention here that in the case of M/s Kim Pharma Pvt. Ltd. V/s CIT in ITA No. 106 of 2011, Hon'ble Punjab & Haryana High Court in decision dated 27.04.2011 while deciding the question of law :-*

*"B. Whether the action on the part of the Id. Authorities below to segregate the surrendered income form business income and treat it as deemed income and taxing the same after refusing set off u/s 701 and 71 of the Act is legally sustainable in the eyes of law? C. Whether the action on the part of the Id. Authorities below not to treat the income surrendered during survey as "income form business" and adjustable against the business losses determined for the year, is legally sustainable in the eyes of law?", dismissed the appeal of the assessee i.e. confirmed the ITAT order taxing income disclosed during survey under the provision of section 69/69A/69B/69C/69D of IT Act. Thus, though the assessee disclosed the entire amount of Rs. 70,00,000/- taxation in total income but the due taxes are to be re-*

*calculated @ 30% in view of section 115BBE of the Act, 1961 which has not been done by the assessee."*

6. We therefore find that the matter relating to excess stock found during the course of survey and taxability thereof has been specifically discussed in the body of the assessment order. Thus, it cannot be said that there is failure on part of the Assessing officer to examine the same.

7. Regarding figures of excess stock of Gold Jewellery of Rs. 24,82,886/- and silver jewellery of Rs.9,18,000/- aggregating to Rs. 34,00,886/- as pointed out by the Id PCIT, it is noted that the said figures relates to the stock which was recorded in the books of accounts as on the date of the survey as apparent from the trading account for the pre survey period which is also reproduced by the Id PCIT in the impugned order and not the figure of excess stock found during the course of survey. The excess stock which was found during the course of survey was Rs. 67,58,112/- and the stock of gold and silver in the trading account has been corresponding increased in the trading account by the assessee and the same has been duly examined by the Assessing Officer along with other discrepancies found during the course of survey and the discrepancies on account of excess stock of Rs 67,58,112/- and other discrepancies adding up to Rs 70 lacs has been offered to tax by the assessee as we have noted above and duly brought to tax by the Assessing officer by invoking provisions of section 115BBE of the Act.

8. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, there is no basis to hold that the order passed by the Assessing officer is erroneous so far as prejudicial to the interest of the Revenue. The order of the Id PCIT is hereby set-aside and that of the Assessing officer is sustained.

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

Order pronounced in the open Court on 07/09/2021.

Sd/-  
(Sandeep Gosain)  
Judicial Member

Sd/-  
(Vikram Singh Yadav)  
Accountant Member

Jodhpur

Dated:- 07/09/2021.

\*Santosh

Copy of the order forwarded to:

1. A. The Appellant- Shri Ram Kumar Soni, Suratgarh.
2. The Respondent- Pr. CIT-1, Jodhpur.
3. CIT
4. CIT(A)
5. DR, ITAT, Jodhpur.
6. Guard File { ITA No. 21/Jodh/2021 }

By order,

Asst. Registrar