

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**

**BEFORE HON'BLE RAJPAL YADAV, VICE PRESIDENT**  
**AND**  
**HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**  
**VIRTUAL HEARING**

ITA No.644/Ind/2019

Assessment Year: 2015-16

ACIT

Ratlam

: Appellant

V/s

Vijay Kumar Surana

Mandsaur

: Respondent

PAN:AVCPS7476B

ITA No.645/Ind/2019

Assessment Year: 2015-16

ACIT

Ratlam

: Appellant

V/s

Rajendra Kumar Surana

Mandsaur

: Respondent

PAN:AMOPS1290C

Revenue by	Shri Rajeeb Jain, CIT-DR
Respondent by	Shri S.S. Deshpande, AR
Date of Hearing	03.08.2021
Date of Pronouncement	30.09.2021

**ORDER**

**PER MANISH BORAD, A.M**

The above captioned appeals filed at the instance of the Revenue for Assessment Year 2015-16 & are directed against the orders of Ld. Commissioner of Income Tax(Appeals) (in short 'Ld. CIT], Ujjain dated 07.01.2019 which are arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 27.12.2017 framed by ACIT, Ratlam.

The Revenue has raised following grounds of appeal in ITANo.644/Ind/2019:

*(i) Whether on the facts and in the circumstances of the case, the CIT(A) was justified in treating the unexplained excess stock found and surrendered during the course of survey as business income without appreciating the fact that the excess stock of Rs. 3,90,15,2001-, surrendered during the course of survey, was income from undisclosed sources and not recorded in the regular books of accounts?*

*(ii) Whether on the facts and in the circumstances of the case, the CIT(A) was justified in treating the excess cash found and surrendered during the course of survey as business income without appreciating the fact that the excess cash of Rs. 9,84,843/-, surrendered during the course of survey, was income from undisclosed sources and the same was not recorded in the regular books of accounts?*

*(iii) Whether on the facts and in the circumstances of the case, the CIT(A) was justified in holding that the provisions of section 115BBE of the LT. Act, 1961 would not be applicable in the assessee's case as the provisions of sub-*

*section (2) prohibit the assessee from claiming any deduction in respect of expenditure or allowance. These provisions are effective from 01.04.2013. The further amended provision was inserted only in respect of "set off of any loss" with effect from 01.04.2017?*

The Revenue has raised following grounds of appeal in ITANo.645/Ind/2019:

*(i) Whether on the facts and in the circumstances of the case, the CIT(A) was justified in treating the unexplained excess stock found and surrendered during the course of survey as business income without appreciating the fact that the excess stock of Rs. 3,41,51,000/-, surrendered during the course of survey, was income from undisclosed sources and not recorded in the regular books of accounts?*

*(ii) Whether on the facts and in the circumstances of the case, the CIT(A) was justified in treating the excess cash found and surrendered during the course of survey as business income without appreciating the fact that the excess cash of Rs. 8,55,607/-, surrendered during the course of survey, was income from undisclosed sources and the same was not recorded in the regular books of accounts?*

*(iii) Whether on the facts and in the circumstances of the case, the CIT(A) was justified in holding that the provisions of section 115BBE of the LT. Act, 1961 would not be applicable in the assessee's case as the provisions of sub-section (2) prohibit the assessee from claiming any deduction in respect of expenditure or allowance. These provisions are effective from 01.04.2013. The further amended provision was inserted only in respect of "set off of any loss" with effect from 01.04.2017?*

2. As the issues raised in these appeals are common and relate to assessee's of same group, at the request of all the

parties these appeals were heard together and are being disposed of by this common order for sake of convenience and brevity.

3. Brief facts as culled out from the records are that there are two assessees namely Vijay Kumar Surana & Rajendra Kumar Surana who are individuals and carrying on the business of Dal & Besan Mill. Vijay Kumar Surana is proprietor of M/s Pankaj Dal & Besan Mill, Dalauda and Rajendra Kumar Surana is asole proprietor of M/s Pankaj Food Product Dalauda. Survey action u/s 133A of the Act was carried out at the business premises of both the assessees. In the case of assessee namely Vijay Kumar Surana the revenue authorities on verification of stock and cash in hand available physically viz-a-viz available in the books found that the stock was excess at Rs.3,90,15,200/- and cash was excess at Rs.9,84,843/- whereas in the case of Rajendra Kumar Surana excess stock was calculated at Rs. 3,41,51,000/- and excess cash at Rs.855607/-. The grounds raised by the revenue in the instant two appeals revolve around the issue of excess stock found at the business premises of both the assessees. As the facts of both the appeals are same and so are the issues raised before us, we will adjudicate the common

issue raised in the instant two appeals on the basis of facts in the case of Vijay Kumar Surana in ITANo.644/Ind/2019 and our decision in this appeal shall apply *mutatis mutandis* on the revenue's appeal in the case of another assessee namely Rajendra Kumar Surana in ITANo.645/Ind/2019.

5. Perusal of record shows that the assessee namely Vijay Kumar Surana filed the return of income for A.Y. 2015-16 on 30<sup>th</sup> September 2015 declaring total income of Rs.2,19,71,920/-. Case was selected for scrutiny followed by serving of notices u/s 143(2) and 142(1) of the Act. Ld. Assessing Officer called for the details to verify as to whether the assessee had offered undisclosed excess stock and excess cash in the return of income. In reply the assessee submitted that the alleged excess stock and excess cash totalling to Rs.4,00,00,043/- ( excess cash of Rs.9,84,843/- + Excess stock of Rs.3,90,15,200/-) are part of the business income and have been shown in the profit and loss account for the year ended on 31<sup>st</sup> March 2015. It was also submitted that the excess stock in hand has also been shown in the trading account on the debit

side below the purchaser so as to bring the stock offered to tax in the regular books for subsequent sales. It was also submitted that the stock in hands also includes the unsold stock out of the excess stock declared at the time of income tax survey. However, Ld. Assessing Officer was not convinced with the way of disclosing the excess stock in books. He was of the view that the entry of excess stock in the trading account and credit entry showing undisclosed income appearing in the profit and loss account should be removed as it is not a business income and the alleged amount should be directly added to the total income of the assessee as 'Income from other sources'. He also observed that by making these changes in the trading account the net profit from the business will come to Rs. 2,11,37,081/- and the income from other sources would be Rs.4,00,00,043/- and after allowing the deduction under chapter VIA at Rs.1,50,000/- the Ld. Assessing Officer assessed the income at Rs.6,09,87,124/-

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6. Aggrieved assessee preferred an appeal before the Id. CIT(A) who after examining the facts and the judicial

pronouncements concluded that the Ld. Assessing Officer has not rejected books of accounts and the assessee has rightly disclosed the excess stock and excess cash in hands in the books as is generally done by other assessee's subsequent to the survey operations. Ld. CIT(A) accordingly accepted the book results of the assessee and deleted the addition made by the Ld. Assessing Officer. Now revenue is in appeal before this Tribunal.

7. Ld. Departmental Representative (DR) vehemently argued supporting the order of Ld. AO and also submitted that the assessee failed to explain the source of excess stock and excess cash and also failed to prove that they are part of the business income and therefore the same should be treated as "Income from other Sources". Ld. DR also submitted that the assessee has managed the figures to show gross loss in the trading account.

8. Per contra Ld. counsel for the assessee vehemently argued referring to the written submissions filed before ld. CIT(A) and also relied on the finding of Ld. CIT(A) deleting the addition made by the ld. AO. Further Ld. counsel for the assessee submitted that:-

*“The assessee has debited trading a/c by Rs.39015200/- for excess stock found and Rs.984843/- excess cash found and credited P & L account 40000043/- to bring out all the discrepancies in to regular course of business.*

*The ld. AO disallowed the excess stock debited and income declared under survey which have been offered in trading a/c the Ld. AO one side disallowed the purchases(which has been included for excess stock) and withdraw the credit side the P & L a/c and assumed that by disallowed both the entry there is no impact on the P & L a/c the AO erred by not taking the value of closing stock at lesser price as survey declaration added as purchases with quantity hence same has increase the quantity of the closing stock.*

*3. So without adjusting the value of closing stock the AO applied section 115BBE so it is the case of double addition one sided income is assessed u/s 115BBE and other side closing stock is the part of Trading & Profit & Loss a/c so the income already declared in P&L a/c. If addition u/s 115BBE is confirm then decrease in the closing stock also Rs.39015200/- and income from business is Rs.21137081/- (i) 39015200/- result income Rs.17878119/-(loss).*

9. We have heard rival contentions and perused the records placed before us. The revenue has raised three grounds of appeal firstly challenging the deletion of addition for excess stock of Rs.3,90,15,200/- secondly, deletion of addition for excess cash of Rs.9,84,843/- and also has challenged the finding of Ld. CIT(A) holding that provision of section 115BBE of the Act are not applicable.

10. We observe that survey action u/s 133A of the Act was carried out at the business premises of the assessee on

02.03.2015 and excess cash of Rs. 9,84,843/- and excess stock of Rs.3,90,15,200/- was found by the survey team. Apart from the excess cash and excess stock no other incriminating material was found. The excess stock was part of the total stock kept at the assessee's premises and is entered in the books and shown on debit side the trading account. The total of excess stock and excess cash is Rs.4,00,00,043/- and has been shown on credit side in the Profit and Loss A/c. The assessee has incurred loss during the year and the gross loss is Rs.9,30,341/-. The closing stock as on 31<sup>st</sup> March, 2015 is shown at Rs.8,31,42,600/- which also includes the unsold stock out of the excess stock declared at the time of income tax survey. Ld. AO has questioned the manner of disclosing the undisclosed income. Ld. AO has treated the total undisclosed income as income from other sources liable to be taxed separately and computed the business income at Rs.2,11,37,081/-. We further find that ld. CIT(A) dealt the issue after examining the facts of the case and also settled judicial precedents observing as follows:

**4.0** *These, grounds of appeal are with regard to making addition of Rs 4,00,00,043 u/s 115BBE of IT Act, 1961. I have carefully gone through the assessment order as well as submission of the appellant in this regard.*

**4.1** *The brief facts of the case are that a survey u/ s 133A*

*was conducted at the appellant's premises. During the course of survey proceedings, excess stock of Rs 3,90,15,200/- and excess cash of Rs 9,84,843 was found. The AO had asked the appellant to submit the explanation regarding the; said excess stock and excess cash so found by the, survey team, The appellant had submitted its reply before the AO but the AO was not satisfied with the reply. The AO had added an amount of Rs 4,00,00,043/- to the appellant's income under the head of income from other sources.*

*The appellant has stated that he had credited' the entered amount in its; books of account as business income. During the course of assessment proceedings, the appellant had submitted the books of accounts such as cash book, ledger, journal, purchase bills and vouchers of expenses and other documents in support of its business activities. The AO had made addition in the head of income from other sources. The AO had made addition in the head of income from other sources. But he had not brought any evidence on record to establish that the appellant was engaged in the any other activities.*

*4.3 The Hon'ble Rajasthan High Court in the case CIT vs BajarganTraders DB IT No 25~/2017 dated 12.09.2017 had held asunder:-*

*"2.10.' We have heard the rival contentions and perused the material assailable on .record. During the course of survey, the assessee has surrendered an amount of 'Rs 7,004814 towards investment in stock of rice which had not been recorded in the books of accounts. Subsequently in the books of accounts, the assessee has incorporated this transaction by debiting the 'purchase account: and crediting the income from undisclosed sources accounts, the purchase of Rs 7004814 were finally reflected as part of total purchases amounting to Rs 331719058 in the. profit and loss account and the same also found included as part of the closing stock amount to Rs 19442569 in the profit/loss: account: since the said stock of rice was not solei out. In addition ITA 142 to 146/Jodh/2018 Vasu Singhalvs ITO with 4 Ors cases to the purchase and the closing stock, the amount of Rs7004814 also found cre4it~d in the profit and loss account as income from undisclosed sources The net effect: of this double entry accounting treatment is that firstly the unrecorded stock of rice has been brought on the books and now forms part: of the recorded stock which can be subsequently sold out and profit/loss therefrom would be subject to tax as any other normal business transaction.*

*Secondly, the unrecorded investment: which has gone in purchase of such unrecorded stock of rice has been recorded in the books of account and offered to tax by crediting the filed amount in the profit and loss account. Had this investment been made out of known source, there was no necessity for assessee to credit the profit/loss account and offer the same to tax. Accordingly, we do not: see any infirmity in assesses bringing such transaction in its' books of accounts and the accounting treatment thereof so to regularize its books of accounts. In fact, the same provides a credible base for revenue to bring to tax subsequent profit/loss on sale of such. stock of-rice in future.*

*2.11 Having said that, the next issue that arises for consideration is whether the amount surrendered by way of investment in the unrecorded. stock of rice has to be brought to tax under the . head "business income" or "income from to her sources". In the present case, the assessee is dealing in sale of food grains rice and oil seeds and the excess stock which has beenfourui during the course of survey is stock of rice. Therefore, the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. "*

**4.4** *It is clear from the findings of the Hon 'ble High Court of – Rajasthan that the surrendered income so disclosed by the assessee was p t of the business activity as no other activity was done by the appellant during the year and no corroborative evidence has been brought on record by the AO to prove that the investment so found reflect any other activities other than regular business activity; in such a situation, no addition can be made under the head Income from other sources.*

*4.5 In the instant case, the question which arises for the determination is that under which head of income the excess. stock/ investment found in survey and offered by the appellant for tax is to be assessed. According to the appellant, such excess stock/investment was a business stock which had arisen out of the unrecorded business activity of the assessee and therefore, the same needs to be assessed under the head of profit and gain of business. During the survey proceedings, the survey team had found unrecorded stock of Dal so found at appellant's premises that the appellant was engaged in its regular business activity only. This stock so found was ,clearly identifiable and was thus related to the regular business stock of the appellant. The facts of this case are identical with the decision of Hon'ble High Court of Rajasthan in the case of CIT vs. Bajargan Traders(supra) so discussed above. The same*

*view was taken by the Hon'ble I.T.A.T. Bench Jaipur in the case of Vasu Singhal vs. ITO with 4 ors. The Hon'ble Bench of I.T.A.T. Bench Jaipur had given their verdict relying on the judicial decision of Hon'ble Ahmadabad I.T.A.T. Bench in the case of Chokshi Hiralal Maganlal vs. DCIT 141 TTJ (Ahd) 1 dated 21.01.2011 on the same issue. The relevant extract of the decision of Hon'ble' Ahmadabad Bench of I.T.A.T. is reproduced hereunder:-*

*“ Excess stock found during the course of survey is not separate and clearly identifiable but is part of mixed lots found at the premises which included declared stock as per books and also the excess stock as computed by the survey officers, the provisions of section 69B cannot be made applicable as primary condition for invoking the provisions of section 69A 69B is that the asset should be separately identifiable and it should have independent physical existence of its own. Since excess stock is a result of suppression of profit from business over the years and has not been kept identifiable separately but is the part of overall physical stock found, the investment in the excess stock has to be treated as business income as per detailed reasons given in the case of Fashion World vs. ACIT ITANo.1634/Ahd/2006”*

*4.6 The appellant has submitted that the AO had made the addition after applying section 115BBE in the appellant's case, During the survey proceedings, the appellant had offered additional income from its regular business activity only before the survey party, hence, the appellant has further stated that the section 115BBE of the Act would not be applicable in the instant case. During the course of survey proceedings, the excess unaccounted stock of Channa and Chana Dal was found and the assessee was dealing in these items only in its regular course of business. This clearly shows that the appellant was engaged in its regular business activity only.*

*4.7 The appellant has further relied on the decision of jurisdictional Bench of Hon'ble' I.T.A.T., Indore in the case of M/s Pumarth Properties & Holding vs. The DCIT Income-tax Act, 1961. No.954/Ind/2016 A.Y. 2013-14. As per the decision of the Hon'ble I.T.A.T., Indore, the amendment in section 115BBE of the Act was effected from 1<sup>st</sup> April, 2017 and this section thus would be applicable from the A.Y.20017-18 and subsequent assessment years. The appellant's case is pertaining to A.Y. 2015-16, Hence as per the decision of jurisdictional bench of Hon'ble I.T.A.T., Indore, the said section would not apply in the appellants. Case. The same view was taken by the Hon'ble Supreme Court in the case of CIT, Mumbai vs. M/s. Walfort Share & Stock brokers P. Ltd. in Civil Appeal No.4927 of 2010.*

*4.8 In this Case, the AO had debited trading account by Rs.39015200 for excess stock found and Rs.984843 for excess cash found. The appellant has credited the same in P&L A/c of Rs.400000043. The entries so made by the appellant are correct from both the Accounting and legal point of view. This way of entry by debiting the purchase*

*account by excess stock so found during the course of survey and crediting the P & L account is to regularized the books of account and introduce the unrecorded sock in the regular course of business while at the same time, P & L account is credited by the income so declared representing the excess stock. This view and method of making entry is also supported by Hon'ble High Court of Rajasthan in the case of CIT vs. Bajargan Traders D.B. (supra). The AO had disallowed both the entries while passing assessment order, which was technically wrong. Hence, in view of the above facts and judicial decision so discussed above, it is clear that the appellant was mainly engaged in its regular business activities i.e. of Chana & Chana Dal and no other business was carried out by him. Further, the AO had not brought any cogent evidence and facts to prove that the appellant had earned income from other sources. The AO had made the double addition to the appellant's income by disallowing debit balance of trading account and credit balance of Profit and Loss account. Hence, in light of the above facts and especially the decision of jurisdictional bench of Hon'ble I.T.A.T. bench, Indore, the addition so made by the AO is hereby deleted and accordingly, these grounds of appeal are allowed.*

11. On perusal of the above finding of Ld. CIT(A) and the decisions referred therein we observe that the revenue authorities have not disputed the fact that the assessee's only source of income is from Dal & Basen Mill. No other incriminating material or document was found during the course of survey which could indicate that the assessee has any other source of income. It can thus be concluded that the alleged excess stock is part of the business income of the assessee. It is also discernable from the records that when the statement was taken during the course of survey, son of the assessee namely Mayur Kumar Surana gave reply to various questions asked by the survey team. At pages 34 to 38 of the paper book dated 17.12.2020 shows various

questions asked to Mr. Mayur Kumar Surana as regards the issue of excess stock. He gave reply that price per quintal of Chana is Rs.3,000/- and price per quintal to Chana Dal is Rs.42000/-. He was also very much aware about the cost of stock and its location. He also stated that same stock of the books kept in the factory premises is of lower quality and the one kept in the warehouse is a fine quality. He also stated that though the physical stock sheet has been prepared before him but still there seems to be something missing in the books made by the computer for which he stated that at the point of time giving statement he was unable to reconcile. The crux of the statement given during the course of survey on the facts that the alleged stock was not accepted to be undisclosed income from other sources but was a part of the business income which required some reconciliation as books of account were not completed at the time of survey proceedings. We are of the view that since the income alleged excess stock and excess cash found during the course of survey is part of the business income, the provisions of section 115BBE of the Act would not be applicable as rightly held by the Id. CIT(A) and also in view of the facts that there was an amendment in the provisions of section 115BBE w.e.f. 1<sup>st</sup> April

2017 and the assessee's case is pertaining to A.Y. 2015-16, thus, it is not be applicable on the case of assessee.

12. As the excess stock and excess cash are part of the business income we further find that the manner of disclosing the excess stock in the trading account is correct. As it is the only way through which the excess stock can be brought into the regular books. If the Ld. AO was not satisfied with the book results he ought to have first rejected the books results and then estimated the profits. The following finding of the Ld. AO of treating the undisclosed income as income from other sources at Rs.4,00,00,043/- and calculating the business income of Rs. 2,11,37,081/- is neither here nor there:-

*“On verification of the Trading account of the assessee as reproduced on page 4, it is clear that the assessee passed “journal entry” in the books of account debiting the amount of Rs.3,90,15,200/-. This entry has been passed without any basis i.e. copy of purchase bills/vouchers and payment made for this purchases. The excess stock found during the course of survey is assessable as income from other sources and not business income. If this entry is removed from the Trading account, there will be gross profit of Rs.3,80,84,859/-. Similarly, the amount of Rs.4,00,00,043/- credited in the P & L account is also required to be removed and to be added in the total income of the assessee as income from other sources. In that case the income of the assessee from business comes to Rs.2,11,37,081/-.”*

13. The above observation of the Ld. AO clearly indicates that he is not aware how to disclose the undisclosed income in the books of account. In case he was not satisfied with the book results, he

has to first find error/mistake in the books of account, give detailed finding on it, and then should have re-casted the trading account. The manner in which the Ld. AO has made addition is not justified and thus Ld. CIT(A) has rightly deleted the addition by accepting book results shown by the assessee. Ld. AO has also not given weightage to the fact that once the excess stock has been debited in the Profit and Loss Account then the unsold stock as on 31<sup>st</sup> March 2015 also forms part of the closing stock which is to be valued as per the method regularly adopted by the assessee.

14. We, therefore, in the given facts and circumstances of the case, find no reason to interfere in the finding of Ld. CIT(A) deleting the impugned addition made by the ld. AO and has also holding that the provisions of section 115BBE of the Act are not applicable on the assessee since the income declared during the course of survey is a 'business income'. Accordingly all three grounds of appeal raised by the revenue are dismissed.

15. Now we take up revenue appeal in ITANo.645/Ind/2019 in the case of Rajendra Kumar Surana raising similar grounds of appeal as were raised in the case of Vijay Kumar Surana (supra) with the only difference of figure of excess stock and excess cash

which in this case the excess stock is Rs. 3,41,51,000/- and excess cash is Rs. 8,55,607/- and total surrendered income is Rs. 3,50,06,607/-. The action of the Ld. AO and finding of Ld. CIT(A) are verbatim similar to one given in the case of assessee, Vijay Kumar Surana in ITANo.644/Ind/2019 in ITANo.644/Ind/2019(supra). Since we have already adjudicated there issue in the case of *Vijay Kumar Surana (supra)*, we apply our decision *mutatis mutandis* in the case of Rajendra Kumar Surana and confirm the finding of Ld CIT(A) and therefore, grounds 1 to 3 raised by the revenue are dismissed.

16. In the result, Revenue's appeals in ITANo.644 & 645/Ind/2019 are dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 30.09.2021.

Sd/-

sd/-

(RAJPAL YADAV)  
VICE PRESIDENT

(MANISH BORAD)  
ACCOUNTANT MEMBER

दिनांक /Dated : 30.09.2021

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore