

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**  
**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITA No. 245/Ind/2021 - Assessment Year: 2019-20**

Shri Shyamlal Goyal, Sendhwa	<b>V/s</b>	ACIT, Central Circle-2 Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: ABDPA9161E</b>		

**ITA No. 246/Ind/2021 - Assessment Year: 2019-20**

Shri Lokesh Mangal, Sendhwa	<b>V/s</b>	ACIT, Central Circle-2 Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AFYPM8184J</b>		

**ITA No. 247/Ind/2021 - Assessment Year: 2019-20**

Shri Aashish Mangal, Sendhwa	<b>V/s</b>	ACIT, Central Circle-2 Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AJWFM5882F</b>		

Assessee by	Shri S.N. Agrawal, AR
Revenue by	Shri Harshit Bari-Sr. DR
Date of Hearing	08.06.2022
Date of Pronouncement	29.06.2022

**O R D E R**

**Per B.M. Biyani, A.M.:**

These three appeals ITA No. 245/Ind/2021, 246/Ind/2021 and 247/Ind/2021 are directed by different assessees against the orders dated 08.11.2021 of learned Commissioner of Income-Tax (Appeals)-3, Bhopal [**"Ld. CIT(A)"**] in Appeal No. CIT(A)-3/BPL/IT-11659/2018-19/681, CIT(A)-

3/BPL/IT-11661/2018-19 and CIT(A)-3/BPL/IT-11686/2018-19, which in turn arise out of the assessment-order dated 24.03.2021, 02.04.2021 and 29.05.2021 passed by learned ACIT, Central-2, Indore [**“Ld. AO”**] u/s 143(3) of the Income-tax Act, 1961 [**“the Act”**] respectively. All these appeals relate to Assessment-Year 2019-20. Since the facts and circumstances are common in all appeals, therefore for the sake of brevity we would like to dispose of all these appeals by way of this common order.

**ITA No. 245/Ind/2021 – in the case of Shri Shyam Lal Goyal:**

2. In this appeal, the assessee has raised following Grounds:

***“1. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining the provision of section 69A of the Income Tax Act on the amount of additional income of Rs. 7,57,290/- as offered during the course of survey on account of excess cash found during survey even when the only source of income of the appellant was from his business and liable to tax under section 28 to 44 of the Income Tax Act. Thus, the provision of section 69A of the Income Tax Act as maintained by the ld. CIT(A) on additional income was neither legal nor proper.***

***2. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining the chargeability of tax at higher rate by invoking the provision of section 115BBE of the Income Tax Act on additional income of Rs. 7,57,290/- as offered during the course of survey on account of excess cash found. The tax as charged at higher rate on additional income was neither legal nor proper.***

***3. The appellant reserves his right to add, alter and modify the grounds of appeal as taken in the present appeal.”***

3. The assessee is an individual engaged in the trading of grocery items. A survey u/s 133A was conducted on 05.02.2019 wherein the assessee admitted an undisclosed income of Rs. 32,37,290/- consisting of (i) unaccounted sundry debtors of Rs. 24,80,000/- and (ii) excess cash of Rs. 7,57,290/-. While filing return of income, the assessee declared these incomes as “income from other sources” and paid tax u/s 115BBE. During assessment-proceeding, the assessee requested the Ld. AO to treat these incomes as part of business income instead of income u/s 69/69A and also

charge tax as per normal rates instead of section 115BBE. However, the Ld. AO did not accede to the request of assessee and completed assessment by taxing unaccounted sundry debtors u/s 69, excess cash u/s 69A and thereby charging tax u/s 115BBE. Being aggrieved, the assessee filed appeal to Ld. CIT(A). During first appellate proceeding, the Ld. CIT(A) accepted the claim of assessee *qua* unaccounted sundry debtors but rejected *qua* excess cash. Being aggrieved by the order of Ld. CIT(A), the assessee has come in appeal and now before us. Presently the controversy between the assessee and revenue is regarding the characterization of income i.e. whether the excess cash of Rs. 7,57,290/- surrendered during survey is a business income u/s 28 chargeable at normal tax-rate or an undisclosed income u/s 69A chargeable at a higher rate of tax u/s 115BBE.

4. Ld. AR appearing on behalf of assessee submitted that the assessee is carrying on business and the survey was carried out at business premise. Ld. AR submitted that impugned excess cash was found at the time of verification of cash-balance held by assessee in the cash-box of business. Ld. AR further submitted that the assessee is having only business as source of income and except business there is no other source of income. Ld. AR submitted that neither the authorized officer who conducted the survey nor the Ld. AO who made assessment has discovered any other source for generation of income by assessee. Ld. AR also submitted that section 69A and 115BBE are deeming provisions which trigger only if the assessee is not able to explain the source of income. But in the present case, since the assessee is having business as sole source of income and there is no other source available to the assessee, it is patently clear that excess-cash found in the cash-box of business is a part and parcel of the business carried on by the assessee and therefore represents business-income of assessee. Ld. AR also relied upon following decisions:

- (i) Hon'ble ITAT, Chandigarh in *Famina Knit Fabs Vs. ACIT*, ITA No. 14945/Chd/2017 order dated 08.02.2019
- (ii) Hon'ble Rajasthan High Court in *CIT Vs. Bajrang Traders*, DBIT No.

258/2017 dated 12.09.2017

- (iii) Hon'ble ITAT Jodhpur in Lovish Singhal & Others V/s ITO, ITA No. 143/Jodh/2018 order dated 25.5.2018.
- (iv) Hon'ble ITAT Ahmedabad Bench in Chokshi Hiralal Mangilal Vs DCIT, ITA No. 3281/Ahd/2009 dated 14.10.2009.
- (v) Hon'ble ITAT, Guwahati in Abdul Hamid Vs. ITO (2020) 117 taxmann.com 986
- (vi) Hon'ble ITAT, Chandigarh in Shri Bhuwan Goyal Vs. DCIT, ITA No. 1385/Chd/2019

Lastly the Ld. AR also contended that during first appellate proceeding, the Ld. CIT(A) has himself accepted the unaccounted debtors of Rs. 24,80,000/- as part of business-income taxable at normal rate and the revenue has not challenged this action of Ld. CIT(A), then there is no justification in giving a different treatment to the excess-cash because both unaccounted debtors and excess-cash were found during the course of same survey proceeding conducted at the same premises and both belong to the very same business carried on by the assessee. With these submissions, Ld. AR prayed that the impugned excess-cash be directed to be treated as business-income taxable at normal rate.

5. Per contra, Ld. DR supported the orders of lower authorities and opposed the contentions of Ld. AR. He submitted that the assessee has not been able to explain any source *qua* the excess-cash of Rs. 7,57,290/- and therefore the lower authorities have rightly taxed the same u/s 69A read with section 115BBE.

6. We have considered rival submission of both sides and perused the material held on record.

7. Section 115BBE reads as under:

**“115BBE.**

(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 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) XXX”*

8. A perusal of section 115BBE makes it clear that once the total income of an assessee includes any income referred to in section 69A, the tax is payable in accordance with that section. There is no ambiguity in the law of section 115BBE. Therefore, the short question we need to examine is whether or not the excess-cash found during survey falls within the clutches of section 69A or not. In order to verify this, the only material available with us is the statement of assessee recorded on oath during survey proceeding because no other material has been brought before us in this respect. The relevant question and reply of assessee recorded in the statement is reproduced below:

“प्रश्न 3. आज दिनांक 05.02.2019 को आपके व्यावसायिक परिसर में. श्याम इंटरप्राइजेस, सेंधवा में सर्वे की कार्यवाही के दौरान आपके परिसर पर रखे Cash box में रखे नगद राशि का आपके समक्ष भौतिक सत्यापन किया गया एवं कुल नगद राशि रुपये 9,91,634/- पाई गई । जबकि आपके द्वारा दिनांक 05.02.2019 तक तैयार की गई लेखा पुस्तकों (रोकड़) के अनुसार कुल नगद शेष राशि रु. 1,62,344/- बताया

गया है। इस प्रकार आज दिनांक 05.02.2014 को आपके व्यवसाय से संबंधित लेखा पुस्तकों के अनुसार शेष नगद राशि एवं भौतिक सत्यापन के अनुसार पाई गई कुल नगद राशि में रु. 7,57,290/- (9,19,634-1,62,344) की नगद राशि अधिक पाई गई है। कृपया इस अधिक पाई गई नगद राशि रु. 7,57,290/- का स्रोत स्पष्ट करें ?

उत्तर 3. महोदय जी, मैं स्वीकार करता हूँ कि आज दिनांक 05.02.2019 को सर्वे कार्यवाही के दौरान मेरे व्यावसायिक परिसर से मेरे व्यवसाय से संबंधित कुल नगद राशि रु. 7,57,290/- अधिक पाई गई है एवं यह राशि मेरी ही है। मेरे परिसर से पाई गई अधिक नगद राशि रु. 7,57,290/- मेरे द्वारा अघोषित स्रोतों से अर्जित की गई है इसलिए मैं इसके स्रोत का स्पष्टीकरण देने में असमर्थ हूँ। मैं इस अघोषित स्रोतों से अर्जित नगद राशि रु. 7,57,290/- को अपनी नियमित आय से अतिरिक्त आय के रूप में वित्तीय वर्ष 2018-19 के लिए करारोपण हेतु घोषित करता हूँ एवं उस पर देय कर का भुगतान आयकर अधिनियम की धारा 115BBE के तहत 31 मार्च, 2019 तक करने का वचन देता हूँ। “

Thus, in his reply the assessee has himself accepted that “the excess cash of Rs. 7,57,290/- found from his premise is earned from undisclosed sources, therefore he is unable to give explanation of its source”.

9. Now we proceed to check whether this statement of assessee fits in the clutches of section 69A or not.

### **Section 69A**

*“69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article **is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewelry or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of***

*the bullion, jewelry or other valuable article may be deemed to be the income of the assessee for such financial year.”*

Thus, section 69A is applicable if three conditions are satisfied, viz. (i) the assessee is found to be owner of any money; (ii) such money is not recorded in the books of account maintained for any source of income; and (iii) the assessee offers no explanation about the nature and source of acquisition of money. Reverting back to the statement of assessee, we observe that all three conditions are clearly satisfied, viz. (i) the assessee was found to be owner of money i.e. excess cash of Rs. 7,57,290/-; (ii) the excess cash was not recorded in the books of account of any source (i.e. books of business in present case) maintained by the assessee; and (iii) the assessee has himself admitted that the excess cash of Rs. 7,57,290/- found from his premise is earned from undisclosed sources, therefore he is unable to give explanation of its source. Thus, we find that all ingredients of section 69A are satisfied from the material held on record i.e. the statement of assessee. Being so we do not have iota of doubt in the application of section 69A.

10. We are consciously aware of the decision of **this Indore Bench in Rajesh Kumar Bajaj ITA No. 16/Ind/2019, order dated 09.03.2020** where an identical controversy was involved. While rejecting similar claim of assessee, this Bench has concluded thus:

*“13. Let us examine the statement given by the assessee during the course of survey in reply to questions raised about the source of Excess stock, Excess cash and undisclosed sundry debtors.*

*प्रश्न 3. आपके Concern M/s R.R.Textile Mills में सर्वेक्षण की कार्यवाही के दौरान आपके द्वारा प्रस्तुत cash book के अनुसार आज दिनांक को cash Balance रु. 17413.71 दिखाया गया है जबकि भौतिक सत्यापन पर नगदी रु. 9,77,450/- पाया गया है। इस प्रकार आपके Concern में रु. 9,60,036.29 अधिक पाया गया है। कृपया इस अंतर रु. 9,60,036/- के कारण को स्पष्ट करें।*

*उत्तर 3. मैं अंतर की राशि रु. 9,60,036/- को स्पष्ट करने में असमर्थ हूँ इसलिए मैं अंतर की राशि रु. 9,60,036/- को मेरी प्रोपराईटरशिप कन्सर्न M/s R.R.Textile Mills की*

नियमित आय के अलावा अतिरिक्त आय के रूप में वित्तीय वर्ष 2014-15 से संबंधित निर्धारण वर्ष 2015-16 के लिए अघोषित आय समर्पित (surrender) करता हूँ और उस पर देय आयकर का भुगतान करने का वचन देता हूँ।

प्रश्न 5. आपके Concern पर सर्वेक्षण कार्यवाही के दौरान 13-14 उद्योग नगर, बुरहानपुर पर M/s R.R.Textile Mills के प्रकरण में भौतिक सत्यापन के दौरान कुल स्टॉक रु. 1,03,95,983/- का पाया गया है जबकि आपकी नियमित लेखा-पुस्तकों के अनुसार M/s R.R.Textile Mills का स्टॉक राशि रु. 28,49,869/- दर्शाया गया है। इस प्रकार कुल रु. 75,46,114/- का स्टॉक अधिक पाया गया है। कृपया अधिक पाये गये स्टॉक की राशि रु. 75,46,114/- के स्रोत को स्पष्ट करें।

उत्तर 5. महोदय, मैं M/s R.R.Textile Mills के प्रकरण में अधिक पाये गये स्टॉक रु. 75,46,114/- का स्रोत स्पष्ट करने में असमर्थ हूँ। अतः अंतर की राशि रु. 75,46,114/- को मेरी प्रोपराईटरशिप कंसर्न M/s R.R.Textile Mills की नियमित आय के अलावा अतिरिक्त आय के रूप में वित्तीय वर्ष 2014-15 से संबंधित निर्धारण वर्ष 2015-16 के लिए अघोषित आय समर्पित (surrender) करता हूँ और उस पर देय आयकर का भुगतान करने का वचन देता हूँ।

प्रश्न 6. मैं आपको BI-1 राजकमल ग्रुप की डायरी दिखा रहा हूँ जिसके कुल 1 से 25 पृष्ठ लिखित हैं जिसे Annexure-'B' में इंद्राज किया गया है जो आपके व्यवसायिक स्थल 13-14, उद्योग नगर, बुरहानपुर पर पायी गयी है। कृपया इस डायरी को देखकर बताये कि इसमें किस प्रकार के व्यवहार दर्ज हैं? और क्या ये सभी व्यवहार आपकी नियमित लेखा-पुस्तकों में दर्ज हैं?

उत्तर 6. मैंने आपके द्वारा दी गई डायरी BI-1, राजकमल ग्रुप को अच्छी तरह से देख लिया है। इसमें अग्रिम की प्रविष्टियां दर्ज हैं, जिनका लेखा M/s R.R.Textile Mills की नियमित लेखा-पुस्तकों दर्ज नहीं है। मैं इन प्रविष्टियों के स्रोत को स्पष्ट करने में असमर्थ हूँ। अतः पृष्ठ क्रमांक 1 से 25 तक में दर्ज कुल अग्रिम की राशि रु. 7,75,000/- को मेरी प्रोपरायटरी कंसर्न M/s R.R.Textile Mills की नियमित आय के अलावा अतिरिक्त अघोषित आय मानते हुए करारोपण हेतु समर्पित करता हूँ और उस पर नियमानुसार आयकर का भुगतान करने का वचन देता हूँ।

14. Now in order to know that whether the assessee has offered any explanation to the excess stock, excess cash or receivable from sundry parties, from perusal of the statements in the reply given by the assessee in Question No.3, 5 and 6 we find that assessee has

*categorically accepted that “he is unable to explain the source of excess cash, excess stock and unaccounted receivables”. There is no other evidence brought on record by the assessee to show that some unaccounted purchases for the year or unaccounted sales or unrecorded sales happened during the year or details of the debtors which can show the nexus of the surrendered income as business income for the year under consideration.”*

We observe that the issue, facts and law involved in this decision are exactly same as of the present appeal before us. Therefore, this decision is directly applicable and we are bound to follow the same.

11. Now we would like to deal with the decisions cited by Ld. AR. In **Hon’ble ITAT, Chandigarh in Famina Knit Fabs Vs. ACIT, ITA No. 14945/Chd/2017 order dated 08.02.2019**, the issue was related to set-off of loss against undisclosed income which is not before us. Further, there was undisclosed income comprising of unaccounted receivables, sundry creditors & advances of business, gross profit on unrecorded sales, investment in kothi and loose papers but there was no issue of excess cash. Moreover a closer scrutiny of the decision demonstrates that the Hon’ble Bench has accepted only unaccounted receivables, sundry creditors & advances of business and gross-profit as business-income. But the Hon’ble Bench has clearly held the investment in Kothi and income arising from loose papers was taxable u/s 69 to 69C for the reason that the assessee had not explained the source of those incomes. Next is the decision of Hon’ble Rajasthan High Court in **CIT Vs. Bajrang Traders, DBIT No. 258/2017 dated 12.09.2017**, wherein the issue involved was of excess stock of business. Next is the decision of **Hon’ble ITAT Jodhpur in Lovish Singhal & Others V/s ITO, ITA No. 143/Jodh/2018 order dated 25.5.2018**. This decision of Hon’ble Jodhpur Bench is also not applicable since the decision is of the Single Bench and is not binding on double bench of Tribunal. With this very reasoning, the Indore Bench has already dissented from this decision of ITAT Jodhpur, in **Rajesh Kumar Bajaj ITA No. 16/Ind/2019, order dated 09.03.2020 (supra)**. Next decision of Hon’ble **ITAT Ahmedabad Bench in Chokshi Hiralal Mangilal Vs DCIT, ITA No. 3281/Ahd/2009 order dated 14.10.2009** is also not

relevant because section 115BBE was not existing in the statute at that time. Next decision of **Hon'ble ITAT, Guwahati in Abdul Hamid Vs. ITO (2020) 117 taxmann.com 986** was concerned with the undisclosed income embedded in the undisclosed business receipts / turnover. Lastly in the decision of **Hon'ble ITAT, Chandigarh in Shri Bhuwan Goyal Vs. DCIT, ITA No. 1385/Chd/2019**, the assessee explained his real estate business as source of undisclosed income. Further the Hon'ble Bench also observed that section 115BBE, as existing at that time, was not applicable because the assessee declared undisclosed income in the return filed u/s 153A and not in the return filed u/s 139. Thus, we observe that all these decisions have different facts or law and do not help the assessee. At the same time, we also observe that the decision given by this Indore Bench in **Rajesh Kumar Bajaj ITA No. 16/Ind/2019, order dated 09.03.2020 (supra) is directly applicable to the assessee.**

12. We would also like to address one important plea taken by Ld. AR about the contradictory approach of Ld. CIT(A). The Ld. CIT(A) has accepted the unaccounted debtors of Rs. 24,80,000/- as part of business-income u/s 28 taxable at normal rate and the revenue has not challenged this action of Ld. CIT(A). But the Ld. CIT(A) has concluded excess-cash as deemed income u/s 69A taxable at higher rate u/s 115BBE. For this plea taken by Ld. AR, we have perused the order of Ld. CIT(A). We observe that the Ld. CIT(A) has given sufficient findings and analysis of legal precedents for arriving at his conclusions. Ld. CIT(A) has also reproduced the statements of assessee in his order. Based on those statements, the Ld. CIT(A) has observed that the assessee has co-related unaccounted debtors with the business, but when it came to excess-cash, the assessee has stated it to be from undisclosed sources. Therefore we do not find anything wrong in the conclusions made by Ld. CIT(A).

13. In view of above discussion, we are of the considered view that the impugned excess cash of Rs. 7,57,290/- found by the revenue during survey-proceeding attracted section 69A as well as section 115BBE of the act.

Therefore, we agree that the lower authorities have rightly invoked / confirmed that the excess cash is taxable u/s 69A read with section 115BBE. The conclusions taken by lower authorities do not require our interference.

14. In the result, ITA No. 245/Ind/2021 is dismissed.

**ITA No. 246/Ind/2021 – in the case of Shri Lokesh Mangal:**

15. In this appeal, the assessee has raised following Grounds:

***“1. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining the provision of section 69A of the Income Tax Act on the amount of additional income of Rs. 2,68,555/- as offered during the course of survey on account of excess cash found during survey even when the only source of income of the appellant was from his business and liable to tax under section 28 to 44 of the Income Tax Act. Thus, the provision of section 69A of the Income Tax Act as maintained by the ld. CIT(A) on additional income was neither legal nor proper.***

***2. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining the chargeability of tax at higher rate by invoking the provision of section 115BBE of the Income Tax Act on additional income of Rs. 2,68,555/- as offered during the course of survey on account of excess cash found. The tax as charged at higher rate on additional income was neither legal nor proper.***

***3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in maintaining addition of Rs. 9,962/- to the total income of the appellant in respect of Gross Profit on shortage of stock of Rs. 99,624/- was neither legal nor proper.***

***4. The appellant reserves his right to add, alter and modify the grounds of appeal as taken in the present appeal.”***

16. First we take up Ground No. 1 and 2 which deal with the characterization of excess-cash of Rs. 2,68,555/- found during survey. We observe that the facts and law are identical to ITA No. 245/Ind/2021. But there is some difference in the wording of question raised by authorized officer and reply given by the assessee, which for the sake of completeness, we reproduce below:

“प्रश्न 24 : सर्वेक्षण कार्यवाही के दौरान आपके व्यवसाय परिसर से कुल नगद राशि रु. 9,55,850/-

प्राप्त हुई है जबकि आपके **Balance Sheet** के अनुसार दिनांक 05.02.2019 के **Cash in**

**Hand** रु. 6,87,295/- है । इस प्रकार नगद राशि रु. 2,68,555/- अधिक प्राप्त हुआ है ।

इस अधिक राशि को कृपया स्पष्ट करें ।

उत्तर- सर, अंतर की राशि रु. 2,68,555/- को स्पष्ट करने में असमर्थ हूँ । इसके साथ ही मैं इस

राशि को मैं चालू वित्त वर्ष की अघोषित आय मानते हुए करारोपण हेतु समर्पित करता हूँ

। इस पर देय कर का भुगतान अग्रिम कर के रूप में समय पर भुगतान करने का वचन

देता हूँ । “

However, we find that the essence and effect is same as in ITA No. 245/Ind/2021. Therefore, following our view in earlier paragraphs, we dismiss assessee's Ground No. 1 and 2.

17. Now we take up next Ground No. 3 which relates to the addition of Rs. 9,962/-. During survey proceeding the physical verification of stock was carried out wherein it was observed that the available stock was of Rs. 31,25,338/- as against the stock of Rs. 32,24,962/- shown by books of account. Thus, the physical stock was found to be short by Rs. 99,624/-. During assessment-proceeding, the Ld. AO treated this short-stock as unaccounted sales out of books of account, estimated profit @ 10% on Rs. 99,624/- and thereby made an addition of Rs. 9,962/-. Ld. CIT(A) has also confirmed this addition. Before Ld. AO as well as Ld. CIT(A), the assessee submitted that the difference of Rs. 99,624/- is a very petty difference which can occur due to hasty physical verification as well as sudden preparation of books of account and hence the difference should be ignored. However, the lower authorities did not accept this submission of assessee. Before us, the

Ld. AR pleaded the same submission. We observe that the difference of Rs. 99,624/- is very nominal and it can happen despite of all care in carrying out physical verification as well as preparation of books. Further, the difference of Rs. 99,624/- has ultimately resulted into addition of Rs. 9,962/-. We observe that the tax effect on Rs. 9,962/- shall be very negligible. Hence in order to impart a justice and taking a holistic and practical view, the addition of Rs. 9,962/- deserves to be deleted. We, therefore, direct the Ld. AO to delete this addition. Accordingly, Ground No. 3 of assessee is allowed.

18. In the result, ITA No. 246/Ind/2021 is partly allowed.

**ITA No. 247/Ind/2021 – in the case of Shri Aashish Mangal:**

19. In this appeal, the assessee has raised following Grounds:

***“1. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining the provision of section 69A of the Income Tax Act on the amount of additional income of Rs. 8,15,000/- as offered during the course of survey on account of excess cash found during survey even when the only source of income of the appellant was from his business and liable to tax under section 28 to 44 of the Income Tax Act. Thus, the provision of section 69A of the Income Tax Act as maintained by the ld. CIT(A) on additional income was neither legal nor proper.***

***2. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining the chargeability of tax at higher rate by invoking the provision of section 115BBE of the Income Tax Act on additional income of Rs. 8,15,000/- as offered during the course of survey on account of excess cash found. The tax as charged at higher rate on additional income was neither legal nor proper.***

***3. The appellant reserves his right to add, alter and modify the grounds of appeal as taken in the present appeal.”***

20. These Grounds deal with the characterization of excess-cash of Rs. 8,15,000/- found during the survey. We observe that the facts and law are identical to ITA No. 245/Ind/2021. But there is some difference in the wording of question raised by authorized officer and reply given by the assessee, which for the sake of completeness, we reproduce below:

“प्रश्न 23 :- आपके व्यावसायिक प्रतिष्ठान पर सर्वेक्षण कार्यवाही के दौरान रोकड़ का भौतिक सत्यापन किया गया जिसके अनुसार आपके व्यवसायिक परिसर में कुल रु. 21,96,630/- पाये गये हैं जबकि आपकी प्रोप्राइटरी कंसर्न मे. माँ कालका ट्रेडिंग में आज की रोकड़ शेष रु. 7,82,608/- आपकी बुक्स ऑफ एकाउण्ट में आ रही है । कृपया इस अंतर की राशि को स्पष्ट करें ?

उत्तर :- जैसा कि मैंने पूर्व में बताया कि इस व्यवसायिक परिसर से मेरी स्वयं की प्रोप्राइटरी कंसर्न माँ कालका ट्रेडिंग के साथ ही मेरे भाई श्री दीपक मंगल की प्रोप्राइटरी कंसर्न मेसर्स दिव्या ट्रेडिंग भी संचालित की जाती है । दोनो कंसर्न की लेखा बहियां भी इसी परिसर में कंप्यूटर पर **Telly** सॉफ्टवेअर पर मेंटेन की जाती है तथा दोनो कंसर्न की रोकड़ भी यही पर रखी जाती है । मैं मेसर्स कालिका ट्रेडिंग तथा मेसर्स दिव्या ट्रेडिंग का आज की दिनांक का ट्रायल बैलेंस प्रस्तुत कर रहा हूँ । जिसके अनुसार मेसर्स माँ कालिका ट्रेडिंग में रोकड़ शेष रु. 7,82,608/- दिख रही है तथा मेसर्स दिव्या ट्रेडिंग की रोकड़ शेष भी रु. 5,99,022/- भी देखी जा सकती है । इस प्रकार उपरोक्त दोनो कंसर्न का रोकड़ शेष कुल रु. 13,81,630/- (कालिका 7,82,608/- + दिव्या 5,99,022/-) बुक्स ऑफ एकाउंट के अनुसार आता है और अंतर की राशि रु. 8,15,000/- होती है जो कि आपके द्वारा भौतिक सत्यापन के उपरांत रोकड़ आधिक्य के रूप में आ रही है । इस रोकड़ आधिक्य की राशि रु. 8,15,000/- को मैं स्पष्ट करने में असमर्थ हूँ । और मैं स्वीकार करता हूँ कि यह रोकड़ आधिक्य की राशि रु. 8,15,000/- मेरी अघोषित स्रोतों से आय है जिसे मैं करारोपण के लिए चालू वित्त वर्ष की आय के रूप में समर्पित करता हूँ । “

However, we find that the essence and effect is same as in ITA No. 245/Ind/2021. Therefore, following our view in earlier paragraphs, we dismiss assessee's Ground No. 1 and 2.

21. In the result, ITA No. 247/Ind/2021 is dismissed.

**22. Thus, in the result, ITA No. 245/Ind/2021 is dismissed, ITA No. 246/Ind/2021 is partly allowed and ITA No. 247/Ind/2021 is dismissed.**

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 29.06.2022.

Sd/-

(MAHAVIR PRASAD)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

Indore

Dated : 29.06.2022

Patel/Sr. PS

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

*By order*

TRUE COPY

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*