

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.225/Asr/2019
Assessment Year: 2016-17**

Sh. Yash Paul Malhotra (HUF), Near Kali Mata Mandir, Industrial Area, Jalandhar. [PAN: AABHS4295L] (Appellant)	Vs.	Income Tax Officer, Ward-2(2), Jalandhar. (Respondent)
---	------------	---

Appellant by	Sh. Surinder Mahajan, CA
Respondent by	Sh. Ravinder Mittal, Sr. DR

Date of Hearing	22.02.2023
Date of Pronouncement	01 .03.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeal)-1, Jalandhar,[in brevity the ‘CIT (A)’] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] order dated 22.02.2019 for A.Y. 2016-17.The impugned order was emanated from the

order of the Id. Income Tax Officer, Ward-II (2), Jalandhar, (in brevity the AO) order passed u/s 143(3) of the Act date of order 24.12.2018.

The assessee has taken the following ground:

- “1. That on the facts & circumstances of the case, Learned Commissioner of Income Tax (Appeals) - Jalandhar [‘Ld. CIT(A)’] has grossly erred in law in concluding that additional business income of Rs. 14,26,000/-declared by the assessee during survey operations is deemed income and taxable u/s 115BBE of the Act. Conclusion drawn by the Learned Commissioner of Income Tax (Appeals) - Jalandhar [‘Ld. CIT(A)’] is illegal and bad in law.*
- 2. That Learned Commissioner of Income Tax (Appeals) - Jalandhar [‘Ld. CIT(A)’] while confirming addition made u/s 115BBE of the Act as against business income declared by the assessee has failed to appreciate that stocks and cash surrendered during survey operations clearly related to business of the assessee and surrender was made by the assessee clearly as additional business income.*
- 3. That addition confirmed as deemed income u/s 115BBE of the Act as against business income declared by the assessee is opposed to judgment of jurisdictional ITAT Amritsar Bench, Amritsar in the case of DEV RAJ HI-TECH MECHINES LTD. vs. Dy. CIT (174 TTJ 0009) wherein it has been held “Where the surrendered additional income related to sundry creditors, repairs to building and advances and*

stock which related to business carried on by assessee then same was included in income from business.

4. That the Appellant requests for leave to add or amend the grounds of appeal before the appeal is heard or disposed off”

2. Brief fact of the case is that a survey was conducted against the assessee. The assessee declared the income related to excess stock amount of Rs.6,27,000/- and excess cash amount Rs.7,99,000/- and the total amount works out to Rs.14,26,000/- which was declared by the assessee during survey. Thereafter assessee had filed the return u/s 139 and had declared this amount in the return of income and also had taken in the books of accounts. The assessment was completed, the Id. AO accepted the declared amount of the assessee and treated the amount as a deemed income u/s 69 and 69A of the Act and levied the tax u/s 115BBE in special rate. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) after considering the submission of the assessee uphold the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

3. During hearing, the Id. Counsel for the assessee first invited our attention in the observation of the Id. CIT(A) in para 3.3 which is reproduced as below:

“3.3 I have carefully considered the facts of the case and submissions of the appellant.

During the survey the assessee has surrendered an amount of Rs. 14,26,000/- as per the return of income, the assessee has included the amount in P&L A/c. However, in view of the fact that the assessee has failed to establish that the surrendered amount has been generated from the business operations, therefore the surrendered income has been treated u/s 69 A/69 read with Section 115BBB of the Income Tax Act, 1961. During the appeal proceedings the Ld. counsel has stated that the assessee has recorded the entry in cash book on 10.09.2015. The assessee has admitted that the said income was its business income and the same has been shown in the profit & loss a/e by the assessee. As per the copy of letter of surrender of income filed by the assessee, the assessee has surrendered an additional income of Rs. 14,26,000/- over and above its normal business income. The assessee has not explained that how income surrendered was being generated from its business. In view of the judgment of Hon'ble Punjab & Haryana High Court in the case of Kim Pharma (P) Ltd. Vs CIT, Panchkula & others, Income Tax Act, 1961. NO. 106 of 2011 dated 27.04.2011, the assessment made by the Assessing Officer by applying provisions of Sec 69A/69 read with section 115BBE of the Income Tax Act, 1961 is upheld. These grounds of appeal are dismissed.”

3.1 The Id. counsel further argued that the assessee is a proprietor of M/s S.K. Traders at Jalandhar survey was conducted in the business premises of the assessee. Stock and cash were physically verified and compared with the books of accounts. The excess of stock amount of Rs.7,99,000/- and cash amount of Rs.6,27,000/- as compared to stock and cash as per books of account of the assessee. To buy the peace of mind and to avoid litigation with the department the assessee offered additional business income total amount of Rs.14,26,000/- over and above normal business income in the impugned assessment year. It is prayed that the tax levied in special rate u/s 115BBE is bad in law.

4. The Id. Sr. DR vehemently argued and mentioned that during assessment proceeding the assessee was incapable to submit the documents to show the business connection of the excess stock and cash. Accordingly, the Id. AO correctly implemented the tax in special rate u/s 115BBE of the Act.

5. We heard the rival submission and relied on the documents available in the record. During hearing, the Id. Counsel further draw our attention in **APB page 3 to 4** of brief facts of the cases. The assessee submitted a letter to the Id. JCIT, Range-2, Jalandhar, Punjab on dated 10.09.2015 and had declared the excess stock and cash which are as an additional income related to the business of the assessee.

The assessee already declared this amount on the return of income. The entire tax calculation u/s 115BBE shall on basis of the order of the Hon'ble Jurisdictional Punjab and Haryana High Court in the case of **Kim Pharma Pvt. Ltd. vs. CIT 258 CTR 0454 (P & H)**. But the ld. counsel mentioned that this case is distinguishable fact with the assessee's case. As per the order of the Hon'ble Jurisdictional High Court, the assessee had declared the surrendered income in "Income from other sources". But no evidence was able to submit during the time of assessment in support of assessee's claim. So, the entire addition was taken as "Income from other sources". Therefore, the assessee filed the reasonable documents i.e. bill copies as proof of stock and statement of account in **APB page no. 8 to 9**. Where it is clearly mentioned that the excess stock Rs.6,27,000/- is the purchased from local dealer which was remained as undisclosed during the survey. Also, in case of cash the assessee submitted statement of accounts in **APB pages 11 to 12**. The assessee was able to correlate the undisclosed amount Rs.14,26,000/- with the business of the assessee. The revenue was also not able to find out any different head of income related to assessee on which basis it would be declared as a deemed income. The ld. DR is also accepted the fact of the assessee and not

made any strong objection in this issue. We set aside the order of the Id. CIT(A).

The addition Rs. 14,26,000/- is liable to be taxed in normal rate.

6. In the result, the appeal of the assessee bearing **ITA No. 225/Asr/2019** is allowed.

Order pronounced in the open court on 01.03.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order