

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. N.K CHOUDHRY, JUDICIAL MEMBER**

ITA No. 1630/Del/2022
(Assessment Year: 2017-18)

M/s Dipin Chemicals Pvt. Ltd., 589/16A, Civil Lines, Gurgaon- 122001, Haryana	Vs	ITO, Ward-1(4), Gurgaon 122001
PAN No. AACCD 8480 A		
(APPELLANT)		(RESPONDENT)

Assessee by	Dr. Rakesh Gupta, Advocate Shri Deepash Garg, Advocate
Revenue by	Mr. Atiq Ahmad, Sr. DR

Date of hearing:	07.03.2023
Date of Pronouncement:	31.03.2023

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 16.06.2022 of the NFAC, Delhi relating to Assessment Year 2017-18.

2. Brief facts of the case as culled out from the material on record are as under :-

3. The assessee is a company stated to be engaged in the business of chemicals. The assessee had filed its return of income

for A.Y 2017-18 on 06.10.2017 declaring total of income at Rs. 15,58,600/- which was initially processed u/s. 143(1) of the Act. Thereafter the survey u/s. 133A of the Act was conducted at the premises of the assessee on 05.05.2016. Thereafter notices u/s. 143(2) and 142(1) were issued and served on the assessee. Consequently the assessment was framed u/s. 143(3) vide order dated 25.12.2019, whereby addition of Rs.4,06,00,000/- was made and held to be taxed as per provision of section 115BBE of the Act.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 16.06.2022 in order no. ITBA/NFAC/S/250/2022-23/1043465361(1) dismissed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:-

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in treating a sum of Rs.4,06,00,000/- as undisclosed income us 69A and 69C and has further erred in charging tax as per provisions of section 115BBE and that too by recording incorrect facts and findings and without appreciating the facts and circumstances of the case and in violation of principles of natural justice.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in treating a sum of Rs.4,06,00,000/- as undisclosed income w/s 69A and 69C and further erred in charging tax as per provisions of section 115BBE, is bad in law and against the facts and circumstances of the case and Ld. CIT(A) further erred in not

appreciating/considering the fact that assessed income has got direct nexus with the business income of assessee.

6. Before us, Ld. AR submitted that during the course of survey proceedings u/s. 133A, assessee had declared Rs. 4.06 crores as its undisclosed income over and above its regular income for financial year 2016-17, the breakup of the undisclosed income as under:-

(i)	Difference in stock of	Rs. 17,00,000
(ii)	Construction and renovation of factory building at Bhiwadi	Rs. 80,00,000
(ii)	Purchase of silver catalyst	Rs. 1,89,00,000
(iv)	Renovation of flat	Rs. 1,20,00,000

AO noted that assessee had accounted the aforesaid undisclosed income of Rs. 4.06 crore in the Profit and Loss account and various expenses were adjusted against the undisclosed income. AO was of the view that adjusting of various expenses against the undisclosed income was in contravention of provision 115BBE of the Act. The assessee was therefore asked to explain as to why Rs. 4.06 crore be not brought to tax as per the provisions of section 115BBE to which assessee filed the submissions but which were not found acceptable to AO. AO thereafter held Rs. 4.06 crores declared by the assessee during the course of survey to be taxable as per provision of section 115BBE of the Act.

7. Aggrieved by the order of AO, assessee carried the matter before CIT(A), who upheld the order of AO.

8. Before us, Ld. AR reiterated the submissions made before the lower authorities and further submitted that the income surrendered during the course of survey was the business income which was represented by difference in stock, construction and renovation of factory building, purchase of silver catalyst which was used in the business and renovation of flat used for the purpose of business. He submitted that since the amount that was surrendered was business income, the same was liable to be taxed u/s. 28 of the I.T Act and therefore it should suffer normal tax rate of 30% and not the high tax rate as per section 115BBE of the Act. He further submitted that the investigation during the course of survey did not show any other business or activity being run by the assessee and therefore the income surrendered by the assessee was business income of the assessee. He further submitted that the higher rate of tax in section 115BBE was introduced by taxation laws amendment Ordinance/Act dated 15.12.2016 which was made operational from 01.04.2017, and since the survey in the case of the assessee was undertaken on 05.05.2016, that is before the amendment, therefore the amendment made u/s. 115BBE would not be applicable. He therefore submitted that the income surrendered during the survey be treated as business income and the tax rate of 30% be made applicable, and not the enhanced tax rate of 60% which was made effective from 01.04.2017.

9. Ld. DR on the other hand, strongly supported the order of lower authorities.

10. We have heard the rival submissions perused the material on record. The issue in the present ground is about taxation of the income surrendered during the course of survey. It is undisputed fact that assessee had declared of Rs. 4.06 crore as its undisclosed income and which was offered to tax. It is the contention of the assessee that the income declared during the course of survey is out of the business of the assessee and is therefore the business income but the Revenue has taxed the same under the provisions of section 115BBE of the Act. We find that there is no finding of the lower authorities as to whether the income declared during the course of survey is arising out of business or it is from the income from other sources. In such a situation more so, when the contention of the assessee is that the assessee has no other business than the present business and the income declared is out of the business of the assessee, we are of view that the matter needs to be re-examined at the end of AO. We therefore restore the issue back to the file of AO, and direct him to give a categorical finding as to whether the income declared by the assessee is business income or income from other sources. Needless to state that AO shall grant adequate opportunity of hearing to the assessee. Assessee is also directed to promptly furnish the details called for by the AO. **Thus, this ground of assessee is allowed for statistical purposes.**

7. **In the result, appeal of the assessee is partly allowed.**

Order pronounced in the open court on 31.03.2023

Sd/-

**(N.K CHOUDHRY)
JUDICIAL MEMBER**

Date:- 31.03.2023

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

NV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI