

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI PRASHANT MAHARISHI, AM**

आयकरअपीलसं./ I.T.A. No.2285/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2019-20)

Govind Gidomal Lulla Mumbai. M S Building, DR CG Road, FCI S.O., Mumbai 400074	बनाम/ Vs.	CIT (A) 51, Mumbai. Aayakar Bhavan, M.K.Road, Churchgate, Mumbai- 400020
स्थायीलेखासं ./जीआइआरसं ./PAN No AAAPL4103D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Dharan Gandhi
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Ram K. Kedia, Sr. AR.
सुनवाईकीतारीख/ Date of Hearing	:	03.04.2023
घोषणाकीतारीख / Date of Pronouncement	:	11.04.2023

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the Assessee against order dated 19.07.2022, passed by Ld.CIT (A) 51, Mumbai, for the quantum of assessment passed u/s 143(3) for the AY: 2019-20

2. In the grounds of appeal assessee has raised the following grounds:

1) *On the facts and circumstances of the case as well as in law The Ld. CIT(A) has erred in holding the action of assessing officer by considering the disclosure of stock of Rs. 22,38,769/- in survey within the meaning of section 69 of the Income Tax Act. 1961("the Act")as unexplained investments. Such disclosure of stock and declaring it in the return of income by paying taxes on the same do not justifies the application of section 69 of the Act.*

2) *On the facts and circumstances of the case as well as in law the Ld. CIT(A) has erred in holding the action of assessing officer by invoking the provisions of the Section 115BBE of the Act on such disclosed stock, which has resulted into higher rate of tax.*

3. The facts in briefs are that, assessee has filed the return of income for A.Y. 2019-20 u/s. 139(1) on 18.10.2019 declaring income of Rs. 8,10,58,630/-. A survey action 133A of the Act was carried out on the business premises of the Assessee, **M/s. Jhama Sweets** on 15.01.2019. Based on the survey finding, the case was selected for scrutiny under "compulsory scrutiny selection". AO noted that, during the course of survey proceedings, inventory of stock was prepared and as on the date of survey, in books of account the stock was shown at Rs. 2,82,400/-. However, the stock as per the physical inventory was arrived at 25,21,196/-. Thus, there was stock discrepancy of Rs. 22,38,769/-, which assessee accepted and offered for taxation as business income.

4. However, the Ld. AO held that access stock found was undisclosed investment within the meaning of section 69, and

therefore taxes have to be levied at higher rate under the provision of section **115BBE**.

5. In the first appeal, the Ld. CIT (A) confirm the action of the AO on the ground that assessee has failed to explain the source of investment in undisclosed stock, and therefore same has been rightly tax u/s. 69 and consequently, provision of section 115BBE are applicable.

6. After hearing both the parties, and on perusal of the relevant finding during the impugned order as well as the material placed before us, it is noticed that there was difference of stock in books and the physical stock found during the survey and such difference was worked out at Rs. 22,38,769/-. Assessee is in the business of manufacturing of sweets (Mithai) and the stock which was found was the raw material/ ingredients used for preparation of the sweets. In the course of survey, the assessee in his statement on this issue merely stated that he will provide the reconciliation in some time about the discrepancy. However, later on assessee offered the difference for taxation as business income, because the excess stock was said to be purely purchase of material for making sweets during the course of the business. If assessee is carrying on business and has some undisclosed stock then same is taxable as an undisclosed business income. It is cannot be held it is a case of undisclosed investment, albeit it is a case of undeclared business income. Neither during the course of survey nor in the statement it was found nor has assessee ever stated that there is some

undisclosed investment representing in the form of undisclosed assets. It is a case of excess stock found during the carrying of the business and stock is generated out of business income and therefore, the provision of section 69 on the facts of the case has no applicability.

7. Accordingly, Assessee has rightly offered it has business income and consequently, the provision of section 115BBE is not applicable. Thus, the ground raised by the assessee is allowed.

8. **In the result of the assessee is allowed.**

Orders pronounced in the open court on 11th April, 2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai;दिनांक Dated : 11.04.2023

Ms.Urmila

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**