

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

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.29/Ind/2023
(Assessment Years:2019-20)

M/s. Supremo India Pvt. Ltd. 400/2, Halka Patwari No.52 Badiakeema Dudhiya, B.O. Indore	vs.	ACIT Central-3 Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAFCS 9822 C		
Assessee by	Shri S.S. Solanki, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	01.05.2023	
Date of Pronouncement	07.06.2023	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 26.12.2022 of Commissioner of Income Tax(Appeal)-3 Bhopal for Assessment Year 2019-20. The assessee has raised following grounds of appeal:

“1.That the learned CIT(A) erred in confirming the view of AO of taxing alleged excess stock surrendered during the course of survey u/s 115BBE by invoking the provisions of section 69A. The addition so confirmed by learned CIT(A) being illegal and wrong. The same therefore may very kindly be deleted.

2. That the learned CIT(A) erred in confirming the view of the AO that alleged excess stock surrendered during survey falls u/s 69B. That at the time of survey, figure of stock is worked out by taking some

assumptions like averaging out the G.P. etc. When the figure of alleged excess stock is itself worked out from assumptions how can it be concluded that appellant has unexplained investment which is a definite term. Applying provisions of Section 69B on estimated figure is illegal and wrong. The same therefore may very kindly be deleted.

3. That the learned CIT(A) erred in confirming the view of the AO of applying provisions of Section 115BBE on business income without even considering the purpose of legislature behind introducing the provisions of Section 115BBE. The action taken by learned CIT(A) of confirming the addition made by AO is illegal and wrong. The same therefore may very kindly be deleted.

4. That the learned CIT(A) erred in confirming the view of the AO that the alleged excess stock is covered u/s 69B and not under the head business income. When the appellant is engaged only in business activity and the stock found is of the same items which appellant manufactures/trades, how can the same be treated as unexplained investment. That section 69B casts heavy burden on the shoulders of the AO. He has not only to conclusively find that there is some unexplained investment done by the appellant which exceeds the amount recorded in books but also the appellant offers no explanation about it. Both the conditions with due respect have not been fulfilled by the AO. The addition so confirmed by learned CIT(A) being illegal and wrong. The same therefore may very kindly be deleted.”

2. The solitary issue arises in this appeal of the assessee is whether in the facts and circumstances of the case the Ld. CIT(A) justified in confirming the order of the AO in applying the provision of section 69B and higher tax rate u/s 115BBE of the Act on the surrendered income on the excess stock offered/declared in the return of income. The assessee company is engaged in the manufacturing and trading of plastic water tank and other plastic products. A survey u/s 133A of the Act was conducted in the case of the assessee on 29.01.2019. The assessee filed its return of income u/s 131(1) of the Act on 22nd December 2019 declaring total income of Rs.1,41,42,170/- including *inter alia* the surrendered income of Rs.58,78,145/- on account of excess stock as business income. During the scrutiny assessment the AO accepted the income declared by the assessee in the return of income but the disclosure on account of cash sales of scrap and excess stock found during the survey proceedings was held to be deemed income u/s 69A

and 69B of the Act respectively and consequently taxed the same at the higher rate provided u/s 115BBE of the Act. On appeal the Ld. CIT(A) granted relief so far as the cash sales of scrap is concerned and held that provision of section 69A are not applicable in respect of cash sales and consequently directed the AO apply normal rate of tax however, the Ld. CIT(A) has confirmed the order of the AO applying the higher tax rate u/s 115BBE in respect of the income on account of excess stock. Aggrieved by the order of the Ld. CIT(A) the assessee filed present appeal.

3. Before us the Ld. AR has submitted that during the course of survey proceedings the assessee though surrendered and declared income on account of excess stock however, the same was surrendered as business income and not an income from undisclosed source. He has referred to the statement of Director of the assessee recorded during the survey proceeding and submitted that in answer to question No. 18, the Director of the assessee explained the source and offered the income as arising from business activity of the assessee company. Thereafter, the assessee has carried out the relevant entries in its books of accounts of the amount of stock surrendered under the head purchases and corresponding entries for crediting the stock. The assessee has specifically shown this income under the head extra ordinary items. The excess stock found during the course of survey is the same as finished goods manufactured by the assessee and deal in the same stock therefore, the excess stock will be treated as business stock of the assessee. This excess stock does not have any independent identity but it is integral and inseparable part of declared asset therefore, the difference can be treated as undeclared business income which has been offered by the assessee in the return of income for invoking provisions of section 69B of the Act there should be clearly identifiable asset separate from the other business asset of the assessee. If there is no physical distinction between accounted stock and unaccounted stock, the unaccounted stock will be treated as undeclared business income. Further in the statement recorded during the course of survey specific query was asked about source of income and assessee

explained that the excess stock is generated out of its normal business and therefore the source of surrendered income stands proved. Thus, the Ld. AR has submitted that the conditions provided u/s 69, 69A, 69B & 69C of the Act are not been satisfied in the case of the assessee when the excess stock is nothing but part of the regular stock generated out the business activity of the assessee and the same is inseparable from the declared stock. Hence the amount surrendered will be treated as business income. In case of the assessee the AO has not found any money, bullion, jewellery or other valuable article as such. The surrender has been made on the basis of alleged stock calculated on the basis of applying some presumptions like assuming GP rate as constant. Further the alleged difference of stock found is inseparable from total stock available with assessee and therefore, the basic conditions for invoking the provision of section 69B are not satisfied. In support of its contention he has relied upon the following judgments:

1. *Pr. CIT vs. Bajargan Traders D.B. Income Tax Appeal No.258/2017 Rajasthan High Court*
2. *ACIT vs. Shri Anoop Neema in ITANo.05/Ind/2020 ITAT, Indore*
3. *DCIT vs. Shri Krishna Kumar Verma in ITANo.185/Ind/2020, ITAT, Indore*
4. *DCIT vs. M/s. Punjab Retail Pvt. Ltd. ITANo.677/Ind/2019 ITAT, Indore*
5. *Gandhir Ram vs. Pr. CIT ITANo.121/Chd/2021, ITAT, Chandigarh*
6. *ACIT vs. M/s Signature Builders IT(SS) ANo.184 to 186/Ind/2018, ITAT, Indore*

4. On the other hand, Ld. DR has submitted that the assessee itself has declared the excess stock during the survey proceedings however, the assessee has given treatment of the said stock by increasing purchase, expenses and crediting same value in the trading account. The mere entries regarding purchase of stock in the books of account by the assessee would not be regarded as explanation of source of excess stock when there is no supporting evidence in the shape of bills and vouchers of

the alleged purchase. Therefore, the claim of the assessee cannot be accepted the assessee has made these entries after the survey and the source of excess stock for purchase remain unexplained. Therefore, the AO has rightly applied the provision of section 69B and consequently taxed the income from excess stock at higher rate provided u/s 115BBE of the Act. He has relied upon the orders of the authorities below.

5. We have considered the rival submission as well as relevant material on record. The dispute before us is only regarding applicability of the provision of section 69B and consequential higher rate of tax u/s 115BBE of the Act in respect of the income surrendered and offered to tax by the assessee on account of excess stock found during the survey. The assessee has declared the income as business income in the return income which was treated by the AO as deemed income u/s 69B of the Act. The AO has made the addition in para 4.2.3 to 4.3 as under:

“4.2.3 Disclosure by assessee as business income is not of any help unless the same is supported by necessary evidences to establish the same as such. Since documentary evidences in respect of excess stock found and source of investment in excess stock remain unexplained, deeming fiction of 698 applies. Plea of the assessee that he has no other source of income is also not found tenable unless corroborative evidences are produced by the assessee to establish the same as income from business transactions for the year under consideration.

4.2.4 Even if the assessee offers the same suo moto as income in the ROI, it does not take away such income out of category of deemed incomes u/s 698/69A for the financial year in which they are found. Rather, offering such income suo-moto in ROI for the financial year in which they are found, without any supporting evidences to support the year of income and the nature of income and also not having recorded such income in books of accounts for the business/profession maintained if any. itself tantamount to having applied and accepted the provisions of deeming such assets as income of the financial year in which it was found u/s 698/69A. If it were not to be interpreted so, then it was impossible for the assessee also to ascertain as to for which financial year the unrecorded assets pertain to and for which FY the income therein pertained. In absence of any evidence to the contrary, the assessee gets jurisdiction to offer the income pertaining to unexplained assets in ROI relevant for the FY in which such unexplained assets are found, only if he also admits to

the application of section 698 which create a deeming fiction not only to charge the asset as income but also deems such income to be of the FY in which they are found. Hence, offering the Income in ROI suo-moto for any FY without any evidence of year of earning such income would also not foreclose the applicability of 69B/69A.

4.2.5 The Madras HC in M/s. SVS Oils Mills, Vs. The Assistant Commissioner of Income Tax in ITA no 765 of 2018, while dismissing the appeal of the assessee decided the following question of law while confirming the order of ITAT:- "Whether the provisions of section 69B/69C of the Act would justify the separate addition for the value of the excess stock despite inclusion of such excess stock by posting necessary entries in the stock register and further despite the undisputed reporting of the sales effected in relation thereto in its entirety by the Appellant?"

4.2.6 Hon'ble Gujarat High court in Fakir Mohamad Haji Hasan Vs CIT 247 ITR 290 (Guj) have held that expression "save as otherwise provided by this Act" used in section 14, clearly leaves the scope for deemed income of nature covered under scheme of section 69,69A,69B and 69C being treated separately, because such deemed income is not income from salary, house property, profit and gains of business or profession or capital gains nor the income from other sources.

4.3 In view of the above, contentions of the assessee are not found tenable and therefore, amount of Rs. 58,78,145/- in form of excess stock, Rs. 52,86,831/-in form of sales and not recorded in its regular books of accounts and without supporting documentary evidences as detected at the time of survey u/s 133A is treated as deemed income u/s 69B/69A of the I.T.Act, 1961 and to be taxed as per provisions of section 115BBE of the I.T.Act, 1961. Penalty proceeding u/s 271AAC is also initiated separately.

6. The AO has applied the provision of section 69B of the Act for want of any supporting evidence regarding source of excess stock and nature of income which was not found recorded in the books of account at the time of survey. On appeal the Ld. CIT(A) has confirmed the order of the AO on the similar reasoning by relying the judgment Hon'ble Madras High Court in the case of M/s. SVS Oil Mills vs. ACIT in Income Tax Appeal No.765 of 2018. It is pertinent to note that during the course of survey what was detected in respect of the stock was that the physical stock found at the business premises of the assessee was excess in comparison to the stock recorded in the books of account. It is not the case of the AO that the excess stock found during the survey was separated from other stock of

the assessee but it is one and common nature of stock found during the survey except the quantity of the stock on physical verification was found to be excess in comparison to the stock recorded in the books of accounts. Therefore, there is no separable identifiable stock found during the survey then the regular stock of the assessee generated from the business activity of manufacturing of plastic water tank and other plastic items. It is also not a case of inflated purchase so as to require to prove the genuineness of the purchase but it is a case of excess stock found during the survey on physical verification and thereby the quantum of stock was in excess. Hence the question of genuine purchase does not arise when the physical stock was found during the survey and the existence of the same is not in dispute. It is also not in dispute that the entire stock which was found during the survey was a result of manufacturing activity of the assessee which is the normal business activity of the assessee company and therefore, the excess stock cannot be regarded as separate asset then the other stock which is recorded in the books of accounts. What is required to be explained by the assessee is the source of excess stock and the assessee explained as business income of the assessee arising from business activity. Once the stock found during the survey is part of the total stock as outcome of the business of the assessee then the said excess stock cannot be given a separate identity than the other stock of the assessee. Further even the excess stock found during the survey was not recorded in the books of account but when the survey was conducted before closure of financial year then the assessee was at liberty to incorporate the excess stock in the books of account at the time of finalizing accounts.

7. The Hon'ble Rajasthan High Court in case of Pr. CIT vs. Bajargan Traders (supra) has upheld the finding of the Tribunal that excess stock found during the survey is not separable and identifiable but it is part of mixed stock found at the premises which including declared stock as per books as computed by the survey team. Therefore, it is held that the provision of section 69B of the Act cannot be made applicable as primary

condition for invoking the provision is that asset should be separately identifiable and it should have independent physical existence on its own. Coordinate Bench of this Tribunal in case of ACIT vs. Anoop Neema(supra) has also considered an identical issue as under:

“7. We have heard rival contentions and perused the records placed before us. Revenue’s sole grievance is that Ld. CIT(A) erred in not treating the income of Rs. 1,41,75,568/- declared during the course of search carried out on 15.12.2016 as unexplained investment u/s 69 r.w.r.t. 115BBE of the Act. We notice that during the course of search excess stock of gold weighing 6433.812 gms was found amounting to Rs.1,41,75,568/-. Mr. Anoop Neema in his statement recorded on oath on 16.12.2016 u/s 132(4) of the Act accepted the value of excess stock as additional business income for financial year 2016-17. So far as, admission of undisclosed income of Rs.1,41,75,569/- is concerned there is no dispute at the end of both the parties. The bone of contention is that whether the provision of section 115BBE of the Act are applicable on the surrendered income of Rs.1,41,75,568/- we find that Ld. CIT(A) on examination of the fact, settled judicial precedence, also appreciating that the alleged income is business income earned by the assessee during the normal course of its business and was part of the total business stock available at the business premises and also observing that provisions of section 115BBE of the Act are applicable from 01.04.2017 and are thus not applicable on the case of assessee as the search was carried out on 15.12.2016 observing as follows:

Ground No 1 to 5:- Through these grounds of appeal, the appellant has challenged the treating of Rs. 1,41,75,568/- declared during search as unexplained investment u/s 69 r.w.s 115BBE of the Act and not as a business income. During the course of search, valuation of stock was taken by registered valuer and net weight of gold was found at 25,857.490 gms valued at Rs. 5,67,73,734/-, however, the value of gold as per books of accounts of the assessee was at 19,423.678 gms valued at Rs. 4,25,98,165/-. Therefore, a difference in stock of 6433.812 gms was found amounting to Rs. 1,41,75,569/-. Statement of Shri Anoop Nema was recorded on oath on 16.12.2016, wherein, he has accepted value of excess stock of gold as additional income for FY 2016-17 (AY 2017-18). The relevant extract of statement is also scanned on page no 4 & 5 in the body

of assessment order. The AO during the course of assessment proceedings observed that the assessee has declared excess stock as undisclosed income in return of income for AY 2017-18. However, the AO required the assessee to separately credit the excess stock of Rs. 1,41,75,568/- in P/L account but the same was not done by him. The AO therefore, considering the excess stock as unexplained investment made addition of Rs. 1,41,75,568/- to the income of the appellant u/s 69 r.w.s 115BBE of the Act.

4.1.1 The appellant during the course of appellate proceedings has stated that an excess stock of gold was found during the course of search and the same was also not recorded in regular books of accounts, thereby the AO has invoked provisions of section 69, however, no enquiry was made by the AO regarding the source of acquisition of excess stock, therefore, the disallowance made by the AO u/s 69 r.w.s 115BBE is unlawful. Further, the amended provisions of section 115BBE are applicable from 01.04.2017 and not from the date of search.

4.1.2 I have considered the entire matrix of the case, various case law cited by the appellant and also perused assessment order. It is undisputed fact that during the course of search excess stock of gold worth Rs. 1,41,75,568/- was found in possession of appellant. Therefore, appellant during search made disclosure of 1,41,75,568/- on account of undisclosed income, however, the appellant while filing return of income has directly credited the same in his capital account and without showing the same as additional income. Therefore, the additional income offered was not shown in profit and loss account. Thus, the AO was justified in making addition on account of undisclosed income declared in statement recorded on oath u/s 132(4) during search. Also, the appellant has accepted the addition made by the AO amounting to Rs. 1,41,75,568/- vide written submissions dated 26.07.2019. However, the appellant has objected to the findings of the AO on treating the additional income offered (or say business income) by the appellant as unexplained investment u/s 69 r.w.s 115BBE of the Act. After considering the plea of appellant inter alia facts of the case it can be easily said that the instant case revolves around applicability of two different sections i.e. section 69A and section 115BBE of the IT Act.

(a) Applicability of provisions of section 69A (unexplained investment) of the Act:-

The AO found appellant of guilty of invoking provisions of section 69 of the Act and has re-classified the income of the appellant u/s 69A of the Act. before moving ahead, I find it important to quote relevant provision section 69 of the Income Tax Act which is as under:-

“69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are 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 the

investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.”[emphasis supplied]

Any assessee can be held guilty of invoking provisions of section 69 of the Income Tax Act if, (i) where in any financial year, the assessee is found to have made certain investments; (ii) such investments are not recorded in the books of account, if any, maintained by the assessee; (iii) the assessee offers no explanation about the nature and source of such investments; and finally, (iv) even if any explanation is offered by the assessee, such explanation in the opinion of the Assessing Officer is not satisfactory. Conditions (i) and (ii) are mandatory in nature and out of condition (iii) and (iv) only one or both as the case may be fulfilled. In the instant case condition no (i) and (ii) has been fulfilled by the appellant, however, on perusal of copy of assessment order it has been observed that neither the search party nor the AO has ever enquired about source of acquisition of excess stock. During the course of search statement of appellant was also recorded on oath u/s 132(4) of the Act wherein in reply to Q.No 8 the appellant has specifically and clearly admitted that the undisclosed income has been earned out of business income in the relevant pervious year. Thus, condition (iii) or (iv) has not been invoked by the appellant, therefore, addition u/s 69 alone of this fact is untenable as held by Hon’ble Jurisdictional ITAT, Indore Bench in the case of Mukesh Sangla HUF vs. DCIT (2016) 27 ITJ 172 (Trib.-Indore).

Nonetheless, neither the search party during course of search nor the AO during assessment proceeding found that appellant has been doing business other than manufacturing and trading of gold ornaments or has any other undisclosed source of income. Further the excess stock found in possession of the appellant was not kept separately and was not easily identifiable. The excess stock was part of the mixed lots of stock found at the premises of the appellant which included declared stock as per books of account and also the excess stock as found during the search. Since the excess stock in possession was not clearly identifiable or was not kept at a secret place, therefore, it can be safely held that the same could have been earned/accumulated over the time. However, this presumption of accumulating over a period of time is ruled out with simple stroke of statement of appellant wherein he has admitted that the same has been earned in FY 2016-17 (AY 2017-18). Further, the appellant does not have any income other than manufacturing and trading of gold ornaments, therefore, the excess stock found during search was earned out of business income by the appellant. Hon’ble Ahmadabad ITAT in the case of Chokshi Hiralal Maganlal vs DCIT, (ITA No 3281/Ahd/2009 dated 05.08.2011) has held that “the provisions of section 69A/69B of the IT Act can only be applied the case where the asset is separately applicable and separately identifiable and it should have independent physical existence of its own.

Since the 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. Similar, view has been taken by Hon'ble jurisdictional Indore tribunal in the case of M/s Shahnai Shriram Market vs ITO 1(1), Ujjain (ITA No 658/Ind/2014 dated 15.05.2015.

(a)(i) It is a settled law that additional income declared on account of excess stock is business income of the assessee. This proposition finds support from the following case laws:-

(a) *Bajrang Traders Vs. ACIT (Circle)-2, Alwar (ITA No. 137/Jp/17 dated 17.03.2017). In this case, it is held as under:-*

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 other sources". In the present case, the assessee is dealing in sale of food grains, rice and oil seeds, and the excess stock which has been found 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. The decision of the Co-ordinate Bench in case of Shri Ramnarayan Birla (supra) supports the case of the assessee in this regard. Therefore, the investment in the excess stock has to be brought to tax under the head "business income" and not under the head income from other sources". In the result, ground No.1 of the assessee is allowed.

(b) *DCIT (Central), Ajmer Vs. Ramnarayan Birla (ITA No. 482/Jp/2015 dated 30.09.2016) In this case, it is held as under:-*

4.3. We have heard rival contentions and perused the material available on record. Undisputed facts emerged from the record that at the time of survey excess stock was found. It is also not disputed that the assessee is engaged in the business of jewellery. During the course of survey excess stock valuing Rs. 77,66,887/- was found in respect of gold and silver jewellery. The Coordinate Bench in the case of Chokshi Hiralal Maganlal vs. DCIT, 131 TTJ (Ahd.) 1 has held that in a cases where source of investment/expenditure is clearly identifiable and alleged undisclosed asset has no independent existence of its own or there is no separate physical identity of such investment/expenditure then first what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset and only on failure it should be considered to be taxed under section 69 on the premises that such excess investment is not recorded in the books of account and its nature and source is not identifiable. Once such excess investment is taxed as undeclared business receipt then taxing it further as deemed income under section 69 would not be necessary. Therefore, the

first attempt of the assessing authority should be to find out link of undeclared investment/expenditure with the known head, give opportunity to the assessee to establish nexus and if it is satisfactorily established then first such investment should be considered as undeclared receipt under that particular head. It is observed that there is no conflict with the decision of Hon'ble Gujarat High Court in the case of Fakir Mohd. HajiHasan (supra) where investment in an asset or expenditure is not identifiable and no nexus was established then with any head of income and thus was not available for set off against any loss under any other head. Therefore, the Hon'ble Coordinate Bench held that where asset in which undeclared investment is sought to be taxed is not clearly identifiable or does not have independent identity but is integral and inseparable (mixed) part of declared asset, falling under a particular head, then the difference should be treated as undeclared business income explaining the investment. In the present case the excess stock was part of the stock. The revenue has not pointed out that the excess stock has any nexus with any other receipts. Therefore, we do not find any fault with the decision of the Id. CIT (A) directing the AO to treat the surrendered amount as excess stock qua the excess stock found.

(c) *Fashion World Vs. ACIT (Circle)-12, Ahmedabad (ITA No. 1634/Ahd/2016 dated 12.02.2010) In this case, it is held as under:-*

12. Thus the important aspect that emerges from the entire discussion is that for invoking deeming provisions under sections 69, 69A, 69B & 69C there should be clearly identifiable asset or expenditure. In the present case we find that entire physical stock of Rs.25,14,306/- was part of the same business. Both kind of stock i.e. what is recorded in the books and what was found over and above the stock recorded in the books, were held and dealt uniformly by the assessee. There was no physical distinction between the accounted stock or unaccounted stock. No such physical distinction was found by the Revenue either. The assessee has repeatedly claimed that unaccounted business income is invested in stock and there is no amount separately taxable under section 69. The department has ignored this claim of the assessee and sought to tax the difference between book-stock and physical-stock as unaccounted investment under section 69 without considering the claim of the assessee that first the business receipt has to be considered and then investment should be treated as coming out of such unaccounted income. The difference in stock so worked out by the authorities below had no independent identity of its own and it is part and parcel of entire lot of stock. The difference between declared stock in the books and what is physically found would only be a mathematical expression in terms of value and not a separate independent identifiable asset. Therefore, it cannot be said that there is an undisclosed asset existed independently. Once this is so then what is not declared to the department is receipt from business and not any investment as it cannot be co-related with any specific asset.

14. To conclude sum of Rs.8,10,011/- being difference in stock is represented by undeclared business income. It does not have a separate physical identity. It is to be only taxed under the head 'business'. Other assets have separate physical identity being furniture and fixtures, air conditioners etc. They cannot have a direct nexus with business and therefore investment therein has to be considered under section 69 only.

15. In view of the above, AO is directed to consider the sum of Rs.8,10,011/- as undisclosed business income assessable under the head 'business' and other two sums under section 69. The business income including application of section 40(b) has to be considered accordingly. For calculation of income in view of our above observations, we restore the matter to the file of AO.

(d) *Chokshi Hiralal Maganlal Vs. DCIT, Ahemadabad (ITA No. 3281/Ahd/2009 dated 05.08.2011) In this case, it is held as under:-*

9. *Since in the present case excess stock found during the survey is not separately and clearly identifiable but is part of mixed lots of stock 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 other the years and has not been kept identifiable separately but i.e. 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 (supra). Once excess stock is treated as business income then assessee is entitled for higher remuneration to the partners as per section 40(b). As a result, this ground -of assessee is allowed.*

(e) *Shri Lovish Singhal Vs. ITO, Ward-2, Sriganganagar (ITA No. 143/Jodh/2018 dated 25.05.2018) In this case, it is held as under:-*

I have heard the rival contentions and record perused. I have also carefully gone through the orders of the authorities below. I have also deliberated on the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by the ld AR during the course of hearing before the ITAT in the context of factual matrix of the case. From 18 ITA 142 to 146/Jodh/2018 Vasu Singhal Vs ITO with 4 Ors. cases the record, I find that during the course of survey, income was surrendered by the assessee on account of stock, excess cash found out of sale of stock and also in respect of incriminating documents. As per judicial pronouncements cited by the ld. AR and also the decision of Hon'ble Rajasthan high court in the case of Bajrang Traders in Income Tax Appeal No. 258/2017 dated 12/09/2017 I observe that the Hon'ble High Court in respect of excess stock found during the course of survey and surrender made thereof was found to be taxable

under the head 'business and profession'. Similarly in respect of excess cash found out of sale of goods in which the assessee was dealing was also found to be taxable as business income. Applying the proposition of law laid down in the judicial pronouncements as discussed above, I hold that the lower authorities were not justified in taxing the surrender made on account of excess stock and excess cash found U/s 69 of the Act. Thus, there is no justification for taxing such income U/s 115BBE of the Act.

(f) *ACIT Vs. Sanjay Bairathi Gems Ltd – 189 TTJ 487/492 (Jp). In this case, it is held as under:-*

From the above, it is seen that the excess stock found during the search operation is not separately and clearly identifiable but is part of mixed lots of stock found at the premises which included declared stock as per books and also the excess stock as computed by the authorized officers during the search operation at the premise. 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. Further, the excess stock so found is part of the regular business, therefore, following decision of Hon'ble Tribunal Bench Jaipur in case of Ramnarayan Birla (cited supra), the same has to be taxed under the business income. Otherwise even if the same is taxed under s. 115BBE of the Act, the provisions of not allowing the set off has come into effect from 1st April, 2017

(g) *ACIT vs M/s A Star Exports and M/s Asian Star Diamonds International Pvt Ltd (2015) 5 TMI 1312 (ITAT Mumbai) wherein it has been held as under:-*

“8. We have considered rival contentions, carefully gone through the orders of the authorities below and also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by ld. DR and AR during the course of hearing before us. From the record we found that the assessee a partnership firm is in the business of trading, import, export, manufacturing, wholesale and retail dealing in diamonds, gems and jewellery The main object of the assessee firm is to carrying out the business of import, export, manufacturing, wholesale and retail dealing in diamonds, gems and jewellery. The partnership business was of importers, exporters, manufacturers, processors, investors, wholesalers, distributors, retailers, dealers and indenting agent of diamonds, synthetic stones, gems and jewellery, precious and semi precious metals and miners and ornaments and article made thereof including jewellery, decorative and precious objects of arts and crafts and to cut, design polish rough diamond, gems and precious stones and that of investment and lending and to do any other business as may be mutually agreed upon by the partners. In the return of income filed for the year under consideration, the assessee has

shown income under the head profit and gains of business and profession and other sources. In the search action, three loose papers were found and seized as part of Annx - 5 of the panchnama prepared on 29.10.2011 at the office premises of 114/116, Mittal Court, C-Wing, 11th floor, Nariman Point, Mumbai - 400021. These documents mention the carat value, rate per carat and total value of diamonds. In the course of search proceedings Shri Vipul Shah confirmed that these loose papers were containing stock details of M/s A'Star Exports, M/s. Asian Star Diamond International P. Ltd. and M/s. Rahil Agencies. The stock mentioned in the above referred seized papers was stated as placed in one safe located at the office premises. The stock of diamonds found from the safe was valued by the Govt. Approved valuer appointed by the Income Tax Department at the time of prohibitory order execution and was valued as follows:

The statement of Shri Vipul Shah was again recorded on 27/12/2010, wherein he admitted the unaccounted stock of 34,50,00,516/- including unaccounted stock of 13,47,63,640/- pertain to the assessee. The computation of the total income of the assessee had declared undisclosed income of 13,47,63,640/- in the form of stock of polished diamonds under the head "profit and gains of the business and profession". In the course of assessment the assessee submitted .its explanation on why the undisclosed stock should be treated as a business income. In this connection it was stated that at the time of search, the investigating officers found unaccounted stock in the business premise of the assessee at 114/116, Mittal Court, 'C' Wing, 11th Floor, Nariman Point, Mumbai - 400021. This stock was valued at 13,47,63,640/- by the income tax valuer. Consequently the assessee declared this amount as stock in trade and this contention of the assessee was accepted by the Investigating officer. Who has released the stock after valuation and not impounded/seized. The statement of Shri Vipul P. Shah Partner of the firm was again recorded on 20.11.2012 wherein in reply to the question no. 22 he has stated that this undisclosed income is generated through unrecorded trading of diamonds. Q.22 Please explain as to how this undisclosed income is generated? Ans: it is through unrecorded trading of diamonds. "

It is clear from the above facts that the declaration was related to business stock in trade hence it is evident that the declaration amount is required to be assessed under the head' Income from Business or profession. Thus, the undisclosed income of 13,47,63,640/- declared voluntarily by the assessee for A.Y. 2011-12, is undisclosed stock held under the customary trading of the business and hence should be treated as the business income of the assessee firm and not as undisclosed investment as held by the AO. If all the three conditions of Section 69 exist together, the unrecorded investment or value of assets can be deemed to be assessee's income of the relevant financial year. In the present case all three conditions as required under section 69 are not fulfilled because the appellant has offered explanation and nature of source of acquisition as undisclosed stock received from the

unaccounted trading of diamond as source of income. The partner of the firm has time and again stated in his statement that diamond found in the premises during the search is out of unrecorded trading of diamonds hence the third part of section 69 is not satisfied hence the said stock is not taxable under section 69 of the Act.”

(h) *M/s Surekh Jewellers vs DCIT ITA No 18/PN/2016 dated 12.06.2016.*

(i) *M/s Silver Palace vs DCIT ITA No 893/PUNE/2016 dated 29.06.2018 (ITAT Pune)*

(j) *M/s Solanki Jewellers vs DCIT ITA No 858/PN/2016 dated 18.11.2016.*

(k) *ITO vs Jmandas Muljibahai (2006) 99 TTJ 197 (ITAT Rajkot).*

(l) *M/s Dev Raj Hi Tech Machines vs DCIT ITA No 326 of 2014 dated 07.10.2015 (ITAT Amritsar)*

(a)(ii) From the above discussion and in view of the plethora of judgments on this settled issue, I am of the considered view that section 69 was clearly not applicable in the case of appellant and the suppressed income found by way of excess stock was business income of the appellant and cannot be treated as unexplained investment u/s 69A of the IT Act.

(b) *Applicability of amended provisions of section 115BBE of the Act:-*

During the course of search excess stock of gold was found amounting to Rs. 1,41,75,568/-. The appellant made voluntary declaration of additional income and the same has been taken into consideration in regular return of income. Till this point there is no dispute. The issue creating dispute is that the additional income disclosed by appellant (during search) has been incorporated in books of accounts as business income, however, the AO has treated the same as unexplained investment u/s 69 of the Act and made subsequent addition in the income of appellant by applying tax rate as per amended provisions of section 115BBE of the Act. First of all let me discuss whether the provisions of section 115BBE are applicable to this case or not. Therefore the relevant extract of pre-amended and post amended provisions of section 115BBE is reproduced for the sake of clarity:-

Pre amended provisions of section 115BBE of the Act:-

“115BBE(1). Where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of thirty per cent; and

(b) 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 (a).”

Post amended provisions of section 115BBE of the Act:-

“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 69, 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).

The provisions of section 115BBE of the Income Tax Act are applicable where addition is made under section 68, 69, 69A, 69B, 69C and 69D i.e. from residuary category w.e.f 01.04.2017. Hon’ble Supreme court in the case of CIT vs Vatika Township Pvt Ltd (2014) 24 ITJ 532 (SC): (2014) 271 CTR 1: (2014) 227 Taxmann 121 has held that “An amendment made to the taxing statute can be said to be intended to remove ‘hardships’ only of the assessee, not of the department-on the contrary, imposing a retrospective levy on the assessee would have caused undue hardship. Hon’ble ITAT Indore in the case of Priyadharshani Construction vs ITO (2012) 19 ITJ 276 (Trib-Indore) has held that “Substantive law shall be understood to be applicable prospectively unless made specifically retrospective. Similar view was taken in following judgments by various courts and tribunals:-

- Hon’ble Rajasthan High Court in the case of CIT vs Bajargan Traders [Appeal No 258/ 2017 dt 12-09-2017];*
- Hon’ble Ahmedabad bench of ITAT in the case of Chokshi Hiralal Maganlal vs DCIT as reported in 141 TTJ 001;*
- Hon’ble Jodhpur bench of ITAT in the case of Lovish Singhal & Others vs ITO [Appeal No 143/ Jodh/ 2018];*
- Hon’ble Jaipur bench of ITAT in the case of DCIT vs Ramnarayan Borla [Appeal No 482/ JP/ 2015 dt 30-09-2016];*
- Hon’ble Supreme Court in the case of Lakhmichand Bajinath Vs CIT as reported in 35 ITR 416;*
- Hon’ble Apex Court in the case of Nalini Kant Ambalal Mody vs SAL Narayan Row as reported in 61 ITR 428.*

In the instant case search u/s 132 of the Act took place on 15.12.2016. Since, the search in the case of appellant was carried out on 15.12.2016 and additions were made consequential to search, therefore, the assessing officer was not justified in stating that provisions u/s 115BBE were invoked by the appellant which infact was applicable from 01.04.2017 and not from 15.12.2016 (date of search).

4.1.3 In view of the above discussion, it is evident that the appellant does not have any other source of income except manufacturing and trading of gold ornaments. Also, neither the search party nor the AO was able to bring to light other facts or evidence suggesting that the excess stock was not acquired through business activities carried out by the appellant. Therefore, the AO is directed to treat the sum of Rs. 1,41,75,568/-, which was voluntarily disclosed as additional income, as business income of the appellant by applying normal tax rate while giving effect of this order. Therefore, appeal on these grounds is Allowed.

8. We on perusal of the above finding and the various judgments and decisions referred hereinabove by Ld. CIT(A) find that the alleged excess stock was not kept separately at any other place and was part of the total business stock found at the assessee's business premises are sufficient enough to indicate that the alleged investment in excess stock is part of the business income we also find that alleged excess stock was duly accepted by assessee as part of unaccounted business and source thereof stated during the course of search itself and no other incriminating material was found during search proceedings and therefore is not an undisclosed income as held by the ld. AO. We, therefore, find no infirmity in the finding of Ld. CIT(A) rightly holding that the provision of section 115BBE of the Act are not applicable on the surrendered income on account of excess stock valuing at Rs. 1,41,75,568/-found during the course of search. Thus, grounds no. 1 to 3 raised by the revenue are dismissed.

8. Similar view has been taken by the Coordinate Bench of the Tribunal in case of *DCIT vs. Krishna Kumar Verma (supra)* and in case of *DCIT vs. M/s Punjab Retail Pvt. Ltd. (supra)*. We further note that the Chandigarh Benches of the Tribunal in case of *Gandhi Ram vs. Pr. CIT* has also considered and decided an identical issue as under:

“7. We have heard the rival contentions and perused the material available on record. For exercise of jurisdiction u/s 263 of the Act, the

order passed by the Assessing officer should satisfy the twin tests of being erroneous as well as prejudicial to the interest of the Revenue. As per ld PCIT, the discrepancies found, confronted and accepted by the assessee during the course of survey attract the deeming provisions of section 68, 69, 69A, 69B & 69C and the income referred therein is chargeable to tax at rate prescribed under section 115BBE Act. As per ld PCIT, the Assessing officer has failed to enquire about the source of income in order to assess the income under the appropriate head of income or the relevant deeming provisions and accordingly, the order so passed has been held as erroneous and prejudicial to the interest of Revenue. Thereafter, the ld PCIT has gone ahead and held that income of the assessee is income referred in the aforesaid deeming provisions and chargeable to tax under section 115BBE of the Act.

8. Firstly, how the ld PCIT has arrived at a conclusive finding that the discrepancies found, confronted and accepted by the assessee during the course of survey attract the deeming provisions of section 68, 69, 69A, 69B & 69C is not apparent from the impugned order. Merely stating that excess cash is clearly covered u/s 68 or 69A, excess stock is covered u/s 69 or 69B, construction of Shed/Godown is covered u/s 69B or 69C and advances made to Sundry Parties is covered u/s 69, 69B or 69D is like an open ended hypothesis which is not supported by any specific finding that the matter shall fall under which of the specific sections and how the conditions stated therein are satisfied before the said provisions are invoked. It is like laying a general rule, which to our mind is beyond the mandate of law, that wherever there is a survey and some income is detected or surrendered by the assessee, the deeming provisions are attracted by default and by virtue of the same, provisions of section 115BBE are attracted. The ld PCIT has to record his specific findings as to the applicability of the relevant provisions and how the explanation called for and offered by the assessee is not acceptable in the facts of the present case which is clearly absent in the instant case. Therefore, where the ld PCIT himself is not clear about the applicability of relevant provisions and in the same breath holding the Assessing officer to task by not invoking the said provisions is clearly shooting in the dark which cannot be sustained in the eyes of law and the order so passed therefore cannot be held as erroneous in the eyes of law.

9. Now, coming to the findings of ld PCIT that the Assessing officer has failed to enquire about the source of income in order to assess the income under the appropriate head of income or the relevant deeming provisions of the Act. In this regard, we find that there are documents in form of statement of the assessee recorded u/s 133A during the course of survey and the surrender letter dated 21.10.2016 submitted by the assessee at the time of survey and these documents are very much part of the records which is available at the time of assessment as well as at the time of examination by the ld PCIT. In the statement

so recorded at the time of survey, the assessee was specifically asked about the source of his income and in response, he has submitted that he is getting income from Gandhi General Store and share of profit from partnership firm, M/s Gandhi Soap and Detergent Industries. Thereafter, in respect of excess cash found at the time of survey, the assessee was asked a specific question to explain the difference and in response, he has submitted that the difference or the excess cash is on account of sales realization during the previous days which he offers over and above his normal business income. Thereafter, in respect of difference in stock of Rs 25,50,000/-, he has submitted that the difference is on account of higher gross margins in the earlier period and which he surrenders in addition to his normal business income. Similar questions have been raised regarding nature and source of cost of construction of building amounting to Rs 25,00,000/- and advances given to various persons. We therefore find that the assessee has been asked specific questions regarding not just the discrepancy but the nature and source thereof during the course of survey and it is clearly emerging that the source of such income is his business income. Further, the said fact is corroborated by the surrender letter dated 21.10.2016. Apparently, the ld PCIT has failed to take into consideration these documents which are very much part of the records. Following the surrender so made, the assessee has offered the additional income as business income in his return of income and paid due taxes thereon. During the course of assessment proceedings, the Assessing officer has specifically taken cognizance of these facts, as apparent on the face of the assessment order, that assessee has voluntarily surrendered Rs 1,02,00,000/- over and above the normal business income in his return of income and has accordingly not drawn any adverse inference. We therefore find that the Assessing officer has duly taken cognizance of statement of the assessee recorded during the course of survey, the surrender letter and the return of income, and after examination thereof and due application of mind has not drawn any adverse inference and income has been rightly assessed under the head "business income". In light of the same, we are of the considered view that the order so passed by the Assessing officer cannot be held as erroneous due to lack of enquiry or for that matter, requisite enquiry on the part of the Assessing officer. Where the Assessing officer after due appreciation of facts and circumstances of the case, assessed the income under the head "business income" and didn't invoke the deeming provisions as so suggested by the ld PCIT, we do not believe that there is any error on part of the Assessing officer and the order so passed by him cannot be held as erroneous. As we have stated above, the ld. PCIT without recording any specific findings as to the applicability of deeming provisions has gone ahead and held that the deeming provisions are applicable in the instant case. Even for sake of argument, where such a view is taken on face value, it would be a case where a different view has been expressed by the ld PCIT, however, the same doesn't lead to the conclusion that the view taken

by the Assessing officer as erroneous as the AO has taken into consideration the entirety of facts and circumstances of the case, the explanation offered by the assessee during the course of survey regarding the source of such income and thereafter, has assessed the income under the head "business income". The view so taken by the Assessing officer is after due application of mind and therefore cannot be held as unsustainable in the eyes of law. In the facts and circumstances of the present case, where there are specific questions asked during the course of survey regarding the nature and source of income and which has been adequately responded to by the assessee and thereafter acted upon in terms of disclosing the income in the return of income under the appropriate head of income and where the same is duly examined and taken into consideration by the Assessing officer during the course of assessment proceedings, the order so passed by the Assessing officer cannot be held as erroneous in nature."

9. Once the facts emerging from the record shows that the excess stock found during the search is part of the total stock and entire lot of stock of the assessee, part of which is recorded in the books of account and part of the same was not found recorded and therefore, treated as excess stock at the time of survey and consequently surrendered by the assessee and also offered to tax in the return of income then the excess stock cannot be as investment in specified asset or the assessee is owner of any bullion, jewellery or other valuable articles as per the provisions of section 69B of the Act. An identical issue has been considered and decided by Hon'ble High Court as well as this Tribunal in series of cases some of these are reproduced above. Accordingly in the facts of the case the excess stock would not fall in the mischief of section 69B of the Act. The question also arises whether the excess stock found during the search which is not separate from the entire lot of stock of the assessee can be treated as other valuable articles though certainly not in the nature of bullion and jewellery. This question has been considered by the Hon'ble Supreme Court in the latest judgment in case of *M/s D.N. Singh vs. CIT, Central, Patna and Another* 150 taxmann.com 301 (SC) as under:

64. It is a case of the appellant that applying the Principle of Ejusdem Generis, bitumen would stand out as a strange bed fellow in the company of its immediate predecessor words, viz., money, bullion and jewellery. In other words, it is the case of the appellant that

bitumen is a clear misfit and it could not have been the legislative intention to treat bitumen as other valuable article. Our attention is drawn to the Circular No. 20D dated 07.07.1964 issued by Central Board of Direct Taxes, which has been adverted to. {see paragraph 48}

65. In [Bhagwandas Narayandas v. Commissioner of Income Tax, Ahmedabad](#) and others¹⁸, the question, which, inter alia, fell for consideration before a learned Single Judge of High Court of Gujarat, was, whether fixed deposit receipts and title deeds of immovable property were 'valuable things or articles', which required a show-cause notice under Rule 112A of the Income-Tax Rules, 1962. [Section 132](#) if the Act also employs the expression 'other valuable articles'. The Court, inter alia, held as follows:

"18. On close consideration of the scheme of sub-section (5) of [section 132](#), we find that the above referred contention of Shri Bhatt is not acceptable. As already pointed out by us in the foregoing discussion, it is evident from the scheme of sub-section (5) of [section 132](#) that the "assets", which are seized during the course of an authorised search under [section 132](#), are expected to be retained only for the purpose of satisfying the tax liability of an assessee as ascertained from his undisclosed income.

Therefore, by using the words "valuable article or thing", what the legislature has intended to imply is that the assets covered by these words should be such as could be converted into cash so that the tax liability of the assessee concerned, as revealed from his undisclosed income, could be duly satisfied. In other words, 1973 Vol. 98 ITR 194 the thing or article which can be retained under sub-section (5) of [section 132](#) should be the one which is carrying its own intrinsic value in terms of money. Therefore, the question is whether the fixed deposit receipts and documents of title relating to an immovable property are the things or articles which can be evaluated in terms of money. Obviously, a document of title relating to an immovable property or even a fixed deposit receipt issued by a bank in favour of a particular person are merely the documents of title which, though possessing much evidentiary value, do not pass any intrinsic market value. They do supply evidence of assets which by themselves are valuable but they being mere documents of title, they can neither be negotiated nor be transferred for a valuable consideration. Under the circumstances, we are of the opinion that documents of title, which have no greater value than an evidentiary one, and which do not carry any saleable interest, are not the "valuable things or articles" contemplated either by subsection (5) of [section 132](#) of the Act or by rule 112A of the Rules. There is nothing in the record to show that the fixed deposit receipts, which are seized in this case, carry any inherent market value with them. They are merely the documents evidencing the debt due to the assessee.

Similarly, the documents of title relating to an immovable property also contain no more value than an evidentiary one. Thus, since none of those documents has got any intrinsic value in terms of money, we are of the opinion that they are not covered by sub-section (5) of [section 132](#) of the Act or rule 112A of the Rules.” (Emphasis supplied)

66. Unlike a document of title or a fixed deposit receipt, which cannot, by itself, be disposed of or alienated, bitumen would be goods, which can be transferred. It would have a value in the market depending upon its quality. In [Commissioner of Income Tax v. M.K. Gabriel Babu](#) and others¹⁹, the High Court of Kerala was dealing with the question, as to whether immovable property would be covered within the expression ‘other value article or thing’ within the meaning of [Section 132\(1\)](#) of the Act. The Court held:

“4. ... A word in a statute is quite often judged by the company it keeps. The preceding words of [Section 132\(1\)](#), cannot be ignored or overlooked. Money, bullion, jewellery, which precede “other valuable article or thing” forge a genus and, consequently, the words “other valuable article or thing” assume a constricted meaning and interpretation in that context. The general principles of interpretation of a restricted meaning being given to certain words, whether it be by applying the principles of *ejusdem generis* or otherwise restricting it, had been followed by judicial decisions covering much area and many topics. They are not necessarily confined to Income Tax legislation. Those connected with the terms under the Income Tax enactment have been referred to by the learned judge in support of his conclusion.

We concur with that view. It is unnecessary, therefore, to supplement it by adventitious decisions available from other jurisdictions as well. We affirm the judgment of the learned Single Judge (*M.K. Gabriel Babu v. Asst. Director of I.T. (Investigation)* [(1990) 186 ITR 435 (Ker.)].”

67. In contrast to the view taken in the impugned order before us, in [Dhanush General Stores v. Commissioner of Income Tax](#)²⁰, the Court, *inter alia*, on facts, held as follows:

“13. If there is undisclosed investment in bullion, jewellery or other valuable articles, which are not fully disclosed in the books of account the case would fall under the ambit of [s. 69B](#) of the Act, 1961. In the case on hand, there was excess stock, which can be held as unexplained investment, not investment in bullion, jewellery or other valuable articles. In the entire survey, it was not found that any bullion, jewellery or other valuable articles has been found. The Kirana articles cannot be held as other valuable articles.

14. “Valuable article” means an article which is valuable and having a high price, not other ordinary articles, as in the instant case.

15. The surrendered income ought to have been treated as deemed income under the provisions of s.69 of the Act, 1961, however, on the wrong provision applied in the assessment order though the effect is one and the same the surrendered income (2011) 339 ITR 651 Chhattisgarh cannot be held that it was not an income under the provisions of s.69 of the Act, 1961. As such, the substantial question of law, i.e., (i) and (iii) are answered accordingly.” (Emphasis supplied)

68. The word ‘valuable’ has been defined in Black’s Law Dictionary as follows: -

“Valuable adjective. Worth a good price; having financial or market value.”

69. The word ‘valuable’ has been defined in the Concise Oxford Dictionary as follows: -

The word ‘valuable’ has been defined as again an adjective. “worth a great deal of money. Very useful or important.”

70. The word ‘money’ has been described in Black’s Law Dictionary as follows: -

“money. 1. The medium of exchange authorized or adopted by a government as part of its currency; esp. domestic currency <coins and currency are money>.2. Assets that can be easily converted to cash <demand deposits are money>. 3. Capital that is invested or traded as a commodity <the money market>. 4. Funds; sums of money <investment moneys>. – Also spelled (in sense4) monies. See Medium of Exchange; Legal Tender.”

71. The word ‘article’ has been defined in Black’s Law Dictionary as “Generally, a particular item or thing <article of clothing.

72. The Word ‘bullion’ has been defined in the Concise Oxford Dictionary as ‘gold or silver in bulk before coining, or valued by weight’ M.PRINCIPLE OF EJUSDEM GENERIS; NOSCITUR A SOCIIS

73. [Section 69A](#) provides for unexplained ‘money, bullion, jewellery’. It is thereafter followed by the words ‘or other valuable articles’. Does this mean that the words ‘other valuable articles’ must be read ejusdem generis? The principle applies when the following conditions are present [Principles of Statutory Interpretation by Justice G P Singh, 14th Edition]:

“(1) the statute contains an enumeration of specific words; (2) the subjects of enumeration constitutes a class or category; (3) that class or category is not exhausted by the enumeration; (4) the general terms follow the enumeration; and (5) there is no indication of a different legislative intent”. If the subjects of enumeration belong to a broad based genus as also to a narrower genus, there is no principle that the general words should be confined to the narrower genus.”

74. In the context of Explanation 3(b) to [Section 32\(1\)](#) of the Act, this Court in [Commissioner of Income Tax, Kolkata v. SMIFS Securities Limited²¹](#), held as follows:

“8. We quote hereinbelow Explanation 3 to [Section 32\(1\)](#) of the Act:

“Explanation 3.—For the purposes of this sub-section, the expressions ‘assets’ and ‘block of assets’ shall mean—

(a) tangible assets, being buildings, machinery, plant or furniture;

(b) intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.” Explanation 3 states that the expression “asset” shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. A reading of the words “any other business or commercial rights of similar nature” in clause (b) of Explanation 3 indicates that goodwill would fall under the expression “any other business or commercial right of a similar nature”. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b).

9. In the circumstances, we are of the view that “goodwill” is an asset under Explanation 3(b) to [Section 32\(1\)](#) of the Act.”

75. In [Rohit Pulp and Paper Mills Limited v. Collector of Central Excise, Baroda²²](#), the Court was dealing with an exception clause in an exemption notification and considered the applicability of the Principle of Noscitur a Sociis, to the facts:

“12. The principle of statutory interpretation by which a generic word receives a limited interpretation by reason of its context is well established. In the context with which we are concerned, we can legitimately draw upon the “noscitur a sociis” principle. This expression simply means that “the meaning of a word is to be judged by the company it keeps.” Gajendragadkar, J. explained the scope of the rule in [State of Bombay v. Hosptial Mazdoor Sabha](#) [(1960) 2 SCR 866 : AIR 1960 SC 610 : (1960) 1 LLJ 251] in the following words: (SCR pp. 873-74) “This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate

sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in "Words and Phrases" (Vol. XIV, p. 207): "Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, (1990) 3 SCC 447 the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *ejusdem generis*". In fact the latter maxim "is only an illustration or specific application of the broader maxim *noscitur a sociis*". The argument is that certain essential features of attributes are invariably associated with the words "business and trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service." This principle has been applied in a number of contexts in judicial decisions where the court is clear in its mind that the larger meaning of the word in question could not have been intended in the context in which it has been used. The cases are too numerous to need discussion here. It should be sufficient to refer to one of them by way of illustration. In *Rainbow Steels Ltd. v. CST* [(1981) 2 SCC 141 : 1981 SCC (Tax) 90] this Court had to understand the meaning of the word 'old' in the context of an entry in a taxing traffic which read thus:

"Old, discarded, unserviceable or obsolete machinery, stores or vehicles including waste products....." Though the tariff item started with the use of the wide word 'old', the court came to the conclusion that "in order to fall within the expression 'old machinery' occurring in the entry, the machinery must be old machinery in the sense that it has become non-functional or non-usable". In other words, not the mere age of the machinery, which would be relevant in the wider sense, but the condition of the machinery analogous to that indicated by the words following it, was considered relevant for the purposes of the statute."

76. About *Noscitur a Sociis* and how it compares with *ejusdem generis*, the following statement in *G.P. Singh* (*supra*) on Statutory Interpretation is apposite:

“It is a rule wider than the rule of ejusdem generis; rather the latter rule is only an application of the former.” N. WHETHER BITUMEN IS ‘OTHER VALUABLE ARTICLE’

77. This Court has referred to the Principles of Eiusdem Generis and Noscitur a Sociis, which undoubtedly are rules of construction the latter being described as having treacherous underpinnings and the former requiring the existence of a genus which is not exhausted by the categories catalogued in the statute. This Court has also referred to the definition of the words, money, bullion valuable and article. The Court approves the view taken by the High Court of Gujarat in Bhagwandas Narayandas (supra) that a document of title to immovable property or a fixed deposit receipt would not qualify as other valuable article. The reasons which have been given appear to us to be sound. A document of title or a fixed deposit receipt would not be ‘articles’ which can be bought and sold in a market. An article, would also not encompass an item of immovable property. This Court can safely conclude that an article must be movable property. One strong indication that the Principle of Eiusdem Generis may not apply is a decision of this Court in Chuharmal (supra), where the articles involved were watches. Watches by no stretch of imagination can be brought in on the basis of ejusdem generis. They do not belong to the so-called genus of money or bullion or jewellery. The hallmark of a watch in the context of the expression ‘other valuable article’ would be that it is marketable and it has value. When it comes to value, it is noticed that in the definition of the word ‘valuable’ in Black’s Law Dictionary, it is defined as ‘worth a good price; having a financial or market value’. The word ‘valuable’ has been defined again as an adjective and as meaning worth a great deal of money in the Concise Oxford Dictionary. Valuable, therefore, cannot be understood as anything which has any value. The intention of the law-giver in introducing [Section 69A](#) was to get at income which has not been reflected in the books of account but found to belong to the assessee. Not only it must belong to the assessee, but it must be other valuable articles. Let us consider a few examples. Let us take the case of an assessee who is found to be the owner of 50 mobile phones each having a market value of Rs.2 lakhs each. The value of such articles each having a price of Rs.2 lakhs would amount to a sum of Rs.1 crore. Let us take another example where the assessee is found to be the owner of 25 highly expensive cameras. Could it be said that despite having a good price or worth a great deal of money, they would stand excluded from the purview of [Section 69A](#). On the other hand, let us take an example where a person is found to be in possession of 500 tender coconuts. They would have a value and even be marketable but it may be wholly inapposite to describe the 500 tender coconuts as valuable articles. It goes both to the marketability, as also the fact that it may not be described as worth a ‘good’ price. Each case must be decided with reference to the facts to find out that while articles or movables worth a great deal of money

or worth a good price are comprehended articles which may not command any such price must stand excluded from the ambit of the words 'other valuable articles'. The concept of 'other valuable articles' may evolve with the arrival in the market of articles, which can be treated as other valuable articles on satisfying the other tests.

78. Bitumen is defined in the Concise Oxford English Dictionary as 'a black viscous mixture of hydrocarbons obtained naturally or as a residue from petroleum distillation, used for road surfacing and roofing'. Bitumen appears to be a residual product in the petroleum refineries and it is usually used in road construction which is also probabalised by the fact that the appellant was to deliver the bitumen to the Road Construction Department of the State. Bitumen is sold in bulk ordinarily. In the Assessment Order, the Officer has proceeded to take Rs. 4999.58 per metric ton as taken in the AG Report on bitumen scam. Thus, it is that the cost of bitumen for 2094.52 metric ton has been arrived at as Rs. 1,04,71,720.30. This would mean that for a kilogram of bitumen, the price would be only Rs.5 in 1995-1996 (F.Y).

79. Bitumen may be found in small quantities or large quantities. If the 'article' is to be found 'valuable', then in small quantity it must not just have some value but it must be 'worth a good price' {See Black's Law Dictionary (supra)} or 'worth a great deal of money' {See Concise Oxford Dictionary (supra)} and not that it has 'value'. [Section 69A](#) would then stand attracted. But if to treat it as 'valuable article', it requires ownership in large quantity, in the sense that by multiplying the value in large quantity, a 'good price' or 'great deal of money' is arrived at then it would not be valuable article. Thus, this Court would conclude that 'bitumen' as such cannot be treated as a 'valuable article'. In view of these findings, this Court need not pronounce on points III and IV. The appeals are allowed. The impugned judgment will stand set aside and though on different grounds, the order by the Commissioner Appeals deleting the addition made on the aforesaid basis will stand restored.

10. The Hon'ble Apex Court has analyzed the provision of section 69, 69A & 69B and particularly the term other valuable articles as employed in the provision of section 69B of the Act. In the light of the Doctrine of *ejusdem generis & noscitur a sociis* it is held that other valuable articles as provided in section 69A & 69B of the Act must be read *ejusdem generis* and statutory interpretation would be that a generic word receives a limited interpretation by reason of its context and take its meaning from the specific term used in the provision. Therefore, the term other valuable articles would draw the meaning from the specific terms used in the

provision of section 69B which is bullion and jewellery. Hence the other valuable articles shall be in the nature of the valuable article like bullion and jewellery and therefore, it must be a substitute of money like bullion and jewellery which has the liquidity and negotiability like money/currency. Therefore, in view of the judgment of Hon'ble Supreme Court as well as the decision of Hon'ble Rajasthan High Court and Coordinate Bench of this Tribunal cited (supra) the excess stock found during the course of search which is not separable from the whole lot of stock of the assessee generated as a result of business activity of the assessee company and the same cannot be brought into mischief of provision of section 69B of the Act. Accordingly, this issue is decided in favour of the assessee and against the revenue. The orders of the authorities below qua this issue are set aside.

11. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 07.06.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 07.06.2023

Patel/Sr. PS

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

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

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