

**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.65/Asr/2023  
Assessment Year: 2019-20**

Rakesh Kumar Laxmi Glass & Plywood House, Katra Sher Singh, Amritsar. [PAN:-AAXPK1676P] <b>(Appellant)</b>	Vs.	DCIT, Central Circle, Amritsar.  <b>(Respondent)</b>
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**I.T.A. No.66/Asr/2023  
Assessment Year: 2019-20**

Raman Gupta Aggarwal Glass & Plywood House, Katra Sher Singh, Amritsar. [PAN: -AAXPK1678D] <b>(Appellant)</b>	Vs.	DCIT, Central Circle, Amritsar.  <b>(Respondent)</b>
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<b>Appellant by</b>	None (Written Submission)
<b>Respondent by</b>	Sh. Amit Jain, Sr. DR

<b>Date of Hearing</b>	30.05.2023
<b>Date of Pronouncement</b>	14.06.2023

**ORDER**

**Per:Anikesh Banerjee, JM:**

Both the instant appeals of two different assessee were filed against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana, [in brevity the 'CIT (A)'] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity 'the Act'] for A.Y.2019-20. Both the impugned orders were emanated from the order of the Id. ACIT/DCIT, Central Circle, Amritsar, [in brevity 'the AO'], order passed u/s 143(3) of the Act.

2. At the outset, both appeals are under the same factual backdrop and have a common issue. Both the appeals are taken together, heard together and disposed of together. For the sake of convenience **ITA No. 65/Asr/2023** is taken as lead case.

**ITA No. 65/Asr/2023**

3. The assessee has taken the following grounds:

*“1. That the order passed by the Hon’ble CIT(A) dated 04.01.2023 is against the law and facts of the case.*

*2. That having regard to the facts and circumstances of the case, Hon’ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 143(3) of the Act and without complying*

*mandatory conditions u/s 143/143(2) as envisaged under the Income Tax Act, 1961.*

*3. (a) That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in treating the surrendered income u/s 69 of the Act and taxing the same u/s 115BBE of the Act, without considering the facts of the case and without observing the principles of natural justice.*

*(b) That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in charging income tax as per provisions of section 115BBE i.e. @ 60% plus surcharge @ 25% on the assessed income, without considering the facts of the case and without observing the principles of natural justice.*

*4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

4. Brief fact of the case is that the assessee is running the business under the name and style of M/s Lakshmi Glass & Plywood House. A survey was conducted u/s 133 A of the Act. The assessee surrendered the business income amount to

Rs.49,89,638/-. The assessee filed the return u/s 139 and declared the surrendered income as business income. The detail of surrendered income is as follows:

<b>PARTICULAR</b>	<b>AMOUNT</b>
Excess Cash found	Rs 8,87,780/-
Excess Stock found	Rs 27,69,958/-
Expenditure incurred	Rs.13,31,900/-
<b>TOTAL</b>	<b>Rs. 49,89,638/-</b>

During assessment proceeding the ld. AO treated the surrendered income as income from other sources and addition was framed u/s 69 of the Act. Accordingly, the tax was calculated under the special rate u/s 115BBE of the Act. The assessee claimed this income as a business income & denied paying the tax u/s 115BBE of the Act. Being aggrieved assessee filed an appeal before the ld. CIT(A) and the ld. CIT(A) upheld the order of the ld. AO. Being aggrieved assessee filed an appeal before us.

5. The ld. AR for the assessee filed a written submission and prayed to disposed of the matter on basis of the written submission. As per the submission, the assessee placed that the entire surrendered income is covered business income. The assessee filed the return u/s 44AD of the Act and has no liability for

maintaining the books of account u/s 44AA of the Act. Therefore, the addition u/s 69 A is uncalled for.

6. The Id. DR vehemently argued and fully relied on the assessment order. The relevant para 3.4 of the assessment order is reproduced as below:

*“3.4 It is observed that assessee has shown surrender amount of Rs.49,89,638/- under the head “ Income from other sources” as any other income. Thus, evidently, source of investment cash, purchase of stock and investment in construction of house neither claimed nor proved from business. Assessee has also not furnished any documentary evidence to link the investment with the source. Thus, investment in the cash, purchase of stock and investment in construction of house could't be proved from business. The Hon'ble Punjab & Haryana High Court in the case of M/s Kim Pharma (P) Ltd. has in the case where assessee had shown cash surrender under the head income from other sources has held that cash found during survey, which was not reflected in Books of account, no source was declared by the assessee and in absence of nature of source of cash being proved; the same is not assessable to as income from business. Accordingly, the Hon'ble Punjab & Haryana High Court has uphold the order of the Id. CIT(A) in including the additional income as deemed income u/s 69A of the I.T.Act.*

*This case is identical to the case of M/s Kim Pharma (P) Ltd. where assessee has shown surrender amount of Rs.49,89,638/- under the head “ Income from other sources” as any other income.”*

7. The assessee in the submission placed that the addition was made on basis of the order of **Hon’ble High Court of Punjab And Haryanain** the case of **M/s Kim Pharma P. Ltd vs CIT[2013] 35 taxmann.com 456 (Punjab & Haryana)**. Held *“Where amount surrendered during survey was not reflected in books of account and no source from where it was derived was declared by assessee, it was assessable as deemed income of assessee under section 69A and not business income”*

The ld. AO fully relied on the order of the Jurisdictional High Court and the addition was confirmed without considering the fact of the case. The assessee submitted a written submission the relevant para is duly inserted for adjudication:

Contentions put-forth by the assessee and AO as stated in the order and in the CIT(A) is as under :

<u>Adverse remarks against assessee by AO</u>	<u>Counter comments of the assessee</u>
<p>During the course of survey action cash of Rs. 9,53,000/- was found whereas cash as per Books of account, as on date of survey i.e. Dt. 15.02.2019 was Rs. 65,220/-. Thus, excess cash of Rs. 8,87,780/- was found. On being confronted, assessee had stated that he was unable to explain the difference and stated that he will explain it later.</p>	<p>In context to said observation , it is stated that as assessee files his return u/s 44AD therefore it is not mandatory for the assessee to prepare books or accounts or get his accounts audited .</p> <p>Sir, the assessee clearly stated during the survey that the excess stock, expenditure and cash represents the business income earned over the years representing it to be undisclosed business income earned over the years.</p> <p>Sir survey was incurred on the business premises of assessee, then it is a fact that cash relates to business of assessee only.</p> <p>Further, during the year assessee deposited cash of more than Rs.50,00,000/- in his bank accounts, this fact itself justifies the claim of assessee that the cash found was business receipts only and the expense incurred on the construction was in cash which was earned from the business of assessee only. There is no other source expect this business income from <u>trading under M/s LAXMI GLASS &amp; PLYWOOD HOUSE.</u></p>
<p>Even source of investment in cash, purchase of stock and investment in construction of house cannot be said to be from business as no proof was found during the survey proceedings that it was purchased out of undisclosed business receipts.</p>	<p>1. Sir, Ld. AO in his <b>assessment order para 3.1 page 2</b> has reproduced surrender letter of assessee dated 18.02.2019 which stated that :</p> <p><u>“.....Physical verification of the stock was done, some of the documents and Bills were also impounded. Certain discrepancies were found in Stock, Cash in hand and amount spent on construction of house which were un-accounted. To cover-up these discrepancies, I offer additional income of Rs.50,00,000/ (Fifty Lackonly) over &amp; above my normal income.....”</u></p>

	<p>Sir, as per above letter it is evitable that the documents / bills that were impounded belongs to the business of the assessee only on the basis of which income was surrendered by the assessee . These bills, which were not entered' pertains to the sale or purchase of plywood or glass which are related to the assessee' business, which resulted in excess stock and excess cash and the construction expense also was incurred out of such receipts only, then how can such income be treated as unexplained source when there are ample amount of evidence and facts pointing it out to be undisclosed business receipts over the years.</p> <p>Sir survey was incurred on the business premises of assessee, then it is a fact that cash relates to business of assessee only.</p> <p>Further, during the year assessee deposited cash of more than Rs.50,00,000/- in his bank accounts, this fact itself justifies the claim of assessee that the cash found was business receipts only and the expense incurred on the construction was in cash which was earned from the business of assessee only. There is no other source expect this business income from <u>trading under M/s LAXMI GLASS &amp; PLYWOOD HOUSE.</u></p>
<p>During the course of assessment proceedings, assessee was asked to explain the source of additional undisclosed income offered with supporting documents and to explain why entire investment of Rs. 50,00,000/- in the form of cash, purchase of stock and investment in construction of house should not be treated as investment from unexplained sources and be taxed as per provisions of Section 115BBE of the I. T. Act. But, assessee has failed to furnish any explanation even after providing repeated opportunities.</p>	<p>Sir,section 69A/69/68 applies where assessee offer no explanation about source and nature of income or offer explanation which is not satisfactory, but in the present case both are explained i.e.</p> <p style="text-align: center;"><i>Source – <u>Receipts from trading under M/s LAXMI GLASS &amp; PLYWOOD HOUSE</u></i></p> <p style="text-align: center;"><i>Nature- Business income</i></p> <p><b><u>Thus the provisions of Section 69A/68/69 are not applicable in the present case. Further assessee has sole business income from trading, so it implied that the surrendered income was also from this business only. Further no incriminating material found &amp; seized during survey which proves that stock or cash found or expenditure incurred related to any other business.</u></b></p>
<p>As per AO, the assessee had shown surrender amount of Rs. 49,89,638/- under the head "Income from other sources" as any other income.</p>	<ul style="list-style-type: none"><li>• That the assessee is an individual being taxed under sec 44AD declaring profits above 8% and not requiring maintaining proper books of account.</li><li>• The assessee in order to avoid any misunderstanding and confusion of manipulating income under sec 44AD, he did not show his income under sec 44AD and offered the income under "Other Sources" by mentioning "Surrender Value Income Tax" which represents the business income surrendered and agreed in the survey. The assessee did not back out from his promise and paid the tax in whole.</li><li>• That in order to reflect the fact that no expense was claimed by assessee from the surrendered income.</li></ul>

	<p>assessee disclosed this business income under the “other source” head, but in the “other source head” he specifically mentioned "Surrender Value Income Tax" which represents the business income surrendered and agreed in the survey.</p> <ul style="list-style-type: none"> <li>• That assessee filed return as per provisions of Section 44AD, and in that column of 44AD, there is no separate column or head in the return form where assessee could state/show/reflect the same as Surrender Income.</li> <li>• Thus in the present case also what needs to be taxed is the undisclosed business receipts only. This is substantiated by the bills and documents found during survey and is evident from page 2 para 3.1 of the assessment order which reflects the undisclosed receipts of assessee out of which cash was also earned and expenditure on construction as also incurred.</li> </ul>
<p>Sir, further the Ld. AO relied upon the following decisions of the High court In the case of <b>PCIT vs. M/s. Khushi Ram &amp; Sons Pvt. Ltd., the Hon’ble High Court of Punjab &amp; Haryana in ITA No. 126 of 2015 dated 21.07.2016</b> <i>“It is not necessary that the surrendered amount is from business income. It could be on account of any other transaction legal or otherwise. Merely because an assessee carries on certain business, it does not necessarily follow that the amounts surrendered by him are on account of its business transactions. There is no presumption that absent anything else an amount surrendered by an assessee is his business income. It is for the assessee to establish the source of such surrendered amount.”</i></p>	<p>The as regard to said contention , it is stated that the said case cannot be applicable to the assessee as :</p> <ul style="list-style-type: none"> <li>• The assessee files his return u/s 44AD</li> <li>• The assessee is not required to get his accounts audited.</li> <li>• In the case as referred by Ld. AO of <b>PCIT vs. M/s. Khushi Ram &amp; Sons Pvt. Ltd., the Hon’ble High Court of Punjab &amp; Haryana in ITA No. 126 of 2015 dated 21.07.2016</b>the books of the assessee is being audited during the year .</li> <li>• That in order to reflect the fact that no expense was claimed by assessee from the surrendered income, assessee disclosed this business income under the “other source” head, but in the “other source head” he specifically mentioned "Surrender Value Income Tax" which represents the business income surrendered and agreed in the survey.</li> <li>• That assessee filed return as per provisions of Section 44AD, and in that column of 44AD, there is no separate column or head in the return form where assessee could state/show/reflect the same as Surrender Income.</li> <li>• Thus in the present case also what needs to be taxed is the undisclosed business receipts only. This is substantiated by the bills and documents found during survey and is evident from page 2 para 3.1 of the assessment order which reflects the undisclosed receipts of assessee out of which cash was also earned and expenditure on construction as also incurred</li> </ul>
<p>Sir, further the Ld. AO relied upon the following decisions of the High court In the case <b>Kim Pharma Pvt. Ltd. vs. CIT in ITA No. 106 of 2011 dated 27.04.2011</b>, the Hon’ble High Court of Punjab &amp; Haryana held that, where the amount surrendered during the survey was not reflected in the books of accounts and the source from where it was derived was not declared, the same was assessable as deemed income u/s 69A of the Act.</p>	<p>The as regard to said contention , it is stated that the said case cannot be applicable to the assessee as:</p> <ul style="list-style-type: none"> <li>• The assessee files his return u/s 44AD</li> <li>• The assessee is not required to get his accounts audited.</li> <li>• .</li> <li>• As per case Law”<b><u>The assessee had also surrendered additional income of Rs.10 lacs in assessment year 2005-06 on account of sundry credits, repairs to building and advances to staff, which being relatable to business carried on by assessee was included as</u></b></li> </ul>

	<p><u>income from business.</u>"The books of the assessee firm is being audited , whereas in the case of assessee there are no books of accounts for income tax purpose.</p> <ul style="list-style-type: none"> <li>• That assessee filed return as per provisions of Section 44AD, and in that column of 44AD, there is no separate column or head in the return form where assessee could state/show/reflect the same as Surrender Income.</li> <li>• Thus in the present case also what needs to be taxed is the undisclosed business receipts only. This is substantiated by the bills and documents found during survey and is evident from page 2 para 3.1 of the assessment order which reflects the undisclosed receipts of assessee out of which cash was also earned and expenditure on construction as also incurred</li> </ul>
<p>Sir, further the Ld. AO relied upon the following decisions of the High court In the case of <b>The Hon'ble Supreme Court in the cases of Roshan Di Hatti vs. CIT [1977] 107 ITR 938 (SC) and Kale Khan Mohammad Hanif vs. CIT [1963] 50 ITR 1 (SC)</b> held that the law is well-settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source.</p>	<p>The as regard to said contention , it is stated that the said case cannot be applicable to the assessee as:</p> <ul style="list-style-type: none"> <li>• As per case Law "<u>The assessee is a trader carrying on two businesses, namely, manihari (general merchandise) and bidis</u>"whereas in the present case the assessee is only engaged in single business under the name and style M/s Laxmi glass and plywood House. Therefore the bills / documents that were impounded during the survey were related to the business of the assessee.</li> <li>• As per case Law "<u>while dealing with the assessment for the year 1948-49, the Income- tax Officer noticed various credit entries in the assessee's books of account which had all escaped his attention at the time of the assessment</u> , whereas in the case of assessee it is not required by the assessee to prepare books of accounts or get his account audited as the assessee files his return of income u/s 44AD.</li> </ul>
<p>Sir, further the Ld. AO relied upon the following decisions of the High court In the case <b>Hon'ble Supreme Court in CIT vs. M Ganpati Mudaliar [1964] 53 ITR 623 and A GovindrajuluMudaliar vs. CIT [1958] 34 ITR 807</b>that "<i>when the assessee has failed to prove satisfactorily the source and nature of the credit entry in his books and it is held that the relevant amount is income of the assessee, it is not necessary for the department to locate its exact source.</i>"</p>	<p>The as regard to said contention , it is stated that the said case cannot be applicable to the assessee as:</p> <ul style="list-style-type: none"> <li>• As per case Law "<u>The appellant carries multiple business. He also runs a lorry.</u>"whereas the assessee is only engaged in single business under the name and style M/s Laxmi glass and plywood House. The bills / documents that were impounded during the survey were related to the business of the assessee out of which undisclosed receipt was found which was related to business only and these bills and documents are itself proof that cash found was out of business income and the expense incurred on construction was out of such undisclosed business receipts only..</li> <li>• As per case Law "<u>These amounts appear in the account books of a firm of which the appellant is a partner as credits from him.</u>" Sir, the case Law is related to the person who is a partner in the firm and has another source of income too and is required to prepare the books of accounts of the firm whereas in the case of assessee it is not required by the assessee to prepare books of accounts or get his account audited as the assessee files his return of income u/s 44AD.</li> </ul>

8. We heard the rival submission and consider the documents available in the record. The assessee declared the income during the survey. The surrendered income was duly declared in the return of income filed u/s 139(1). Considering the nature of surrendered income is excess cash found, excess stock found, expenditure incurred. The revenue was not able to submit any source of income for the assessee other than the business income. The Id. AR relied on the order of the ITAT Ahmedabad in the case of **Chokshi Hiralal Maganlal vs. DCIT (ITA No. 3281/Ahd/2009 dated 05.08.2011)**The relevant paragraph is inserted as follow:-

*“In which it was held that for invoking deeming provisions under sections 69, 69A, 69B & 69C there should be clearly identifiable investment or asset or expenditure. In case source of investment or asset or expenditure is clearly identifiable and has no independent existence of its own where a case arises to claim that it cannot be separated from business then first ‘what is to be taxed is the undisclosed business receipt. Only on failure of such exercise, it would be regarded as taxable under section 69 on the premises that such excess investment or asset or expenditure is unexplained and unidentified, satisfying the mandate of the law.”*

8.1 We respectfully consider the order of the Hon'ble Jurisdictional High Court in the case of Kim Pharma P. Ltd. (supra). The observation of the Hon'ble High Court is related to the surrendered income which is unidentifiable, the amount surrendered during survey would not reflected in the books of account and the source from where it was derived was not declared. The same was assessable as deemed income u/s 69A of the Act. We respectfully observed the order of the Hon'ble High Court. It is not under the factual matrix in assessess's case. The assessee declared the income and filed the return u/s 44AD of the Act under the presumptive scheme. The assessee declared the surrendered income in the return and all the surrendered income are nature of business transactions. We fully relied on the order of the ITAT, Ahemdabad **Chokshi Hiralal Maganlal**(supra) and order of Hon'ble Apex Court in the case of **M Ganpati Mudaliar** (supra). Accordingly, the addition made u/s 69A amount to Rs. 49,89,638/- is liable to be deleted and the calculation of tax u/s 115BBE is liable to be quashed. The income of the assessee will be treated as business income.

9. As noted at the beginning of this order, the facts and issue in both these appeals are common. So, our observations qua in **ITA No.65/Asr/2023** are, *mutatis mutandis*, equally applicable to **ITA No.66/Asr/2023** and follows accordingly.

10. In the result, the appeals of the assessee bearing **ITA No. 65/Asr/2023 & ITA 66/Asr/2023** are allowed.

**Order pronounced in the open court on 14.06.2023**

**(Dr. M. L. Meena)**  
**Accountant Member**

**(ANIKESH BANERJEE)**  
**Judicial Member**

AKV

Copy of the order forwarded to:

- (1) The Appellant
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- (3) The CIT
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- (5) The DR, I.T.A.T.

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