

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.252/PUN/2023  
निर्धारण वर्ष / Assessment Year : 2018-19

Ashok K. Kriplani,  
154, Polan Peth, Dana Bazar,  
Jalgaon – 425001

PAN : BAFPK2585N

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,  
Central Circle – 1, Nashik

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.253/PUN/2023  
निर्धारण वर्ष / Assessment Year : 2018-19

Kanhaiyalal M. Kriplani,  
154, Polan Peth, Dana Bazar,  
Jalgaon – 425001

PAN : AAZPK8131B

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,  
Central Circle – 1, Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare  
Revenue by : Shri Ramnath P. Murkunde

सुनवाई की तारीख / Date of Hearing : 22-06-2023  
घोषणा की तारीख / Date of Pronouncement : 03-07-2023

## आदेश / ORDER

### PER S.S. VISWANETHRA RAVI, JM :

These two appeals by the different assessees against the common order dated 13-01-2023 passed by the Commissioner of Income Tax (Appeals)-12, Pune [‘CIT(A)’] for assessment year 2018-19.

2. Since, the issues raised in both the appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to hear both the appeals together and to pass a consolidated order for the sake of convenience.

**3. First, we shall take up appeal of assessee in ITA No. 252/PUN/2023 for A.Y. 2018-19.**

4. The assessee raised 11 grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in confirming the order of AO in not treating the disclosed income during the survey as business income, consequently, charging the same u/s. 115BBE of the Act.

5. The brief facts of the case are that the assessee is an individual and conducts its business as proprietor of M/s. Mohan Dry Fruit. A survey was conducted on 04-10-2017 in the business premises of M/s. Mohan Dry Fruit u/s. 133A of the Act. The assessee filed return of income declaring a total income of Rs.1,38,40,940/-. According to the AO that the assessee surrendered an amount of Rs.73,69,908/- on account of excess stock and Rs.8,09,032/- on account of excess cash totaling to

Rs.81,78,941/- and included the said surrendered income in the computation of income as business income and he proceeded to exclude the above said both the amounts and treating the same as unaccounted stock u/s. 69 and excess cash u/s. 69A of the Act, charged the same u/s. 115BBE of the Act. Before the CIT(A), it was contended that the amounts representing excess stock and excess cash were duly recorded in the regular books of account and appeared in the financial statements. The assessee was contended that the investment in unrecorded business stock as well as unaccounted cash discovered during the survey action should be taxed as business income. The CIT(A) held acceptance of such contention may lead to a situation where a tax payer having undisclosed income from a source of other than from business or profession, can invest such income in the business stock and subsequently claim that the same is taxable at normal rate. Further, according to the CIT(A) that the assessee could not explain clearly the nature of additional income surrendered during the course of survey as well as assessment proceedings flowing from business activity of the assessee. By holding so the CIT(A) confirmed the order of AO in charging the additional income offered u/s. 115BBE of the Act.

6. The ld. AR, Smt. Deepa Khare submits that the CIT(A) incorrectly held that the additional income declared on account of excess cash and excess stock as deeded income u/s. 69A and 69 of the Act, respectively and no consideration was given to the contention that the excess cash and excess stock found, was the result of unrecorded business receipts. She argued that the amounts of excess cash and excess stock were duly recorded in the books of account and paid taxes treating the same as business income. The finding of CIT(A) is not justified in treating the same as unexplained within the meaning of section 69 and 69A of the Act. The

ld. AR placed reliance on the decision of Hon'ble High Court of Rajasthan in the case of CIT Vs. Bajargan Traders reported in (2017) 86 taxmann.com 295 (Rajasthan) submits that the Hon'ble High Court held that the investment in the excess stock was to be brought to tax under head "business income" regarding excess stock which was found during the survey could be the investment in procurement of such stock. Further, she placed reliance on the order of ITAT, Mumbai Benches in the case of Govind Gidomal Lulla in ITA No. 2285/Mum/2022 and the order of ITAT, Jodhpur Benches in batch of cases lead case being Shri Lovish Singhal in ITA No. 143/Jodh/2018 and argued that the Jodhpur Benches of ITAT by placing reliance in the case of Bajargan Traders (supra) of Rajasthan High Court held that the excess stock and excess cash found during the course of survey and surrendered made thereof is taxable under the head "business and profession" further, held not justified in taxing such income u/s. 115BBE of the Act. The ld. DR relied on the order of CIT(A).

7. Heard both the parties and perused the material available on record. There is no dispute with regard to offering of additional income during the course of survey under the head excess stock to an extent of Rs.73,69,909/- and excess cash Rs.8,09,032/-. The said amounts were included in the computation of income and declared total income of Rs.1,38,40,940/- u/s. 139(1) of the Act which is inclusive of excess stock and excess cash offered during the course of survey. The AO and the CIT(A) was of the opinion that both the excess stock and excess cash found during the course of survey are not recorded in the books of account at the time of survey and attracts the provisions u/s. 69 and 69A of the Act, therefore, both the charged u/s. 115BBE of the Act. A contention raised before us that the excess stock and excess cash found and offered during

the course of survey were not recorded in the books of account then and same were considered in the financials as on the last day of financial year i.e. 31-03-2018 supports the answers given by the assessee to Q. Nos. 20 and 21 which are reproduced at page 22 of the impugned order. Therefore, it can be fairly concluded that the excess stock and excess cash found during the course of survey nothing but business income flowing from assessee's regular business.

8. The Hon'ble High Court of Rajasthan in the case of Bajargan Traders (supra) observed that the amount surrendered under unrecorded stock has to be brought to tax under the head "business income" as the excess stock which has been found during the course of survey is the investment in procurement of such stock is clearly identifiable and related to the regular business stock of the assessee. The Hon'ble High Court clearly held the investment in excess stock has to be brought to tax under the head "business income" but not under the head "income from other sources". The Mumbai Benches of the Tribunal in the case of Govind Godomal Lulla (supra) held undisclosed investment in the case of excess stock found during carrying on business and the same is generated out of business income, no provisions of section 69 of the Act would attract. Further, the Jodhpur Benches of the Tribunal in the case of Shri Lovish Singhal (supra) held the excess stock/cash found during the course of survey is taxable under the business and no provision u/s. 115BBE of the Act is attracted. In the present case as discussed above without any dispute the assessee offered additional income under excess stock and excess cash during the course of survey and same were entered in the books of account as on the last day of financial year ending on 31-03-2018 and offered the said amounts to tax under the business income. Therefore, in our opinion, the

ratio laid down by the Hon'ble High Court of Rajasthan in the case of Bajargan Traders (supra) which was followed by the Jodhpur Benches of Tribunal is similar and identical to the issue in the present case. Therefore, the CIT(A) is not justified in confirming the order of AO in excluding the alleged additional income offered during the course of survey and attracting the provisions u/s. 69 and 69A of the Act, consequently, the charging u/s. 115BBE of the Act. Thus, the order of CIT(A) is set aside and the grounds raised by the assessee are allowed.

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

**ITA No. 253/PUN/2023, A.Y. 2018-19**

10. We find that the issues raised in the appeal and the facts in ITA No. 253/PUN/2023 are identical to ITA No. 252/PUN/2023 except the variance in amount. Since, the facts in ITA No. 253/PUN/2023 are similar to ITA No. 252/PUN/2023, the findings given by us while deciding the appeal of assessee in ITA No. 252/PUN/2023 would *mutatis mutandis* apply to ITA No. 253/PUN/2023, as well. Accordingly, the appeal of assessee is allowed.

11. To sum up, both the appeals of assesseees are allowed.

Order pronounced in the open court on 03<sup>rd</sup> July, 2023.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03<sup>rd</sup> July, 2023.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune.
4. The Pr. CIT, Central, Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune