

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 292/JP/2023
निर्धारण वर्ष/Assessment Year : 2015-16

Shri Sanjay Gupta In front of Arya Samaj Mandir Bajaja Bazar, Alwar-301 001 (Raj)	बनाम Vs.	The ACIT Circle-1 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACCPG 4140 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Shri Anoop Singh, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 06/07/2023
उदघोषणा की तारीख / Date of Pronouncement: 17/07/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 17-04-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2015-16 raising therein following grounds of appeal.

"1. The ld. CIT(A), NFAC has erred on facts and in law in dismissing the appeal filed by the assessee by holding that rectification sought by the appellant is not the rectification of a "mistake apparent from the records" within the confines of the provision of Section 154 of the I.T. Act, 1961 ignoring that

rectification is sought by the AO and not by the assessee and thus as per the findings of CIT(A) the order passed by AO u/s 154 is bad in law and therefore the appeal of assessee ought to have been allowed.”

2. The Id. CIT(A), NFAC has erred on facts and in law in not appreciating that the excess stock of Rs.36,96,223/- offered for tax is correctly assessed by AO as business income taxable under normal provision of the Act and not u/s 115BBE for which AO passed the order u/s 154 of the Act.

2.1 Brief facts of the case are that the assessee is proprietor of M/s Hardik Jewellers engaged in trading of gold, silver & diamond jewellery. A survey u/s 133A of the Act was conducted at the business premises of assessee on 10.10.2014 where the value of physical stock was determined at Rs.1,82,97,343/- as against book stock of Rs.1,46,00,235/-. After considering the purchases yet to be recorded of Rs.11.00 lacs, the excess stock was determined at Rs.23,97,108/- against which assessee offered Rs.25 lacs for tax. Further on the basis of some loose slips, the assessee offered Rs.10,28,700/-. Thus the total income offered for tax is Rs.35,28,700/-. However, in the return of income assessee offered income of Rs.36,96,223/- (1,82,97,343 minus 1,46,00,235-885 cash shortage) by debiting the purchase account and crediting indirect income in the P&L A/c. It is noted that the AO framed the assessment order u/s 143(3) dated 10.10.2017 and accepted the returned income. Thereafter AO in order u/s 154 dated 02.11.2018 held that

income surrendered of Rs.36,96,223/- should be charged to tax @ 30% u/s 115BBE of the Act. Against this order assessee filed appeal before Ld. CIT(A).

2.2 Aggrieved by the order of the AO, the assessee preferred an appeal before the ld. CIT(A) who at Pg 8 of the order held that the rectification sought by the assessee is not the rectification of mistake of a 'mistake apparent from record', within the confines of the provisions of section 154 of the IT Act, 1961 and the related jurisprudence as has been enunciated by the Hon'ble constitutional courts. Accordingly, the ld. CIT(A) dismissed the appeal of the assessee.

2.3 During the course of hearing, the ld. AR of the assessee prayed to quash the order passed by the AO u/s 154 of the Act for which the ld. AR of the assessee filed the following written submission.

“1. At the outset it is submitted that Ld. CIT(A) has decided the appeal without any discussion on the submission made by the assessee. Further he held that the rectification sought by the assessee is not the rectification of mistake within the confines of the provisions of section 154 of the IT Act, 1961 ignoring that rectification is not sought by the assessee but it is the AO who has rectified its order. According to Ld. CIT(A) such rectification do not come under the purview of section 154 and therefore the ground of assessee ought to have been allowed but he has wrongly dismissed the appeal of assessee.

2. It is submitted that the assessee offered business income of Rs.36,96,223/- on account of stock difference. The assessee in reply to Q. No.15 of his statement dt. 10.10.2014 (**PB 16-17**) has explained the reason for the same but still offered the same for tax as business income and paid tax on it under the normal provisions of the Act. However, the AO in order passed u/s 154 has held that the same is taxable u/s 115BBE of the Act. Exactly the similar issue was decided by **Hon'ble ITAT Jaipur Bench in case of Hari Narain Gattani Vs. DCIT (2021) 199 DTR 121 (PB 21-25)** wherein income surrendered by the assessee was taxed

u/s 115BBE of the Act @ 60% by passing order u/s 154 of the Act but the same was quashed by the ITAT. The head note of this decision reads as under:-

“Assessee filed his return which included the surrendered income as current year's business income. In the assessment completed u/s 143(3), AO charged the tax and interest at normal rates of tax for individual. There is nothing stated either in the pre-amended or post-amended provisions of sec. 115BBE that where the assessee surrenders undisclosed income during the search action for the relevant year, the tax rate has to be charged as per provision of sec. 115BBE. In the assessment order passed u/s 143(3), there is no finding by the AO that the income so surrendered has been determined as income referred to in sec. 68, sec. 69, sec. 69A, sec. 69B, sec. 69C or sec. 69D. Secondly, in the computation of tax liability, the tax liability on the undisclosed income has been determined as per slab rate of taxation applicable to an individual and not @ 30% as specified in sec. 115BBE. Thus, none of the aforesaid provisions referred in sec. 115BBE has been invoked by AO during the assessment proceedings and therefore, the contention of the revenue that during the assessment proceedings the tax rate has been charged @ 30% on surrendered income u/s 115BBE is not factually correct. Hence, the action of AO in increasing the rate of taxation from 30% to 60% and levying surcharge and cess on such undisclosed income by invoking his jurisdiction u/s 154 is not sustainable.”

3. In various cases it has been held that the excess stock found is taxable as business income under the normal provisions of the Act. Reliance in this connection is placed on the following cases:-

PCIT Vs. Deccan Jewellers Pvt. Ltd. (2021) 438 ITR 131 (AP) (HC) (Case laws compilation PB 1-6)

The head note of the decision reads as under:-

Income from undisclosed sources—Vis-a-vis business income—Excess stock found during search—Explanations have been offered by the assesseees that excess stock was a result of suppression of profits from business over the years and is a part of the overall stock found and therefore excess stock could not have been treated as ‘undisclosed investment’ under s. 69 but assessable as business income—No contrary view either of any High Court or the apex Court has been placed to demonstrate that the explanations offered by the assesseees in the course of assessment were either perverse or contrary to law—Tribunal was correct in law in holding that unaccounted and excess stock found during the course of search shall be assessed as business income

PCIT Vs. Bajargan Traders DBITA No.258/2017 order dt. 12.09.2017 (Raj.) (HC) (Case laws compilation PB 7-11)

SANJAY GUPTA VS ACIT, CIRCLE-1, JAIPUR

In this case the assessee is a partnership firm dealing in sale of food grain, rice and oil seeds. A survey u/s 133A was conducted on the business premises. During the survey assessee surrendered excess stock of rice. The assessee submitted that the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. AO taxed the amount surrendered by way of investment in unrecorded stock of rice under the head Income from other sources. In appeal, the Hon'ble ITAT allowed the claim of assessee by holding as under:-

“2.10. We have heard the rival contentions and perused the material available on record. During the course of survey, the assessee has surrendered an amount of Rs.70,04,814/- towards investment in stock of rice which had not been recorded in the books of accounts. Subsequently, in the books of accounts, the assessee has incorporated this transaction by debiting the purchase account and crediting the income from undisclosed sources. In the annual accounts, the purchases of Rs.70,04,814/- were finally reflected as part of total purchases amounting to Rs.33,47,19,658/- in the profit and loss account and the same also found included as part of the closing stock amounting to Rs.1,94,42,569/- in the profit/loss account since the said stock of rice was not sold out. In addition to the purchase and the closing stock, the amount of Rs.70,04,814/- also found credited in the profit and loss account as income from undisclosed sources. The net effect of this double entry accounting treatment is that firstly the unrecorded stock of rice has been brought on the books and now forms part of the recorded stock which can be subsequently sold out and the profit/loss therefrom would be subject to tax as any other normal business transaction. Secondly, the unrecorded investment which has gone in purchase of such unrecorded stock of rice has been recorded in the books of accounts and offered to tax by crediting the said amount in the profit and loss account. Had this investment been made out of known source, there was no necessity for assessee to credit the profit/loss account and offer the same to tax. Accordingly, we do not see any infirmity in assessee's bringing such transaction in its books of accounts and the accounting treatment thereof so as to regularise its books of accounts. In fact, the same provides a credible base for Revenue to bring to tax subsequent profit/loss on sale of such stock of rice in future.

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 Coordinate 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."

On further appeal by department, Hon'ble Rajasthan High Court upheld the above findings of ITAT and dismissed the appeal filed by the department.

DCIT Vs. Sh. Ram Narayan Birla ITA No.482/JP/2015 order dt. 30.09.2016 (Jaipur) (Trib.) (Case laws compilation PB 12-19)

In this case it was held that the excess stock is to be assessed as part of the normal stock and to be taxed under the head income from business. The relevant finding of ITAT at Para 4.3 reads 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 ld. CIT (A) directing the AO to treat the surrendered amount as excess stock qua the excess stock found.”

ACIT Vs. Mangaldeep (2022) 211 DTR 7 (Surat) (Trib.) (Case laws compilation PB 20-30)

In view of the fact that assessee is engaged only in the business of trading of cloth, the unaccounted stock found during the survey is related to its business and therefore, the undisclosed income declared during the survey is assessable under the head 'Business income' and not u/s 69A.

4. In view of above it is submitted that unaccounted stock found during survey is related to the business and thus assessable as business income under normal provisions of the Act and not u/s 115BBE. Otherwise also, **Hon'ble Supreme Court in case of ITO Vs. Volkart Bros. [1971] 82 ITR 50** has held that a mistake apparent from record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two options. A decision on a debatable point of law is not a mistake apparent from the record.

In view of above, order passed by AO u/s 154 be quashed.”

2.4 On the other hand, the ld. DR supported the order of the ld. CIT(A).

2.5 The Bench has heard both the parties and perused the materials available on record including the judgement cited by respective parties. From the facts on record, it is noted that the assessee is a Prop. Of M/s. Hardik Jewellers which is engaged in the trading of gold, silver and diamond jewellery. A survey u/s 133A of the Act was conducted at business premises of the assessee on 10-10-2014 where the value of physical stock was determined at Rs.1,82,97,343/- as against book

stock of Rs.1,46,00,235/- . After considering the purchases yet to be recorded of Rs.11.00 lacs, the excess stock was determined at Rs.23,97,108/- against which assessee offered Rs.25.00 lacs for tax. Further on the basis of loose slips, the assessee offered Rs.10,28,700/-. Thus the total income offered for tax is Rs.35,28,700/-. In the return, the assessee offered business income of Rs.36,96,223/- on account of stock difference and even in reply to Question No. 15 and statement made on 11-10-2014 which is at PB Pages 16-17, the assessee has explained the reason for the same but still offered the same for tax as business income and paid tax on it under the normal provisions of the Act. The AO in the order passed u/s 154 of the Act has held the same to be taxable u/s 115BBE of the Act. It is noted that Id. CIT(A) while reaching to the conclusion held that such rectification do not come under the purview of Section 154. It is also noted that the Id.CIT(A) also mentioned in his order that rectification sought by the assessee is not the rectification of mistake within the confines of the provision of Section 154 of the Act whereas factually no rectification application was filed by the assessee rather it was AO's rectification u/s 154 of the Act. It is worthwhile to mention that the Id. CIT(A) misinterpreted the facts and dismissed the appeal of the assessee, however, the facts still remain that the assessee had offered the income with regard to stock difference by considering it as business income and the AO also accepted the same. Even otherwise, there was no finding in the order of the assessment that

income so surrendered has been determined as income referred to in Sec. 68, Sec. 69, Sec. 69A, Sec. 69B, Sec. 69C or Sec. 69D. Therefore, while drawing the strength from the decision of Coordinate Bench of ITAT, Jaipur in the case of Shri Hari Narain Gattani vs DCIT (2021), 199 DTR 121 wherein income surrendered by the assessee was taxed u/s 115BBE of the Act @ 60% by passing order u/s 154 of the Act but the same was quashed by the ITAT. The relevant portion of the decision in the case of Hari Narain Gattani vs DCIT (supra) is reproduced as under:-

“Assessee filed his return which included the surrendered income as current year's business income. In the assessment completed u/s 143(3), AO charged the tax and interest at normal rates of tax for individual. There is nothing stated either in the pre-amended or post-amended provisions of sec. 115BBE that where the assessee surrenders undisclosed income during the search action for the relevant year, the tax rate has to be charged as per provision of sec. 115BBE. In the assessment order passed u/s 143(3), there is no finding by the AO that the income so surrendered has been determined as income referred to in sec. 68, sec. 69, sec. 69A, sec. 69B, sec. 69C or sec. 69D. Secondly, in the computation of tax liability, the tax liability on the undisclosed income has been determined as per slab rate of taxation applicable to an individual and not @ 30% as specified in sec. 115BBE. Thus, none of the aforesaid provisions referred in sec. 115BBE has been invoked by AO during the assessment proceedings and therefore, the contention of the revenue that during the assessment proceedings the tax rate has been charged @ 30% on surrendered income u/s 115BBE is not factually correct. Hence, the action of AO in increasing the rate of taxation from 30% to 60% and levying surcharge and cess on such undisclosed income by invoking his jurisdiction u/s 154 is not sustainable.”

While taking into consideration the decision of the Coordinate Bench (supra), we are of the view that excess stock found was rightly taxed as business income under

the normal provisions of the Act. In this regard, we take into consideration the following decisions relied upon by the Id. AR of the assessee.

**PCIT Vs. Deccan Jewellers Pvt. Ltd. (2021) 438 ITR 131 (AP) (HC)
(Case laws compilation PB 1-6)**

The head note of the decision reads as under:-

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In this case the assessee is a partnership firm dealing in sale of food grain, rice and oil seeds. A survey u/s 133A was conducted on the business premises. During the survey assessee surrendered excess stock of rice. The assessee submitted that the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. AO taxed the amount surrendered by way of investment in unrecorded stock of rice under the head Income from other sources. In appeal, the Hon’ble ITAT allowed the claim of assessee by holding as under:-

“2.10. We have heard the rival contentions and perused the material available on record. During the course of survey, the assessee has surrendered an amount of Rs.70,04,814/- towards investment in stock of rice which had not been recorded in the books of accounts. Subsequently, in the books of accounts, the assessee has incorporated this transaction by debiting the purchase account and crediting the income from undisclosed sources. In the annual accounts, the purchases of Rs.70,04,814/- were finally reflected as part of total purchases amounting to Rs.33,47,19,658/- in the profit and loss account and the same also found included as part of the closing stock amounting to Rs.1,94,42,569/- in the profit/loss account since the said stock of rice was not sold out. In addition to the purchase and the closing stock, the amount of Rs.70,04,814/- also found credited in the

profit and loss account as income from undisclosed sources. The net effect of this double entry accounting treatment is that firstly the unrecorded stock of rice has been brought on the books and now forms part of the recorded stock which can be subsequently sold out and the profit/loss therefrom would be subject to tax as any other normal business transaction. Secondly, the unrecorded investment which has gone in purchase of such unrecorded stock of rice has been recorded in the books of accounts and offered to tax by crediting the said amount in the profit and loss account. Had this investment been made out of known source, there was no necessity for assessee to credit the profit/loss account and offer the same to tax. Accordingly, we do not see any infirmity in assessee's bringing such transaction in its books of accounts and the accounting treatment thereof so as to regularise its books of accounts. In fact, the same provides a credible base for Revenue to bring to tax subsequent profit/loss on sale of such stock of rice in future.

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 Coordinate 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."

On further appeal by department, Hon'ble Rajasthan High Court upheld the above findings of ITAT and dismissed the appeal filed by the department.

DCIT Vs. Sh. Ram Narayan Birla ITA No.482/JP/2015 order dt. 30.09.2016 (Jaipur) (Trib.) (Case laws compilation PB 12-19)

In this case it was held that the excess stock is to be assessed as part of the normal stock and to be taxed under the head income from business. The relevant finding of ITAT at Para 4.3 reads 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.) I 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 ld. CIT (A) directing the AO to treat the surrendered amount as excess stock qua the excess stock found.”

ACIT Vs. Mangaldeep (2022) 211 DTR 7 (Surat) (Trib.) (Case laws compilation PB 20-30)

In view of the fact that assessee is engaged only in the business of trading of cloth, the unaccounted stock found during the survey is related to its business and therefore, the undisclosed income declared during the survey is assessable under the head 'Business income' and not u/s 69A.’

Therefore, considering the totality of the facts and circumstances of the case, we are of the view that the unaccounted stock found during survey is related to business and thus assessable as business income under the normal provisions of the

Act. Therefore, the order passed by the AO u/s 154 is quashed and thus the appeal of the assessee is allowed.

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

Order pronounced in the open court on 17/07/2023.

Sd/-

(संदीप गोसाईं)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 17 /07/2023

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Sanjay Gupta, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-1, Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 292/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar