

**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. 04/Ind/2023**  
**Assessment Year: 2018-19**

Shri Premdeep Rajput, 47-B, Sector A, Industrial Estate, Sanwer Road, Indore (Assessee / Appellant)	<b><u>बनाम/</u></b> Vs.	ACIT, Central Circle, Ujjain (Revenue / Respondent)
<b>PAN: ABVPR8534N</b>		
Assessee by	Shri Sushil Jethani and Shri V.K. Bhandari, Adv.	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	01.06.2023	
Date of Pronouncement	25.08.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 21.11.2022 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 06.04.2021 passed by ACIT, Central Circle, Ujjain ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2018-19, the assessee has filed this appeal.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Brief facts leading to present appeal are such that the assessee is a individual engaged in the business of manufacture of PVC footwear. A survey u/s 133A was conducted upon assessee on 21.03.2018 falling within

previous year 2017-18 relevant to AY 2018-19 under consideration. During survey, the statement of assessee were recorded wherein, vide replies to Q.No. 17, 18 and 19, the assessee surrendered excess stock of Rs. 42,52,775/-, advances of Rs. 8,16,000/- and excess cash of Rs. 9,35,725/-; all aggregating to Rs. 60,04,500/-. Thereafter, while filing return of income of relevant AY, the assessee faithfully honoured his surrender and disclosed additional income of Rs. 60,04,500/- as "Income from Business" u/s 28 and paid taxes @ normal rate of tax as applicable to business income. During assessment-proceeding, the AO issued notice dated 02.03.2021 asking the assessee as to why the excess stock, advances and cash should not be treated as deemed income u/s 68 to 69D. In response, the assessee filed reply which is re-produced by AO in Para No. 5 of assessment-order. The assessee submitted that he was engaged only and only in the manufacturing business of footwear and there was no income other than business income available with the assessee which could be assessed u/s 68 to 69D. The assessee also submitted that he has made surrender of income to buy peace of mind and avoid time-consuming litigation and faithfully offered the surrendered income in the return of income honoring his commitment; therefore the department must accept assessee's disclosure and should not saddle him with punishment of higher tax liability at assessment stage. However, although the AO accepted the additional income of Rs. 60,04,500/- as declared by assessee but he treated the same as deemed income u/s 69/69A/69B and thereby applied higher rate of tax u/s 115BBE. The AO held so by relying upon certain judicial rulings as mentioned in assessment-order and ultimately observing thus:

*"7. It is a fact that as on the date of survey, the assessee was showing cash of Rs. 2,37,575/- in books of accounts, whereas cash found was Rs. 11,73,300/- as per physical verification. Thus, the excess cash found was at Rs. 9,35,725/-. The assessee has offered the said amount of excess cash found of Rs. 9,35,725/- in his Income Tax Return. In view of the same, and in view of the fact that the said excess cash was accepted by the assessee through his aforesaid statement, and after considering all the facts and circumstances of the case, there remains no ambiguity that the amount of excess cash of Rs.9,35,725/- clearly comes under the definition of*

*unexplained money as envisaged u/s 69 of the Income-tax Act, 1961. The said amount of Rs. 9,35,725/- is, therefore, considered as the assessee's income u/s 69A and is taxed u/s 115BBE of the Act at the rate of 60% + surcharge + cess. This stand is further supported by the discussions made in the preceding paras. In view of the provisions of section 271AAC of the Act, I am satisfied that the penalty proceedings must be initiated u/s 271AAC in the matter, and hence, the same are hereby initiated.*

8. *During survey, the assessee was showing closing stock at Rs. 62,36,521/- in his books of accounts, whereas stock found was at Rs. 1,04,89,296/- as per physical verification. Thus, the excess stock was at Rs. 42,52,775/-. The assessee has offered the said amount of excess stock found of Rs. 42,52,775/- in his Income Tax Return. In view of the same, and in view of the fact that the said excess stock was accepted by the assessee through his aforesaid statement, and after considering all the facts and circumstances of the case, there remains no ambiguity that the amount of excess stock of Rs. 42,52,775/- is, therefore, considered as the assessee's income u/s 69B and is taxed u/s 115BBE of the Act at the rate of 60% + surcharge + cess. This stand is further supported by the discussions made in the preceding paras. In view of the provisions of section 271AAC of the Act, I am satisfied that the penalty proceedings must be initiated u/s 271AAC in the matter; and hence, the same are hereby initiated.*

9. *In the course of survey, a diary BI-1 was impounded which contains details of Rs. 8,16,000 given by the assessee to various persons as advance. The assessee has not shown the amount of Rs. 8,16,000/- in his books of accounts and also could not explain source of the said amounts given to various person as advance. The assessee has offered the said amount of Rs. 8,16,000/- in his Income Tax Return. In view of the same and in view of the fact that the said amount was accepted by the assessee through his aforesaid statement, and after considering all the facts and circumstances of the case, there remains no ambiguity that the amount of Rs. 8,16,000/- clearly comes under the ambit of unexplained investments as envisaged u/s 69 of the Income Tax Act, 1961. The said amount of Rs. 8,16,000/- is, therefore, considered as the assessee's income u/s 69 and is taxed u/s 115BBE of the Act at the rate of 60 % + surcharge + cess. The stand is further supported by the discussions made in the preceding paras. In view of the provisions of section 271AAC of the Act, I am satisfied that the penalty proceedings must be initiated u/s 271AAC in the matter, and hence, the same are hereby initiated."*

4. Aggrieved by action of AO, the assessee went in first-appeal. During first-appeal, the assessee made a detailed submission which is re-produced by CIT(A) in Para No. 3 of his order. The assessee's main contention was such he was aged about 72 years at the time of survey and his sole source of income was the manufacturing business of footwear for more than 35 years and the excess-stock, advances and cash were the outcome of suppressed business income over the years; no other source of income except the same

business had been found during survey. It was also submitted that the excess stock, advances and cash were integral part of normal stock, advances and cash balance of business of assessee and they do not have separate identity so as to infer not related to business. It was also submitted that the assessee has well-recorded the excess stock, advances and cash in books of account, copies of books of accounts, Trading A/c and P&L A/c were also filed to demonstrate the same. The assessee also submitted his analysis of the provisions of section 69/69A/69B and section 115BBE to convey that those sections were not applicable. The assessee also relied upon certain judicial rulings where such income had been accepted as business income and not treated as deemed income u/s 69/69A/69B read with section 115BBE. However, the CIT(A) was not satisfied with assessee's submission who, relying upon the decisions of **M/s SVS Oil Mills, Tax Appeal No. 765/2018 (Madras High Court)** and **Shri Shyam Lal Goyal and Others, ITA No. 245-247/Ind/2021, order dated 29.06.2022 (ITAT Indore Bench)**, upheld the AO's action.

5. Still aggrieved, the assessee has come in this appeal. The grounds raised by assessee are as under:

- "1. The Id. CIT(A)-3, Bhopal erred by confirming the order of the Id. AO which is bad in law, contradictory to the provisions of the Act, and also contradictory to the facts of the case.
2. That the assessment order passed by the Ld. ACIT Central Circle, Ujjain (MP) is without jurisdiction as the order u/s 127 passed by the CIT is without affording opportunity to the assessee is not legal and the Ld. CIT(A)-3 erred by ignoring the objection of the assessee and passed the order, which is not proper.
3. That the assessment order passed by the Ld. ACIT Central Circle, Ujjain (MP) without issuing notice u/s 143(2) is bad in law and the Ld. CIT(A)-3, Bhopal, erred by ignoring the objections of the assessee and passed the order, which is not proper.
4. That, the Id. CIT(A) -3, Bhopal erred by confirming the order passed by the ACIT Central Circle, Ujjain (MP) which is without jurisdiction. The ITO, Ward 4.4, Indore, was the jurisdictional AO in the case of the assessee and no notice u/s 127 of the I.T. Act was given to the assessee

prior to transfer of the case to the ACIT, Central Circle, Ujjain from ITO, Ward-4(4), Indore.

5. That, the disclosed income of Rs. 60,04,500/- is income from business and the same has been assessed (i) u/s 69 - Cash in hand Rs. 9,35,725/- , (ii) u/s 69B - Stock Rs. 42,52,775/-, (iii) u/s 69 - Advance for purchase of Raw Material - Rs. 816000/- and rate of tax has been applied u/s 115BBE of the Act is without material and without basis and is contradictory to the facts of the case.
6. The assessee craves to add, amend, alter and modify all or any of the grounds of appeal."

6. At the time of hearing, both sides did not make any pleading on Ground No. 1 to 4 and Ground No. 6. On perusal of CIT(A)'s order, it is found that the assessee contested the issues raised in Ground No. 1 to 4 before CIT(A) also but the CIT(A) has dismissed assessee's claims. Further, Ground No. 6 is a general ground only. It seems that the parties realize no substance or merit in these grounds, therefore they have remained silent and did not make any submission. In view of this state, these grounds are dismissed as not pressed or pleaded.

7. Now, what remains to be adjudicated is only Ground No. 5. Apropos to this ground, Ld. AR for assessee made following contentions:

- (i) It is submitted that at the time of survey, the assessee was aged about 72 years. His sole activity/source is the manufacturing business and that is why no piece of evidence whatsoever had been found during the course of survey indicating any other source of income. He submitted that the assessee has been in this line of manufacturing business for over 35 years and the excess-stock, advances and cash were the outcome of suppressed business income over the years.
- (ii) With regard to excess-stock, it is further submitted that the excess-stock found during survey was a part of overall physical stock lying in the business of assessee; there was no separate identity, identification, existence, holding or any other difference in the normal

stock and so-called excess stock. Ld. AR submitted that the excess stock was merely a mathematical expression of the difference arrived at by survey-team in the value of available stock and stock that ought to have been from books of account. Therefore, the difference is merely an "undeclared business income"; it cannot be attributed in any manner other than as part of business. Ld. AR also argued that the assessee has recorded excess-stock in books of account and credited the same to Trading-cum-P&L A/c of business. Ld. AR strongly contended that this is the correct legal proposition in such facts and the same is held by ITAT, Ahmedabad in **M/s Fashion World Vs. ACIT, ITA No. 1634/Ahd/2006 order dated 12.02.2010**, relevant paras are re-produced below:

*"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.*

*13. Thus in a case 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 only where no nexus is established with any head then it should be considered as deemed income under [section 69](#), [69A](#), [69B](#) & [69C](#) as the case may be. It is because when assessee fails to explain satisfactorily the source of such investment then it should be taxed under [section 69](#), [69A](#), [69B](#) & [69C](#) as the case may be. It should not be done at the first instance without giving opportunity to the assessee to establish nexus. Therefore, there is no conflict with the decision of Hon. Gujarat High Court in the case of Fakir Mohmed Haji Hasan (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, we hold 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.

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."

Ld. AR submitted that the reliance of CIT(A) on the decision in M/S SVS Oil Mills (supra) is mis-placed. Ld. AR submitted that in that case, the AO, CIT(A) and ITAT, all three authorities, recorded a clear finding that the assessee neither recorded the excess-stock/excess-cash in books of account nor declared in the return of income and based on such finding, the Hon'ble High Court was pleased to hold that no substantial question of law arose in assessee's appeal. But, in the present case, the assessee has very much recorded the excess-

stock in books of account, credited to Trading A/c and thereby included in the Return of Income. Hence, the decision is clearly distinguishable and not applicable to present case of assessee.

- (iii) With regard to advances, it is submitted that during survey-proceeding the receipts of advances given by assessee were found which clearly showed that the advances were given for purchase of raw-material of business. Ld. AR further argued that the assessee has recorded those advances in in books of account and credited the same to P&L A/c of business.
- (iv) With regard to excess-cash, it is submitted that the cash balance was found at the business premise and the same was very much part of normal cash of business. Therefore, there is no reason of not accepting the same as business income. Ld. AR further argued that the assessee has recorded excess-cash in books of account and credited the same to P&L A/c of business.
- (v) Lastly, Ld. AR relied upon following decisions of Pr. CIT vs. Bajarang Traders (2017) 86 Taxmann.com 295 (Rajasthan HC); ITAT, Indore in ACIT vs. Shri Anoop Neema, ITA No. 05/Ind/2020 order dated 06.01.2022; ITAT, Indore in DCIT Vs. Shri Krishna Kumar Verma (2023) 46 ITJ 345; and ITAT, Indore in Saaras Agro Industries Vs. ACIT, ITA No. 910/Ind/2019 dated 29.09.2022.

8. Per contra, Ld. DR for the Revenue supported the orders of lower-authorities. He submitted that the sections 69/69A/69B are deeming provisions and unless the assessee satisfies the AO, the AO can very well invoke section 69/69A/69B and consequently section 115BBE. During hearing, Ld. AR also read out certain paragraphs of the order of CIT(A) but after going through same, he finally urged that that even if the Bench feels that the excess stock and advances are part of business income, at least the

excess-cash could not be accepted in view of decision of **ITAT, Indore in Shyam Lal Goyal, ITA No. 245-247/Ind/2021 dated 29.06.2022.**

9. We have considered rival submissions of both sides and carefully perused orders of lower-authorities in the light of applicable provisions of law and judicial rulings cited before us. The dispute before us is only regarding applicability of the provision of section 69/69A/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, advances and excess-cash found during survey. While the assessee has declared the surrendered income as business income in the return of income, the lower-authorities have treated the same as deemed income u/s 69/69A/69B of the Act. Since the surrendered income consists of three components, namely (i) excess-stock, (ii) advances, and (ii) excess-cash, we would like to deal these components separately one by one.

**Excess-Stock:**

10. *Firstly*, we are in agreement with the very first and foremost contention of Ld. AR that the assessee is aged about 72 years, engaged in the business of manufacturing for over 35 years and that was the sole source of income found by authorities. Therefore, it is reasonable to accept that the excess-stock was outcome of suppressed business income over the years.

11. *Secondly*, 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 survey except the quantity of the stock on physical verification was found to be excess in comparison to the stock recorded in books of accounts. Thus, there is no separable identifiable stock found during survey then the stock regularly held by assessee in the normal course of business of manufacturing. Once the stock found during survey is part of total stock of business, then the said excess stock cannot be given a separate identity than the other stock of assessee. Further, even if excess stock found during 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 excess stock in books of account at the time of finalizing accounts, which also the present assessee has done which is evident from a separate credit entry made in Profit & Loss A/c. The Hon'ble Rajasthan High Court in case of **Pr. CIT vs. Bajarang 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. Further, the 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 previous 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. Haji Hasan (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, Ahemdabad (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 Id 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 Id. 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 Id. 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.*

*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 Id. 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."*

12. Therefore, once the facts emerging from record shows that the excess stock found during survey was a part of entire lot of stock of assessee, part of which is recorded in 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 treated as deemed income u/s 69 or 69B of the act in view of the judgment of Hon'ble Rajasthan High Court and Coordinate Bench of this Tribunal cited above. In fact, we find from the order of first-appeal that the CIT(A) has himself made following conclusion on Page No. 32 of his order:

*"Further, I have also followed the decisions on which the appellant has placed reliance on the issue involved here in my earlier appellate orders, but the above aspects have not been discussed by me. Therefore, I am bound to deviate from my earlier stand where the contentions of the appellants have been accepted on the basis of certain decisions."*

In fact, the CIT(A) has tried to justify his changed view against assessee in this particular case but we do not find, on reading of order by Ld. DR during hearing, that there is any valid or cogent reason to deviate from earlier view or from the settled judicial rulings as discussed by us in earlier paragraphs.

13. The above discussion brings us to conclude that the lower-authorities are not justified to hold excess-stock as something which was not business income and thereby invoke deeming provisions of section 69 or 69B read with section 115BBE. The orders of the authorities below *qua* this issue is set aside. The assessee succeeds to this extent.

**Advances:**

14. We find that the assessee has given advances for purchase of raw-material and this nature of advances is not disputed by revenue. On a careful reading of order of CIT(A), we find that he has himself noted on Page No. 33 *"Though the appellant admitted the above advances as unaccounted business income and subsequently recorded the same in the books ...."*. Thus, the Ld. CIT(A) has clearly mentioned that the assessee admitted the advances as "unaccounted business income" during survey. Then, we also find that acting upon such admission, the assessee has recorded income in books of account and offered in income-tax return. Then in such a situation, we do not find any reason to tinker with the nature of income declared by assessee in the survey, more particularly when the advances are related to and part of business of assessee and the revenue has no evidence to prove otherwise. Therefore, we do not find any justification on the part of lower-authorities in invoking section 69 read with section 115BBE of the act. The orders of the authorities below *qua* this issue is set aside. The assessee succeeds to this extent.

**Excess-Cash:**

15. With regard to excess-cash, the position is materially different. We find that the assessee is an individual who can have cash from any source. Even if the cash is physically kept at business premise, it cannot be said that it was part of business income. We further find that the CIT(A) has given contemporary findings and also rightly relied upon decision of **ITAT, Indore in Shyam Lal Goyal (supra)**. It is to be noted that the Ld. AR has

not proved by means of statement recorded during survey or by any other evidence that the impugned excess-cash represented business income of assessee. Therefore, we have no basis to interfere with the conclusion taken by CIT(A) holding excess-cash as deemed income u/s 69A attracting higher rate of tax u/s 115BBE. The assessee fails to this extent.

**16. Resultantly, this appeal of assessee is partly allowed.**

*Order pronounced in the open court on 25.08.2023.*

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 25.08.2023

CPU/Sr. PS

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

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*