

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND  
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **167/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2019-20

Suresh Kumar, Deputy Commissioner of  
114/10 (LIGH), Gandhi Road, v. Income Tax,  
West Tambaram, Central Circle 1(3),  
Chennai – 600 045. Chennai – 600 034.

**[PAN: AAGPS-0396-D]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 16.08.2023

घोषणा की तारीख/Date of Pronouncement

: 31.08.2023

**आदेश /ORDER**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income-tax (Appeals)-18, Chennai, dated 29.11.2022 and pertains to assessment year 2019-20.

2. The assessee has raised the following ground of appeal:

"1. The order of the learned Commissioner Of Income Tax (Appeals)-18, is wrong, illegal and is opposed to law.

2. The Ld. Commissioner of Income Tax [(Appeals)-18 erred in ubl8laing the order of assessment by assessing the business income offered by the appellant as unexplained investment under section 69B r.w.s 115BBE of the Income Tax Act.

3. The Ld. Commissioner of Income Tax (Appeals)-18 ought to have seen that addition under section 69B r.w.s 115BBE of the Income Tax Act is warranted only if the twin condition that the excess stock found at the time of survey i.\$ not recorded in the books of account and the appellant offers no satisfactory explanation. In the instant case the appellant has offered satisfactory explanation that the surplus stock found at the time of survey is generated out of business income, which source stands uncontroverted by the learned Assessing officer.

4. The Ld. Commissioner of Income Tax (Appeals)-18 ought to have seen that the appellant while accounting for difference in surplus stocks, found at the time of survey, by adding the same in the stock register and passing corresponding entry in financial books, has also given proper explanation for the source from which the surplus stock was acquired which stands uncontroverted by the revenue.

5. The Ld. Commissioner of Income Tax (Appeals)-18 ought to have seen that the excess stock found at the time of survey is part of the mixed stock and cannot be clearly identified from declared stock as per the books of accounts maintained by the appellant,

6. The Ld. Commissioner of Income Tax (Appeals)-18 erred in relying on certain case laws which are clearly distinguishable on facts in as much as in the said case laws although the difference in stock was added in the stock register corresponding entries were not passed in the financial books.

*For these and other grounds that may be rendered at the time of hearing it is most humbly prayed that the Hon'ble Tribunal may be pleased to allow the appellants appeal and thus render justice."*

3. The brief facts of the case are that, the appellant is a proprietor of M/s. Vijay Jewellers, which is engaged in the business of trading in gold jewellery and silver articles. The

assessee has filed his return of income for the assessment year 2019-20 on 23.10.2019, admitting a total income of Rs. 3,37,57,380/-. A survey u/s. 133A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was initiated at the business premises of the assessee on 25.02.2019. During the course of survey proceedings, inventory of physical stock of gold and silver was taken, which resulted in detection of excess physical stock of gold weighing 10035.095 gms and silver articles of 154853.60 gms. The value of excess stock was quantified at Rs. 3,39,98,188/-. The assessee was called upon to explain and reconcile excess stock found during the course of survey with books of accounts, for which Shri. Suresh Kumar Jain, in his statement u/s. 131 of the Act dated 25.02.2019, admitted the excess stock and has also agreed to offer the same for taxation. During the course of assessment proceedings, the Assessing Officer noticed that on perusal of the profit and loss account for the year ended 31.03.2019, the assessee has offered excess stock found during the course of survey under the head business income. The assessee, was show caused as to why the same should not be assessed u/s. 69B of the Act. In response, the assessee submitted that excess stock found during the course of survey is on account

of numerous items of physical stock present, which cannot be immediately reconciled to books of accounts and further, said excess stock has been acquired out of business income earned for the impugned assessment year, which has been plugged back into business in the form of stock in trade. Since, the excess stock was mixed with business stock of the assessee, which has not been identified separately, the same should be considered as stock in trade of the assessee and income if any arising out of such excess stock should be assessed under the head income from business only. The Assessing Officer, however was not satisfied with the explanation furnished by the assessee and according to the Assessing Officer, once excess stock is found which is not recorded in the books of accounts of the assessee, needs to be assessed as unexplained investment u/s. 69B of the Act and thus, by following the decision of Hon'ble High Court of Madras in the case of M/s. SVS Oil Mills vs ACIT [2019] 418 ITR 0442, opined that explanation offered by the assessee to offer income quantified towards excess stock found during the course of survey under the head business income is not satisfactory and thus, rejected arguments of the assessee and assessed sum of Rs. 3,39,98,188/- u/s. 69B of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee has filed detailed written submission on the issue along with certain judicial precedents including the decision of Hon'ble Rajasthan High Court in the case of CIT vs Bajargan Traders, in Income Tax Appeal No. 258/2017, dated 12.09.2017, and argued that excess stock found during the course of survey is mixed with regular stock in trade of the assessee and said excess stock was acquired out of business income earned for the impugned assessment year. The Id. CIT(A), after considering relevant submissions of the assessee and also taken support from the Jurisdictional High Court of Madras in the case of M/s. SVS Oil Mills vs ACIT (Supra), opined that once excess stock found is identified over and above stock recorded in the books of accounts of the assessee, then such excess stock needs to be assessed u/s. 69B of the Act, but not under the head income from business. The Id. CIT(A), discussed the issue in light of various judicial precedents including the decision of Rajasthan High Court in the case of CIT vs Bajargan Traders (Supra), and held that when conflicting decisions of two High Courts are there on

same issue, then the decision of Jurisdictional High Court needs to be followed and thus, by following the decision of Hon'ble High Court of Madras in the case of SVS Oil Mills vs ACIT (Supra), deleted additions made by the Assessing Officer towards excess stock found during the course of survey u/s. 69B of the Act. The relevant findings of the Id. CIT(A) are as under:

**"7.9** *Similar issue had come up for consideration before the jurisdictional Madras High court in the case of Ms. SVS Oils Mills Vs. The Assistant Commissioner of Income Tax in ITA No.765 of 2018 wherein it was clearly held that the investment in excess stock found should be assessed as undisclosed income and not as business income. Assessee tried to distinguish the facts in futile stating that excess stock was not identified during survey in his case, <sup>1</sup>.vhercas the fact is the excess stock has been identified by physical inventory during survey in the presence of the assessee and it was not recorded in the books/Registers/bill books. In the additional grounds/submissions, the assessee tried to further distinguish the facts stating that in SVS Oil Mills case the excess stock was not disclosed in the return, whereas in the assessee's case, it was disclosed in the return as 'other income' under business head. The question here is whether the stock is unaccounted and whether the source is fully and satisfactorily explained. In the instant case, the excess unaccounted stock was arrived at in the presence of the assessee during survey and the assessee has never explained how the source for investment in excess stock emerged from his business. As both the limbs of section 69B gets satisfied, it is assessable under that section 698- Mere showing it as 'other income' under business head will not distinguish his case. It: is to be noted that this 'other income' shown is over and above the net profit from the accounted business. No proof given to show how the 'other income' has arisen from business. Thus; SVS Oil Mills case squarely applies in the assessee's case and not that of Hon'ble*

*Rajasthan High Court decision in the case of Pr.CIT vs. Bajargan Traders in ITA No.258 of 2017. It is well settled principle of law that if there is conflicting views rendered by different High Courts, the view taken by the jurisdictional High Court is binding in the jurisdictional area of the respective High Court. The Hon'ble Bombay High Court in the case of Subramaniam vs,- Siemens India Ltd. (1985) 156 ITR 1 I (Born.) held that so far as the legal position is concerned, the ITO would be bound by a decision of the Supreme Court as also by a decision of the High Court of the State within whose jurisdiction he is functioning, irrespective of the pendency of any appeal or special leave application against the judgment. He would equally be bound by a decision of another High Court on the point, because not to follow that decision would be to cause grave prejudice to the assessee. However, in the case where there is conflict of views between different High Courts, ITO must follow the decision of the High Court within whose jurisdiction he is functioning. In view of the above settled law, I am bound to follow the jurisdictional Madras High Court in the case of SVS Oil Mills relied on by the AO and have no other alternative except to confirm the order of the AO assessing the unexplained excess stock as unexplained investment u/s 69B of the Act. Even during the appeal proceeding, the assessee except stating that the AO was wrong in treating the impugned amount as unexplained income, no corroborative evidence was furnished. I therefore sustain the assessment of excess stock found during survey u/s 69B and taxed under the rates u /s 115BBE and dismiss the grounds raised.”*

5. The Ld. Counsel for the assessee, Shri. D. Anand, Advocate, submitted that the Id. CIT(A), erred in upholding the additions made by the Assessing Officer towards excess stock found during the course of survey u/s. 69B r.w.s. 115BBE of the Act, without appreciating fact that in order to make additions u/s. 69B of the Act, the twin conditions embedded therein must be satisfied i.e., (i) excess stock found at the

time of survey is not recorded in the books of accounts and (ii) the appellant offers no satisfactory explanation. In the present case, the appellant offered explanation with regard to excess stock found during the course of survey and claimed that said excess stock is on account of numerous items of physical stock carried by the assessee including old jewellery received from customers for repair and polish and also exchange and further said excess stock has been acquired out of business income generated for the impugned assessment year. The Ld. Counsel for the assessee, further referring to the decision of ITAT, Chennai Benches in the case of M/s. Overseas Leathers vs DCIT in ITA No. 962/Chny/2022, submitted that, the Tribunal has considered an identical issue in light of excess stock found during the course of survey and by considering various decisions including the decision of Hon'ble High Court of Madras in the case of SVS Oil Mills vs ACIT (Supra), held that once assessee offered explanation about the excess stock found during the course of survey, then same needs to be assessed under the head income from business, because such excess stock was acquired out of business income earned by the assessee for the relevant assessment year. In this regard, he relied upon the decision

of ITAT, Chennai Benches in the case of M/s. Mookambika Impex vs DCIT in ITA No. 299/Chny/2023 dated 26.07.2023.

6. The Id. SR-AR, Shri. AR V Sreenivasan, Addl. CIT, supporting the order of the Id. CIT(A) submitted that, when survey took place, presence of excess stock was not disputed by the assessee. Further, excess stock was found on account of quantification when compared to book stock. The assessee could not explain source for excess stock and also agreed to offer additional income for taxation. Therefore, once there is an excess stock, then same needs to be assessed u/s. 69B of the Act and this principle is supported by the decision of the Hon'ble Madras High Court in the case of SVS Oil Mills vs ACIT (Supra). Further, the Id. CIT(A) had also distinguished other case laws relied upon by the assessee including the decision of Hon'ble High Court of Rajasthan in the case of CIT vs Bajargan Traders (Supra). Therefore, he submitted that the order of the Id. CIT(A) should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The fact with regard to quantification of excess

physical stock present at the time of survey was not disputed by the assessee. In fact, the assessee has admitted excess stock available at the time of survey and also quantified and admitted additional income of Rs. 3,39,98,188/- for the assessment year 2019-20. It is also an admitted fact that during the course of survey in the statement recorded u/s. 131 of the Act, the assessee has offered explanation for source of excess stock found during the course of survey and stated that said excess stock has been acquired out of business income generated for the financial year 2018-19. In fact, we find that when physical stock was taken during the course of survey, the excess stock was quantified out of total stock in trade present in the business of the assessee and such stock has been mixed with regular stock in trade of the assessee. We further, noted that the assessee had also explained source for excess stock and claimed that said excess stock has been acquired out of business income earned for relevant assessment years. Therefore, from the above facts, it can be safely concluded that excess stock found during the course of survey cannot be isolated with regular stock in trade of the assessee and also cannot be considered as unexplained investment of the assessee, which can be taxed u/s. 69B of

the Act. In order to invoke provisions of section 69B of the Act, twin conditions must be satisfied i.e., (i) there must be unexplained investment (ii) the assessee's explanation is not satisfactory in the opinion of the Assessing Officer. In the present case, the excess stock found during the course of survey is mixed with regular stock in trade of the assessee and further the assessee has offered explanation for source for excess stock and claimed that the same has been acquired out of business income of the assessee. Once, the excess stock found during the course of survey is explained out of business income of the assessee, then same cannot be considered as unexplained investment, which is taxable u/s. 69B of the Act. This is because, it is a common practice in trade that income generated from business is plugged back into the business in the form of stock in trade or spent for other purpose like acquisition of asset etc. In the present case, during the course of survey, except excess stock in trade, no other investment in any kind of asset is found by the Department. Therefore, from the above fact, it is very clear that income earned from the business has been kept in the form of stock in trade. Therefore, the explanation of the assessee that excess stock found during the course of survey is acquired out of business

income generated for the impugned assessment year is reasonable and acceptable.

8. At this stage, it is relevant to consider the case laws relied by the assessee. The Ld. Counsel for the assessee, relied upon the decision of ITAT, Chennai Benches in the case of M/s. Overseas Leathers vs DCIT (Supra). We find that the ITAT, Chennai Benches in the above case has considered an identical issue of assessment of excess stock found during the course of survey u/s. 69B of the Act and after considering relevant facts and also by considering the ratio of case laws followed by the Assessing Officer in the case of M/s. SVS Oil Mills vs ACIT (Supra) held that, income offered towards excess stock found during the course of survey should be assessed under the head income from business, but not u/s. 69B of the Act. The relevant findings of the Tribunal order are as under:

*"10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The fact with regard to the impugned dispute are that a survey operation u/s. 133A of the Act was conducted on 14.03.2018 and during the course of survey, inventory of physical stock was taken which resulted in detection of excess physical stock of Rs. 5.08 crores. A statement u/s. 131 of the Act was recorded from the managing partner of the assessee Mr. M. Srinivasa Reddy, where he had, in response to a specific question admitted that excess stock found during the course of survey is acquired out of unaccounted income generated from the business for the current financial year. The assessee had*

*admitted a sum of Rs. 5.08 crores towards excess stock found during the course of survey under the head profits and gains from business and profession and also paid taxes. These are undisputed facts. The only dispute is with regard to head of income under which additional income offered towards excess stock to be assessed, whether it is under the head profits and gains of business or profession or unexplained investment as per section 69B of the Act.*

*11. The provisions of section 69B of the Act deals with, where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article and the Assessing Officer finds that the amount expended on making such investments exceeds amount recorded in this behalf in the books of accounts maintained by the assessee for any source of income, and the assessee offers no explanation or the explanation offered by the assessee is not in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee in such financial year. In order to assess any investment or other bullion, jewellery or any other valuable asset, two things must be satisfied. Firstly, the assessee must expended amount towards investment or in acquiring some asset and is not recorded in the books of accounts maintained for that financial year and further, the assessee offers no explanation or explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory. In this case, the assessee has offered explanation towards excess stock found during the course of survey, in response to a specific question and stated that such excess stock is generated out of the business income of the current financial year, which will be offered to tax as an additional income of the firm for the assessment year 2018-19. From the above, it is very clear that it is not a case of the AO that the assessee has not offered any explanation towards excess stock found during the course of survey, but it is a case of explanation offered by the assessee is not satisfactory with the opinion of the Assessing Officer. Therefore, it is necessary to examine the issue in light of explanation offered by the assessee towards excess stock found during the course of survey to ascertain whether source for such excess stock is generated out of business income or income from undisclosed source.*

*12. During the course of survey, excess stock of leather and allied products has been found and such excess stock was*

noticed when physical inventory of stock in trade of the assessee was taken up. Further, said stock is mixed with regular stock in trade of the assessee. The assessee has explained before the Assessing Officer that it could not immediately reconcile difference in stock and thus, to buy peace from Department, additional income has been offered under the head income from business, equivalent to the amount of excess stock found during the course of survey. The explanation offered by the assessee either during the course of survey or during the assessment proceedings is not negated with any other evidences to disprove the claim of the assessee that source for acquisition of stock in trade is other than business income of the assessee. Moreover, the assessee derives only one source of income from manufacturing and trading in leather and allied products, which is evident from income declared for the impugned assessment year and earlier assessment years. Further, when the assessee has explained source for excess stock found during the course of survey, is out of income earned from current year business, the AO did not go further to disprove the claim of the assessee that said source is not from income from business. Moreover, it is a general practice in trade that income generated is either ploughed back into the business in the form of stock in trade or receivables or spent for other purpose like acquisition of asset outside the business. In this case, during the course of survey except stock difference, no other investment with any other asset was found. Therefore, from the above it is very clear that explanation offered by the assessee that source for excess stock is out of income generated from business activity of the current year appears to be plausible explanation. Therefore, we are of the considered view that when the assessee has explained the source for acquisition of stock out of business income, the AO ought to have accepted the explanation of the assessee and assessed the income under the head profits and gains of business or profession, but not under the head unexplained investment u/s. 69B of the Act. This is because, excess stock found during the course of survey does not have any independent identity as the asset is a mixed part of overall stock found in the business premises of the assessee, which in our considered view represents business income.

13. Coming back to the case laws relied upon by the AO and the Ld. Counsel for the assessee. The AO has relied upon the decision of Hon'ble High Court of Madras in the case of SVS SVS Oils Mills vs ACIT (Supra). We find that in the said case,

*although excess stock was found during the course of survey u/s. 133A of the Act, which the assessee did not account in his books of accounts and also not brought to tax in the relevant assessment years. The AO has made additions towards excess stock as unexplained investment u/s. 69B of the Act in absence of necessary explanation with regard to source for said excess stock. Under those facts, the Hon'ble Madras High Court came to the conclusion that excess stock found during the course of survey should be assessed u/s. 69B of the Act. In this case, facts are entirely different. The excess stock found during the course of survey was mixed with regular stock in trade of the assessee in its business. The survey team was also not identified excess stock separately, but was valued because the assessee could not reconcile the difference in stock in trade when compared to book stock. Further, the assessee has explained the source for excess stock and argued that it is out of current year income generated from the business. The explanation of the assessee was not disproved. Therefore, we are of the considered view that the facts of the present case are not applicable to the case laws relied upon to the Assessing Officer.*

14. *At this stage, it is relevant to discuss the decision of Hon'ble Rajasthan High Court in the case of Bajargan Traders vs PCIT (supra). The Hon'ble High Court considered an identical issue and held that when excess stock found during the course of survey is related to stock in trade dealt by the assessee, then investment in procurement of such stock is clearly identifiable and related to regular business stock of the assessee and thus, said investment in excess stock has to be brought to the tax under the head business income and not under the head unexplained investment. The relevant findings of the Hon'ble High Court are as under:*

*"3. The Tribunal while considering the matter has observed as under:-*

*"2.7. It is further submitted that the real issue in this case is whether the excess stock surrendered should be made as a part of business income or not and if so, assessee can claim deduction on account of payment of remuneration to partners on account u/s 40b(v). In this regard, our reference was drawn to the decision of Co-ordinate Bench in case of Shri Ramnarayan Birla (in ITA No. 482/JP/15 dtd 30.09.2016). In that*

case, the question before the Coordinate Bench was "whether the CIT(A)-2, Udaipur has erred in directing the AO to assess the unexplained investment surrendered by the assessee under the head "income from Business" ignoring the decision of the Hon'ble Gujarat High Court in the case of Fakir Mohd. Hazi Hasan 247 ITR 290 that unaccounted income ought to be categorized under the residuary head of 'Income from other sources'. In respect to the said issue, the findings of the Coordinate Bench are as follows:

"We have heard the 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 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 jewellery. The Coordinate Bench in the case of Choksi Hiralal Mangnlal 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 u/s 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. Jajihasan (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."*

*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 amount 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 foodgrains, 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.*

*3.2. The Id. AR of the assessee submitted that at the outset, it may be noted that the AO has made addition on account of notional interest of Rs. 1,39,366/-. There cannot be any addition on account of notional income as held by the Hon'ble Supreme Court in case of E.D. Sassoon & Co. & Ors. vs. CIT (1954) 26 ITR 27 and Godhra Electricity Co. Ltd. vs. CIT (1997) 225 ITR 746 where it was held that only real income can be taxed, hypothetical income cannot be taxed nor income can be taxed in vacuum. Therefore, the addition made by the AO is not as per law and the same be deleted. The Id. CIT(A) has confirmed the addition by stating that it is the disallowance of interest. It is submitted that the lower authorities have not disputed about the commercial expediency about the advance given to Smt. Rita Gupta. In fact, the advance was given to Smt. Rita Gupta in earlier years for construction of godown and the same was given on rent by the assessee. Therefore once commercial expediency for giving the advance is established, no part of the interest expenditure can be disallowed in view of the decision of Hon'ble Supreme Court in case of S.A. Builders 288 ITR 1 and Hero Cycles Pvt. Ltd. vs. CIT 379 ITR 347 where it was held that the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. If further held that no businessman can be compelled to maximize his profit and that the income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman*

would act. The authorities must not look at the matter from their own viewpoint but that of a prudent businessman. Further, in past, no such disallowance/addition was made. Therefore, neither the addition of notional interest made by the AO or disallowance of interest as held by the Id. CIT(A) is Rs. 1,96,73,637/-. Partners are paid interest @ 12% the balance in the partners account is much more than the amount advanced to Smt. Rita Gupta who is a wife of one of the partner. Therefore, even the disallowance made @ 4% is not justified and the same should be restricted @ 2% only. Reliance is also placed on the following cases. .CIT vs. Ram Kishan Verma (2016) 132 DTR 107/132 Taxman 107 (Raj.)(HC) . CIT vs. Vijay Solvex Ltd. (2015) 113 DTR 382 (Raj.) (HC)

4. We are in complete agreement with the view taken by the Tribunal. No substantial question of law arises.”

15. A similar view has been taken by the Coordinate bench of ITAT, Jaipur in the case of ACIT vs Sanjay Bairathi Gems Ltd in ITA No. 157/JPR/2017, dated 08.08.2017 and also the Ahmedabad Bench of ITAT in the case of Chokshi Hiralal Maganlal vs DCIT in ITA NO. 486/AHD/2008.

16. In this view of the matter and considering facts and circumstances of the case and also by following the case laws discussed herein above, we are of the considered view that when the assessee has explained source for excess stock found during the course of survey, is out of income generated from current year business and explanation offered by the assessee is plausible explanation, then income offered towards excess stock cannot be treated as unexplained investment u/s. 69B of the Act, and also provisions of section 115BBE of the Act. The AO and the Ld. CIT(A) without appreciating relevant facts assessed additional income offered towards excess stock as unexplained investment u/s. 69B of the Act and levied tax u/s. 115BBE of the Act. Thus, we set aside the order passed by the Id. CIT(A) and direct the AO to assess additional income offered towards excess stock found during the course of survey under the head profits and gains of business and profession as considered by the assessee.”

9. The assessee had also relied upon the decision of ITAT, Chennai Benches in the case of M/s. Mookambika Impex vs DCIT (Supra). The Tribunal had considered an identical issue and held as under:

*"3. From the fact it emerges that the only source of assessee's income is 'Business income' arising out of sale of gold jewellery and silver articles. During survey proceedings, quantitative differences were found in the physical stock vis-à-vis book stock. The assessee brought the same into books of account by way of credit to partners' capital account with corresponding increase in book-stock. The excess stock was included in the stock register. Accordingly, the differential was separately offered to tax in the return of income as 'Business Income'. Naturally, the excess stock was acquired out of excess income regenerated from business activity only since the assessee do not have any other source of income since its inception. The entire stock was accumulated out of income from jewellery business. The undisclosed business income was ploughed back into business to acquire further stock. In such a case, the excess stock could be said to have arisen out of normal business activity only and therefore, the same would be assessable as 'business income' only in terms of decision of Hon'ble Rajasthan High Court in the case of CIT vs Bajargan Traders (supra) wherein it was held that with respect to such excess stock found during the survey, it could be said that the investment in procurement of such stock was clearly identifiable and related to regular business stock of the assessee. Therefore, the same should be considered as 'Business Income only. In the present case, the stock difference has arisen in the course of day-to-day business activity only and not otherwise. The entire stock was available as trading stock at the business premises and it was part and parcel of regular business stock. The decision of Hon'ble Supreme court in the case of Lakshmidhand Baijnath vs CIT (supra) also support the said conclusion. It was held by Hon'ble Court that when an amount is credited in the business books, it is not an unreasonable inference to draw that it is a receipt from business. Therefore, the impugned income, in our considered opinion, would be assessable as 'Business Income'*

*only. Similar view has been taken in the decision of Chennai Tribunal in M/s Overseas Leathers vs. DCIT (ITA No.962/Chny/22 dated 05.04.2023). We find that facts in that case are quite identical to the facts of the present appeal before us.*

*4. After going through the case law of Hon'ble High Court of Madras in the case of M/s SVS Oil Mills vs. ACIT (supra), we find that said case is distinguishable on facts. In that case, though stock was added in the stock register but there was no corresponding credit in the books of accounts. It was thus held that stock could not come in from vacuum. Therefore, the excess stock was held to be unexplained investment. However, in the present case, there is corresponding credit to partners' capital account. Therefore, this case law is distinguishable on facts."*

10. In this view of the matter and by following the decision of ITAT, Chennai Benches in the case of M/s. Mookambika Impex vs DCIT (Supra), we are of the considered view that the additional income offered towards excess stock found during the course of survey is assessable under the head income from business as claimed by the assessee, but not income assessable u/s. 69B of the Act, as assessed by the Assessing Officer. Thus, we set aside the order of the Id. CIT(A) and direct the Assessing Officer to assess income towards excess stock under the head income from business as declared by the assessee.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 31<sup>st</sup> August, 2023 at Chennai.

**Sd/-**  
**(महावीर सिंह )**  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /Vice President

**Sd/-**  
**(मंजुनाथ. जी)**  
**(MANJUNATHA. G)**  
लेखासदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 31<sup>st</sup> August, 2023

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF