

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 169/Asr/2023**  
Assessment Year: 2017-18

M/s Sharp Chucks and Machines Pvt. Ltd., A-12, Industrial Development Colony, Jalandhar-144 001, Punjab [PAN: AACCS 0690M] <b>(Appellant)</b>	Vs.	D.C.I.T. Central Circle 1, Jalandhar  <b>(Respondent)</b>
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Appellant by	:	Sh. Rohit Kapoor, CA & Sh. V.S. Aggarwal, ITP
Respondent by	:	Smt. Ratinder Kaur, Sr. DR
Date of Hearing	:	29.08.2023
Date of Pronouncement	:	13.09.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

The captioned appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 19.04.2023 for Assessment Year: 2017-2018 challenging the confirmation of the order

of the Id. CIT(A), by challenging applicability of provisions of section 115BBE of the Income Tax Act, 1961 without appreciating the facts on merits that the assessee already disclosed the surrendered income as business income with explanation of source during the survey and assessment proceedings.

2. Brief facts are that a survey was conducted at the business premises of the assessee on 15.07.2016 and thus, it was submitted that this case was not covered by the demonetization period and the appellant to settle the case based on discrepancy noticed by the survey team made a surrendered of sum of Rs.1.61 crores as additional business income for financial year 2016-17 relevant to the Assessment Year under consideration (APB pg. 71). During scrutiny proceedings, the AO accepted the fact that the appellant surrendered a total sum of Rs. 1.61 crores which was utilized in the excess stock of Rs.69,25,000/-, excess cash at Rs.9,80,0000/- and in expenditure of building at Rs.81,95,0000/-. The Assessing Officer (In short "the AO") has accepted the fact that the additional income derived by the appellant was out of the business carried out, however, while passing the order u/s 153(3) dated 20.09.2021, he has disputed the surrendered income amounting to Rs.81,95,000/- as being

utilized for construction of building and so taxed u/s 69 r.w.s 115BBE of the Income Tax Act, 1961.

3. In appeal, the Id. CIT(A) had confirmed the addition made by the AO by bifurcating total surrender made by the appellant amounting to Rs. 1.61 crore vide letter dated 15-07-16 into two parts (APB, Pg. 71). The CIT(A) in para 5.2.4 of order passed under section 250(6) observed that a sum of Rs. 8195000/- representing income from other sources and the balance income of Rs. 7905000/- representing business income because the funds to the tune of Rs. 8195000/- were used for construction of factory buildings (APB, Pg.15). The CIT(A) stated that as per AO, the building construction expenses were never entered in the books of accounts before the survey proceedings and that the additional disclosure under head building of Rs.81,95,000/- was done only after the survey was conducted. Thus, he concluded as per AO, if survey proceeding was not conducted at the business premises of the assessee, the assessee would never have made addition in the books of accounts and alleged that the assessee could not substantiate that it was generated out of his regular business activity. Therefore, in the absence of any documentary evidence, the additional disclosure made under head of building under construction amounting to

Rs.81,95,000/- was treated as unexplained investment under section 69 of the Income Tax Act, 1961 and tax thereon charged as per section 115BBE of the Income Tax Act, 1961. The CIT(A) relied on the decision of the Hon'ble ITAT Amritsar Bench in the case of Rakesh Kumar v. DCIT in ITA No. 65/Asr/2023 order dated 14.06.2023 where it was held vide para 8.1, as under:

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

4. The Ld. Counsel submitted that Ld. CIT(A) has confirmed the addition ignoring the fact that the appellant has earned the undisclosed income from sale/ purchase of goods and material outside books of accounts. That the CIT(A) while confirming action of AO has not been able to discharge the onus that the assessee was involved in activity other than the business

activity. The counsel argued that the Ld. CIT(A) has erred in not appreciating the merits that the expenditure incurred for creating a business asset ought to have been generated through the business carried out by the assessee outside the books of accounts in the absence of anything contrary to the same. The CIT(A) has failed to consider the statement recorded during survey in which it has been clearly stated by the assessee before the authorized officer that the expenditure incurred on factory was born out of undisclosed business income.

4.1 The Ld. AR filed a synopsis dated 29.08.2023. The relevant part of synopsis is reproduced as under:

19. The department during the course of survey was not able to find any source of Income except the business of manufacturing of electronics and hardware components. There has been no adverse findings or note given by the survey team. However during the assessment proceedings, the AO gave a show cause as to why the part of the income offered amounting to Rs. 89,65,000 out of Rs. 1,61,00,000/- should not be treated as Deemed Income to which the assessee filed a reply but the AO formed a view that once the surrendered income has been utilized for the purpose of building, the same is required to be taxed u/s 69 of the Income Tax Act, 1961. The contention of the AO that the Income has not been reflected in the books of accounts is not correct as all the entries of the surrender amount have been recorded in the business heads of the assessee in its books of accounts. The copy of ledger account of the same have already been submitted before AO in assessment proceedings. All the income surrendered are reflected in the books of accounts It is further stated that once a specific surrender made by the assessee has been accepted by the Income Tax department and Tax on the same has been realized, the department cannot take a U turn while framing the assessment of the assessee by taxing the same under the head Income from other sources under Section 69 of Income Tax Act, 1961.

It has to be assessed under the Head Income from Business. Further the surrender made by the assessee was on account of cash found during the survey, discrepancy in the cost of construction of building, discrepancy in stock. By no stretch of imagination, any of these incomes can be considered as income under any head other than business income. In this regard reliance is being placed upon the following case laws: -

**a) 2019 (11) TMI 410 - IT AT CHANDIGARH M/S. ARORA ALLOYS LTD VERSUS DCIT, CIR. 1 LUDHIANA.**

*Source of surrendered income - Deemed income against which no deduction/set off - HELD THAT:- In the case of Famina Knit Fabs [2019 (5) TMI 8 - ITAT CHANDIGARH] the Tribunal has examined this issue elaborately and propounded that onus is on the assessee to establish the source of surrendered income. If it failed to demonstrate such source, then, it is to be characterized as deemed income under sections 69,69A/B/C, and if that be happened, then such income to be taxed on the gross amount without setting off any expenditure or allowance against the same under section 115BBE.*

*The stand of the assessee is that expenditure incurred for construction of building was from the routine business, and such addition of Rs.32 lakhs ought to be treated as business income. **We find force in this contention of the Id. counsel for the assessee, because the expenditure incurred for creating a business asset and it must have been generated through the business carried out by the assessee. It is pertinent to bear in mind that expenditure laid out for the purpose of business is to be allowed deduction either as expenditure or to be capitalized on which depreciation will be allowed.** The assessee might have earned income from the business which has not been accounted and used for constructing the business asset, though specific details have not been discussed either in the impugned order about the nature of evidence found during the course of survey. We also need not to ponder on this aspect because the assessee has admitted this unexplained expenditure on construction of building. This admission has to be accepted as given by the assessee, wherein it was alleged that it is for the purpose of the business. **Therefore, to the extent the expenditure incurred for construction of the building, out of unexplained source is concerned, it is to be construed as earned from the business and it will take character of the business income. Once this income is to be assessed under the "business income", then all***

***incidental benefits for set off from brought forward loss or any other expenditure is to be given to the assessee.***

*In the judgments relied upon the Id. counsel for the assessee, similar treatment has been given on the amounts which were admitted as trade receivable during the course of search/survey. Respectfully following the order of the Co-ordinate Bench, we direct the Assessing Officer to treat surrendered income to the extent of 32 lakhs as business income.*

*As far as excess cash balance is concerned, the assessee failed to explain the source of such income, and it is to be treated as deemed income, and it is to be assessed on gross basis, as treated by the Assessing Officer. In view of the above discussion, the appeal of the assessee is partly allowed. No.- IT A NO. 1481/CHD/2017*

***b. 2015 (11) TMI 631 - ITAT CHANDIGARH Other Citation: [2015] 43 ITR (Trib) 414 (ITAT [Chand]) GAURISH STEELS P. LTD. VERSUS ASSISTANT COMMISSIONER OF INCOME-TAX***

*Treatment of surrendered income - whether the income surrendered is to be taxable as business income or income from other sources or as deemed income under sections 69A, 69B and 69C - Held that:- Assessing Officer has nowhere disputed the business losses incurred by the assessee. The books have not been rejected. It was stated at the Bar that even at the time of survey, in the trading account prepared by the survey team, there were losses incurred by the assessee. All these facts have not been disputed by the Assessing Officer. Further, the surrender made by the assessee was on account of cash found during the course of survey, discrepancy in the cost of construction of building, discrepancy in stock and discrepancy in advances and receivables. By no stretch of imagination, any of these incomes apart from cash can be considered as income under any head other than the "business income".*

**Nowhere in his order the Assessing Officer has been able to bring on record the fact that the income surrendered during the course of survey was not out of the business of the assessee. Also nowhere he has objected to the heads under which the assessee had surrendered these amounts, i.e., cash, construction of building, discrepancy in stock and discrepancy in advances and receivable. Further, even the survey team has not found any source of income except the business income. Now, following the judgment of jurisdictional High Court, in the background of the facts of the present case, we can safely infer that apart from cash all other income**

**surrendered may be brought to tax under the head "business income" while the cash has to be taxed under the head deemed income under section 69A of the Act.**

*Now, as regards the business losses incurred by the assessee during the year, these can be set off against the income surrendered during the course of survey except for the amount of cash surrendered, as per the mandate of section 71 of the Act. No loss can be set off against the cash surrendered as the same has already been held to be taxed under a different head. The Assessing Officer is hereby directed to set off business losses suffered by the assessee out of the surrendered income except the element of cash surrendered. - Decided partly in favour of assessee.*

*No.-1. T. A. No. 1080 /Chd/ 2014 (assessment year 2011-12).*

5. Per Contra, the learned DR stands by the impugned order.
6. Heard both the sides, perused the material on record, impugned order and case law cited before us. Admittedly, the AO has accepted the fact that the appellant surrendered a total sum of Rs. 1.61 crores which was utilized in the excess stock of Rs.69,25,000/-, excess cash at Rs.9,80,000/- and expenditure on building at Rs.81,95,000/- being the additional income derived by the appellant out of the business on account of income surrendered and reflected in the books of accounts. The Ld. AR contended that the surrendered income would be assessed under the Head Income from Business as the assessee's surrender was on account of cash found during the survey, discrepancy in the cost of construction of building, and discrepancy in stock and by no stretch of imagination, any of these incomes can be considered as income under any head other than business

income. In our view, once a specific surrender made by the assessee explaining the source as business income and investment transaction in excess stock, cash and building construction as above, before the Income Tax department and due Tax has been realized, the department would not have case to take a U turn while framing the assessment of the assessee by taxing the same under the head Income from other sources under Section 69 of Income Tax Act, 1961. It is noted that the Ld. CIT(A) has failed to appreciate that the expenditure incurred for creating a business asset ought to have been generated through the business carried out by the assessee was accounted for in the books of accounts in the absence of anything proved contrary to the same. The CIT(A) has failed to consider the statement recorded during survey wherein it has been clearly stated by the assessee before the authorized officer that the expenditure incurred on factory was born out of undisclosed business income. Even the survey team has not found any other source of income except the business income. Thus, it can be safely inferred that apart from cash all other income surrendered may be brought to tax under the head "business income" while the cash may be taxed under the head deemed income under section 69A of the Act. The relevant surrender/documents are extracted as under:

# SHARP CHUCKS & MACHINES PVT. LTD.

Formerly SHARP CHUCKS & MACHINES LIMITED  
Regd. Office : A-12, Industrial Development Colony, Jalandhar - 144 012 (Pb.)  
E-mail : info@sharpchucks.com Website : www.sharpchucks.com

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To  
Joint Commissioner of Income tax,  
Range-II  
Jalandhar

Sub: Surrender of additional business income for AY 2017-18

Dear Sir,

A survey under sec 133A of income tax act 1961 has been conducted on our business premises on 15-07-2016. During survey some discrepancies has been found in the books of accounts & records of the company i.e Sharp Chucks & Machines Pvt Ltd, Jalandhar.

In order to buy peace of mind & avoid litigation with the income tax department we voluntarily surrender additional business income of Rs 1.61 Crore ( Rupees One Crore Sixty one Lac Only ) i.e. the normal business income for the financial year 2016-17 relevant to AY 2017-18 to cover the type of discrepancies including past discrepancies subject to no penalty and prosecution and accept the offer and oblige.

We also enclosing herewith three cheques in favour of Joint Commissioner Income Tax Range-II Jalandhar each of Rs 1774381/- totaling Rs 5323143/ towards additional income tax surrendered income.

Further detail of surrender is as under :-

Particulars	Amount in Lacs
Cash	09.80
Building Under construction	81.95
Stock	69.25
<b>Total</b>	<b>161.00</b>

Thanking You,

Yours Truly,  
For SHARP CHUCKS & MACHINES PVT LTD

AUTHORIZED SIGNATORY

ATTESTED TO BE  
TRUE COPY

Verified  
Reserved  
(DR. ANKITER AGGARWAL)  
Joint Commissioner of Income Tax  
Range-II (CIT) JALANDHAR



MANUFACTURERS & EXPORTERS OF  
SHARP PRECISION TOOLING SYSTEMS

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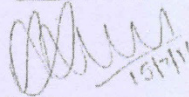
(51)

Including statement of G. N. Singh  
No. 22, Kam Park, Delhi aged about 48 years  
P/O 142, State Nagar, Jalandhar recorded  
during the course of survey of 137A of 120  
Inventory of 1961 at the business premises  
of M/s Sharp Chucks & Machines Pvt. Ltd.,  
An Industrial Development Colony, Jalandhar  
on 15.07.2016

Date Administration

Date Taken

(DINESH GUPTA)  
Dy. Commissioner of I.T.

  
(DINESH GUPTA)

01 During the course of survey conducted  
at the business premises of M/s Sharp Chucks &  
Machines Pvt. Ltd. inventory of cash physically  
found was made and the figure of the  
same is Rs. 39,56,000/-, whereas as per  
your books of accounts cash in hand  
is Rs. 29,76,859/-. Thus, there is discrepancy of  
difference of Rs. 9,79,141/-. Please explain the  
same.

  
(DINESH GUPTA)

Contd. N/2

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7. From the record, it is evident that the expenditure incurred for creating a business asset must have been generated through the business carried out by the assessee and that expenditure laid out for the purpose of business is to be allowed deduction either as expenditure or to be capitalized on which depreciation will be allowed. In the present case, to the extent of the expenditure incurred for construction of the building, out of unexplained source is concerned, it is to be construed as income earned from the business and it will take character of the business income. The case law relied upon by the Ld. CIT(A) is distinguishable on the facts as in that case the amount surrendered during survey was not reflected in the books of account and the source from where it was derived was not declared/explained whereas in the present case the amount surrendered during survey was duly reflected in the books of account and the source it was declared/explained as business activity with due payment of Tax liability and the authorities below failed to prove the contrary to disprove source of income other than Business income.

8. Respectfully following the order of the Co-ordinate Bench, Chandigarh in the case of M/S. ARORA ALLOYS LTD Vs. DCIT (Supra), we

direct the Assessing Officer to treat surrendered income to the extent of expenditure on building at Rs.81,95,0000/- lakhs as business income.

9. In the backdrop of the aforesaid discussion, the appeal of the assessee is disposed of in the terms as above.

*Order pronounced in the open court on 13.09.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy

By Order