

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND**  
**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.826/Chny/2022  
निर्धारण वर्ष /Assessment Year: 2019-20

**Shri Suresh Ogadram,**  
No.1/33-D,  
Old Mahabalipuram Road,  
Keelambakkam,  
Chennai – 603 103.  
**[PAN: ALKPS-2984-C]**

**The Dy. Commissioner of**  
**Vs. Income Tax,**  
Central Circle-3(3),  
Chennai.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri N. Arjun Raj, C.A  
: Shri V. Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing

: 27.09.2023

घोषणा की तारीख /Date of Pronouncement

: 31.10.2023

**आदेश / O R D E R**

**PER MANOMOHAN DAS, J.M:**

This appeal by the assessee is directed against the order of the  
Learned Commissioner of Income-Tax (Appeals)-18, Chennai [CIT(A)]  
dated 25-08-2022 and pertains to the Assessment Year [AY] 2019-20.

The grounds of the assessee are as under:

*"1. The order of the Commissioner of Income Tax (Appeals) - 18, Chennai dated 25.08.2022 vide DIN:No.ITBA/APL/M/250/2022-23/1044918661(1) for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

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2. The CIT(Appeals) erred in confirming the addition of Rs.1,78,22,940/ presumed to be excess stock found at the time of survey as unexplained investment as part of the computation of taxable total income without assigning proper reasons and justification.

3. The CIT(Appeals) failed to appreciate that having not noticed the fact of inclusion of the differential/disputed amount presumed to be excess stock for purpose of taxation, the sustenance of the disputed sum forming part of the computation of taxable total income once again should be reckoned as bad in law in view of complete defiance of the principles of fairness in taxation.

4. The CIT(Appeals) failed to appreciate that in any event the presumption of the disputed differential sum which was presumed to be excess stock was wholly unjustified and ought to have appreciated that the arithmetical accuracy of the said disputed sum was not verified as well as checked by the Assessing Officer thereby vitiating the related findings in the impugned order.

5. The CIT(Appeals) failed to appreciate that the sustenance of the said addition based on the findings in para 7.2 of the impugned order was wholly unjustified and ought to have appreciated that the decision of the Jurisdictional High Court referred to therein had no application to the facts of the present case thereby vitiating the related findings.

6. The CIT(Appeals) failed to appreciate that the provisions of section 69B of the Act was wrongly invoked and ought to have appreciated that the disputed sum was already brought to tax by appellant under the head 'income from business' thereby vitiating the charging of enhanced rate of tax in terms of section 115 BBE of the Act.

7. The CIT(Appeals) failed to appreciate that the replies filed in the assessment and the stand taken in the appellate proceedings were completely ignored in gross violation of the principles of Legitimate Expectation and ought to have appreciated that the entire recomputation of taxable total income on various facets was wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

8. The CIT(Appeals) erred in sustaining the addition of Rs.3,38,300/- on the presumption of the cash being excess by applying the provisions of section 69A of the Act without assigning proper reasons and justification.

9. The CIT(Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order as well as before passing the assessment order and any order passed in violation of the principles of natural justice would be nullity in law.

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*10. The Appellant craves leave to file additional grounds/arguments at the time of hearing.”*

2. The brief facts of the case are that the assessee is an individual and engaged in the business of Jewellery and Pawn Broking in the name and style of “M/s. Rahul Gold House”. On 22-01-2019, a survey operation u/s. 133A of the Income-Tax Act, 1961 [the Act] was conducted at the business premises of the assessee situated at No. 3/33, OMR Road, Kelambakkam, Chennai- 603103. Subsequently, the case was selected for scrutiny and notice u/s. 143(2) of the Act dated 29-09-2020 was issued to the assessee. Notice u/s.142(1) of the Act was issued on 27-01-2021 asking for details and documents. The assessee responded to the notice and made submissions. The Ld. Assessing Officer [AO] considered the submissions and issued show-cause notice dated 23-09-2021 to the assessee.

3. The Ld. AO noticed that an excess stock of gold of 5688.89 gms and silver of 49712.15 gms was found during the survey operation but the assessee has not maintained stock register and other books of account. The Ld. AO also noticed that the assessee has accepted the excess stock of gold and silver vide a statement u/s. 131 of the Act dated 22-01-2019. The assessee also stated that he has been charging 1.5% interest per month on pawned items, whereas income

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offered in the income tax return as 1% per month. The balance of 0.5% is not reflected in the ITR as filed by the assessee. Therefore, the assessee has agreed to offer an amount of Rs. 13,04,180/- to the tax thereon.

4. The Ld. AO observed that the assessee did not make any submissions to the show cause notice date 23-01-2019 through which it was proposed to add the excess stock value Rs. 1,59,28,910 (gold) and Rs. 18,94,030/- (silver) u/s. 69B of the Act. The said excess stock of gold and silver are not recorded by the assessee in his books of accounts. The assessee also failed to furnish any documentary evidence to substantiate the claim that the excess stock was from regular business activity. No source for purchase of excess stock, no bills/vouchers etc. were filed by the assessee in support of his claim. Therefore, the Id. AO added the value of the excess stock of gold and silver Rs. 1,78,22,940/- u/s 69B, and Rs. 3,38,300/-, respectively u/s 69A of the Act to the total income of the assessee. While adding of the value of the excess stock of gold and silver as well as showing less interest on pawn broking, the Id. AO took rest on the decision of the Hon'ble Madras High Court in the case of M/s SVS Oils Mills vs. The Assistant Commissioner of Income Tax in ITA No. 765 of 2018 and

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treated the same as unexplained investment and unexplained money respectively.

5. Being aggrieved, the assessee filed 1<sup>st</sup> appeal before the Id. CIT(A). The Id. CIT(A) after considering the submissions of the assessee and observations of Id. AO dismissed the appeal of the assessee. Aggrieved, the assessee filed the present appeal before the Tribunal.

6. Heard both the parties and perused the materials on record. The Ld. AR submitted that section 115BBE of the Act is not attracted as the assessee explained the source of the excess stock and the income was earned from business activity only. The Id. AR relies on the following decisions of the Tribunal.

- (i) M/s Overseas Leathers vs. DCIT – Chennai Tribunal – ITA No. 962/Chny / 2022,
- (ii) M/s Mookambigailmpex vs. DCIT – Chennai Tribunal – ITA No. 299 / Chny / 2023,
- (iii) Santhilal Jain Vijay Kumar vs. ITO – Chennai Tribunal – ITA No. 1103 / Chny / 2022, and
- (iv) Kamlesh vs. DCIT – Chennai Tribunal – ITA No. 1104 / Chny / 2022.

7. On the other hand, the Ld. DR supports the order of the lower authorities. The Ld. DR relies on the following decision:

- (i) Shri Rajesh Kumar Bajaj vs. ACIT – Indore Tribunal – ITA No.16/ Ind/2019.

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8. We carefully considered the submissions of the parties. Also, we have perused the orders of the lower authorities. The Id. CIT(A) noticed that the assessee accepted the value of the excess stock of Rs.1,78,22,940/- for assessment but is aggrieved due to treat the said amount as undisclosed income u/s. 69B of the Act. The Id. CIT(A) finally dismissed the case of the assessee by observing as under:

*“ 7.2. I have considered the submissions of the appellant. Similar issue had come up for consideration before the jurisdictional Madras High Court in the case of M/s 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. In view of the binding decision of the jurisdictional Madras High Court, I have no other alternative except to confirm the order of the AO assessing the value of excess stock found as unexplained investment u/s 69B. I therefore, sustain the addition of Rs. 1,78,22,940/- made u/s 69B and taxed under the rates of section 115BBE and dismiss the ground raised.*

*7.3. The other addition of Rs. 3,38,300/- represents excess cash found at the time of survey u/s 133A for which the appellant had no explanation. The appellant had not adduced any evidence even in the appeal proceedings before me. I therefore sustain the addition of Rs. 3,38,300 made as unexplained money u/s 69A of the Act and dismiss the grounds raised.*

*8. In the result the appeal is dismissed.”*

9. We observe that the assessee is engaged in the business of Jewellery and Pawn Broking which is an undisputed fact. The excess stock found during the survey operation are gold and silver but the same were not recorded by the assessee in his books of account. The assessee submitted before the Id. CIT(A) that the excess stock found pertain to the business carried on by him and accumulated over a

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period of time. Submission was also made before the Id. AO during the assessment proceeding but no documentary evidence was submitted by the assessee that the excess stock had been earned from regular business activity during the current financial year only. However, the Id. AO could not show that the assessee has any other business also in addition to the business of Jewellery and Pawn Broking.

10. We observe that the Tribunal have already decided the similar matters in favour of the assessee. The decisions relied on by the Id. AR are recent decisions of the Tribunal, wherein the decision of the Hon'ble jurisdictional High Court of Madras in the case of *M/s SVS Oil Mills v. ACIT reported in (2020) 113 taxmann.com 388 (Mad)* has also been considered while disposing of the cases in favour of the assessee.

11. It may not be necessary to state the decisions of the aforesaid four cases here. It will suffice to state the latest decision of the Tribunal dated 30-08-2023 as passed in the case of Mr. Kamlesh vs. The Dy. Commissioner of Income Tax under Appeal No. ITA No.1104/Chny/2022. The decision of the Tribunal is as under:

*"7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. During the course of survey, excess stock was found when compared to book stock. The assessee has offered additional income towards excess stock found during the course of survey and also paid necessary taxes*

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by offering income under the head "Income from business and profession". The AO assessed excess stock found during the course of survey u/s 69B of the Act, as unexplained investment on the ground that the assessee could not explain source for excess stock found during the course of survey. We find that the excess stock found during the course of survey was mixed with regular stock in trade employed by the assessee in his business. The stock was not separately identified so as to assess it under the head 'unexplained investment'. The assessee is having only one source of income i.e. income from trading in gold jewellery and silver articles. From the above, it is very clear that the entire stock found during the course of survey was available for trade at the business premise of the assessee and it was part and parcel of the regular business stock. Once, it is considered as regular business stock, then, obviously the source for acquisition of said stock is out of business income earned for the relevant assessment year, because, it is a general practice in business that whatever excess income earned is kept in the form of stock and debtors. Since the excess stock found during the course of survey was not separately identified and was mixed with regular business income, the assessee has rightly offered additional income declared during the course of survey under the head 'income from business and profession', and this position is supported by the decision of the Rajasthan High Court in the case of CIT vs. Bajargan Traders in ITA No. 258 /2017 dated 12-09-2017. This issue is further supported by the decision of the co-ordinate Bench of ITAT, in the case of M/s Overseas Leathers in ITA No. 962 / Chny / 2022, wherein, under identical set of facts, the Tribunal by considering the decision of the Hon'ble High Court of Madras in the case of M/s SVS Oil Mills v. ACIT (supra) held that excess stock found during the course of survey is assessable under the head 'income from business', but not u/s 69B of the Act, as unexplained investment. A similar view has been taken by the co-ordinate Bench of the ITAT Chennai Benches in the case of M/s Mookambika in ITA No. 299 / Chny / 2023 dated 26-07-2023 and relevant findings of the Tribunal are 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

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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 Lakshmichand Bajinath 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.

5. In the result, the appeal stand allowed in terms of our above order.”

12. Here, we also consider the decision of the ITAT, Indore Bench dated 09-03-2020 in the case of Shri Rajesh Kumar Bajaj vs. ACIT, Khandwa under ITA No. 16/Ind/2019, wherein the ITAT, Indore Bench decided the case as under:

“18. We therefore in the given facts and circumstances of the case are of the considered view that though the alleged surrendered income of ITA No. 16 / Ind / 2019 Rajesh Kumar Bajaj Rs. 92,81,150/- is a business income but since assessee being individual having no limitation of earning income from sources other than for the objects of the business and also the assessee having not offered any explanation in the statement given during the course of survey which stand un rebutted, therefore the alleged unexplained / undisclosed income of Rs. 92,81,150/- is liable to be taxed as income falling under Sections 68 to 69D of the Act as applicable to the type of income and has been rightly taxed by Id. AO applying the higher rate of tax provided in Section 115BBE of the Act. We therefore confirm the findings of Ld. CIT(A). The assessee failed to succeed and the sole ground raise in the instant appeal stands dismissed”.

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13. The ITAT of Indore Bench also, in this case inter alia accepted that the alleged surrendered income was a business income as it is says that “we therefore in the given facts and circumstances of the case are of the considered view that though the alleged surrendered income of ITA No. 16/Ind/2019 Rajesh Kumar Bajaj Rs. 92,81,150/- is a business income .....” The Tribunal, however confirmed the order of the Id. AO due to non-explanation of the assessee.

14. Whereas, in the case in our hands, explanation was made by the assessee which was not accepted by the Id. AO. Again, the cases relied on by the assessee in support of his case are similar in nature. The assessee is engaged in one business of jewellery and pawn broking only.

15. In view of the aforesaid discussions, it is our considered opinion that as the business of the assessee is Jewellery and Pawn Broking, the excess stock of gold and silver found during the survey operation is part and parcel of that business of the assessee. No other business is carrying on by the assessee. Accordingly, claim of the assessee has to be allowed. Accordingly, we set aside the order of the Id. CIT(A) dated 25-08-2022 as well as order of the Id. AO dated 29-09-2021 so

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far as relating to the application of provision of Section 115BBE of the Act on the excess stock of the assessee.

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

*Order pronounced on 31<sup>st</sup> October, 2023.*

**Sd/-**  
**(मंजुनाथ. जी)**  
**(Manjunatha. G)**

**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 31<sup>st</sup> October, 2023.

EDN/-

**Sd/-**  
**(मनोमोहन दास)**  
**(Manomohan Das)**  
**न्यायिक सदस्य/Judicial Member**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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