

आयकर अपीलिय अधिकरण, चण्डीगढ न्यायपीठ "बी" , चण्डीगढ  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य  
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 754/Chd/2022  
निर्धारण वर्ष / Assessment Year : 2019-20

Tarlochan Singh Prop. M/s Satwant Agro Tech Bhawanigarh	बनाम	The DCIT Central Circle Patiala
स्थायी लेखा सं. / PAN NO: ABRPS6074J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारित की ओर से/ Assessee by : Shri Deepak Anand, Advocate  
Shri Ritesh Anand, Advocate  
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 18/10/2023  
उद्घोषणा की तारीख/ Date of Pronouncement : 12/01/2024

**आदेश/Order**

**PER VIKRAM SINGH YADAV, A.M. :**

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-5, Ludhiana dt. 23/11/2022 pertaining to Assessment Year 2019-20.

2. In the present appeal, the assessee has raised the following grounds of appeal:

1. "That the order of Ld Commissioner of Income Tax (Appeals)-5 and of Assessing Officer is against law & facts.

2. That the Ld Commissioner of Income Tax (Appeals) and Assessing Officer was not justified to confirm & assess, the surrendered amount as "deemed income" u/s 69 of Income Tax Act 1961. The surrendered amount represents the difference of stock of Rs. 17,07,029 and credit entry in capital account of Rs. 14,70,000 prior to date of survey proceedings u/s 133 A of Income Tax Act 1961.

3. That Ld Commissioner of Income Tax (Appeals) & Assessing Officer was not justified to assess the surrendered amount as deemed income in contravention to Section 14(j) of Income Tax Act 1961 as Assessing Officer assessed these amounts as income from undisclosed sources but added & assessed in business income.

4. That the Ld Commissioner of Income Tax (Appeals) was erred in law to hold and assess the income in accordance to provision of Section 68 whereas the

*Assessing Officer assessed these income under section 69 which concludes that these both officers are not definite about applicability of specific provision of law.*

*5. That the surrendered amount has wrongly assessed as "deemed income" whereas appellant has shown these income as "business income" in books & in return of income as the appellant has no other source of income.*

*6. That the appellant, craves leave to add or amend any ground of appeal before appeal is heard or dispose off.*

3. During the course of hearing the Ld. AR submitted that the survey operation u/s 133A was conducted on the business premises of appellant on 16/04/2018. During the course of survey, the appellant surrendered the amount of Rs. 31,77,029/- on account of excess stock of Rs. 17,07,029/- and credit entry in capital account of Rs. 14,70,000/-. These entries were duly disclosed in profit & loss account of business concern. The appellant accepted the surrendered amount and shown this amount of Rs. 31,77,029/- as additional income over & above business income in his return of income filed for A.Y 2019-20. During the scrutiny proceedings, the Assessing Officer assessed the surrendered amount as "deemed income" i.e income from undisclosed sources. There is no dispute of surrendered amount as the same has been offered for taxation in return of income.

3.1 It was submitted that the main issue in appeal is that appellant shown the surrendered amount as "business income" however Assessing Officer treated the surrendered amount as "deemed income" i.e income from undisclosed sources whereas CIT (Appeals) sustained the surrendered amount u/s 68 of credit entry of Rs. 14,70,000/- and u/s 69 of excess stock of Rs. 17,07,029/-. The appellant contended that surrendered amount represents the "business income" as the appellant has no other source of income.

3.2 Further, our reference was drawn to contentions advanced before the Ld CIT(A) and reliance was placed on the written submissions filed before the Ld.

CIT(A) which are contained at pages 4 to 11 of the paper book and the same are reproduced as under:

"That the appellant filed income tax return declaring the income of Rs.38,97,630.00 which includes agricultural income of Rs.2,06,468.00. The assessment was completed u/s 143(3) at an income of Rs.39,23,591.00. The only addition of Rs.25,961.00 on account of interest accrued or earned on advances of cash to unknown person relating to difference found in cash at the time of survey operation u/s 133 A of Income Tax Act 1961. The main ground of appeal is contest is that the Assessing Officer assessed the voluntarily surrendered income of Rs.31,07,029.00 as deemed income u/s 69 of Income Tax Act 1961 against the business income surrendered & returned income. During the course of survey u/s 133A of Income Tax Act 1961 the appellant surrendered the amount on following grounds.

1. Rs. 14,70,000.00 on account of capital introduced in capital account which was noticed at the time of survey.
2. Rs. 17,07,029.00 on account of excess stock found during the course of survey.
3. Rs.2,16,341.00 on account of difference in cash found at the time of survey.

While completing the assessment u/s 143(3) the Assessing Officer assessed voluntarily surrendered income with the following finding.

- i. Rs. 14,00,000.00 as deemed income u/s 69 of Income Tax Act 1961 as unexplained investment of capital introduced by Proprietor.
- ii. Rs. 17,07,029.00 as deemed income u/s 69 as unexplained investment on account of excess stock.
- iii. Rs.2,16,341.00 on account of difference in cash was treated and assessed as business income.

That only issue/ground of appeal is that Assessing Officer was not justified in eyes of law/facts to assess income u/s 69 of Income Tax Act 1961 whereas appellant has correctly returned as business income & further addition of Rs.25,961.00 is also in dispute as ground of appeal No.4 of Form No.35 filed online. The written submission ground of appeal wise is as under.

Ground of Appeal No.2 income of Rs.14,00,000.00 wrongly assessed u/s 69 of Income Tax Act 1961

That Para No.2 of assessment order reveals the show cause notice & reply of appellant thereof. The Assessing Officer raised the issue in show cause notice which is "in the statement of assessee was asked to explain source of capital amounting to Rs. 14,70,000.00 introduced by the assessee in his capital account." However assessee failed to explain the source of Rs. 14,70,000.00 added during the year in the capital account.

That appellant contended that addition in capital account is not covered u/s 69 and there is no justification in accordance of provision of law to assess as deemed income u/s 69 of Income Tax Act 1961.

That the Assessing Officer held that "on the perusal of aforesaid surrender letter it is absorbed that the assessee was not able to furnish any satisfactory explanation regarding the source of capital introduced which was noticed during survey and accordingly an additional income of Rs.14,00,000.00 was disclosed by assessee such unrecorded and unexplained capital introduced is an unexplained investment and hence deemed income within meaning of section 69 of Income Tax Act 1961."

That the main ground of arguments on facts and decided cases are as under.

Firstly:- That entry of Rs. 14,70,000.00 was duly reflected in books of account and was noticed by survey team however explanation was not considered and hence surrendered for want evidence and has shown/declared as business income in return of income. The entry of Rs. 14,70,000.00 was duly seen in capital account by survey team. The assessee has no other source of income and amount, if any, remains unexplained should be assessed as business income. The legal provision of law u/s 69 of Income Tax Act 1961 is argued as.

As per section 69 "where in any financial year immediately preceding the assessment year, the assessee has made investment which are not recorded in the books of account, if any, maintained by him for any source of income."

Section 69 of Income Tax Act 1961 states that before invoking section 69, the following condition must be fulfilled.

- (i) Such investments are not recorded in the books of account, if any, maintained by him for any source of income.
- (ii) The assessee does not offer any explanation about the nature and source of investment or the explanation offered by him is not in the opinion of the Assessing Officer satisfactory.

This shows that if the above said conditions are satisfied, the value of such investment may be deemed to be the income of the assessee of such financial year.

One of the fundamental differences between section 68 and this section 69 of Income Tax Act 1961 for their application is that whereas for section 68, there should be credit entry in books of account, for section 69 there should not be entry the books of account'

- i. In Laxmim Narain Gupta Vs CIT 124 ITR 94
- ii. In Banshidhar Aggarwal Vs CIT 148 ITR 523
- iii. In Prakash Tiwari Vs CIT 148 ITR 474
- iv. In Shanta Devi Vs CIT 171 ITR 532 (Pb & Haryana High Court)
- v. In CIT Vs Shiv Shakti Timbers 229 ITR 505
- vi. In Chatna Enterprises Vs ITO 238 ITR (AT) 103

Held in all decided cases that, "The income from undisclosed source, if credited in books of account maintained by the assessee is liable to be assessed u/s 68 of Income Tax Act 1961 but if such income from undisclosed sources, though, invested had not been recorded in the assessee's books, than such income is liable to be assessed in terms of section 69 of Income Tax Act 1961.

vii. In *Roshan Lal Madan VS CIT 245 ITR (AT) 36 (Chandigarh) AND Jagmohan Ram Ram Chandra Vs CIT 274 ITR 405* held that, "where firms books show credit in partners name for which there is no satisfactionary explanation, section 69 is not applicable for firm's assessment."

viii. In *Babu Lal C Borana 298 ITR 313 Bombay High Court* held that, "where the purchase transaction is recorded in regular books of accounts and the identity of vendor is disclosed, the amount cannot be included as unexplained investment u/ 69 of Income Tax Act 1961."

That the Assessing Officer wrongly stress on the word as "unrecorded and unexplained" capital introduced. The amount was duly recorded in books of account though could not explain at the time of survey. In following decided cases of various courts it has been that fundamental condition for invoking section 69 is "That entry should not be recorded in books of accounts.

1. *Dy CIT Vs Himland Agro Food Ltd ITA No.743,745,747/CHD/2013 order dt 17/01/2017.*
2. *ITO Vs Sukamal Sikdar in ITA No. 146/Kol/2012.*
3. *ITO Vs Karim K Lakhan in ITA No.220/AHD/2010 order dt 13/12/2013.*
4. *Sarogi Credit Corp Vs CIT 103 ITR 344.*
5. *Smt Sarika Jain Vs CIT(2017) 84 Taxman.com 64 (All).*

In view of facts & decided cases Assessing Officer has wrongly invoked section 69 of Income Tax Act 1961 read with section 115BBE of Income Tax Act 1961.

Ground of Appeal No. 3 Excess stock of Rs.17,07,029.00 assessed u/s 69 of Income Tax Act 1961.

Para No.3 of assessment order at Page 5 reads that' "

Further, during the course of survey proceedings conducted at the assessee's business premises on 17/04/2018, a total stock of Rs.83,87,723 was found on physical verification. However, as on date of survey the stock shown in books was found to be Rs.66,80,723.00. In the statement of assessee recorded on oath at the time of survey, the assessee was asked to explain source of excess stock of Rs. 17,07,029.00 found during the survey operation. However assessee failed to explain the source of excess stock found amounting to Rs. 17,07,029.00. That the appellant failed to explain the source so why this amount of Rs. 17,07,029.00 was surrendered for want of evidence. The argument on facts & legal decided cases of this ground is as under.

- i. Para 3, stock in trade of Rs.83,87,723.00 was found which means that excess stock related to business transactions.

ii. That the difference was determined between physical counting and stock as per books which clearly reveals that excess stock may be due to excess yield or discrepancy in counting or quoting and applying of rate without considering the purchase vouchers.

iii. That the Assessing Officer did not find any incriminating documents with regard to bogus purchases or sales outside books of accounts.

iv. That survey was conducted on 17/04/2018 i.e only 17 days after close of year. The Assessing Officer accepted the opening stock however did not appreciate the year in which difference in stock relates to section 69 indicates that unexplained investment should be in the year immediate proceedings the assessment year. That excess stock was found at business premises of firm and the firm has no other source of income accepts the business income of manufacturing of agricultural implements.

v. That the Assessing Officer did not considered the fact that in surrender letter the addition on account of excess stock was surrendered as over & above business income and entry of surrender was made in trading account.

vi. Following decided cases in which it was held that section 69 is not applicable on the excess stock found during the survey. The value of an unexplained investment not recorded in the assessee's books of accounts may be assessed as income.

(i) 237 ITR 570 SC- CIT Vs Noorjaha.

(ii) 247 ITR 105- CIT Vs Satyapalan.

(iii) 251 ITR 671- CIT Vs Mahim.

(iv) In *Gaurish Steels (P) Ltd Vs ACIT (2015) 43 ITR (Tribunal) 414 Chandigarh ITAT* held, "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 assessee. Further even the survey team has not found any source of income except business income of firm. Now following the judgment of jurisdictional High Court, in the background of present case, ITAT can safely inform that apart from cash all other income surrendered may be brought to tax under the head "business income" however the cash may to be taxed under the head deemed income u/s 69 of Act (Para 14)."

(v) In *Dev Raj Hi-Tech Machines Ltd ITAT ASR 83 Taxman.com 15 (174 TTJ 9 ASR)* held that, "In the present case also, the income surrendered was due to renovation of building, stock and advances and imprest account with director and due to cash in hand which clearly related to the business of assessee and moreover the assessee had declared such surrender over & above, the normal profit of the concern, therefor the case laws relied upon by Id DR is also in favour of assessee.

(vi) *Sh. Lovish Singhal Vs ITO Shri Ganganagar ITA No.143/JODH/2018 A.Y 2014-15* decided on 25/05/2018 ITAT Jodhpur held That "as per judicial pronouncements cites by the AR and the decision of Hon'ble Rajasthan High Court in case of " *Bajrang Traders in Appeal No.258/2017* dated 12/09/2017 I observe that Hon'ble High Court in respect of excess stock found

during the course of survey and surrendered made thereof was found 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 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 Income Tax Act 1961. Thus there is no justification for taxing such income u/s 115BBE of Income Tax Act 1961.

So at last it is submitted that excess stock without any finding about bogus purchases is assessable under the head "business or profession" and section 69 read with section 115BBE had wrongly invoked.

That the Assessing Officer made the addition amounting to Rs.25,961.00 on account of alleged interest earned on the advances to different persons. During the course of survey operation cash was found excess in books of accounts however physical cash was nil and the officer contended that the said cash was advanced to difference persons. There is no incriminating document which may held that the assessee advanced this said amount. The addition amounting to Rs.25,961.00 is not justified rather the whole of the addition of surrendered amount of Rs.2,16,341.00 is also not justified. The amount of difference in cash has wrongly been surrendered and the said amount has been taxed twice as on one hand excess cash was recorded in books of account and further specific addition/ amount surrendered by taxpayer. The issue may be considered with facts of the case.

It is therefore requested that after considering the facts and legal decided case, the appeal of appellants may be accepted.

4. Per contra, regarding addition of Rs 14,00,000/- sustained u/s 68 of the Act, the Ld. Sr DR has submitted that the assessee has failed to offer any explanation about the nature and source of credit in the capital account of the assessee, has relied on the findings of the Ld. CIT(A) and our reference was drawn to his findings which are contained in para 5.2 of the impugned order which read as under:

"5.2 Ground of Appeal No. 2 relates to addition of Rs. 14,00,000/- on account of unexplained investment as deemed income u/s 69 of the Income Tax Act, 1961.

SECTION 68 vs. 69

The AR has contended that the addition in capital account is not covered u/s 69 and there is no justification in accordance with provisions of law to assess the same as deemed income u/s 69 of Income Tax Act 1961. A show-cause was issued to the assessee to explain as to why the said credit in the books of accounts/capital account should not be treated as deemed income u/s 68. The

*AR in response to the same submitted that the powers of Commissioner (Appeal) are restricted to confirm, reduce, enhance or annul the assessment order. Hence, the AR contended that no action to assess the deemed income u/s 68 can be taken by the CIT(A). The AR also submitted a number of judgments in his support which are part of the submissions. A credit of Rs. 14.00 lacs is there in the capital account of the proprietor. The assessee surrendered the same during the course of survey as no explanation regarding the source & the nature of the said credit could be offered. The AO treated the same as deemed income u/s 69. The AR has vehemently opposed the addition made u/s 69 as well as the show-cause issued by this office to assess the said credit u/s 68 of the Income Tax Act, 1961.*

*A bare reading of Section 68 suggests that there has to be a credit in the books maintained by the assessee and the assessee offers no explanation about the nature & source of such credits or the explanation is not satisfactory, then the Assessing Officer can assess the same as deemed income u/s 68 of the Income Tax Act, 1961. The provision of Section 68 is squarely applicable to the case of the assessee as the credit is there in the capital account of the proprietor and the assessee has no justification to explain its source or nature.*

*The Hon'ble High Court of Punjab & Haryana in the case of Gumani Ram Siri Ram vs. CIT [1975] 98 ITR 337 held that" the language of Section 68 shows that it is general in nature and applies to all credit entries in whomsoever name they may stand."*

*Also, the Hon'ble MP in the case of CIT vs. Shiv Shakti Timbers [1997] 90 taxman 349 held that "a close reading of Section 68 & 69 makes it clear that in the case of Section 68 there should be a credit entry in the books of accounts whereas in the Section 69 where may not be an entry in the books of accounts."*

*In the case of Roshan Di Hatti vs. CIT [1977] 107 ITR 938, the Hon'ble Supreme Court held that "the onus of proving the source of some of money found to have been received by an assessee is on him."*

*In the case of Kale Khan Mohammad Hanif vs. CIT [1963] 50 ITR 1, the Hon'ble Supreme Court held that "where the nature & source of an receipt cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is income of the assessee and no further burden on the revenue to show that the income is from any other particular source."*

*It has further been held by the Hon'ble Supreme Court in CIT vs. M Ganpati Mudaliar [1964] 53 ITR 623 and A Govindrajulu Mudaliar vs. CIT [1958] 34 ITR 807 that "when the assessee has failed to prove satisfactorily the source and nature of the credit entry in his books and it is held that the relevant amount is income of the assessee, it is not necessary for the department to locate its exact source."*

*The assessee has relied upon the judgment of Ld. ITAT Bench in the case of Gandhi Ram Village Sularharat in ITA No. 121/Chandi/2021. The said judgment relates to the issue of jurisdiction of PCIT u/s 263 and not exactly related to the issue under hand. The assessee has further relied on the judgment of Hon'ble Rajasthan High Court reported at 165 ITR 453. In this case, the issue related to additions made in the trading results of the assessee which are not applicable to the present case. The Judgment of Hon'ble High Court of Punjab & Haryana reported at 310 ITR 75 as submitted by the AR in his support buttresses the stand of this office that when the assessee offers no explanation about a credit the same has to be treated as deemed income u/s 68. The judgments of Allahabad High*

*Court (117 ITR 316), Punjab & Haryana High Court (367 ITR 281) and Ahmedabad Tribunal (ITA No. 2 of 2013) are not applicable to the facts of the present case as those relate to introduction of unexplained credit by the partners of a firm and the case being dealt now relates to a proprietorship.*

POWERS OF CIT(A)

*The AR has also questioned the powers of CIT(A) to modify the section under which the deemed income is to be assessed. The Hon'ble Supreme Court in the case of CIT vs. Kanpur Coals Syndicate [1964] 53 ITR 225 has held that "the Appellate Commissioner has plenary powers in disposing of an appeal. The Hon'ble Court further held that the scope of the power of CIT(A) is coterminous with the AO."*

*The Hon'ble High Court of Karnataka in the case of CIT vs. K. S. Dattatreya [2011] 197 taxman 151 has held that "as a revisional authority Commissioner Appeals can revise not only the ultimate computation arrived at but every process which led to the ultimate computation or assessment".*

*The Hon'ble Kerala High Court in the case of V. Subramonia Aiyar vs. CIT [1978] 113 ITR 685 held that "the power conferred on Appellate Authority by Section 246 which is exercised in accordance with procedure with Section 250 indicate the amplitude and width which is no less wide than that of an ITO and the Appellate Authority could substitute the order of the ITO by one of his own."*

*From the above, it is very clear that the powers of CIT(A) are coterminous with that of the AO. Hence, the credit in the capital account of the assessee is treated as deemed income u/s 68 of the Income Tax Act, 1961. The ground of appeal is accordingly dismissed. Penalty proceedings u/s 271AAC are initiated.*

4.1 It was further submitted that for the unaccounted stock found during the survey proceedings, there can be no presumption to treat the value representing such excess stock as application of business income in absence of any evidence of earning that income or details as to when, how and from whom such income was derived which has been invested in stock. It was submitted that the assessee has not been able to establish nexus between the excess stock and normal business income. Further no documentary evidence has been submitted to justify the additional income of Rs. 17,07,029/- as business income. It was accordingly submitted that the action of the AO in applying the rate as prescribed u/s 115BBE of the Act on the surrendered income included in the tax return and which has been treated by the AO as income under section 69 of the Act is justified and the Ld. CIT(A) has rightly affirmed the order of the AO in treating the surrender of Rs. 17,07,029/- on account of unaccounted stock found during the course of survey as deemed income under section 69 of the Act and

which has been brought to tax as per the provisions of Section 115BBE of the Act. It was accordingly submitted that the order so passed by the Ld. CIT(A) be confirmed and the appeal so filed by the Assessee be dismissed.

5. We have heard the rival contentions and perused the material available on record. The first issue under consideration relates to whether deeming provisions of Section 68 can be invoked in respect of amount of Rs 14,70,000/- introduced in the capital account of the assessee and found credited during the course of survey in the books of accounts of the assessee. The **Hon'ble Punjab and Haryana High Court** in case of **Yash Pal Goel vs CIT(A)** (*Supra*) has held that a plain reading of Section 68 shows that there has to be credit of amount in the books maintained by an assessee; such credit has to be of a sum during the previous year; and the assessee offer no explanation about the nature and source of such credit found in the books; or the explanation offered by the assessee in the opinion of the assessing officer is not satisfactory, it is only then the sum so credited may be charged to income tax as the income of the assessee of that previous year. It was held that the expression "the assessee offers no explanation" means where the assessee offer no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. It is true that the opinion of the assessing officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion. The Hon'ble High Court referred to the decision of the Hon'ble Supreme court in case of *Sumit Dayal versus CIT 1995 (2) SCC 453* wherein it was held by Hon'ble Supreme Court that "In all cases in which a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it

is not taxable because it falls within exemption provided by the Act lies upon the assessee. But, in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year the same may be charged to income tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the assessing officer, not satisfactory. In such a case there is, prima facie, evidence against the assessee viz. the receipt of money, and if he fails to rebut, the said evidence being unrebutted, can be used against him by holding that it was a receipt of an income nature."

6. In the instant case, it is an undisputed fact that a sum of Rs 14,70,000/- has been found credited as additional capital in the capital account of the assessee, the proprietor of M/s Satwant Agro Tech during the course of survey. The Survey team had asked a specific question to the assessee during the course of survey (question no. 23) to explain the source of capital introduced during the financial year 2018-19 relevant to assessment year 2019-20 and in response, the assessee had stated that he was unable to explain the source of capital introduced of Rs 14,70,00,000/- during the during the financial year 2018-19 relevant to assessment year 2019-20, however, in order to buy piece of mind, he voluntarily surrendered the sum of Rs 14,70,000/-. Therefore, during the course of survey, the assessee has failed to offer any explanation regarding the source of such capital introduced in his capital account. Even during the course of assessment and appellate proceeding, we find that no explanation is forthcoming from the assessee. We therefore find that basis material available on record, the credit entry in the capital account of the assessee clearly demonstrate that the receipt of money by the assessee and in absence of any explanation from the assessee explaining the source of such capital introduced, the provisions of section 68 are clearly attracted and we therefore affirm the findings of the Id CIT(A) as far as bringing to tax the amount of Rs 14,70,000/- under section 68 of the Act.

7. Now, coming to the second issue whether the AO has invoked the deeming provisions of section 69 and brought to tax excess stock found during the course of survey which is sustained by the Id CIT(A). Unlike provisions of Section 68, where there is a credit in the books of accounts and thus a prima facie evidence against the assessee regarding the receipt of money which the assessee is required to rebut and offer necessary explanation, for the provisions of Section 69 to be attracted in the instant case, there has to be a finding by the AO basis material on record that the assessee has made investments in the stock during the financial year and such investments are not recorded in the books of accounts so maintained by the assessee. Further, the assessee offers no explanation about the nature and source of the investments or the explanation so offered is not found satisfactory in the opinion of the AO. Therefore, once a finding has been recorded by the Assessing officer regarding investments in stocks not recorded in the books of accounts, the explanation of the assessee has to be sought and the explanation so offered by the assessee explaining the nature and source of such undisclosed income and the reasonability of the explanation so offered by the assessee needs to be analysed and examined to draw necessary conclusions in this regard.

8. During the course of survey proceedings, stock as per books of account was found recorded at Rs 66,80,723/- however, on physical verification of stock lying in the business premises, it was found at Rs 83,87,752/- and there was a difference of Rs 17,07,029/- in the stock which was found by the survey team. We therefore find that the stock physically found has been valued and then, compared with the value of stock so recorded in the books of accounts and the difference in the value of the stock so found belonging to the assessee has been determined. There is thus no dispute that there is a commonality in the stock so found and as recorded in the books and in absence of which, the comparison would not have been possible and difference would not have been worked out. The Revenue has not pointed out that the excess stock has any

nexus with any other receipts other than the business being carried on by the assessee. There is thus a clear nexus of stock physically so found with the stock in which the assessee regularly deals in and recorded in the books of accounts and thus with the business of the assessee and the difference in value of the stock so found is clearly in nature of business income.

9. The statement of the assessee recorded during the course of survey is available on record and related documents so found during the course of survey are stated to be in possession of the Revenue authorities. Apparently, the AO has failed to take into consideration the findings of the survey team, the statement of the assessee recorded during the course of survey and other documents which are very much part of the records. Further, in the surrender letter dated 17/04/2018, the assessee has stated that during the course of survey operations, certain discrepancies were noticed in business stock, cash and capital and to avoid litigation, he offer additional business income of Rs 17,07,029/- being the stock difference for the current financial year 2018-19 over and above his normal business income. During the course of assessment proceedings as well, the assessee has explained that what has been found is the business stock and difference has arisen on account of valuation and not with regard to any unaccounted stock. We therefore find that the nature and source of such unaccounted stock is nothing but arising out of assessee's business operations. No doubt, these transactions were not fully recorded at the time of survey thus qualify as unrecorded transactions satisfying one of the essential conditions, at the same time, the assessee has provided the necessary explanation about the nature and source of such unrecorded transactions and the necessary nexus with assessee's business has been established, thus, it cannot be said that these are unexplained transactions thus, doesn't satisfy the second condition for invoking the deeming provisions of section 69 of the Act.

10. In case of **Fashion Fashion World Vs. ACIT** (IT Appeal No. 1634(Ahd.) of 2006, dt. 12/02/2010), the **Coordinate Ahmedabad Benches** has held as under:

"11. But this does not mean that loss computed under any of the five heads mentioned in section 14 – (i) 'salary', (ii) 'income from house property', (iii) 'profits and gains from business or profession', (iv) 'capital gains' and (v) 'income from other sources' – cannot at all be adjusted against unexplained investment or expenditure. What is necessary as per Hon. Gujarat High Court is that source of acquisition of asset or expenditure should be clearly identifiable. In the case before Hon. Gujarat High Court the source of gold confiscated was not identifiable and hence adjustment was not permitted.

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."*

*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."*

11. In the instant case as well, there is no physical distinction between the accounted stock and unaccounted stock. No such physical distinction was found by the Revenue either. We therefore find that the difference in stock so found out by the authorities has no independent identity and is in terms of value terms only and thus part and parcel of entire stock, therefore, it cannot be said that there is an undisclosed asset which existed independently and thus, 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 and the difference should thus be treated as business income.

12. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the income of Rs 17,07,029/- surrendered during the course of survey cannot be brought to tax under the deeming provisions of section 69 of the Act and the same has to be assessed to tax under the head "business income". In absence of deeming provisions, the question of

application of section 115BBE doesn't arise and normal tax rate shall apply. The AO is thus directed to assess the income of Rs 17,07,029 under the head "Income from Business/profession" and apply the normal rate of tax.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 12/01/2024.

Sd/-

**आकाश दीप जैन**  
**(AAKASH DEEP JAIN)**  
**उपाध्यक्ष / VICE PRESIDENT**

Sd/-

**विक्रम सिंह यादव**  
**(VIKRAM SINGH YADAV )**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

**AG**

**Date: 12/01/2024**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar