

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.451 to 454/Ind/2023
(Assessment Years: 201-19 to 2021-22,)

Shri Anil Dhakad 227, Saket Nagar Indore (Appellant / Assessee)	Vs.	DCIT Central-I Indore (Respondent/ Revenue)
PAN: ABHPD1501B		
Assessee by	Shri P.D. Nagar, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	23.04.2024	
Date of Pronouncement	29.04.2024	

ORDER

Per Bench :

These four appeals by assessee are directed against the composite order of the Commissioner of Income Tax (Appeal)-3, Bhopal dated 30.10.2023 for A.Ys. 2018-19 to 2021-22 respectively. The assessee has raised common grounds in these four appeals. The grounds raised for A.Y.2018-19 are reproduced as under:

“1) That the learned Commissioner of Income tax (A) in law in confirming the applicability of provisions of 69A of the Act as "unexplained money" received by the appellant against right to

use business assets ie, petrol pump business owned by the appellant. The nature and source of the receipts the receipts of Rs. 7,80,000/- was fully explained and not doubted upon either by AO or by the Search Officers as it was evident from seized document itself. There being no no c corresponding investment in the form of cash or bullion etc. as contemplated u/s. 69A of the Act found during search, provision of section 69A were not applicable at all. The appellant having discharged the onus by explaining the nature & source of such receipts duly offered as income while submitting the returns and accepted by the AO, treatment of the same within the meaning of u/s 69A of the Act is arbitrary and un-lawful hence deserves to be set aside.

02) That the learned Commissioner of Income tax (A) erred in law in mis-construing the provisions of section 69A of the Act without appreciating the fact that due to litigation going on for transfer of license, the question of execution of lease agreement with M/s Amir Brothers or any affidavit from the said party was an impossible task. The amounts were received on adhoc basis in cash based on its availability with the occupier of petrol pump against petrol pump operations, hence it was claimed as business income. Not only the nature and source of receipt was fully explained but the identity of the person who paid the amount to the appellant besides genuine reasons of receipt in cash from the seized document itself was satisfactorily explained and proved beyond doubt. Such receipt duly offered for tax while submitting the return U / s 153A of the Act can not be covered within the ambit of deeming fiction of law u/s 69A of the Act hence levy of tax at special rate u/s 115BBE of the Act on Rs.7,80,000/- is wholly unjustified, improper, bad in law and deserves to be quashed.”

2. The solitary common issue raised by the assessee in these appeal is whether in the facts and circumstances of the case the CIT(A) has erred in confirming order of the AO invoking provisions of section 69A r.w. section 115BBE of the Act in respect of

unaccounted/undisclosed rental income found recorded in the seized material.

3. The assessee is an individual derives income from house property and income from partnership firm. A search and seizure operation u/s 132 was carried out on 12.01.2021 at the premises of the assessee and associates of JRG Group. During the course of search and seizure operation at the residential premises of the assessee various incriminating documents were found and seized. As per the seized documents BS-02 back side of the page 23 certain entries were recorded under the head Dewas Account. During the statement recorded u/s 132(4) of the Act the assessee was confronted with the notings/contents of the seized documents. In response the assessee explained that he purchased a land admeasuring 20000 sq ft at Dewas (Bilawali) where a petrol pump of HPCL was being operated by one Shri Jay Prakash Daad. A dispute was going on between the assessee and Shri Jay Prakash Daad regarding the transfer of the said petrol pump after purchase of the said land by the assessee. The assessee offered the cash receipt to the extent of Rs.35,70,000/- to tax in the return of income for A.Ys. 2018-19 to 2021-22 as under:

<i>Assessment year</i>	<i>Amount (in Rs.)</i>
2018-19	7,80,000/-
2019-20	7,20,000/-

<i>2020-21</i>	<i>13,20,000/-</i>
<i>2021-22</i>	<i>7,50,000/-</i>
<i>Total</i>	<i>35,70,000/-</i>

The AO did not accept the said receipt as business income of the assessee and invoked the provisions of section 69A by treating the said cash receipt as unexplained money and taxed the same as per the provisions of section 115BBE of the Act. Aggrieved by the said action of the AO the assessee filed the appeals before the CIT(A) and contended that the nature of cash receipt is rental income from M/s Amir Brothers and source of the cash receipt was also explained as identity of the payer was not in dispute when the AO also issued notice 148A and proposed the addition in the hands of M/s. Amir Brothers u/s 148 of the Act. The CIT(A) did not accept this explanation of the assessee as a satisfactory explanation for want of any document and confirmed the action of the AO invoking the provisions of section 69A r.w. section 115BBE of the Act.

3.1 Before the Tribunal Ld. AR of the assessee has submitted that the assessee has explained the nature of receipt as well as source in the statement recorded u/s 132(4). He has further submitted that even the seized document itself explained the nature and source of the said receipt being rental income received from M/s. Amir Brothers in respect of the land owned by the assessee on

which the petrol pump was being operated by the other party. Therefore, the Ld. AR has submitted that the assessee has explained said receipt as business income of the assessee. He has also referred to the reply/explanation filed by the assessee to DDIT investigation during the post search inquiries which is placed at page no.2 of the paper book. Ld. AR has then referred to the reply filed by the assessee during the assessment proceedings vide letter dated 06.04.2022 placed at page no.3 to 11 of the paper book. Thus, Ld. AR has submitted that the assessee has explained purchase of plot of land located at Dewas in the month of March 2011 on which petrol pump was being operated since many years under the name and style M/s Amir Brothers in whose name valid license to run petrol pump was given by HPCL. After purchase of the land by the assessee the license was not transferred by the HPCL in favour of the assessee till date and therefore, it was mutually agreed between the parties that the petrol pump shall continue to be operated by M/s. Amir Brothers and for the time being a reasonable amount will be given to the assessee from November 2017 onwards towards right to use the land for the purpose of running petrol pump. Ld. AR has referred to the seized documents BS-02 back side of page 13 and submitted that the noting in the said seized documents itself are self-explanatory as received under the Dewas account being on account of use of the land owned by the assessee for running petrol pump by M/s. Amir Brothers. Therefore, in lieu of use of the land, the assessee was being paid these amounts. Ld. AR has further submitted that the said seized

documents contain various entries of cash as well as cheques. The amounts received in Cheque from the same party has been duly recorded in books and declared as income in the return of income filed by the assessee and hence no addition was made by the AO so far as the amount received through cheques. Thus, Ld. AR has submitted that once the nature and source of the income was explained by the assessee then the provisions of section 69A as well as section 115BBE of the Act are not applicable. In support of his contention he has relied upon following decisions:

- i. Mukesh Sangla HUF vs. DCIT 27 ITJ 172 (Trib. Indore)*
- ii. Pipush Kumar O. Desai vs. CIT 247 ITR 568 (Guj.)*
- iii. DCIT vs. Tapesht Tyagi (ITAT, Delhi)-ITA No.1344/Del/2021 order dt. 27.10.2023*
- iv. Jayashri Shrikant Deshmukh vs. ACIT (ITAT, Pune) ITANo.776/Pun/2022*
- v. Ram Kishan vs. ITO in ITANo.1909/Del/2020 (ITAT, Delhi)*
- vi. D.N. Singh vs. CIT (2023) 454 ITR 595 (SC)*
- vii. CIT vs. Mother India Refrigeration Industries P. ltd. 155 ITR 711 (SC)*

3.2 Ld. AR has submitted that the provisions of section 69/69A are applicable on cumulative satisfaction of the condition prescribed therein and once the assessee has explained the nature and source of the income or assets then provisions of section 69A are not applicable. He has further submitted that the AO has applied the provisions of section 69A in respect of the cash received

by the assessee on account of land of the assessee is being used for running petrol pump by M/s Amir brothers and therefore, the nature and source of those cash receipts recorded in the seized material are duly explained and does not fall in the category of any money, bullion jewellery or other valuable articles for which the assessee has offered no explanation about the nature and source of acquisition of money, bullion, jewellery or other valuable articles or the explanation offered by the assessee is not in the opinion of the AO satisfactory. Ld. AR has submitted that when the entries in the seized documents are not in the nature of any money, bullion jewellery or other valuable articles found in the possession of the assessee or ownership of the assessee then the provisions of section 69A are not applicable.

4. On the other hand, Ld. DR has submitted that the AO as well as CIT(A) has given a finding that the assessee has failed to explain the nature of transactions with supporting documents such as registered rent/lease agreement, affidavit from M/s. Amir Brothers for cash payment in lieu of rent etc. He has further submitted that onus is on the assessee to explain the nature and source of undisclosed income found recorded in the seized material and when the assessee failed to do so the provisions of section 69A are attracted and consequently higher tax u/s 115BBE is applicable. He has further submitted that the CIT(A) has relied upon the decision of Indore Bench of the Tribunal on 29.06.2022 in case of Shri Shyamlal Goyal and others ITANo.245-247/Ind/2021. He has relied upon the orders of the authorities below.

5. We have considered rival submissions as well as relevant material on record. During the course of search and seizure action inter alia a document was seized and marked as BS-2 containing various cheques and cash entries at page no.13. The AO has reproduced the scan copy of the said seized documents in para 7 as under:

A/c 7397427/3611/14118		
3.00	12/9/17	
2.40		15/11/17
2.40	21/2/18	23/2/18
1.80	12/3/18	29/3/18
3.00	CASH	11/7/18
1.80	23/12/18	15/12/18
1.20	CASH	15/12/18
3.00	CASH	15/1/19
3.00	CASH	13/3/19
1.80	CASH	15/3/19
1.20	CASH	22/3/19
	15/10/19	3/12/20
3.00	CASH	16/7/19
3.00	CASH	19/10/19
3.00	CASH	19/11/19
1.50	CASH	1/12/20
3.00	CASH	19/2/20
1.80	CASH	13/3/20
1.20	CASH	20/3/20
		16.50
9505905	31/3/20	3611/14118
		माल स्टॉक
2.40		16/7/20
1.80		18/8/20
1.80		27/9/20

5.1 Thus, the AO has stated in the order that as per the back side of the page 13 of BS-2 certain entries relating to Dewas account are recorded. As it is clear from the entries that there are chques as well as cash receipts. So far as the Cheques received under the Dewas account the AO has not disputed those Cheques receipts being already offered to tax by the assessee as business income being to the rent receipts in respect of the land measuring 20000 sq ft at Dewas used for running petrol pump by M/s Amir Brothers. In the statement recorded u/s 132(4) the assessee explained the entries as the amount received by the assessee in lieu of the land of the assessee being used for running petrol pump by M/s. Amir Brothers. The AO has not disputed that these cash amounts were received by the assessee from M/s Amir brothers and also initiated the proceedings u/s 148A of the Act against M/s Amir Brothers. Once the Cheque entries are accepted as receipt from the same source and same nature of income then the cash entries in respect of the Dewas account cannot be treated differently. At the first instance the assessee in the statement recorded u/s 132(4) explained the nature and sources of these cash receipts as income against the use of his land by M/s Amir Brothers for running the petrol pump. The assessee also explained surrounding circumstances under which the parties had agreed to an arrangement that till the license for running petrol pump is transferred in the name of the assessee by HPCL, M/s. Amir Brothers will pay a certain amount to the assessee in lieu of assessee's land being used for running petrol pump. The AO has

recorded the fact that during the statement recorded u/s 132(4) the assessee was confronted with the seized documents with respect to the noting/contents on page no.13 and assessee has duly explained the nature and source of these receipts. These facts are recorded by the AO in para 7.1 & 7.2 as under:

“7.1 During statement of Shri Anil Dhakad recorded u/s 132(4) of the Act, the subject was confronted w.r.t. the notings / contents of the said page. In response, Shri Anil Dhakad had submitted that he had purchased a land admeasuring 20000 sq ft at Dewas (Bilawali) and a petrol pump of HPCL was operated on the land since 2011. That the petrol pump was operated by one Shri Jay Prakash Daad and that there is an ongoing dispute between him and Shri Jay Prakash Daad. That the entries were related to cash receipt from petrol pump amounting to Rs.35,70,000/- from 12.09.2017 to 27.09.2020. Further, the other two entries were related to debt and stock amounting to Rs.73,97,427/- and Rs.95,05,905/- respectively. The cash receipts of Rs.35,70,000/- has been admitted his undisclosed income and has been shown as business income in his ITRs filed in response to notice u/s 153A for differing years are as under:

<i>Assessment year</i>	<i>Amount (in Rs.)</i>
<i>2018-19</i>	<i>7,80,000/-</i>
<i>2019-20</i>	<i>7,20,000/-</i>
<i>2020-21</i>	<i>13,20,000/-</i>
<i>2021-22</i>	<i>7,50,000/-</i>

Total	35,70,000/-
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7.2 The assessee has offered above cash receipts for different assessment years as business income from M / s Amir Brothers for normal rate of taxation. Since, the receipts were in cash without any supporting documentary evidence to establish nature and source of such receipts, such amounts cannot be treated as business income of the assessee. Moreover, source of such cash payments from M / s Amir Brothers has also remained unexplained/ unsubstantiated. In absence of true nature and source of such cash receipts and non furnishing of satisfactory explanation by the assessee, such cash receipts are treated unexplained money u/s 69A of the I.T. Act, 1961 and to be taxed as per the provision of section 115BBE. Since, such cash receipts are already offered for taxation in the ITRs filed U / s 153A, separate addition on this count is not being made except to be taxed U / s 69A rws 115BBE. Penalty proceedings 271AAC for the AYs 2018-19 to 2020-21 and u / s 271AAB for AY 2021-22 being specified/search year are also initiated.”

5.2 Therefore, the AO has simply declined to accept the said explanation without bringing any contrary material or fact on record. Once the assessee has explained the nature and source of the said cash receipt as recorded in the seized material at the first occasion while recording the statement u/s 132(4) and this stand of the assessee is consistent as the assessee has again explained to the DDIT investigation placed at page no.2 of the paper book as under:

M/S. NAKODA REALITIES, PARTNER SHRI ANIL DHAKAD, INDORE

Explanation relating to page 13 (backside) of BS-2 found and seized during the course of search proceedings

As explained earlier, the land located at Dewas is owned by Shri Anil Dhakad on which Petrol Pump is being operated since many years by Shri Jai Prakash Dad based on valid license of Petrol Pump given by HPCL to Mr. Jaiprakash. After purchase of land by Shri Anil Dhakad, Mr. Jaiprakash neither vacated the land nor the license has been transferred by HPCL in favour of Shri Anil Dhakad. Under such circumstances, it was agreed that Shri Jaiprakash Dad will continue to run Petrol Pump for the time being and Shri Anil Dhakad mutually agreed to receive reasonable rent from November 2017 onwards of the land owned by him. Accordingly Shri Jaiprakash Dad made payments as and when it became convenient to him instead of monthly payments. Adhoc payments towards rent were made & summary of year-wise payments received in cash from Shri Jaiprakash Dad as noted on the page No.13 of BS 2 are as under :

<u>Financial year</u>	<u>Assessment year</u>	<u>Amount</u>
2017-18	2018-19	Rs. 7,80,000/-
2018-19	2019-20	Rs. 7,20,000/-
2019-20	2020-21	Rs.13,20,000/-
2020-21	2021-22	Rs. 7,50,000/-
	Total	Rs.35,70,000/-

This payments were made in cash without any written agreement hence they shall be offered for tax as additional income surrendered during search by Shri Anil Dhakad in his Individual case in above years.

Shri Jaiprakash Dad also made payments by cheque to Smt. Nikita Dhakad who used to visit the Petrol Pump atleast twice in a week to safeguard not only ownership interest but also to watch that further encroachment over the land is not done besides supervising the activities of Petrol Pump. Such details have also been found written on this page being remuneration which has been duly offered for tax while submitting the return by Smt. Nikita Dhakad pertaining Assessment years 2018-19, 2019-20 and 2020-21 respectively under the head "Income from Salary" as under :

	<u>Date</u>	<u>Mode of payment</u>	<u>Amount</u>
a)	On 29.03.2018	Cheque	Rs.1,20,000/-
b)	On 15.12.2018	Cheque	Rs.1,80,000/-
c)	On 13.03.2020	Cheque	Rs.1,80,000/-

5.3 Even during the assessment proceedings the assessee has again explained nature and source of these receipts in para A6 of reply dated 06.04.2022 as under:

“A.6 With regard to sources of income during the relevant assessment years it is humbly submitted that I derived income from Partnership Business and Interest income in all the relevant years. Besides such income, I submit that a plot of land located at Dewas was purchased by me in March 2011 on which Petrol Pump was being operated since many years under the name and style as M/s. Amir Brothers, in whose name valid license to run Petrol Pump was given by HPCL. After purchase of land by me, the license has not been transferred by HPCL in my favour till date. In the absence of license by HPCL in my favour, it was mutually agreed that the Petrol Pump will continued to be operated by M/s. Amir Bothers, and for the time being reasonable amount will be given to me from November 2017 onwards towards right to use land with petrol pump equipments. As there was no written agreement, following payments were received by me from A.Y. 2018-19 onwards in cash as noted on the page No. 13 of BS-2 as under :-

<i>Assessment year</i>	<i>Amount</i>
<i>2018-19</i>	<i>Rs. 7,80,000/-</i>
<i>2019-20</i>	<i>Rs. 7,20,000/-</i>
<i>2020-21</i>	<i>Rs. 13,20,000/-</i>
<i>2021-22</i>	<i>Rs. 7,50,000/-</i>
<i>Total</i>	<i>Rs. 35,70,000/-</i>

Based on above notings, while submitting the returns in response to notice u/s 153A, I have offered aforesaid amount for tax as additional income surrendered during search. I am unable to submit copies of the Audit report in relation to petrol pump activity because I have no access to such records.”

5.4 Thus the assessee has taken a consistent stand by giving facts and explanation. The facts explained by the assessee regarding purchase of the land in March 2011 as well as running petrol pump by M/s Amir Brothers on the said land are not disputed by the department either during the search proceedings or during the assessment proceedings. Once this fact is not in dispute that the assessee is the owner of land in question on which petrol pump is being operated by M/s Amir Brothers then the cash receipts as recorded in the seized material in respect of Dewas account along with the transactions of the amount received from M/s Amir Brothers cannot be treated differently. Both cash as well as Cheque transaction are recorded in the seized document and the transactions of receipts through cheques are accepted by department as already offered to tax by the assessee then the remaining entries in the said seized material in cash cannot be regarded as different category and source. Even otherwise these entries are only in respect of the cash receipts by the assessee in lieu of his land used for running a petrol pump by M/s Amir Brothers therefore, the same would not fall in the ambit of section 69A being any money, bullion, jewelley or other valuable article (all are in the nature of assets) found in the ownership of the assessee or the assessee is found to be owner of these assets was not recorded in the books of account and further no explanation about nature and source of acquisition of the assets was furnished by the assessee. These are entries of income received by the assessee which are duly explained in the search proceedings as well as in the

assessment proceedings. Apart from the explanation of assessee the seized material itself showing source as Dewas account which the AO has accepted as received from M/s Amir Brothers Dewas. The relationship between the assessee and M/s Amir Brothers Dewas has been explained by the assessee which was not disputed by the AO being supported by undisputed facts of land owned by the assessee is being used for operating petrol pump by M/s Amir Brothers. The CIT(A) in para 3.2.4 has also recorded the explanation of the assessee that these cash receipts are rental income received from M/s Amir Brothers. However, the said explanation was declined by the CIT(A) on the ground that the assessee has not produced any supporting evidence being registered rent deed/lease deed. It is pertinent to note that once these entries are made in relation to Dewas account which pertains to M/s Amir Brothers Dewas running petrol pump on the land owned by the assessee then this fact itself corroborates the explanation of the assessee regarding the nature of these receipts. The source of these receipts are even mentioned in the seized documents itself being Dewas account/M/s Amir Brothers Dewas.

5.5 Accordingly in the facts and circumstances of the case we are of the considered opinion that these transactions of cash receipts do not fall in the ambit of provisions of section 69A when the nature and source was explained by the assessee beyond any doubt with supporting facts and consequently the higher tax u/s 115BBE of the Act will not be attracted. In the recent decision of this

tribunal in case of Nakoda realities in ITANo.533 to 535/Ind/2023
dated 22.04.2024 has considered an identical issue as under:

“6. We have considered rival submissions as well as relevant material on record. The AO has discussed the details of the entries in the seized material marked as BS-1 & BS-3 in para 12.1 to 12.4 as under:

“12.1 BS-01 (Page-59 Back Side & Page-60):

On perusal of noting on the said page, it was noted that the word 'cash' has repeatedly been mentioned and name of Shri Vijay Jain with 1.00%, cash appears on the top of the page. Additionally, the name of Shri Daulat Kaka and Shri Pramod are also mentioned. Scanned copy of Page No. 59 back side of BS-01 is reproduced as under:

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12.1.2 Cash Loan from Shri Vijay Jain through Hundi:

A hundi amounting to Rs.20.00.000/- was also found affixed on bottom of page 60 of BS-01. Scanned copy of bottom of Page No. 60 of BS-01 is reproduced as under:

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12.1.3 Cash Loan from Shri Daulat Kaka:

The second noting on page 59 back side of BS-01 related to cash loan received from Shri Daulat Kaka of Rs.15,00,000/- which has remain Unexplained.

12.2 BS-03 (Page-10 Front & Back Side):

On perusal of Page-10 Front & Back Side of BS-03, it is seen that the assessee had accepted unexplained cash loan from

Shri Kamal Jain and Shri Sunil Dhakad on various dates as mentioned on the page which is reproduced as under:

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12.4 As per the seized documents, assessee had accepted unsecured loans in cash from different parties as mentioned in above table. However, it is seen that assessee has offered amount of Rs.75.20 lacs only as unexplained unsecured loans accepted during different years as above. Out of this accepted amount of Rs.75.20 lacs, it is seen that amount of cash loan of Rs.3,50,000/- pertain to AY 2016-17 but in the return filed by the assessee same has not been offered as additional income. Since amount of Rs.3,50,000/- received in cash remain unexplained, the same is added to the total income of assessee for AY 2016-17 as unexplained money u/s 69A r.w.s. 115BBE. Penalty proceedings u/s 271(1)(c) is also initiated for concealment of particulars of income for AY 2016-17.”

6.1 The AO has also compiled the details of the transactions in the tabulated form giving of the page number of the seized material, the name of the lenders, date of the loan along with amount which was accepted and interest paid on the same. All these details are found recorded in the seized material itself and therefore, the entries in the seized material are self-explanatory to extent of nature and source of these unsecured loans. It is not the case of introduction of cash credit in the books of accounts and assessee failed to discharge the onus of proving identity, creditworthiness of the creditors and genuineness of the transactions. Once the transactions are recorded in the seized material giving all the details regarding nature and source of the transactions then question of further explaining the nature and source of these transactions does not arise. Since these transactions were not recorded in the books of account therefore, the assessee surrendered these amount to tax. The provisions of section 69A are attracted in the case where the assessee is found to be owner of any money, bullion, jewellery or other valuable articles and the same are not recorded in the books of account, and the assessee failed to

offer any explanation about the nature and source of acquisition of money, bullion, jewellery or other valuable articles or the explanation offered by the assessee is not to the satisfaction of the AO. The loan entries found in the seized material are not in the nature of any money, bullion, jewellery or other valuable articles owned by the assessee. Thus it is not case of any cash bullion, jewellery or valuable articles found in the possession of the assessee or owned by the assessee. Further it is also manifest from the seized material itself that these transactions are loan transactions recorded in the name of five persons, the details of which are duly given by the AO in para 12.3 reproduced (supra) which contains all the relevant information including the nature and source. Therefore, the nature and source is explained by the seized material itself. The CIT(A) in para 3.2.4 has given reasons for upholding order of the AO that the assessee has failed to explain that the unsecured loan is the income generated from the ordinary and regular business activities of the assessee. There is no such condition in section 69A of the Act that the nature and source of acquisition of money bullion or other valuable articles shall be only income from regular business activity. The only requirement is to explain the nature and source of acquisition of money, bullion or articles which may be other than the regular business activity. Therefore, once the seized material itself reflect nature and source of these transactions by giving all the necessary details then the same cannot be treated as unexplained money u/s 69A of the Act. The Delhi Benches of the Tribunal in case of DCIT vs. Tapesht Tyagi (supra) has considered this fact in para 7 to 9 as under:

“7. As discussed earlier, in course of search and seizure operation carried out in case of the assessee, a loose paper/document was found from the possession of the assessee, wherein, amount of Rs.30,20,00,000 was mentioned with the description "Com Trade". In the statement recorded under Section 132(4) of the Act in course of search and seizure operation, when the assessee was confronted with the said loose paper/document, the assessee submitted that it indicates profit earned by him from "Commodity Trade". It is a fact that in

the statement recorded under Section 132(4), assessee surrendered the amount as income. It is also a fact on record that in the return of income filed for the assessment year under dispute, assessee offered the amount of Rs.30.20 crores as income. Thus, the aforesaid facts clearly establish that at the time of search and seizure operation itself, assessee has explained the source of the amount offered as income to be the profit derived from "commodity trade", which is in the nature of business income. It also appears that the departmental authorities have no dispute with regard to the explanation of the assessee regarding the source of the surrendered income.

8. As rightly observed by the learned First Appellate Authority, section 69A uses word "may", which implies that if explanation offered by the assessee regarding source of money, bullion, jewellery or other valuable articles is satisfactory, it cannot be treated as unexplained money under Section 69A of the Act. In the facts of the present appeal, there is nothing on record to suggest that assessee's explanation regarding the source of the income offered has either been doubted or disputed at the time of search and seizure operation or even during the assessment proceedings. Therefore, in our view, the income offered by the assessee cannot be treated as unexplained money under Section 69A of the Act. Therefore, as a natural corollary, section 115BBE of the Act would not be applicable.

9. Having held so, we may further add that a reading of section 115BBE of the Act makes it clear that the special rate of tax provided under the said provisions shall be applicable under two conditions. Firstly, where the total income includes any income referred to in sections 68, 69A, 69B, 69C or 69D and reflected in the return of income under Section 139 of the Act. Secondly, if the income determined by the Assessing Officer includes any income referred to, in sections 68, 69, 69A, 69B, 69C or 69D, if such income is not covered under the first condition. In the facts of the present appeal, admittedly, assessee has not offered the income under Section 69A of the Act. Even, the Assessing Officer has not made any separate addition under Section 69A of the Act. He has merely re-

characterized the nature of income offered by the assessee. Thus, in our considered opinion, the provisions of sections 115BBE would not be applicable to the facts of the present appeal.”

5.6 Accordingly in the fact and circumstances of the case as discussed above and to maintain the rule of consistency we follow the earlier decision of this tribunal and consequently the orders of the authorities below invoking provisions of section 69A r.w. section 115BBE are set aside. The finding on this issue for A.Y.2018-19 is applicable mutatis and mutandis for all the assessment years.

6. In the result, all four appeals of the assessee are allowed.

Order pronounced in the open court on 29 .04.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 29.04.2024

Patel/Sr. PS

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

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*