

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

HEARING THROUGH: VIRTUAL MODE

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. 753/Chd/2022
निर्धारण वर्ष / Assessment Year : 2019-20

| | | |
|---|------|---------------------------------------|
| M/s Satwant Agro Engineers Sangrur Road, Bhawanigarh, Punjab-148026 | बनाम | The DCIT Central Circle Patiala |
| स्थायी लेखा सं. / PAN NO: AANFS9148Q | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

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

सुनवाई की तारीख/Date of Hearing : 05/02/2024
उद्घोषणा की तारीख/Date of Pronouncement : 03/05/2024

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. 25/11/2022 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) and of Assessing Officer is against law & facts.

2. That the Ld Commissioner of Income Tax (Appeals) was not justified to confirm the finding of Assessing Officer to assess the surrendered amount as "deemed Income" u/s 69 read with section 115BBE of Income Tax Act 1961. The surrendered amount is on account excess stock of Rs.10,00,000/- and Rs. 9,66,000.00 of cash difference duly represents the business income and more so Ld Commissioner of Income Tax (Appeals) duly telescoped with unrecorded sales of Rs.23,35,000.00.

3. That the Ld Commissioner of Income Tax (Appeals) was erred in law to hold the entry of Rs.50,00,000.00 in capital account (Rs.25,00,000.00 each partner)

covered u/s 68 instead of section 69 as assessed by Assessing Officer. The surrendered amount is neither covered u/s 68 nor u/s 69 of Income Tax Act 1961.

4. That the Ld Commissioner of Income Tax (Appeals) was not justified to reject the contention of appellant that entire sales of Rs.42,80,000.00 as unrecorded were duly credited back in partners account against which entry in books was made and is business income of appellant.

5. That the Ld Commissioner of Income Tax (Appeals) and Assessing Officer was not justified to make separate addition of unrecorded sales of Rs.23,35,000.00 which is duly covered with surrendered amount and even if made, the entire addition of Rs.23,35,000.00 is not called for and only gross profit should be assessed in case of no evidence of unexplained purchases.

6. That the Ld Commissioner of Income Tax (Appeals) was not justified not to allow the credit of Rs.42,80,000.00 on account of unrecorded sales found in impounded documents prior to the date of survey.

7. That Commissioner of Income Tax (Appeals) has not considered the finding with regard to "deemed income" although treated as income from undisclosed source yet it was duly added and assessed in business income of the appellant. The firm has no other source of income.

8. That the appellant craves leave to add or amend any ground of appeal before the appeal is heard or disposed off.

3. Briefly, the facts of the case are that the assessee is a partnership firm engaged in the business of manufacture of agriculture implements and sale purchase of allied products. A survey operation under section 133A of the Act was conducted at the business premises of the assessee on 16/04/2018 wherein the assessee surrendered a sum of Rs. 69,66,000. Thereafter the return of income was filed on 31/10/2019 taking into consideration the amount so surrendered during the course of survey. The case of the assessee was thereafter selected for compulsory scrutiny and notices under section 143(2) and 142(1) alongwith show cause were issued during the course of assessment proceedings and thereafter considering the submissions of the assessee but not finding the same acceptable, the assessment proceedings were completed under section 143(3) dt. 27/09/2021 wherein the AO brought to tax the excess stock surrendered during the course of survey under section 69, unexplained capital introduced in the capital account of the partners under section 69 and

unexplained excess cash under section 69A as against these amounts shown by the assessee as business income while filing the return of income. Besides that an amount of Rs. 23,35,000/- was added to the income of the assessee on account of unaccounted sales and as against the returned income of Rs. 72,80,250/-, the assessed income was determined at Rs. 96,15,250/- wherein Rs. 26,49,250/- was brought to tax at normal rate and the amount of Rs. 69,66,000/- was brought to tax under section 115BBE of the Act.

4. Here it would be relevant to refer to the findings during the course of survey operation the show cause issued by the AO during the course of assessment proceedings and the submissions so made and the findings of the AO.

5. Firstly, regarding the excess stock found during the course of survey operation conducted at the business premises of the assessee, physical verification of stock was carried out and stock valued at Rs. 1,24,60,160/- was determined as against stock of Rs. 1,14,60,160/- recorded in the books of account. The statement of the partner of the assessee firm Shri Bhagwant Singh was recorded who was asked to explain the discrepancy in stock and in his reply, he submitted that at this point of time, he was not in a position to explain the discrepancy and therefore he offered the amount of Rs. 10,00,000/- for taxations @ 30.9% subject to no penal action for the F.Y. 2018-19 relevant to A.Y. 2019-20.

6. Referring to the said statement recorded during the course of survey, a show cause was issued to the assessee during the course of assessment proceedings and the assessee was asked to explain why the stock so surrendered should not be brought to tax under section 69 of the Act.

7. In response, the assessee submitted that during the course of survey operation just within a short period of 10 hours, the stock was physically counted

by the department and the inventory of stock was prepared. The department has not furnished any copy of the said inventory to the assessee. It is admitted fact that stock of Rs. 1,24,60,160.00 was calculated against stock in hand at Rs.1,14,60,160.00 leaving aside the exact difference of Rs.10,00,000/-. The inventory is based on following footing which is just an estimate and should not be relied as such from which actual profit were earned.

i. Items not fully incorporated in the list/inventory by counting either excess item or on estimate basis.

ii. The rate applied on the inventory of stock was sale rate however no rate was applied in accordance to purchase vouchers.

iii. The inventory of stock is based on counting of stock within just of 10 hours with regard to about Rs.1,25,00,000 crore value.

iv. The inventory was prepared not in physical presence of the proprietor as the stock was counted by different staff members of the department and it is difficult rather impossible to be present before all staff members who were counting the stock.

8. It was submitted that it is admitted fact that the said inventory was got signed from the partner of the firm which is purely based on estimate in number of goods estimated, value adopted not on the basis of purchase vouchers. These facts were narrated to Inspecting officer however the assessee was so depressed by the threats of the department and. at last in order to avoid litigation with department, the assessee firm surrendered the amount of Rs. 10,00,000/- on account of excess stock. Being business transaction of stock, the assessee credited the said entry to profit & loss account and has never retracted to the surrendered amount. The figure shown clearly reveals that in

order to arrive at Rs. 10,00,000/- the last 5 digits are the same. The additional income duly represents business income of the firm.

9. It was submitted that Section 69 of Income Tax Act 1961 reads "where in the financial year immediately preceding the assessment year, the assessee had made investments which are not recorded in the books of account, if any, maintained by him from any source of income, and the assessee offers no explanation about the nature and source of the investment or the explanation offered by him is not, in the opinion of the [Assessing Officer] satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year." The above said section indicates the specific condition in which cases section 69, 69A, 69B of Income Tax applies where.

I. Where in financial year immediately preceding the assessment year, investment was made.

II. Where books of account maintained and the said investment is not recorded in books of Accounts.

III. The explanation of assessee is not satisfactory.

IV. The section is deeming provision.

10. Further when the stock was found excess only due to estimate reasons, the Assessing Officer did not come to the conclusion about unexplained/unrecorded purchase of the assessee. Without such finding of unrecorded purchase, the investment as per books of account cannot be treated as unexplained investment as the stock in excess is due to more production/yield on the manufacturing of agricultural implements.

11. Further it is concluded that stock which was furnished in excess represents the discrepancy on account of less production shown in books of account for

which the assessee voluntarily surrendered the amount of Rs.10,00,000.00 as additional business income alongwith regular business income.

12. The submissions so filed by the assessee was considered but not found acceptable to the AO. As per the AO, the assessee has claimed that the difference in stock is just an estimate and that has challenged the quantity and rates adopted during the joint physical verification. The claim of the assessee is however an afterthought. The assessee has never, till date raised any objections post the survey operation concluded on 17.04.2018. Also, Shri Balwant Singh, partner of the assessee firm has duly appended his signatures on each and every page of the Inventory list prepared during the survey operation. This fact is being admitted by the assessee in the above mentioned reply letter as well. Also, the assessee, in its letter does agree to the discrepancies found in the stock and voluntary disclosure made by the partner of the firm during the survey proceedings. The assessee claims the excess stock to be a result of suppression of profit from business carried out in the past. Thus, the assessee has himself stated that he has carried out the suppression of profit and hence business receipts leading to unaccounted sales. Such sales, if any, has not been booked by the assessee and it is very likely that had the income tax department not conducted the survey u/s 133A, the purported suppression of business receipts and profit would not have come to the light.

13. Further, the assessee has stated that he has duly honored the surrender made during survey and has declared taxable income in Income from Business and profession amounting to Rs. 10,00,000/- and has deposited the due taxes at normal rates. It is pertinent to mention here that the heads of surrender of additional income amounting to Rs. 10,00,000/- on account of excess stock found during the survey relate to the unexplained investment within the meaning of section 69 for which the provisions of section 115BBE of the Income

Tax Act are applicable. The assessee, at the time of survey, had voluntarily surrendered the above mentioned amounts in its.

14. Further it is observed that assessee was not able to furnish any satisfactory explanation regarding the excess stock found from the business premises of the assessee, which was noticed during survey and accordingly an additional income of Rs. 10,00,000/- was disclosed by the assessee. Such unrecorded and unexplained stock is an unexplained investment and hence deemed, income within the meaning of section 69 of the Act. Further, the calculation of tax has been done by the assessee in the surrender letter as per the provisions of section 115BBE of the Act. However, while filing the Income tax return for the relevant period at a much later date, the assessee has disclosed such additional income as income from Business and Profession. Such contention of the assessee is not supported by any documentary evidence. Hence, the contention of the assessee is not tenable and is accordingly rejected. Thus, the additional income of Rs. 10,00,000/- is added to income u/s 69 of the Act for the relevant period.

15. Now, coming to the additional capital introduced in the capital account of the two partners of the assessee firm, it was observed by the survey team during the course of survey that an additional capital of Rs. 25,00,000/- was introduced in the capital account of both the partners and the assessee was asked to explain the source of capital so introduced.

16. In response, the partner of the assessee firm stated that presently, he was unable to explain the capital introduction of Rs. 25,00,000/- each in both the partners capital account and in order to buy peace of mind, he voluntarily surrendered a sum of Rs. 50,00,000/- in partners account over and above the normal business income.

17. Referring to the said statement, a show cause was issued during the course of assessment proceedings and in response, the assessee submitted that it is admitted fact that partners made entry of the amount Rs.25,00,000.00 each in their account which is purely based on the impounded document mentioned in para no.4. The impounded document in para no.4 contains the transaction amounting to Rs.42,80,001.00 against which assessee surrendered the amount of Rs.50,00,000.00 and made the entry in books of accounts in partners account in accordance to their share in partnership. The amount of Rs. 50,00,000.00 surrendered is purely based on impounded documents of sale transaction of Rs.42,80,001.00 as incorporated in the para no.4 of the notice. The assessee had already submitted reply to show cause notice 21/09/2021 at page 2 & 3 which is as under:

"During the course of survey operation u/s 133A of Income Tax Act 1961 one 'Neelgagan slip pad' was impounded which contains the transactions of sales, description of material to be supplied and on the estimate the order for 'Boaring Machine' was taken alongwith advance amount duly accounted for in books however delivery of said machinery was given after few days or month. The detail of transaction is given in Para iv of notice alongwith specified name of purchaser. The transaction amount in said chart of Rs.42,80,001.00 which pertains to following assessment years:

| | |
|--|------------------|
| Assessment Year 2018-19 i.e 31/03/2018 | Rs.27,05,001.00 |
| Assessment Year 2019-20 ie 31/03/2019 | Rs. 15,75,000.00 |
| (under question) | |
| Total Rs.42,80,001.00 | |

That the said impounded slip pad is just an order form however the transaction amount of Rs.15,75,000.00 pertains to A.Y 2019-20, the year under question. The

assessee firm made sales against that order on following dates. Sometime in this line of trade the order was booked in another name and sale bill was issued at the name which was suggested by purchaser and further with the change with the mind, the customer revised his order as per his wishes. The firm supplied the machine as per their order or revise order on following dates.

| <i>Date of invoice</i> | <i>Invoice No</i> | <i>Order Transaction Amount</i> | <i>Invoice Amount</i> |
|------------------------|-------------------|---------------------------------|-----------------------|
| 15/05/2018 | SAE/000401 | 4,85,000.00 | 4,85,098.00 |
| 23/04/2018 | SAE/000339 | 6,25,000.00 | 4,13,000.00 |
| 19/04/2018 | SAE/000333 | 4,65,000.00 | 2,35,000.00 |
| | <i>Total</i> | 15,75,000.00 | 11,33,098.00 |

That the assessee firm duly disclosed all facts and particulars were also before Inspecting Officer. The officer insisted for surrender which was settled at Rs.50,00,000.00 due to facts of inability of production of customer or to get verified the sales. The said amount was credited to capital account of partners of Rs. 25,00,000.00 each (in same ratio as profit) however the auditor credited this amount in profit & loss account and automatically credited in partners account. The said amount duly represents the sale transaction and was taken as business income. There is no separate entry of Rs.50,00,000.00 except the entry of Rs.42,80,000.00 and to cover up all discrepancy surrendered Rs.50,00,000.00 ie (42,80,000.00+7,20,000.00). The inspecting officer impounded the documents which were considered as sales transaction. The impounded slip pad contains sales transaction of Rs.42,80,000.00 which was surrendered alongwith other discrepancy of Rs.7,20,000.00. The total amount of sale transaction and other discrepancy were credited in partners account i.e Rs.25,00,000.00 each. The auditor considering the sale transaction of Rs.42,80,000.00+7,20,000.00 credited the said amount of Rs.50,00,000.00 in profit & loss account."

18. The submissions so filed by the assessee were considered but not found acceptable. As per the AO, the contention raised by the assessee is perused,

and found not tenable. The assessee has stated that the income surrendered amounting to Rs. 50,00,000/- has been credited in profit & loss account. It is pertinent to mention here that the heads of surrender of additional income amounting to Rs. 50,00,000/- on account of unexplained capital introduced found during the survey relate to the unexplained investment within the meaning of section 69 of the act for which the provisions of section 115BBE of the Income tax Act are applicable. Further, the assessee itself agreed to the amounts of surrender income vide voluntary letter of surrender reproduced above. The assessee has claimed that it has surrendered an income of Rs. 50,00,000/- on account of unaccounted sales amounting to Rs. 42,80,001/-. On the perusal of surrender letter, the contentions of the assessee are found to be false. The same is accordingly rejected. On the perusal of the surrender letter 17.04.2018, it is observed that 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. 50,00,000/- was disclosed by the assessee. Such unrecorded and unexplained capital introduced is an unexplained investment and hence deemed income within the meaning of section 69 of the act. However, while filing the Income tax return for the relevant period at a much later date, the assessee has disclosed such additional income as income from business. Such contention of the assessee is not supported by any documentary evidence. Hence, the contention of the assessee is not tenable and is accordingly rejected. The additional income of Rs. 50,00,000/- is removed from the profit & loss account and is added to income u/s 69 for the relevant period.

19. Now coming to the issue of excess cash, it was noticed that during the course of survey that the assessee was having cash of Rs. 11,65,546/- as against the cash of Rs. 1,99,546/- shown in the books of account and the assessee was asked to explain the source of the excess cash of Rs. 9,66,000/- found during the

course of survey and in response, the partner of the assessee firm stated that at the relevant point in time, he was not in position to explain the same and same was offered to tax, in order to buy peace of mind voluntarily. Thereafter, during the course of assessment proceedings the assessee was issued a show cause and in response, the assessee submitted that the assessee had already received show cause notice dated 21/09/2021 and the reply with regard to cash difference of Rs.9,66,000.00 had already been furnished at page 1 & 2 which is as under:

“During the course of survey operation u/s 133A of Income Tax Act 1961, cash was found less by Rs.9,66,000.00 as per books & physically available cash at counter. The assessee stated that cash belongs to firm which is out of business income as the firm has no other source of income. The difference in cash found may be due clerical error or on account of cash sales were duly accounted books and further some expenditure of firm not incorporated in books of account which are duly allowable u/s 37 of Income Tax Act 1961. The inspecting officer did not accept the contention however insisted to surrender as income for the year under question. The assessee firm surrendered this amount and included in income tax return of Rs.9,66,000.00. No doubt this amount of Rs.9,66,000.00 was surrendered yet the assessee had evidence to prove the same. This cash was resulted on account of business transaction and is duly accounted for in books of accounts.

20. Section 69A of Income Tax Act 1961 is not applicable as there was no unexplained money which was not recorded in books of account. Moreover section 69A is deeming provision and Assessing Officer has to establish with cogent evidence that cash was unexplained & not recorded in books of account however in this case, the cash in hand is as per books of account and is duly accounted for in books of account. So section 69A is not applicable. Being business transaction in books of account, the assessee firm strongly

objected to apply section 69A read with section 115BBE of Income Tax Act 1961."

21. The submissions so filed by the assessee were considered but not found acceptable. As per the AO, the contention raised by the assessee is perused, and found not tenable. The assessee has stated that the cash difference may be due to clerical error. This contention was never raised either during the survey in the statement recorded nor in the letter of voluntary disclosure. Thus it is nothing but an afterthought of the assessee. Further, income surrendered amounting to Rs. 9,66,000/- has been credited in profit & loss account. It is pertinent to mention here that the heads of surrender of additional income amounting to Rs. 9,66,000/- on account of unrecorded and unexplained excess cash is unexplained money and hence deemed income within the meaning of section 69A of the Act. However, while filing the Income tax return for the relevant period at a much later date, the assessee has disclosed such additional income as income from business and profession and paid taxes on normal rate. Unexplained income u/s 69A of the Act is taxable u/s 115BBE of the Act. Thus, the additional income of Rs. 9,66,000/- removed from the profit & loss account and is added to income u/s 69A for the relevant period.

22. Now coming to the issue of unrecorded sales, during the course of survey, three neelgagan slip pads marked as D1,D2,D3, were impounded vide impounding order dated 17.04.2018. The said slip pads contain written pages which mentioned various transactions made by the firm as per following details:-

| S. No. | Diary /No. of pages in slip Pad | Name of party / customer | Date | Transaction amount |
|--------|---------------------------------|-------------------------------------|-------------|--------------------|
| 2. | D1/2 | M/s Namo Shivya Traders Bihar | 15.03.2018* | 7,60,000/- |
| 5. | D3/1 | Sh. Om Prem S/o Sh. Harbhajan Singh | 01.04.2018 | 4,85,000/- |

| | | | | |
|----|------|---|------------|-------------|
| 6. | D3/2 | | 01.04.2018 | 6,25,000/- |
| 7. | D3/9 | Sh. Shrikant Sharma S/o Sh. Ram Krishan Sharma, Murradnagar | 11.04.2018 | 4,65,000/- |
| | | Total | | 23,35,000/- |

* Goods to be delivered on 05.04.2018.

23. At the time of survey, the statement of Sh. Bhagwat Singh, Partner of the firm was recorded wherein he failed to furnish any satisfactory explanation regarding above mentioned transactions and admitted that the above mentioned transactions have not been accounted for in books of accounts. Basis the same the assessee was issued a show cause and in response, the assessee submitted that the aforesaid transaction pertains to the sales made by it and that the voluntary disclosure of additional income amounting to Rs. 50,00,000/- was made on account of unrecorded and unexplained sales only and in support three invoices dt. 15/05/2018, 23/04/2018 and 19/04/2018 were submitted.

24. The AO however did not agree to the submissions so made and it was held that the voluntary disclosure of additional income was made by the assessee on account of discrepancy in stock in trade, unexplained introduction of capital and unexplained cash. Hence the contention that it disclosed the additional income at the time of survey on account of unaccounted sales was not tenable and same was rejected. It was further held that neither the names of the parties nor value mentioned in the invoices supplied by the assessee match with the names and figures mentioned in the impounded material. In some cases the name of machinery supplied is mentioned and it therefore appears that the assessee had carried out unaccounted sales amounting to Rs. 23,35,000/- and the assessee was again issued a show cause as to why the books of account should not be rejected under section 145(3) which were objected to by the assessee. However the AO went ahead and rejected the

books of account and determined the gross profit at Rs. 80,68,041/- as against Rs. 57,33,041/- without allowing additional direct expenses against the additional turnover amounting to Rs. 23,35,000/- resulted in the addition of Rs. 23,35,000/- in the hands of the assessee.

25. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the said addition and the relevant findings are contained at para 5.2 to 5.4 of the impugned order and the contents thereof read as under:

"5.2 Grounds of Appeal Nos. 2, 4, 7 & 8 relate to addition of Rs. 10,00,000/- on account of excess stock & Rs. 9,66,000/- on account of difference in cash between cash found or cash-in-hand as per books of accounts found during the course of survey proceedings.

The said surrender was made during the course of survey on account of discrepancies noticed in the stock & cash of the assessee. The AR in his submissions has tried to justify the same as unexplained investment out of the business income of the assessee. The AR has claimed that the appellant is not having any other source of income, but income arising from business. Further, the AR has relied upon judgments as quoted in his submissions.

The contentions of the assessee have been examined. The judgments quoted by the AR have been gone through. It is important to emphasize here that in all the judgments quoted by the AR in his support, the Hon'ble High Courts/Ld. Tribunal Benches have very clearly held out that the AO shall give an opportunity to the assessee to establish a linkage between the surrendered income with the business income, if any. If the assessee is able to do that then the income can be considered as from business. In the case of the assessee, no linkage between the surrendered income under the head of 'excess stock' & 'cash' and the business income could be established as the assessee could not establish a direct nexus between the two. Hence, from above discussion, it is clear that in all the cases, the settled position of law is that the nexus between the surrendered income and business needs to be established before the same can be treated as income from business.

Merely having a known business activity will not, per se, render any unexplained asset/ income as business/profession income u/s 14, unless the burden of proving the source u/s 68 to 69D is also discharged. The onus of proving that such receipts are from an activity other than disclosed business activities is not upon the AO. Therefore, there can be no presumption against the deeming fiction u/s 68 to 69D to hold that income/investment, whose source is not explained, will still be classified as income under any head u/s 14. It would be, therefore, impermissible to attempt and classify such incomes under any of specific heads, even if there is any activity which can be remotely/indirectly linked to such deemed income. The word 'source' in the same context would refer to nexus of such income generating activity/transaction with name and identity, creditworthiness of

person with whom such activity/transaction was done along with proving the genuineness of transaction also.

The requirement of proving these 3 essential ingredients to prove the source in order to escape the rigors of the deeming fiction has been upheld universally. The conjoint burden of proving the 'nature and source' is therefore, not restricted to merely claiming the nexus of any activity/transaction to a particular credit/income/asset but also requires to establish with cogent evidence the nexus of such activity/transaction with source also by providing the name and identity, creditworthiness of person with whom the activity/ transaction was done along with proving the genuineness of transaction.

Thus, for the unrecorded excess investment in stock and excess cash found during survey proceedings, there can be no presumption to treat the value representing such excess investment in stock and excess cash 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 or generated the excess cash.

The AR has contended that the nature of the income has been duly explained during the course of survey as well as assessment proceedings. This contention of the AR is not found correct as nowhere during the assessment proceedings, the AR has been able to establish nexus between the investment in stock and normal business income. Further, the AR has contended that the assessee has carried out no activity other than business so there is no question of the investment in stock/excess cash being related to unexplained sources. In above context, it is important to see that the assessee has not been able to produce any documentary evidence, bills, vouchers, purchase & sale, documents to justify the additional income on account of excess stock/excess cash as related to business. If the AR is sure about the business nature of the receipts invested in stock/generated in cash necessary documentary evidence should have been adduced.

In the above grounds of appeal, the AR has contended that provisions of Section 115BBE are not applicable to the case of the assessee. Ongoing through the surrender letter on the letter head of Satwant Agro Tech dated 17.04.2018, it is seen that the tax on the disclosure during the survey has been offered as per provisions of Section 115BBE. It was only later on during the filing of return that the assessee changed his mind and brought the same under normal business income. In response to question No. 19 during the course of statement during the survey, the assessee said as under:

"I further state that I voluntarily surrendered a total of Rs. 69,60,000/- over and above my normal business income relevant to AY 2019-20. I will pay the tax @77.26% on the surrendered amount as per the surrender letter."

From the above, it is clear that the assessee had himself offered the said surrender to tax u/s 115BBE but later on retracted from the commitment.

In the case of PCIT vs. M/s. Khushi Barja & Sons Pvt. Ltd., the Hon'ble High Court of Punjab & Haryana in ITASoTi26 of 2015 dated 21.07.2016 held as under:

"It is not necessary that the surrendered amount is from business income. It could be on account of any other transaction legal or otherwise. Merely because an assessee carries on certain business, it does not necessarily follow that the

amounts surrendered by him are on account of its business transactions. There is no presumption that absent anything else an amount surrendered by an assessee is his business income. It is for the assessee to establish the source of such surrendered amount."

In the case of SVS Oil Mills vs. ACIT, Chennai, the Hon'ble High Court of Madras in ITA No. 765 of 2018 dated 26.03.2019, held in para 9 of the order, as under:

"When the excess stocks were found during the Survey, there is no question of allowing the Assessee to record any additional purchases because such purchases had already been recorded in the books of accounts of the Assessee. Therefore, the excess stock, per se, has to be naturally brought to tax as 'undisclosed income' by itself and there is no question of any corresponding deduction from that in such cases."

Similarly, in the case of Kim Pharma Pvt. Ltd. vs. CIT in ITA No. 106 of 2011 dated 27.04.2011, the Hon'ble High Court of Punjab & Haryana held that, where the amount surrendered during the survey was not reflected in the books of accounts and the source from where it was derived was not declared, the same was assessable as deemed income u/s 69A of the Act.

The Hon'ble Supreme Court in the cases of Roshan Di Hatti vs. CIT [1977] 107 ITR 938 (SC) and Kale Khan Mohammad Hanif vs. CIT [1963] 50 ITR 1 (SC) held that the law is well-settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any 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 above observations also get support from the decision of Hon'ble ITAT Cochin Bench, Cochin in the case of M/s. Elhima Jewellers vs. PCIT Kozhikode in ITA No. 208/Coch/2018, Assessment Year 2013-14 vide order dated 20.08.2018. The relevant para of this order is reproduced below:-

"6.2. The opening words of section 14 'Save as otherwise provided by this Act' clearly leave scope for 'deemed income of the nature covered under the scheme of sections 69, 69A and 69C being treated separately, because such deemed income is not income from salary, house property, profits and gains of business or profession, or capital gains, nor is it income from 'other sources' because the provisions of sections 69, 69A, 69B and 69C treat unexplained investments, unexplained money, bullion, etc., and unexplained expenditure as deemed income where the nature and source of investment, acquisition or expenditure, as the case may be, have not been explained or satisfactorily explained. Therefore, in these cases, the source not being known, such deemed income will not fall even under the head 'Income from other sources'. Therefore, the corresponding deductions, which are applicable to the incomes under any

of these various heads, will not be attracted in case of deemed incomes which are covered under the provisions of sections 69, 69A, 69B & 69C in view of the scheme of those provisions.

7. It is therefore, clear that, when the investment in or acquisition of gold, which was recovered from the assessee was not recorded in the books of account and the assessee offered no explanation about the nature and source of such investment or acquisition and the value of such gold was not recorded in the books of account, nor the nature and source of its acquisition explained, there could arise no question of treating the value of such gold, which was deemed to be the income of the assessee, as a deductible trading loss on its confiscation, because such deemed income did not fall under the head of income 'Profits and gains of business or profession'.

8. In our opinion, therefore, the Tribunal was perfectly right in holding that the value of the gold was liable to be included in the income of the assessee as the source of investment in the gold or of its acquisition was not explained and that the assessee was not entitled to claim that the value of the gold would be allowed as a deduction from his income."

Similarly in the case law of ITO Vs Dulari Digital Photo Services (P) Ltd. ([2012] 24 Taxman.com.31(CHD)), the question before the Co-ordinate Bench was whether unexplained cash credit under section 68 of the Act can be considered for set-off against losses under various heads of income. After examining the relevant provisions in detail, Co-ordinate Bench has clearly outlined that for income to be considered even from other sources, the sources have to be established. The relevant observations read as follows:

"14 Section 2(45) defines 'total income' as 'the total income referred to in section 5, computed in the manner laid down in this Act'. It is relevant to note that the principal charging section 4 makes the 'total income referred to in the principal charging section. Section 14 classifies the heads of income while sections 15 to 59 provide for its quantification. Chapter VI of the Income tax Act provides for aggregation of income and set off or carry forward of loss. Thus Chapter VI is in two parts; first part deals with aggregation of income while the second part deals with set off or carry forward of losses. Chapter has been placed after Chapter IV and V, It comes into play only after the computation of total income under the various heads of income in terms of in terms of Chapter IV has been done. Income falling under Chapter VI is taxed by aggregating the same with the income quantified in terms of Chapter IV. Chapter VI is not subservient to Chapter IV Besides, section 14 allows the taxability of income under specific provisions of the I. T. Act outside Chapter IV. For the reasons aforesaid, the income assessable under section 68 cannot be assessed as income from other sources under section 56.

15. Thus what is taxed under Chapter IV is income from a known source including income from other sources. A source of income means a specific source from which a particular income springs or arises. Once a source giving rise to a particular income is identified, it has then to be placed under a particular head of income as specified in section 14. Thus income can be taxed under a specific head of income as enumerated in section 14 only when it is possible to peg the same to a known source/head of income. If the nature and source of a particular receipt is not known, it cannot then be pegged to a known source/head of income. Chapter IV contemplates

computation of income arising from known sources/heads of income whereas Chapter VI, on the other hand, contemplates aggregation of the entire sum the nature and sources of which are not known. The aforesaid two Chapters are completely different in their nature, scope and effect. Though the income assessable under them are part of total income as defined in sections 2(45)/4/5 of the IT. Act yet that does not mean that income assessable under section 68 has to be assessed under section 56. In the case before us, source of unexplained cash credits is not known and hence they cannot be linked to any known source/head of income including income from other sources. In order to constitute 'income from 'other sources', the source, namely, the "other sources", has to be identified. Income from unexplained or unknown sources cannot therefore be considered or taxed as income from other sources.

The aforesaid view is fortified by the judgement of the Hon'ble Gujarat High Court in *Fakir Mohamed Haji Hasan V. CIT* [2001] 247 ITR 290/[2002] 120 Taxman 11 in which the Hon'ble High Court has held as under:-

"The scheme of sections 69,69A, 69B and 69C of the Income-tax Act 1961, would show that in cases where the nature and source of investments made by the assessee or the nature and source of acquisition of money, bullion etc. owned by the assessee or the source of expenditure incurred by the assessee are not explained at all, or not satisfactorily explained, then, the value of such investments and money or the value of articles not recorded in the books of account or the unexplained expenditure may be deemed to be the income of the assessee. It follows that the moment a satisfactory explanation is given about such nature and source by the assessee, then the source would stand disclosed and will, therefore, be known and the income would be treated under the appropriate head of income for assessment as per the provisions of the Act. However, when these provisions apply because no source is disclosed at all on the basis of which the income can be classified under one of the heads of income under section 14 of the Act, it would not be possible to classify such deemed income under any of these heads including income from "other sources" which have to be sources known or explained. When the income cannot be so classified under any one of the heads of income under section 14, it follows that the question of giving any deductions under the provisions which correspond to such heads of income will not arise. If it is possible to peg the income under any of those heads by virtue of a satisfactory explanation being given, then these provisions of sections 69, 69A, 69B and 69C will not apply, in which event, the provisions regarding deductions, etc., applicable to the relevant head of income under which such income falls will automatically be attracted.

The opening words of section 14 are "Save as otherwise provided by this Act" clearly leave scope for 'deemed income' of the nature covered under the scheme of sections 69, 69A, 69B and 69C being treated separately, because such deemed income is not income from salary, house property, profits and gains of business or profession, or capital gains, nor is it income from "other sources" because the provisions of sections 69,69A, 69B and 69C treat unexplained investment, unexplained money, bullion, etc., and unexplained expenditure as deemed income where the nature and source of investment, acquisition or expenditure, as the case may be, have not been explained or satisfactorily explained, Therefore, in these cases, the source not being

known, such deemed income will not fall even under the head 'Income from other sources'. Therefore, the corresponding deductions which are applicable to the incomes under any of these various heads, will not be attracted in the case of deemed incomes which are covered under the provisions of sections 69, 69A, 69B and 69C of the Act in view of the scheme of those provisions."

Accordingly, the arguments of the AR that the surrendered income is to be treated as business income of the assessee is not acceptable and the additions made u/s 69, are to be treated separately and it would not be possible to classify such deemed income falling under Chapter-VI, under any of the heads including 'income from other sources' but they will be aggregated along with the incomes computed under Chapter IV. The AR has not been able to adduce documentary evidence to establish the nexus between the surrendered income and business and no source for the surrendered income could not related to. The judgments cited supra i.e.:

- (1) Fakir Mohammed Haji Hasan Vs. CIT [(2001) 247 ITR 290 (Guj.)
- (2) PCIT vs. M/s. Khushi Ram & Sons Pvt. Ltd., the Hon'ble High Court of Punjab & Haryana in ITA No. 126 of 2015 dated 21.07.2016
- (3) SVS Oil Mills vs. ACIT, Chennai, the Hon'ble High Court of Madras in ITA No. 765 of 2018 dated 26.03.2019
- (4) Kim Pharma Pvt. Ltd. vs. CIT in ITA No. 106 of 2011 dated 27.04.2011,
- (5) The Hon'ble Supreme Court in the cases of Roshan Di Hatti vs. CIT [1977] 107 ITR 938 (SC)
- (6) Hon'ble Supreme Court in CIT vs. M Ganpati Mudaliar [1964] 53 ITR 623 and A Govindrajulu Mudaliar vs. CIT [1958] 34 ITR 807
- (7) Hon'ble ITAT Cochin Bench, Cochin in the case of M/s. Bhima Jewellers vs. PCIT Kozhikode in ITA No. 208/Coch/2018, Assessment Year 2013-14

also bring out a clear legal position that for any income to be treated as business income, the nexus/the source, has to be established. Hence, the action of the AO in applying the rate as prescribed u/s 115BBE on the surrendered income included in the ITR, treated by the AO as income u/s 69 in the assessment order, is found sustainable. Keeping in view the above facts and discussion, it is held that the AO has rightly treated the surrender of Rs. 10,00,000/- & Rs. 9,66,000/- on account of unexplained investment in stock and on account of difference in cash found during the survey as deemed income u/s 69/69A and to be taxed as per provisions of Section 115BBE of the Income Tax Act, 1961 and hence the same is confirmed.

5.3 Ground of Appeal No. 3 relates to addition of Rs. 50,00,000/- 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.

The credit of Rs. 50 lacs is there in the capital account of the firm shown as Rs. 25 lacs each from the individual partners. The assessee surrendered the same during the course of survey as no explanation regarding the source & the nature of the said credits 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 are squarely applicable to the case of the assessee as the credit is there in the capital account of the firm 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 there 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 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 Bench (ITA No. 2 of 2013) have also been quoted by the AR in support of his case.

The assessee is supposed to explain the nature of credits in the capital account of the firm. The assessee cannot shift the onus directly to the partners of the firm to avoid the due process of law.

The Hon'ble High Court of Rajasthan In the case of CIT v. Kishorilal Santoshllal [1995] 216 ITR 9 (Raj.) held that "*there is no distinction between the cash credit existing in the books of the firm, whether it is of a partner or of a third party; (ii) the burden to prove the identity, capacity and genuineness has to be on the assessee; (Hi) if the cash credit is not satisfactorily explained, the ITO will be justified to treat it as income from undisclosed sources; (iv) the firm has to establish that the amount was actually given by the lender; (v) the genuineness and regularity in the maintenance of the account has to be taken into consideration by the taxing authorities; (vi) if the explanation is not supported by any documentary or other evidence, then the deeming fiction created by section 68 can be invoked; (vii) simply because the amount is credited in the books of the firm in the partner's capital account, it cannot be said that it is not the undisclosed income of the firm and that in all cases it has to be assessed as an undisclosed income of the partner alone*"

Also, the Hon'ble High Court of Jammu & Kashmir in the case of Commissioner of Income-tax vs. Construction Engineers reported in [2017] 83 taxmann.com 268 (Jammu & Kashmir) in which it has been held that "*In course of assessment, Assessing Officer noted that certain amount was credited to capital accounts of partners of assessee-firm - Assessee's case was that said amount represented agricultural income of partners - Since assessee did not furnish any sort of evidence with regard to alleged agricultural income, Assessing Officer added said amount to assessee's income - Commissioner (Appeals) directed that addition made by Assessing Officer could be deleted only after verifying assessment records of partners that said income had been properly assessed in hands of partners - Tribunal, however, concluded that Assessing Officer could not make any addition in hands of assessee firm, even if such capital invested remained unexplained - Whether once a credit in books of assessee is found to be unexplained, a presumption is drawn against assessee in terms of section 68 that said credit is part of income of assessee unless it is rebutted by producing relevant cogent evidence on record - Held, yes - Whether in view of aforesaid legal position, impugned order passed by Tribunal was to be set-aside and that of Commissioner (Appeals) was to be upheld - Held, yes"*

Further, it has been held by the Ld. Hyderabad Bench 'A' in the case of ACIT vs. Durga Granites reported in reported in [2022] 138 taxmann.com 335

(Hyderabad - Trib.) that "During course of scrutiny assessment proceedings, Assessing Officer observed that partners of assessee firm had introduced cash in form of capital and by way of loan from partners into firm, however, since source for amount introduced in firm as capital and loan was not properly explained, Assessing Officer added same in hands of assessee as unexplained credit under section 68 - Whether therefore, onus was on assessee firm to establish genuineness of cash introduced in books of assessee firm - Held, yes - Whether since assessee firm had failed to establish source and genuineness of cash introduced in its books, addition made in hands of assessee firm was justified - Held, yes"

Hence, the addition of capital in the hands of the firm u/s 68 is justified,

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 lead 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 2 which is exercised in accordance with procedure with Section 250 indicate and 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. Penalty proceedings are initiated u/s 271AAC of the Income Tax Act, 1961.

The AR has also submitted that the addition in the partner's capital account of Rs. 50 lacs should be considered as explained under the unaccounted sales transactions of Rs. 42.80 lacs in the impounded documents and other discrepancies of Rs. 7.2 lacs found during the course of survey. The above facts have been verified from the statement recorded during the course of survey. It is seen that nowhere during the course of survey, the partner of the firm gave the statement that the unexplained credits in the capital account should be considered in lieu of the unaccounted sales reflected in the impounded documents. It is very clearly an afterthought whereby the assessee wants to claim the benefit of unrecorded sales being considered as part of the surrender made under the head of addition to partner's capital account. Hence, the above contentions of the AR cannot be accepted and is liable to be rejected. In above circumstances, the contention to adjust the unaccounted sales as part of the addition in partner's capital cannot be accepted. The ground of appeal is accordingly dismissed.

5.4 Grounds of Appeal Nos. 5 & 6: are regarding rejection the books of accounts u/s 145(3) and to make the addition of Rs. 23,35,000.00 which is duly covered under the surrendered amount. The AR has further contended that the Assessing Officer has wrongly made addition of Rs. 23,35,000.00 of entire unrecorded sales as undisclosed income. The AR also contended that the Assessing Officer accepted the opening stock, purchase & closing stock which clearly indicate that there is no unexplained investment of firm. The AR further submitted that the surrendered amount of Rs. 10,00,000.00 (excess stock) and Rs. 9,66,000.00 (excess cash) duly telescope with unrecorded sales of firm.

The survey in the case of the assessee was done on 16.04.2018. The transactions valued at Rs. 23.35 lacs as mentioned in the impounded documents pertain to a period earlier than 11.04.2018 i.e. before the date of survey. There is no doubt that the assessee has acknowledged the unaccounted transactions during the course of statement recorded at the time of survey. The contention of the AR that the unaccounted sales need to be telescoped with excess stock and cash is found to be correct as the cash generated from unaccounted sales can be considered to be invested in the excess stock and excess cash found during the course of survey. So, the benefit of unaccounted sales taxed during the Financial Year 2018-19 should be given to the excess stock and cash found during the course of survey. The addition on account of unaccounted sales of Rs. 23.35 lacs is accordingly reduced to Rs. 3,69,000/- (Rs. 23,35,000 - Rs. 19,66,000).

The AR has further questioned the rejection of books of accounts u/s 145(3) by the AO. The AR has contended that once the books have been rejected the provisions of Section 68/69 cannot be applied to the case of the assessee. The AO has rejected the books of accounts on two grounds:

- (1) unaccounted transactions as mentioned in the assessment order
- (2) failure to maintain the salary & wages register as acknowledged by the partner during the statement recorded during survey.

It has been held by the Hon'ble Andhra Pradesh High Court in the case of CIT vs. Margadarsi Chit Funds Pvt. Ltd. [1985] 155 ITR 442 that "*the AO must refer to inherent defect in the books and record a clear finding.*" The AO in this case has clearly recorded the findings for rejection of books of accounts.

It has further been held by the Hon'ble Supreme Court in the case of CIT vs. British Paints India Ltd., reported in [1991] 188 ITR 44 that "*it is duty of the AO to consider whether or not the books disclose the true state of accounts and correct income of the assessee.*"

As the AO has duly followed the legal precedents, the books of accounts have rightly been rejected.

The contention of the AR that the AO could not deem income u/s 68/69 in case the books of accounts had been rejected is not correct. There is nothing in law which prevents the Assessing Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained, and the business income estimated by him after rejecting the books of account of the assessee as unreliable.

This was so decided in the case of Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC). It has also been held in the case of CIT v. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194, 196 (SC) that "*whether in a given case the Assessing Officer may tax the cash credit entered in the books of account of the business, and at the same time estimate the profit must, however, depend upon the facts of each case.*"

It has been held in the case of CIT vs. Maduri Rajaiahgari Kistaiah [1979] 120 ITR 294 (AP) that "*where the unexplained cash credits are not referable to the business income of the assessee which was estimated, the Assessing Officer is not precluded from treating the unexplained cash credit as income from any other source.*"

Hence, the AO was very well justified in rejecting the books of accounts as well as making the necessary addition of deemed income. Hence these grounds of appeal are partly allowed."

26. Against the said findings and the directions of the Ld. CIT(A) the assessee is in appeal before us.

27. During the course of hearing, the Ld. AR reiterated the submissions made before the lower authorities and in particular, our reference was drawn to the P&L Account, Trading account where the assessee has duly honored the surrender so made at the time of survey and offered the income to tax under the head "business income". Further, our reference was drawn to the written submission filed before the Ld. CIT(A) and the contents thereof read a under:

"That the assessment in this case was completed u/s 143(3) vide order dated 27/09/2021 by ACIT/DCIT Central Circle, Patiala. The assessed income is amounting to Rs.96,15,250.00 against total returned income of Rs.72,80,250.00. The order passed u/s 143(3) reveals that there is an addition of Rs.23,35,000.00 on account of unaccounted sales and surrendered income was assessed u/s 69 read with section 115BBE of Income Tax Act 1961 which was disclosed by the assessee as "business income". The assessee firm filed the return declaring the business income of Rs.72,80,250.00 which included the surrendered amount of Rs.69,66,000.00. The income of Rs.69,66,000.00 (surrendered amount) has been declared voluntarily in return of income as per surrender letter, however the Assessing Officer treated surrendered income of Rs.69,66,000.00 u/s 69 and 69 A read with section 115BBE of Income Tax Act 1961. The Assessing Officer had not assessed the income under any head of income and had not mentioned under which head the Assessing Officer made the addition which is in violation of section 14 of Income Tax Act 1961. The turnover of the assessee exceeded Rs. 1,00,00,000.00 (one crore) and was compulsory audited u/s 44 AB of Income Tax Act 1961 and the auditor after going through facts of the case also concluded the entire surrendered amount as "business income". The assessee filed the

appeal which is pending for adjudication and the written submission with regard to different grounds of appeal is hereby submitted & furnished.

Ground of Appeal No.2- Excess stock of Rs. 10,00,000.00

Firstly:- That during the year under question, survey u/s 133A was conducted on the business premises of firm. Stock inventory was prepared which was reconciled with stock as per books and found the difference of Rs. 10,00,000.00 which was surrendered by firm for want of evidence and in absence to explain the discrepancy. The assessee firm offered the surrender amount for taxation of firm income and on quantum there is no contest/dispute however the action of Assessing Officer invoking provision of section 69 is in dispute as the difference relates to business income of firm which has shown as "business income" in return of income. The stock position is as under.

| | | |
|-----|--|-----------------------|
| i. | Stock as per inventory prepared u/s 133A | 1,24,60,160.00 |
| ii. | Stock as per books of account | <u>1,14,60,160.00</u> |
| | Difference | <u>10,00,000.00</u> |

That during the course of assessment the assessee firm contended that, "It is admitted fact that the said inventory was got signed from partner of firm which is purely based on estimate in number of goods, estimated value adopted not on the basis of purchase vouchers. These facts were narrated to Inspecting Officer however the assessee was so depressed by the threats of the department and at last in order to avoid litigation with department, the assessee firm surrendered the amount of Rs. 10,00,000.00 on account of excess stock. The additional income duly represents business income of firm.

That assessing officer held that, "The contention raised by assessee pursued and found not tenable (last three lines at page 4 of order) reads that, "The assessee claims the excess stock to be resultant of suppression of profit from business carried out in past thus the assessee has himself stated that he has carried out the suppression of profit and hence business receipts leading to unaccounted sales."

That the finding of Assessing Officer clearly indicates that either sales or profit not shown or unaccounted pertains to firm. The assessee firm also stated "when the stock was found excess only due to estimate reasons the Assessing Officer did not come to conclusion about unexplained/unrecorded purchases of assessee. Without such finding of unrecorded purchases, the investment as per books of account cannot be treated as unexplained investment as the stock in excess may be due to more production/yield on the manufacturing of agricultural implements, (reply of assessee at page 3 last and 4). So as per facts of case it is concluded that surrendered amount is business income of firm and may be considered as "business income" and there is no justification of invoking provision of section 69 read with section 115BBE of Income Tax Act 1961.

Secondly: - As per legal aspect the provision of section 69 is not applicable on following grounds.

I. That entry of excess stock of Rs. 10,00,000.00 duly incorporated in books of account of the financial year.

II. There is no finding about unexplained investment as no purchases were held as unrecorded in books of account moreover the year in which such excess stock pertains.

III. 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 dt 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.

Ground of Appeal No.3-Credit entry in partner's a/c of Rs.50,00,000.00.

Credit Entry in Partners Account of Rs.50,00,000.00 (Rs.25,00,000.00 each partner) assessed u/s 69 of Income Tax Act 1961.

Firstly:- During the course of survey u/s 133 A of Income Tax Act 1961, assessee firm surrendered an sum of Rs.50,00,000.00 for want of source, proof and evidence. The assessee firm paid the tax on surrendered amount, being, business income of firm however the Assessing Officer assessed this surrendered amount as income from undisclosed source treating as unexplained investment u/s 69 of Income Tax Act 1961 read with section 115BBE of Income Tax Act 1961. The order passed u/s 143(3) reads at Page 8 Para 3 as,

"Further during the course of survey proceedings conducted at the assessee's business premises on 16/04/2018, ongoing through the capital account of partners, it was observed by the survey team that an additional capital of Rs.25,00,000.00 each has been introduced in capital account of both partners. In Sh. Bhagwant Singh statement recorded on oath, it was asked to explain source of capital amounting to Rs.50,00,000.00 introduced by the partners of assessee firm in their respective capital account."

Held at page 11, second para of order reads, "On the perusal of the survey letter dated 17/04/2018 it is observed that assessee was not able to furnish any satisfaction explanation regarding source of capital introduced which was noticed during the survey and accordingly an additional income of Rs.50,00,000.00 was disclosed by the assessee, such unrecorded and unexplained capital introduced is an unexplained income and hence deemed income within the meaning of section 69 of Act.

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 investment 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 23 8 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 Lai 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 satisfactory explanation, section 69 is not applicable for firm's assessment."

viii. In Babu Lai C Borana 298 ITR 313 Bobmay 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." .

Thus in this case the amount of Rs.50,00,000.00 pertains to credit entry in books of account of firm for which it was held at page 11 of order (para 1) which reads, "it is pertinent to mention here that the heads of surrender of additional income amounting to Rs.50,00,000.00 on account of unexplained capital introduced found during the survey relates to the unexplained investment within the meaning of section 69 of the Act reads with section 115BBE of Act." In following decided cases of various courts it has held that fundamental condition for invoking section 69 is that entry should not be recorded in books of account.

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.

Secondly:- on facts that assessee firm surrendered the amount of Rs.50,00,000.00 as additional income of firm which is purely based on capital account of partners. The firm submitted before Assessing Officer which is incorporated at page 10 (last seven lines) as.

"The impounded slip pad contains sales transaction of Rs.42,80,000.00 which was surrendered alongwith other discrepancy of Rs.7,20,000.00. The total amount of sales transaction and other discrepancy were credited in partners account i.e Rs.25,00,000.00 each. The auditor considering the sale transaction of Rs.42,80,000.00 + 7,20,000.00 as income of firm credited the said amount of Rs.50,00,000.00 in profit & loss account."

That the Assessing Officer treated the amount of Rs.42,80,000.00 as business income of firm leaving aside the entry of Rs.50,00,000.00. The sale transaction was added as business income. The total entry of Rs.42,80,000.00 was related to A.Y 2018-19 & A.Y 2019-20 of Rs.27,05,000.00 & Rs.15,75,000.00 respectively. The assessing Officer made addition of Rs.23,35,000.00 against sale transaction of Rs.15,75,000.00 so in view of facts, the credit entry of Rs.50,00,000.00 which represents the sale transaction has wrongly assessed u/s 69A of Income Tax Act 1961 read with section 115BBE of Income Tax Act 1961.

(i) Prashant C Sharma Vs ACIT (2015) Tax Pub (Dt) 3701 (Mumbai Tribunal).
 "Where amount unaccounted in books of account was assessed on substantive basis in firm's hand and amount was equally credited in both the partners in their capital account the alleged amount of unexplained cash and Jewellery was to be set off against the amount available with each of partners as stated above as such to that extent the amount of cash was to be treated as explained.

Thirdly:- That the assessee firm surrendered the amount of Rs.50,00,000.00 credited in partner's capital account (Rs.25,00,000.00 each) as income however as per provision of law the credit entry should be assessed in partners account instead of firm. The assessee firm duly honoured the surrender and declared the said surrendered amount as additional income of business of firm however if Assessing Officer has changed the head of income i.e from business to unexplained investment u/s 69, then it should be considered as retreated the surrendered and should be decided as per provision of law. The provision of law and as per decided cases is that "where there is credit entry in partners account it should be assessed in individual partners hand and addition in firm is not justified in eyes of law. The surrender either shown by assessee in firm or accepted by department is against provision of law. The firm is not liable for payment of tax on said entry. The following decided cases clearly indicate the said provision of law."

- 1) 263 CTR 612- Credit in partners account should not be assessed in firm.
- 2) 23 Income Tax Matter 37 - Partner's unexplained amount cannot be assessed in firm.
- 3) 282 CTR 200- Partner's capital cannot be assessed in firm.
- 4) Supreme Court of India held in CIT Vs Lovely Exports (P) Ltd (2009) 319 ITR (ST) 5 that, "if the share application money is received by assessee company for alleged bogus shareholder, whose names are given to Assessing Officer, then the department is free to proceed to reopen their individual assessment in accordance to with law but it cannot be regarded as undisclosed income of assessee company.
- 5) India Rice Mills Vs CIT 218 ITR 508.-Credit in partners account should not be assessed in firm.

So the credit entry in partners account is not taxable in firm as income and should be assessed in individual partners account. If contention of surrendered letter is not acceptable to department, it should be treated as retreated from surrendered and unexplained amount/investment should be assessed as per legal provision of law.

In nutshell surrender amount on account of credit in partners account duly recorded in books is not assessable u/s 69 read with section 115BBE and the contention about sale transaction of Rs.42,80,000.00, the addition of surrender

should be appreciated and if Assessing Officer does not accept the version of firm, then addition of Rs.50,00,000.00 has wrongly made in firm which is assessable in partners account. The contention/version of assessee may be accepted and surrender amount may be assessed as "business income" and not u/s 69A of Income Tax Act 1961 read with section 115BBE of Income Tax.

Ground of Appeal No.4-Addition on account of difference in cash. Addition of Rs.9,66,680.00 u/s 69A.

During the course of survey u/s 133 A of Income Tax Act 1961 the assessee firm surrendered the amount of Rs.9,66,000.00 on account of difference in cash found and as per books of account.

| | |
|--|--------------|
| (i) Actual total cash (as per para 4 of order) | 11,65,546.00 |
| (ii) Cash in hand as per books | 1,99,546.00 |
| Difference | 9,66,000.00 |

The assessee firm surrendered the amount of Rs.9,66,000.00 and paid the tax . Now even the quantum of addition is not contested however the action of Assessing Officer of invoking section 69A is not justified in eyes of law & facts of case. The Assessing Officer rejected the books of account u/s 145(3) and made addition of Rs.23,35,000.00 on account of unrecorded sales as per impounded documents. The total sales transaction as per impounded documents is Rs.42,80,000.00 however addition pertaining to A.Y 2019-20 (year under question) of Rs.23,35,000.00 was made. The issue of cash difference is determined as under.

| | |
|---|------------------|
| (i) Cash in hand as on 16/04/2018 | 1,99,546.00 |
| (ii) Added sales transaction treated as unrecorded in books out of Rs.23,35,000.00 entry of Rs.7,60,000.00 pertains to goods to be delivered on 05/04/2018. | 15,75,000.00 |
| Total cash | 17,74,546.00 |
| Cash found | Rs. 11,65,546.00 |

The total cash included opening cash with cash of unrecorded sales of Rs. 15,75,000.00 the cash in hand as per record comes to Rs. 17,74,546.00 whereas only of Rs.1 1,65,546.00 was found. At this stage it is submitted that cash is on account sales transaction of firm and Assessing officer was not justified in eyes of law and on facts for invoking section 69A of Income Tax Act 1961. The cash as explained is excess then actually found during survey operation. The assessee firm has rightly claimed the difference as business income surrendered for want to evidence. The Assessing Officer himself assessed the unrecorded sales as "business income". There is no justification of invoking provision of section 69 of Income Tax Act 1961.

Ground of Appeal No.5 & 6- Addition of Rs.23,35,000.00 on account of unexplained sales.

During the course of survey operation u/s 133 A at business premises of firm, slip pads were impounded which contains entries of Rs.42,80,000.00 for A.Y 2018-19 and 2019-20, the year under question however entry dt 15/03/2018 of Rs.7,60,000.00 was also considered as the goods to be delivered on 05/04/2018. The total amount (15,75,000.00+7,60,000.00) Rs.23,35,000.00 was considered as unaccounted sales. The assessee firm contended that the slip pad is just "an order form" in which advance amount is written but Assessing Officer made addition by recasting the trading account and by rejecting the books of account u/s 145(3) of Income Tax Act 1961. The addition of Rs.23,35,000.00 is highly objected in view of facts of case.

Firstly:- This slip pad had already considered against surrendered amount of Rs.50,00,000.00. The assessee could not explain the impounded documents at the time of survey due to stress of officials of departments however surrendered the same against Rs.50,00,000.00. The separate addition of Rs.23,35,000.00 on account of slip pad is not justified.

(I) CIT Vs Jaora Flour & Foods (P) Ltd (2012) 344 ITR 294 (MP) "where the unrecorded sales & cash found during survey is recorded in the books of account subsequently addition cannot be made to income as such amount is duly accounted for in books of accounts and is not income from undisclosed sources"

Secondly:- This slip pad is just an order form which does not mention the exact amount of sale consideration. The advance money received by firm clearly indicates that this is not a sale voucher. The assessing Officer made addition of Rs.23,35,000.00 being unaccounted sales after rejecting the books of account u/s 145(3) of Income Tax Act 1961 which is not justified.

Thirdly:- The books of account has wrongly been rejected u/s 145(3) of Income Tax Act 1961. As the said pad had been considered against surrender of Rs.50,00,000.00. There is no other document to support the contention of Assessing Officer about rejecting of account books. No defect pointed out hence rejection of account books is not justified. Moreover assessment was completed u/s 143(3) not u/s 144 of Income Tax Act 1961.

Fourthly:- Without prejudice to my argument about alleged addition, the Assessing Officer is erred in law to make addition of whole of the amount of unaccounted sales whereas only gross profit on unaccounted sales should be added as decided by various courts. The Assessing Officer has wrongly rejected the trading account in accordance to facts of case. The actual trading account for whole of the year is as under.

| Particulars | | Amount | Particulars | Amount |
|-----------------------------|----------|------------------|-----------------------|------------------|
| Opening Stock | | 9335090 | Sales | 145452218 |
| Purchases | | 132606629 | Sales upto 17/09/2018 | 71067343 |
| Purchase upto 17/09/2018 | 57405444 | | Sales upto 31/03/2019 | 74384875 |
| Purchase upto 31/03/2019 | 75201185 | | Closing Stock | 14554995 |
| Direct Expenses | | 9324798 | | |
| Direct Exp. upto 17/09/2018 | 4305625 | | | |

Direct Exp. upto 31/03/2019 5019173

| | | |
|--|------------------|------------------|
| Gross Profit | 8740696 | |
| | 160007213 | 160007213 |
| Gross Profit Ratio Percentage | 6.00% | |
| Net Profit Ratio Percentage (Rs.72,63,292.00) | 4.99% | |

There are various following decisions in which it was held that entire sales unaccounted/outside books of account should not form addition however only gross profit ratio percentage should be assessed as these are not to be treated/considered as unexplained investment.

1. ITO Vs Gurbachan Singh 55 ITD 75 Ahmedabad ITAT Decided on 03/08/1995.
2. Issrani Ghanshyam Kolumal Vs ITO Rajkot ITAT decision on 14/12/2017 Appeal no.ITA162/RJT/2008.
3. Roop Niketan Vs ACIT 90 TTJ (Mumbai ITAT) 1097.
4. ACIT Vs XL Petrochem (P) Ltd (2004) 87 TTJ 827.
5. ACIT Vs Govindan (1999) 63 TTJ 271.
6. CIT Vs Sharda Real Estate (P) Ltd (2014) Tax PUB (DT) 1354 (MPHC) tribunal was justified in trading 25% of sale proceedings received in cash from business of purchases & sales of real estate & flats as income of assessee instead of making addition of the entire amount of sale proceeds received in cash.
7. In Manmohan Sadani Vs CIT 304 ITR 52 (MP) entire sale proceed cannot be assessed only net profit should be adopted.

That the addition of Rs.23,35,000.00 in this case is not justified as per facts of case however, if at all, addition is made it should be restricted to application of gross profit ratio percentage on unaccounted sales which can easily be determined at Rs. 1,40,100. The calculation is as under.

| | |
|--|-----------------|
| Unaccounted sales of | Rs.23,35,000.00 |
| Gross profit ratio percentage | 6% |
| Profit/alleged addition $23,35,000 \times 6\%$ | Rs. 1,40,100.00 |

So addition of Rs.23,35,000.00 is highly objected in view of above facts & decided cases.

28. Further, our reference was drawn to another written submissions filed before the Id CIT(A) and the contents thereof read as under:

"That during the course of survey u/s 133A on 16/04/2018, survey team noticed an entry of Rs.25,00,000.0 in both partners account which was duly credited on 10/04/2018. The appellant firm surrendered the amount during the course of

survey operation. The firm surrendered this amount over and above any business income as per surrender letter issued by firm. The Assessing Officer assessed this surrendered amount u/s 69 of Income Tax Act 1961 whereas appellant declared this amount as "business income". During the course of assessment proceedings u/s 143(2) the Assessing Officer noticed unrecorded sales worth Rs.42,80,000.00 on the basis of 'slip pad' impounded during the course of survey operation and on that very basis books of accounts were rejected u/s 145 of Income Tax Act 1961.

Now during appellate proceedings your honour asked why section 68 may not be invoked on entry of Rs.50,00,000.00 instead of section 69 as applied by Assessing Officer and further as shown by appellant as business income in books of account and return of income. The issue of applicability of section 68 is strongly objected in view of following facts.

Firstly :- That relevant entry in capital account of partner is neither credit entry u/s 68 nor unexplained investment u/s 69 of Income Tax Act 1961.

Secondly :- Where books of accounts are rejected u/s 145, section 68 is not applicable. In this case (page 16 of AO's order) it reveals "Accordingly the books of accounts maintained by assessee are hereby rejected u/s 145(3) of Income Tax Act 1961 of the act for reasons mentioned below.

- (i) Unaccounted transactions mentioned in Table no.I and.
- (ii) Failure to maintain salary/wages register."

Thirdly:- That surrendered amount was already credited on 10/04/2018 i.e before survey operation on 16/04/2018. The appellant proved the source of entry of Rs.25,00,000.00 each in partners account and stated as,

"The impounded slip pad contains sales transactions of Rs.42,80,000.00 which was surrendered alongwith other discrepancy of Rs.7,20,000.00. The total amount of sales transactions & other discrepancies were credited in partners account i.e Rs.25,00,000.00 each. The auditor considering the sale transaction of Rs.42,80,000.00+7,20,000.00 credited the said amount of Rs.50,00,000.00 in profit & loss account .(Page no 10% of order).

1. Entry of Rs.50,00,000.00 in capital account neither covered u/s 69 nor u/s 68

1.1 Entry of Rs.50,00,000.00 was duly credited on 10/04/2018 prior to survey u/s 133 A on 16/04/2018. By invoking of section 251 of Income Tax Act 1961 your honour proposed to change the nature of deeming provision to section 68 instead of section 69 applied by Assessing Officer. Section 251 (l)(a) reads that,

"In disposing of an appeal the Commissioner of Income Tax (Appeals) shall have the following powers.

- (a) In an appeal against the order of assessment, he may confirm, reduce, enhance, or annual the assessment.

That show cause reveals that your honour purposed to change the deeming provision of section 69 to section 68 of Income Tax Act which is neither covered

by any word confirm, reduce, enhance or annual. The assessment can be said to have been enhanced only if the tax assessment has been enhanced as decided in CF Tarkeshwar Nath Aggarwal Vs CST 34 STC 497-decided by Allahabad High Court.

Following decisions of various courts it was held that Assessing Officer should apply section 68 after application of mind & to form opinion after rejecting explanation offered by appellant.

1.2 *In case of Gandhi Ram Prop Gandhi General Store Vill. Sularharat ITAT Chandigarh ((ITA No.121/CHD/2021) decided on 04/08/2022 held that, "We have heard the rival contentions and pursued the material available on record. For exercise of jurisdiction u/s 263 of the Act, the order passed by the Assessing Officer should satisfy the twin tests of being erroneous as well as prejudicial to the interest of the revenue. As per Id PCIT, the discrepancies found, confronted and accepted by the assessee during the course of survey attract the deeming provisions of section 68, 69, 69A, 69B & 69C and the income referred therein is chargeable to tax at rate prescribed under section 115BBE Act. As per Id PCIT, the Assessing officer has failed to enquire about the source of income in order to assess the income under the appropriate head of income or the relevant deeming provisions and accordingly, the order so passed has been held as erroneous and prejudicial to the interest of Revenue. Thereafter, the Id PCIT has gone ahead and held that income of the assessee is income referred in the aforesaid deeming provisions and chargeable to tax under section 115BBE of the Act.*

Firstly, how the Id PCIT has arrived at a conclusive finding that the discrepancies found, confronted and accepted by the assessee during the course of survey attract the deeming provisions of section 68, 69, 69A, 69B & 69C is not apparent from the impugned order. Merely stating that excess cash is clearly covered u/s 68 or 69A, excess stock is covered u/s 69 or 69B, construction of Shed/Godown is covered u/s 69B or 69C and advances made to Sundry Parties is covered u/s 69, 69B or 69D is like an open ended hypothesis which is not supported by any specific finding that the matter shall fall under which of the specific sections and how the conditions stated therein are satisfied before the said provisions are invoked. It is like laying a general rule, which to our mind is beyond the mandate of law, that wherever there is a survey and some income is detected or surrendered by the assessee, the deeming provisions are attracted by default and by virtue of the same, provisions of section 115BBE are attracted. The Id PCIT has to record his specific findings as to the applicability of the relevant provisions and how the explanation called for and offered by the assessee is not acceptable in the facts of the present case which is clearly absent in the instant case. Therefore, where the Id PCIT himself is not clear about the applicability of relevant provisions and in the same breath holding the Assessing officer to task by not invoking the said provisions is clearly shooting in the dark which cannot be sustained in the eyes of law and the order so passed therefore cannot be held as erroneous in the eyes of law. "

1.3 165 ITR 453 Rajasthan High Court in CIT VS Tyaryamal Balchand (1987) additions were made in trading results further amount representing cash credit were also added as income from undisclosed sources. The Tribunal found that the

additions in trading results would cover the amount of cash credit as also substantial addition had been made in earlier year. Tribunal was justified in deleting the addition on account of cash credit.

1.4 The AO way out to approach a cash credit under section 68 of Income Tax Act 1961 is explained in case of *Badri Prasad Gupta VS Asstt. CIT* (2008) 14 DTR (Agra-Trib) 348 held that,

"It was observed that for a cash credit, two parties are required. The one is the assessee and the other is the cash creditor. Another person should have deposited a sum of money with the assessee. This 'another person' cannot be a fictitious person but he should be a real person, who can be also a legal juristic person, which is permitted under the Income Tax Act. The other person should have deposited his 'own money' and not the money of the assessee. Therefore, what is necessary to establish to prove a cash credit under section 68 is that any other person other than the assessee must have given or deposited money's worth with assessee out of his own money. Assessing Officer has been given unlimited power to ascertain veracity of fact vis-a-vis cash credit. Therefore, the assessing officer has to find out as to whether the deposit/gift/cash credit is a result of any collusion, is a result of any dubious device employed by the assessee, is a result of any subterfuge, which is aimed at evasion of tax. Therefore, even the cash credits by near and dear relatives and the partners of the firm can be genuine. These are to be doubted to a certain limit and thereafter the doubts should not be perennial."

1.5 Ld Judges of Punjab & Haryana High Court held in *Yash Pal Goel Vs CIT* (Appeals)(2009) 310 ITR 75 (P&H),

"Observation was the true nature and scope of section 68 and when and in what circumstances, section 68 would come into play. A plain reading of section 68 shows that there has to be credit of amounts in the books maintained by an assessee; such credit has to be of a sum during the previous year; and the assessee offers 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. The expression "*the assessee offer 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."

1.6 Ld Judges of Allahabad High Court in *Sunder Lai Jain VS CIT* (1979) 117 ITR 316 held that,

"Where there are unexplained cash credits in books of firm in the name of partners it should be treated as income of partner under section 69 and not u/s 68 of Income Tax Act 1961.

1.7 Ld Judges of Punjab & Haryana High Court in case of Mukand Cold Storage vs CIT 367 ITR 281 held that,

"From the above, it emerges that the money introduced in the names of the partners was in fact earned by the firm from its business of cold storage and was its unaccounted income. Further, no material had been produced to show that the partners had independent source of income. The assessee firm in spite of several opportunities having been provided to it to produce the partners so that confirmation of introduction of cash by them could be verified, had failed to comply with it. Further, the assessee had not furnished the addresses of the farmers from whom cold storage rent is alleged to have been received as the assessee had been carrying on the business of cold storage for the last at least more than 10 years. Moreover, no receipt in support of the alleged receipt of rent from the said farmers had been produced. The plea of the assessee that it was amount of the partners and not of the firm remained unsubstantiated. In view of the concurrent finding of fact recorded by the Assessing Officer, the Commissioner of Income Tax (Appeals) and the Tribunal, which have not been shown to be perverse or illegal in any manner, no substantial question of law arises.

1.8 Ld Judges of Ahmedabad Tribunal in case of C.K Industries Vs DCIT Co No.90 and ITA No.2 (AHD) of 2013 held that,

"Unless there is anything to demonstrate that the monies credited to partner's capital accounts were profit of the firm and as long as the partners have confirmed that the money is given by them to the firm, no addition under section 68 can be made in the hand of the firm in respect of credits to the partner's capital account in firm.

Further it is submitted that credit entry in capital account of partners was surrendered in firm which was duly accepted by department so in case of firm the addition/surrendered amount should be assessed as business income which concludes that neither section 69 nor section 68 is applicable in this case.

2. Section 68 is not applicable where books of account was rejected.

In this case books of account were rejected u/s 145(3) of income tax Act 1961. There are various decided cases in which it was held that section 68 is not applicable where books of account had been rejected. .

2.1 LD Judges of Punjab & Haryana High Courts in case of CIT Vs Dulla Ram decides on 22/10/2013 (unreported) held that,

"An Assessing Officer may, while considering a return of income, inspect the account books and, if satisfied, that account books do not reflect the true income of an assessee, reject the same. Account books once rejected, are ruled out of consideration and cannot be pressed into service whether by the assessee or the revenue. Thus, when account books are rejected, it would follow, as a necessary corollary, that entries in the account books whether suspicious or not

cannot be relied by the revenue or the assessee. To hold otherwise, would, in essence, render account books valid for certain purposes and invalid for others, a course impermissible in law. The Assessing Officer rejected the account books in their entirety and thereafter proceeded to assess income by applying a flat rate of profit of 10%. After applying a flat rate of profit of 10%, the Assessing Officer added Rs., 1,98,298.00 to the income of the assessee on the basis of certain 'entries' deemed to be suspicious. The Commissioner of Income Tax (Appeals) as Yag Dut 2013/11/13 13:54 I attest to the accuracy and integrity of this document well as the Tribunal have rightly held that as books of accounts were rejected in their entry, the Assessing Officer could not rely upon any entry in the books of account for making an addition of Rs. 1,98,298.00 .

2.2 Ld Judges of Gauhati High Court in Anand Ram Raitani Vs CIT 223 ITR 554 held that,

"The assessing officer before invoking the power under section 68 of the Act must be satisfied that there are books of account maintained by the assessee and the cash credit is recorded in the said books of account and if the assessee fails to satisfy the assessing officer, the said sum so credited has to be charged to income tax as the income of the assessee of the previous year. The existence of books of account is a condition precedent of invoking of the power. Discharging of burden is a subsequent condition. If the first point is not arise. Similarly in Smt. Shanta Devi Vs CIT (1988) 171 ITR 532 (P & H) the Punjab and Haryana High Court had the occasion to consider a similar point. While deciding the point court observed that a perusal of section 68 of the Act shows that in relation to the expression "books" the emphasis is on the word "assessee" meaning hereby that such books have to be books of the assessee himself and not any other assessee. A partnership firm is an assessable entity distinct from the individual partner. The books of account of a partnership cannot be treated as those of the individual partner.

So in this case books of accounts either suspicious or not cannot be relied by AO or appellant. Section 68 of income Tax Act 1961 is not applicable as it is pre-requisite condition that entry should be credited in books of accounts.

3. Source of entry explained not accepted.

During the course of survey operation u/s 133A certain loose 'Neelgagan Pad' was impounded which contains the entries of sales not recorded in books of account or could not reconcile with any entry in books. The total entries were amounting to Rs.42,80,000.00. The Assessing Officer added Rs.23,35,000.00 as unrecorded sales pertaining to year. A.Y. 2019-20. The appellant pleaded that entry of unrecorded sales worth Rs.42,80,000.00 alongwith other amount of Rs.7,20,000.00 was credited in partners account i.e. 25,00,000.00 in each partner account (total Rs.50,00,000.00). The Assessing Officer during the course of assessment proceedings did not accepted version of appellant however assessed Rs.50,00,000.00 u/s 69 of Income Tax Act and further addition of Rs.23,35,000.00 as profit from business of firm. This fact indicates that AO assessed unrecorded sales of Rs.42,80,000.00 however did not prove that this amount of unrecorded sales was invested anywhere except in firm. In absence of any evidence in controvert, the version of appellant should be accepted. There are

decided cases in which business income was assessed where amount of unrecorded sales was ploughed back in credit appearing in firm.

3.1 Allahabad High Court in case of CIT Vs Singhal Industrial Corporation (2006) 303 ITR 225 (All): the assessee, a partnership was deriving income from the business of manufacturer/assembly of diesel engine sets and diesel generating set. For the year under consideration, assessing authority made two additions one for Rs. 1,50,980.00 towards undisclosed profit on the sale of fuel injector equipment and a sum of Rs.89,500.00 toward unexplained cash credit under the head "Dealership Security Account". The Commissioner (Appeals) reduced the addition of Rs.,1,50,000.00 to Rs.89,500.00 and has deleted the addition toward unexplained cash credit for Rs.89,500.00. The Commissioner of Income (Appeals) found that the sales out of the books has been ploughed back in the form of deposits. A separate addition for the same would accordingly be deleted. In the net result the addition for deposits as well as extra consumption would be restricted to Rs.89,500.00. The Tribunal upheld the order of Commissioner (Appeals). It was held that the view of the Commissioner (Appeals) that sales out of the books had been ploughed back in the form of deposits and the separate addition for the same could be deleted, has not been challenged by the revenue before the Tribunal. The effect of the finding of the Commissioner (Appeals) is that it has been accepted that the sales out of the books of account has been deposited in the firm as cash credit. The addition in respect thereof at Rs.89,500.00 has been sustained, therefore, the Commissioner (Appeals) and the Tribunal have not deleted the addition made by the assessing authority as an unexplained cash credit under section 68 of the Act as it was explained, but it has been deleted on the ground that the deposits were out of sales made out of the books of accounts and the addition to that extent has been sustained.

3.2 Punjab & Haryana High Court held in CIT Vs Metal & Metals of India (2007) 208 CTR (P & H), it was observed that on the fact of the case, the firm has given explanation about the source namely Suresh Bhandari, partner, who himself was an assessee. The said partner had admitted having made deposit with the firm. Thus, as far as the firm is concerned, even if the claimed to have been received by Suresh Bhandari is to be rejected, the said Suresh Bhandari may be liable to be taxed by treating the said amount as undisclosed income, but the firm cannot be subjected to tax on the ground.

3.3 In CIT Vs K.S.M Guruswary Nadar & Sons (1984) 149 ITR 127 it was held that two additions, one towards suppressed books profit and other toward bogus cash credit, should be telescoped and covered into one addition.

3.4 In CIT Vs Burma Electro Corporation (2001) 252 ITR 344 held that, "The assessee was a firm comprising 12 partners. The cash credit to the extent of Rs. 10,000.00 of Shri Had Singh, Rs.5,000.00 of Shri Gurdev Singh and Rs.50,00 of Smt. Dhan Raj have not been properly explained by the assessee as sufficiency of funds at the time of assessment in their case to the extent have not been explained. In these circumstances, the Tribunal held that this amount of cash credits of the partners cannot be assessed as the income of the assessee-firm u/s 68 of the Income Tax Act but it may be assessed in their individual hands as their unexplained investments, if that is permissible u/s 69 of the Income Tax Act. Thus, according to the Tribunal the result was that the above calculated unexplained

cash credit relating to partners cannot be added in the income of the firm as its unexplained income. The High Court Held, "in our opinion, the reasons assigned by the Tribunal for deleting the additions are directly referable to the provisions of section 68 of the Act and we do not find any cogent reasons to interfere with the same merely because on a reappraisal of the entire matter it may be possible to form a different opinion."

3.5 In *Hindustan Tea Trading Co. Ltd Vs CIT (2003) 263 ITR 289 Calcutta*. "It was held that the power of the A.O u/s 68 is not an absolute one. It is subject to his satisfaction where an explanation is offered. The power is absolute where the assessee offers no explanation. The satisfaction with regard to the explanation is in effect an in-built safeguard in section 68 protecting the interest of the assessee. It provides for an opportunity to the assessee to explain the nature and source of the fund. Once it is explained, it is incumbent on the A.O. to consider the same and form an opinion whether the explanation is satisfactory or not."

So that credit entry of Rs.50,00,000.00 in partners account is not assessable either under section 68 or section 69 of Income Tax Act 1961 and more so where source was explained but not accepted. The invoking of section 251 to treat this amount u/s 68 of Income Tax Act is not justified."

29. Per contra, the Ld. DR has relied on the order of the lower authorities which we have taken note of supra.

30. We have heard the rival contentions and perused the material available on record. 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.

31. During the course of survey proceedings, stock as per books of account was found recorded at Rs 1,14,60,160/- however, on physical verification of stock lying in the business premises, it was found at Rs 1,24,60,160/- and there was a difference of Rs 10,00,000/- 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.

32. 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, the assessee has stated that during the course of survey operations, certain discrepancies were noticed in stock, cash and capital and to avoid litigation, he offer additional business income of Rs 10,00,000/- 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. Infact, the AO accepted the assessee's explanation that the excess stock has arisen out of suppression of profit from business carried out in the past, however, the same was not accepted for the reason that the assessee has not recorded the same in the books of accounts. No doubt, these transactions were not 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 and which has not been disputed by the AO, 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.

33. 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."

34. 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.

35. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the income of Rs 10,00,000/- 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 10,00,000/- under the head "Income from Business/profession" and apply the normal rate of tax.

36. Now, coming to the issue of capital introduced in the partner's capital account and whether deeming provisions of Section 68 can be invoked in respect of amount of Rs 50,00,000/- introduced in the capital account of the partners 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.”

37. In the instant case, it is an undisputed fact that a sum of Rs 25,00,000/- each has been found credited as additional capital in the capital account of partners of the assessee firm by the survey team. The Survey team had asked a specific question to the assessee during the course of survey 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 25,00,000/- each 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 50,00,000/-. However, during the course of assessment proceedings, the assessee submitted that the surrender so made was basis impounded slip pad by the inspecting officer during the course of survey which contains sale transaction of Rs 42.80 lacs along with other discrepancy of Rs 7.20 lacs. It was further submitted that the amount of Rs 50 lacs was credited in the profit/loss account and corresponding entry was passed in the partner's capital account to the extent of their share. The AO has not accepted the said explanation and has summarily rejected the same holding that unexplained capital introduced in the partner's capital account relates to unexplained investment within the meaning of section 69 of the Act. During the appellate proceedings, the Id

CIT(A) has invoked the provisions of section 69 instead of section 68 of the Act and has effectively confirmed the action of the AO. The explanation of the assessee regarding impounded slip pad has however not been addressed by either of the authorities. Given that the explanation so submitted is basis the impounded slip pad which is in custody of the Revenue, it was essential that the authorities below should have examined the impounded slip pad and thereafter, decided the matter. However, we find that no finding has been recorded by either of the authorities in this regard. We therefore deem it appropriate to remand the matter back to the file of the AO to examine the same afresh and decide as per law after providing reasonable opportunity to the assessee.

38. Now, coming to the issue of excess cash of Rs 9,66,000/- found during the course of survey, we find that in the statement of the partner of the assessee firm recorded during the course of survey, he was unable to explain the same and surrendered the amount to tax. The assessee firm never retracted the surrender so made and offered the same to tax in the return of income. However, in absence of necessary explanation submitted either during the course of survey or even during the course of assessment proceedings to the satisfaction of the AO, we don't find any infirmity in the action of the AO invoking deeming provisions of section 69A read with section 115BBE of the Act and the Id CIT(A) confirming the same.

39. Now, coming to the issue of unrecorded sales of Rs 23,35,000/-, we find that where the books of accounts have been rejected, it is a settled position that the gross profit has to be determined on the whole of the gross receipts including the receipts relating to unaccounted sales of Rs 23,35,000/- on reasonable basis and in the facts and circumstances of the present case, we find that it would be appropriate to estimate gross profit rate of 6% on whole of

the gross receipts. In view of the same, the addition is restricted to Rs 1.40 lacs and the remaining addition is hereby directed to be deleted.

40. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 03/05/2024.

Sd/-

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

Sd/-

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

AG

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