

आयकर अपीलिय अधिकरण, चण्डीगढ न्यायपीठ "ए", चण्डीगढ
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
HEARING THROUGH: PHYSICAL 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. 508/Chd/ 2022
निर्धारण वर्ष / Assessment Year : 2017-18

Aargee Enterprises Branch Office-7087/10, Ground Floor, Mata Rameshwari Nehru Nagar Karol Bagh, New Delhi	बनाम	The Pr. CIT Rohtak
स्थायी लेखा सं. / PAN NO: AAWFA2764R		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Y.P. Rawla, CA
राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR
सुनवाई की तारीख/ Date of Hearing : 07/03/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 04/06/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. Pr. CIT, Rohtak dt. 14/03/2022 passed u/s 263 pertaining to A.Y. 2017-18 wherein the assessee has taken the following grounds of appeal:

- 1. That having regard to the facts and circumstances of the case, Ld. Principal Commissioner of Income Tax has erred in law and on facts the issuance of Notice u/s 263 of the Act was illegal and there was no facts which was not disclosed in the assessment proceedings.*
- 2. On the facts and circumstances of the case, the order passed by Pr. CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of lack of enquiry, not in the case of inadequate enquiry.*
- 3. That on the facts and circumstances of the case and provisions of the law, the Order passed by the Ld CIT u/s 263 is illegal, bad in law and devoid of merits as Ld CIT has failed to appreciate the fact that the impugned proceeding were in consequence of survey proceeding and no incriminating document or other than business stock was found.*
- 4. That on the facts and circumstances of the case and provisions of the law, the Order passed by the Ld CIT u/s 263 is illegal, bad in law and devoid of*

merits as for revision to be made u/s 263 both the conditions as given in the section 263 has to be followed simultaneously.

That the relief prayed may kindly be allowed and the order of the PCIT may kindly be quashed, set aside, annulled or modified.

2. Briefly the facts of the case are that a survey operation under section 133A was carried out at the business premises of the assessee firm on 12/06/2016. During the course of survey operation, certain discrepancies were noticed and as a result, the assessee offered a sum of Rs. 1,00,00,000/- apart from its normal business income. Subsequently, the assessee filed his return of income on 07/11/2017 showing total income of Rs. 1,08,79,404/- including the surrendered income of Rs. 1,00,00,000/-. The case of the assessee was taken up under compulsory scrutiny and notice under section 143(2) and 142(1) were issued alongwith detailed questionnaire. After taking into consideration, the submissions of the assessee, the returned income was accepted by the AO and assessment order dt. 17/12/2019 was passed by the AO under section 143(3) of the Act.

2.1 Subsequently, the assessment records were called for and examined by the Ld. Pr. CIT and a show cause under section 263 dt. 09/02/2022 was issued and thereafter, in absence of any reply and submissions so filed by the assessee, the assessment order passed under section 143(3) was held to be erroneous in so far as prejudicial to the interest of the Revenue as the income surrendered during the course of survey should be brought to tax as unexplained income u/s 68/69/69A/69B/69C and tax should have been charged at the rate of 60% u/s 115BBE as amended and which the AO has failed to do so, hence, the matter was set aside to the file of the AO for passing a fresh order in accordance with law, keeping in view the observation made in the impugned order and after providing reasonable opportunity to the assessee.

3. Against the said findings and directions of the Ld. Pr. CIT, the assessee is in appeal before us.

4. During the course of hearing, the Ld. AR submitted that the assessee filed its return of income declaring total income of Rs 1,08,79,404/- under the head "Income from Profit and Gains from Business or Profession". It was submitted that during the course of survey proceedings, the assessee surrendered a sum of Rs. 100,00,000/- on account of excess stock of Rs. 91,00,150/- in comparison to what has been recorded in the books of accounts and Rs. 9,00,000/- excess cash found in comparison to cash book. It was submitted that the said amount of Rs. 100,00,000/- was credited in the P&L Account as normal business income and thereafter the return of income was filed and the taxes were paid at normal rate of tax.

5. It was submitted that during the course of assessment proceedings, the AO vide notice under section 142(1) dt. 23/08/2019 specifically inquired about the income surrendered during the course of survey and in response the assessee filed his submissions dt. 29/08/2019 and 13/12/2019. It was submitted that taking into consideration the submissions filed by the assessee and after due application of mind, the assessment proceedings were completed by the AO wherein he accepted the returned income and no additions were made.

6. It was submitted that in the above factual background, the AO took a possible view on the taxability of income surrendered by the assessee and accepted the sum surrendered as part of the business income of the assessee and accordingly the revision proceedings have been initiated by the Id PCIT merely basis difference of opinion which cannot be a ground to determine as to whether the order passed by the AO is erroneous and prejudicial to the interest of the Revenue.

7. It was further submitted that the Ld. Pr. CIT has erred in invoking the Explanation 2 to Section 263 as the case of the assessee does not fall in any of the limb of the said explanation. It was submitted that the AO made necessary and proper enquiries on the issue concerned and there is no lack of inquiry as specific inquiry was made by the AO on the issue involved.

8. It was further submitted that the assessee has duly disclosed the amount of surrendered income in the P&L Account and which is only on account of business of the assessee and the said fact has been accepted by Survey Team during the course of survey as well as by the AO during the assessment proceedings. It was accordingly submitted that the amount surrendered pertains only to the business of the assessee and in view of the said explanation which has been found reasonable and acceptable to the AO, he has not invoked the deeming provisions along with provisions of Section 115BBE of the Act.

9. In support of the aforesaid contentions, the reliance was placed on the decisions of Coordinate Chandigarh Benches in case of Gandhi Ram Vs. The Pr. CIT (*ITA No. 121/Chd/2021 dt. 04/08/2022*), in case of Shri Bal Krishan Vs. The Pr. CIT (*ITA No. 406 to 409/Chd/2021 dt. 16/03/2023*), Bindas Foods Pvt Ltd (*ITA No. 409/CHD/2021*) and Bajaj Sons vs DCIT (*ITA No. 1127/CHD/2019*); and the decisions of the Hon'ble Delhi High Court in case of CIT vs Anil Kumar Sharma 335 ITR 83(Del) and CIT vs Sun Beam Auto Ltd 332 ITR 167 (Del).

10. Per contra, the Ld. CIT/DR supported the order and the findings of the Ld. Pr. CIT. It was submitted that during the course of survey, the assessee had surrendered an amount of Rs. 1,00,00,000/- which is in the nature of excess stock and excess cash which was not accounted for in the books of accounts. It was submitted that assessee in his return of income has shown the surrendered income as business income and has paid taxes as per normal slab rate. It was submitted that during the course of assessment proceedings, the assessee failed

to submit any explanation for showing the surrendered income as normal business income. It was submitted that the amount so surrendered represent the undisclosed income of the assessee which would have never come to light had there been no survey action under section 133A of the Act and the same could not be treated as normal business income and have to be considered as unexplained income under section 69, 69A and 69B of the Act and the tax rate @ 60% should have been applied as per the provisions of Section 115BBE of the Act in terms of amendment to Section 115BBE by taxation laws 2nd Amendment Act, 2016. It was accordingly submitted that in this case, the AO should have considered the amount so surrendered as unexplained income under section 69A to 69B and the tax should have been charged under section 115BBE of the Act.

11. It was further submitted that this was the only possible view in the facts and circumstances of the present case wherein the provision of Section 115BBE are applicable on surrendered income after taking cognizance of prevalent provisions of law and therefore the contention of the Id AR that the AO has taken a possible view cannot be accepted. It was accordingly submitted that there is no infirmity in the order of the Ld. Pr. CIT wherein the order so passed by the AO has been held as erroneous in so far as prejudicial to the interest of the Revenue.

12. We have heard the rival contentions and purused the material available on record. We have dealt with a similar matter in case of **Bal Krishan and Others vs PCIT** (*supra*) in terms of applicability of deeming provisions in context of survey proceedings and the invocation of jurisdiction by the Id PCIT u/s 263 and we therefore deem it appropriate to refer to the discussions therein, which we find are equally relevant in the present context, and the same read as under:

"16. We have heard the rival contentions and purused the material available on record. The limited issue under consideration relates to nature and source of income surrendered by the assessee during the course of survey and the

explanation so offered by the assessee. In this regard, we find that survey operations u/s 133A were conducted at the business premises of M/s Shankar Agro Food and whose business has since been taken over by the assessee company, M/s Bindas Food Pvt Ltd. During the course of survey, statement of Shri Kewal Krishan, Partner in M/s Shankar Agro Food and now Director in M/s Bindas Foods Pvt Ltd was recorded on 31/08/2016 and the relevant contents thereof read as under:

"Q.3:- Your attention is drawn towards the trading account submitted by you and the stock statement counted physically whereby there is a difference of stock to the extent of 2086 Qtls. when this is calculated at average rate, the excess stock comes out to Rs. 1,02,98,582/- Please explain the discrepancy?"

Ans:- I acknowledge the difference in stock found during physical verification. To cover up the discrepancy, I voluntarily surrender an income of Rs. 1,02,98,582/- over and above my regular income.

Q.4:- Your attention is drawn to page no.1 of Annexure A-2 wherein an amount of Rs. 19,79,682/- is mentioned. The page reads in as Manohar Lal Faqir Chand Commission Agent, Mudki/Kabbar Vachha. Please explain about the same?"

Ans:- The amount of Rs. 19,79,682/- is receivable from M/s Manohar Lal Faqir Chand, which we did not account for. Now I surrendered this amount of Rs. 19,79,682/- as our voluntary income.

Q 5. Your attention is drawn to page no. 11 of Annexure A-2, wherein an amount of Rs.2,57,147/-is written. The slip reads in as 'Pyare Sukhdev'. Please explain about the same.

Ans:- This amount of Rs. 2,57,147/- is receivable from M/s Pyare Sukhdev which we did not account for. Now I surrender this amount of Rs. 2,57,147/- as our voluntary income.

Q 6. Your attention is drawn to various other loose slips numbering 1 to 15 which deals in Rs. 76,63,171/-. Please explain nature and details of these slips and entries therein?"

Ans:- These are the various amounts receivable from various parties by us. I acknowledge the fact that these amounts could not be entered into books of accounts at that time. Now realising the mistake, I voluntarily surrender the amount of Rs. 76,63,171/- over and above my normal income.

Q 7. Do you have anything else to say?"

Ans:- I am surrendering total amount of Rs. 2,02,00,000/- purely on voluntary basis without any pressure or fear. Further, I want to state that the Income Tax Team was very courteous and cooperative. I further plead that I may be excused from penalty and prosecution."

17. In this regard, we further refer to the surrender letter dated 01/09/2016 submitted by the assessee company before DDIT(Investigation), Ludhiana and contents thereof read as under:

To.

Dated: 01/09/2016

The Deputy Director of Investigation, Ludhiana

Sub - Surrender of income in lieu of Survey Action on our premises u/s 133A.

Dear Sir

Our premises were Surveyed u/s 133A by Income Tax Department and a team lead by Sh. Prem Singh, IRS Deputy Commissioner Income Tax.

During the Course of Survey certain discrepancies were found as (per) our recorded statements. To buy peace of mind and to avoid litigation we voluntarily surrendered a sum of Rs. 2,02,00,000/- (Rupees two Crore and two Lacs only) the detail of which are given below:-

Due to Difference in Stock - Rs. 1,02,98,582/-

On Account of Amount Received - Rs. 99,01,418/-

We are enclosing cheques details as below. Further the surrendered amount will be shown in our income for F.Y. 2016-17 in addition to our normal income. This surrender is voluntary and subject to no penalty and prosecution. The cheques are issued against Taxes on surrender Income.

CH No. 396551 dt 15.11.2016 - Rs. 17,40,000/-

CH No. 396552 dt 15.03.2017 - Rs. 17,00,000/-

CH No. 396553 dt 30.06.2017 - Rs. 17,00,000/-

CH No. 396554 dt 30.09.2017 - Rs. 17,00,000/-

Rs. 68,40,000/-

This amount is given in four installments due to financial hardship and seasonal nature of our business. It is therefore requested that the installments as requested may be granted.

It is further requested that the firm is likely to be taken over on the basis of as it is (assets & liabilities) by a company Bindas Agro Foods Pvt. Ltd. and this surrender will stand in the name of said company if it is taken over and the liabilities of this firm will cease being merged in aforesaid company.

Thanking you,

Yours faithfully

Sd/-

Partner

18. The nature of surrendered income was therefore difference in stock and unrealized sundry receivables generated out of out of book sales undertaken by the assessee. The factum thereof has been accepted by the Survey team lead by Id DDIT (Investigation) and thereafter by the Assessing officer during the course of assessment proceedings after due examination. The Assessing officer has issued a specific show-cause dated 26/12/2018 and has referred to the survey

proceedings wherein it was stated that stock inventory was prepared physically and compared with the books of account and it was observed that there was difference in the stock. Besides, there were certain loose documents / accounts in respect of certain parties representing the amounts receivables. All these issues were duly confronted to Sh. Kewal Krishan as per the statement recorded on 31.08.2016. Keeping in view the discrepancies in the stock as well as amounts receivables, these have been declared as additional income over and above the normal income for the A.Y. 2017-18 as detailed below:

"Surrendered on account of difference in stock	Rs. 1,02,98,582/-
Surrendered on account of amount receivable from Monahar Lal Fakir Chand.	Rs. 19,79,822/-
Surrendered on account of amount receivable From Pyare Sukhdev	Rs. 2,57,147/-
Surrendered on account of amount receivable As per loose papers	<u>Rs. 76,63,171/-</u>
Total amount surrendered	Rs. 2,01,98,582/-

19. And the assessee was issued a show-cause as to why the provisions of section 115BBE be not invoked and thereafter, after taking into account the findings of the survey team and his own independent examination, the AO has accepted the nature and source of surrendered income as arising out of business operations subject to normal taxation as against taxation under the deeming provisions of section 115BBE of the Act. We therefore find that the assessee has been asked specific questions regarding not just the discrepancy but the nature and source thereof during the course of survey and it is clearly emerging that the source of such income is from its business operations. Further, the said fact is corroborated by physical stock taking conducted by the survey team and there is no finding that the stock so found is different from the one in which the assessee deals regularly and comparison thereof with the stock recorded in the books of accounts, the details of the parties from whom the amount was receivables as part of regular business dealings and the surrender letter dated 01/09/2016. Apparently, the Id PCIT has failed to take into consideration these documents and findings of the survey team which are very much part of the records. Following the surrender so made during the course of survey, the assessee has honored the surrender so made and offered the additional income as business income in his return of income and paid due taxes thereon. During the course of assessment proceedings, the Assessing officer has specifically taken cognizance of these facts, as apparent on the face of the assessment order that assessee has voluntarily surrendered Rs 2,02,00,000/- over and above the normal business income in his return of income and has accordingly not drawn any adverse inference.

20. We therefore find that the Assessing officer has duly taken cognizance of the findings of the survey team, the documents found during the course of survey, the statement of the partner/director of the assessee company recorded during the course of survey, the surrender letter and the return of income, and after

examination thereof and due application of mind, income has been rightly assessed under the head "business income". In light of the same, we are of the considered view that the order so passed by the Assessing officer cannot be held as erroneous due to lack of enquiry or for that matter, requisite enquiry on the part of the Assessing officer. Where the Assessing officer after due appreciation of facts and circumstances of the case, assessed the income under the head "business income" and didn't invoke the deeming provisions as so suggested by the Id PCIT, we do not believe that there is any error on part of the Assessing officer and the order so passed by him cannot be held as erroneous.

21. The Id PCIT has held that the moment any income representing any excess stock/investment/receivables/cash/bullion etc is found during survey/search and not recorded at that point in time in books of accounts, the same being in nature of deemed income as mentioned u/s 69/69B/69C etc, the provisions of section 15BBE are attracted. In our view, what is relevant before invoking the deeming provisions is not just the factum of survey/search action but besides that, what is the explanation so offered by the assessee explaining the nature and source of income so found during the course of survey/search proceedings and the same is the essence of the statutory provisions as duly recognized by the Courts. The mere fact that survey/search proceedings have been initiated at the business premises of the assessee doesn't mandate the Assessing officer to invoke the deeming provisions automatically and before invoking the deeming provisions, he has to call for the explanation of the assessee and only where the explanation so offered is not found satisfactory, he can proceed and invoke the deeming provisions. In case of **Gandhi Ram** (Supra), speaking through one of us, it was held as under:

5. "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 15BBE 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."

22. As we have noted above, the Id. PCIT without taking into consideration the findings of the survey team, the documents found during the course of survey,

the statement of the partner/director of the assessee company, the surrender letter and subsequent enquiry and examination conducted by the AO during the course of assessment proceedings has recorded a finding that the provisions of section 115BBE are applicable in the instant case. Where the Id PCIT dispute the nature of such surrender or the findings of department's own survey team as well as that of the AO, he has to lead positive evidence to arrive at any contrary finding. Nothing has been brought on record in this regard. Therefore, the picture which is clearly emerging from the material available on record is the nature of surrender is amount of difference in stock of goods regularly dealt with by the assessee in normal course of its business and unrealized receivables from the sales undertaken by the assessee as part of his regular business dealings and which have not been recorded in the books of accounts. Where the assessee has subsequently recorded the same in his books of accounts as part of business income, it cannot be said that the said action on part of the assessee is not in accordance with accepted accounting methodology and the nature of such income is other than business income. We find that similar view has been taken by the Coordinate Chandigarh Benches in case of **Famina Knit Fab** (Supra) after taking into consideration the decisions of the Hon'ble Punjab and Haryana High Court in case of Khushi Ram (supra) and Kim Pharma (supra) and wherein it was held as under:

"19. In the facts of the case in ITA No. 408/Chd/2018, the income surrendered was on account of unaccounted receivables of the business of the assessee amounting to Rs. 1.25 crores. The Ld. CIT (A) in para 9 of the order has outlined the facts relating to the surrender made by the assessee stating that during survey a pocket diary was found from the account section of the assessee-company which contained entry of receivables amounting to Rs. 1.25 crores on pages 27, 28, 31 and 33, which were not recorded in the regular books of the assessee and were subsequently surrendered stating that these entries were unaccounted sundry receivables being surrendered as income under the head business, to buy piece of mind and subjected to no penalty and further that the losses incurred by the assessee in the impugned year will be adjusted against this surrendered income. The relevant facts as stated by the CIT (A) in para 9 of his order and which are not disputed, are reproduced hereunder:

"9. Adverting now to the facts of the instant case, it is seen that when survey proceedings were conducted at the business premises of the appellant company, a pocket diary was found from the accounts section which contained entries of receivables amounting to Rs. 1.25 crores on page Nos. 27, 28, 31 and 33, which were not recorded in the regular books of account. When these entries were confronted to the appellant company while recording the statement on 15/09/2012, it was stated: "that these entries are sundry receivables which has not been accounted for in the books of account and in order to buy peace of mind, the same is surrendered as income under the head business for RY. 2012-13 relevant to Asstt. Year 2013-14 subject to no penalty and prosecution under the I.T. Act, 1961. Since the company is incurring losses in current FY. 2012-13, the surrendered income will be adjusted against these losses." [Extracted from the impugned assessment order; pages 5 &6]."

20. Clearly, it is evident from the above that the surrender was on account of debtors/receivables relating to the business of the assessee only. The Revenue has accepted the surrender as such, as being on account of receivables. It follows that the debtors were generated from the sales made by the assessee during the course of carrying on the business of the assessee, which was not recorded in the books of the assessee. Though the said income was not recorded in the books of the assessee, the source of the same stood duly explained by the assessee as being from the business of the assessee. Even *otherwise, no* other source of income of the assessee is there on record, either disclosed by the assessee, or unearthed by the Revenue. The preponderance of probability, therefore, is that the debtors were sourced from the business of the assessee. Therefore, there is no question of treating it as deemed income from undisclosed sources u/ss. 69, 69 A, 69B and 69C of the Act and the same is held to be in the nature of Business Income of the assessee. Having held so, the same was assessable under the head "business and profession" and as stated above, the benefit of set off of losses, both current and brought forward, was allowable to the assessee in accordance with law.

21. The contention of the Revenue, therefore, that the income be treated as deemed income u/s. 69,69A/B/C of the Act is, accordingly, rejected and, as a consequence thereto, the plea that no set off of losses be allowed against the same u/s. 115BBE of the Act, also is rejected."

23. In the instant case, as we have discussed above, it is evident that deeming provisions are not applicable. Even for sake of argument, where such a view is taken on face value, it would be a case where a different point of view has been expressed by the Id PCIT though without any corroborative evidence, in any case, the same doesn't lead to the conclusion that the view taken by the Assessing officer as erroneous as the AO has taken into consideration the entirety of facts and circumstances of the case, the explanation offered by the assessee during the course of survey regarding the source of such income and thereafter, has assessed the income under the head "business income". The view so taken by the Assessing officer is after due application of mind and therefore cannot be held as unsustainable in the eyes of law.

24. In light of aforesaid discussions and in the facts and circumstances of the present case, where there are specific questions asked during the course of survey regarding the nature and source of income and which has been adequately responded to by the assessee and thereafter acted upon in terms of disclosing the income in the return of income under the appropriate head of income and where the same is duly examined and taken into consideration by the Assessing officer during the course of assessment proceedings, the order so passed by the Assessing officer cannot be held as erroneous in nature. In the result, the order of the Id PCIT u/s 263 is set-aside and that of the Assessing officer is sustained."

13. In the instant case, in the show cause issued under section 263 of the Act, the Ld. Pr. CIT has stated that during the course of survey proceedings at the assessee's business premises, certain discrepancy were observed and

confronted to the assessee and in response, the assessee offered a sum of Rs. 1,00,00,000/- which is largely in the nature of unexplained cash and excess stock. It was further stated by the Ld. Pr. CIT that in the return of income, the surrendered income of Rs. 100,00,000/- has been shown under the head "Profit & Gains from Business & Profession" and taxes have been as per normal slab rate instead of tax payable at the rate of 60% u/s 115BBE of the Act. Thereafter, the assessee was also asked to justify as to why the tax have not been paid as per the provisions of Section 115BBE of the Act. Basis the above it was stated by the Ld. Pr. CIT that there was failure on part of the AO in this regard and re-computation of tax is required to be made on the surrendered income as per section 115BBE of the Act.

14. We therefore find that the show cause U/S 263 has been issued for the reason that there was a survey operation at the business premises of the assessee and assessee has offered a sum of Rs. 100,00,000/- during the course of survey and since the assessee has not paid taxes as per the provisions of Section 115BBE of the Act, the Ld. Pr. CIT deemed it appropriate to invoke his jurisdiction under section 263 of the Act. In our view, the very basis of invocation of jurisdiction under section 263 suffers from serious fallacies in the sense that the unexplained income found and surrendered during the course of survey proceedings have been sought to be brought to tax straightway under section 115BBE of the Act. And if we look at the provisions of Section 115BBE of the Act, it provides that where the total income of the assessee includes any income refer to in section 68, 69, 69A, 69B, 69C and 69D which is either reflected in the return of income furnished by the assessee or determined by the AO, the income tax payable shall be at the rate specified therein. Therefore, for section 115BBE, which talks about specified rate of tax, to be applicable in the instant case, the deeming provision of Section 68 to 69D needs to be satisfied at first instance and only in those cases where the deeming provisions are applicable, the tax rate as specified in Section 115BBE of the Act can be applied. Further if we look at the

deeming provisions, it provides that where the assessee has made investments which are not recorded in the books of accounts and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory in the opinion of the AO, the value of investment may be deemed to be the income of the assessee for such financial year. We therefore find that there is thus a difference in terms of the undisclosed income and the unexplained income and the deeming provisions are attracted in respect of the undisclosed income which may be found during the course of survey but before the same is assessed and brought to tax under the deeming provision, what is relevant to examine is the sufficiency and adequacy of the explanation so submitted by the assessee explaining the nature and source of such income. There is thus a difference between the undisclosed income and the unexplained income which apparently is absent on the face of the show cause notice. As we have held in case of Bal Krishan Vs. Pr. CIT and Others (*supra*), the mere fact that the survey proceedings have been initiated at the business premises of the assessee doesn't by default mandate the AO to invoke the deeming provision and before invoking the deeming provision, he has to call for the explanation and only where the explanation so offered is not found satisfactory, he can proceed and invoke the deeming provision.

15. Moving further, let's look at the findings of the Ld. Pr. CIT as to how he has held that the order so passed by the AO is erroneous in so far as prejudicial to the interest of the Revenue. The Ld. Pr. CIT has stated that survey under section 133A of the Act was conducted at the business premises of the assessee on 12/06/2016 and certain discrepancy were found, confronted and accepted by the assessee during the course of survey proceedings in terms of excess cash of Rs. 9,00,000/- and excess stock of Rs. 91,00,000/- and the case of the assessee is squarely covered under the deeming provision of 68/69/69A/69B/69C and tax was liable to be paid at the rate of 60% u/s 115BBE of the Act. As we have noted above, there is no findings recorded by the Ld. Pr. CIT as to how

explanation so called for from the assessee in terms of excess cash and excess stock during the course of survey proceedings and thereafter, during the course of assessment proceedings was not found acceptable to the Ld. Pr. CIT.

16. As we have held in case of *Gandhi Ram Vs. Pr. CIT (supra)*, the Ld. Pr. CIT has to record specific findings as to the applicability of the relevant deeming provision and how the explanation called for and filed by the assessee during the course of assessment proceedings is not acceptable in the facts of the present case and which is clearly absent in the instant case. There is no inquiry or investigation which has been conducted by the Ld. Pr. CIT and there is no positive evidence brought on record as to why the deeming provision read with section 115BBE of the Act are applicable in the instant case. Therefore in absence of clear cut findings recorded by the Ld. Pr. CIT as to how the order passed by the AO is erroneous in so far as prejudicial to the interest of the Revenue, the findings of the Ld. Pr. CIT deserves to be set aside.

17. Having said that, let's look at the nature and source of income surrendered and the explanation submitted by the assessee during the course of survey and whether the matter has been inquired into by the AO during the course of assessment proceedings.

18. In the statement of the assessee recorded under section 131 during the course of survey which was conducted on 12/06/2016, one of the partner's of the assessee firm has stated that the assessee firm was started in year 2012 and he and his son are partners in the said firm and the firm is carrying on the same business of wholesale trading of textiles since inception and there has been no change in the line of business. Thereafter, in response to question relating excess cash of Rs 9,00,000/- found at the time of survey whereby cash as per books was Rs 34,700/- whereas physical cash so found was Rs 934,750/-, he has submitted that the excess cash was from unaccounted sales and which he offered to surrender and pay taxes on behalf of the firm. In response in another

question where he was asked to explain the discrepancy in terms of excess stock of Rs. 91,00,150/- which was the difference in terms of physical stock which was found and valued at Rs. 1,62,21,652/- as against the stock as shown in the books of accounts amounting to Rs. 71,21,502/-, he submitted that the difference in stock of Rs. 91,00,000/- is not explainable at the moment and the same may be considered as additional stock over and above the stock in the books of accounts and to buy peace, he voluntarily disclosed the same for taxation. Subsequently, in the surrender letter dt. 13/06/2016, the partner of the assessee firm has reiterated the surrender of Rs. 1,00,00,000/- on account of excess stock and excess cash and has stated that the surrender is made out of their free will over and above their normal business income subject to no penalty under the Income Tax Act. Thereafter the assessee filed its return of income disclosing the amount so surrendered in the P&L Account and the same was offered to tax under the head business income at the normal rate of tax. During the course of assessment proceedings, the AO in the notice issued under section 142(1) dt. 23/08/2019 has asked the assessee to specifically explain the details about the business income amounting to Rs. 100,00,000/- surrendered during the course of survey, which has been shown in the P&L Account and as to why deeming provisions should not be invoked. In response to the notice so issued, the assessee has filed its submissions dated 29/08/2019 and thereafter, another submission dated 13/12/2019 reiterating the nature and source of the surrendered income during the course of survey operation.

19. We therefore find that the assessee has been asked specific questions not just regarding the discrepancy found during the course of survey but the nature and source thereof during the course of survey and it is clearly emerging that the source of such income so surrendered is from the assessee's business operation of the whole sale textile trading which it was running since 2012. All the stock was found lying at the business premises of the assessee and the assessee was confronted with discrepancies in terms of stock so found and

valued and he has categorically stated that it is their business stock though unaccounted in the books of accounts. The stock physically found was valued and then, compared with stock as recorded in the books of accounts, thus, there was clear nexus of stock with the assessee's business. There is no finding on record that the difference in stock so found out by the authorities has any independent identity and the same was thus part and parcel of entire stock of textiles. Similarly, excess cash has been explained as arising out of unaccounted business sales. 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, thus, it cannot be said that these are unexplained transactions thus, doesn't satisfy the second condition for invoking the deeming provisions. The AO has duly taken cognizance of the findings of the survey team, the documents found during the course of survey, the statement of the partner of the assessee firm, the surrender letter and the return of income and after examination thereof and due application of mind, the income has been rightly assessed under the head "business income". Thus, the view taken by the AO is clearly a plausible view considering the facts and circumstances of the present case and nothing has been pointed out as to how the view so taken is unsustainable in the eyes of law.

20. In light of the above we are of the considered view that the order so passed by the AO cannot be held as erroneous due to lack of inquiry or for that matter requisite inquiry on the part of the AO. As we have held above, there is no findings recorded by the Ld. Pr. CIT as to how the deeming provisions are applicable in the instant case and the order so passed by the AO is erroneous. We therefore find that merely stating that there was survey operation at the business premises of the assessee and provisions of Section 115BBE of the Act are

attracted, the same can be a basis for exercise of jurisdiction under section 263 of the Act. In view of the same, order so passed by the Ld. Pr. CIT under section 263 is set aside and that of the AO is restored.

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

Order pronounced in the open Court on 04/06/2024.

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