

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.4371/Mum/2023
(Assessment Year :2018-19)**

Dy. Commissioner of Income Tax-23(1) 511, 5 th Floor Piramal Chambers Lalbaug Maharashtra-400 012	Vs.	Shri Kundanmal Keshrimal Shah 2 nd Floor, 182/186 Kalbadevi Road Above Hira Mistan Maharashtra - 400 002
PAN/GIR No.ANIPS0212K		
(Appellant)	..	(Respondent)

Assessee by	Ms. Sruti Kalyanikar
Revenue by	Shri P.D. Chougule
Date of Hearing	04/07/2024
Date of Pronouncement	18/07/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 05/10/2023 passed by CIT(A)-51, Mumbai for the quantum of assessment passed u/s.143(3) for A.Y.2018-19.

2. The only ground raised by the Revenue is that ld. CIT(A) has erred in treating the income of Rs.1,56,19,021/- towards unaccounted cash which was added u/s.69A to be taxed at

normal rate as against Section 115BBE applied by the ld. AO which provides a special rate of 16%.

3. The assessee has filed its return of income on 22/09/2018 declaring return of income of Rs.1,89,77,960/-. The assessee is in the business of manufacturing of jewellery in the name of M/s. K.K. Jewellers. The survey action u/s.133A was conducted on the business premises of the assessee on 07/11/2017 and during the survey, assessee had declared 5681.71 gms of gold ornaments stock valuing at Rs.1,56,19,021/-. The assessee had included this amount in his profit and loss account as his regular business income. The income offered by the assessee on account of stock was treated as income u/s.69A by the ld. AO and invoked Section 115BBE to tax Rs.1,56,19,021. The ld. CIT(A) held that since assessee had declared it as business income, the provision of Section 115BBE would not apply.

3. After going through the impugned orders, we find that during the survey action u/s.133A assessee had offered stock of Rs.1,56,90,021/- on the credit side of the profit and loss account and declared the stock as his business income. The gold ornaments stock offered as business stock and credited to trading account cannot be added u/s.69A. Once assessee is in regular business of jewellery and the gold ornament has been offered as stock for the purpose of business and had credited in the profit and loss account and the same has been accepted by the ld.AO, then such undisclosed stock credited to the profit and loss account has to be taxed as business income and therefore,

the ld. CIT (A) has correctly held that Section 115BBE would not apply.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced on 18th July, 2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai; Dated 18/07/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai