

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH, CHENNAI**

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND**  
**SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./**ITA No.: 972/Chny/2022**

निर्धारणवर्ष / Assessment Year: 2018-19

S. Prathick Kumar,  
No. 56, High Road,  
Chengalpattu,  
Kancheepuram – 603 002.

Deputy Commissioner of Income  
v. Tax,  
Central Circle 3(3),  
Chennai.

**[PAN: AJOPP-5977-G]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. J. Saravanan, Advocate

प्रत्यर्थीकीओरसे/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 21.06.2024

घोषणा की तारीख/Date of Pronouncement : 24.07.2024

**आदेश /ORDER**

**PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:**

This appeal instituted by the assessee is against the order of the Commissioner of Income Tax (Appeals)-18, Chennai for the assessment year 2018-19, vide order dated 09.09.2022 against the order of the DCIT, Chennai, dated 17.09.2021.

2. The sole issue in this appeal is, the impugned order of the CIT(A) confirming the action of Assessing Officer in making

addition of unexplained investment in stock, found during the course of survey conducted u/s. 133A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") u/s. 69B of the Act and by invoking the provisions of section 115BBE of the Act. For this, the assessee has raised various grounds which are argumentative, exhaustive and hence, need not be reproduced.

3. The brief facts of the case are that, the assessee is an individual and engaged in the business of trading of diamond and gold jewellery in the name and style of M/s. Nanesh Diamonds. A survey action u/s. 133A of the Act was carried out in the business premises of the assessee on 01.02.2018. During the course of survey, excess stock of gold bullion and jewellery valued at Rs.2,56,86,300/- and excess cash to the tune of Rs.5,01,438/- was found. As per the statement of income furnished by the assessee, the excess stock of gold bullion and excess cash has been offered as 'business income', based on the declaration given by the assessee at the time of survey to declare as additional income apart from regular income earned by the assessee for the A Y 2018-19 and therefore he pleaded that there is no requirement to invoke

section 69B and 69A of the Act. However, the Id.AO treated the excess stock of gold bullion & jewellery as unexplained money u/s.69B by holding as under:

*"Judgment of the Jaipur Bench of the Rajasthan High Court in the case of Pr.CIT, Alwar versus Bajragan Traders in DB Income Tax Appeal No. 258/2017, the following observations regarding Applicability of Section 69 was made by the said Court. In the said case, the learned judge has referred to the Case of Coordinate Bench in the case of Choksi Hiralal Maganlal vs DCT 131, TTJ (Ahd.) 1 which held that in a cases 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 u/s 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."*

and the AO also added the excess cash u/s. 69A of the Act, respectively and subjected to tax as per provisions of section 115BBE of the Act and passed the assessment order u/s. 143(3) of the Act on 17.09.2021 by making the total addition as below:

Unexplained stock U/s.69B	Rs.2,56,86,300/-
Unexplained Cash U/s.69A	Rs. 5,01,438/-

4. Aggrieved, the assessee preferred an appeal before Ld.CIT(A).

5. The Id.CIT(A), was pleased to confirm the action of the AO, and aggrieved the assessee is in appeal before us.

6. The Ld. AR assailing the action of the lower authorities stated that, the assessee has declared the additional Income of both excess cash and stock found during the course of survey dated 01.02.2018 and under the head business income and paid the applicable taxes accordingly as given in the written statement before the survey officer. The assessee admitted the excess stock and cash found and offered as 'additional income' under the head business income for the current assessment year, as the assessee do not have any other source of income other than gold business to levy tax at any other heads of income of the assessee. The excess stock and cash found at the current business premises of the assessee, which has been carried on from long period. Therefore, even assuming without conceding, the Id.counsel stated that the allegation of excess stock at the time of survey is taken to be correct, still the treatment of the excess stock

and cash found cannot be taxed as unexplained investment u/s.69B of the Act to levy tax u/s.115BBE of the Act. Before us, the Id.counsel assailed the action of Lower authorities has relied on following ITAT and Hon'ble High Court decisions and pleaded that the AO ought not to have held the excess stock as unexplained Stock U/s.69B and excess cash U/s.69A of the Act; wherein the source of income is proved then deeming section 115BBE provision is not applicable.

(i) Choksi Hiralal Maganlal (ITAT Ahmadabad)

(ii) Fashion World (ITAT Ahmadabad)

(iii) Ramnarayan Birla (ITAT Jaipur)

(iv) ShriLovishSinghal vs ITO (ITAT Jodhpur)

(v) Gandhiram vs PCIT (ITAT Chandigarh)

(vi) Pr.CIT, Alwar versus Bajragan Traders – Jaipur bench of Rajasthan High court

7. Further, the Ld. Counsel took us through the written submissions and stated that the assessee has recorded the transaction of excess stock found and the excess cash in the books of accounts and the same has been correlated with the return of income filed for the relevant assessment year for having offered additional income for tax. The Ld. Counsel for

the assessee also shown that the relevant GST return was filed for the month of Feb, 2017 by declaring the excess stock found 'under reverse charge mechanism' and discharged the applicable GST on the same.

8. Per contra the Id. DR, supporting the action of the AO and that of the Id.CIT(A) order submitted the source of excess stock and cash was not proved by the assessee to treat the same as regular income of the current assessment year to tax under normal Income tax as noted by the AO.

9. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee is engaged in the business of trading in diamond and gold jewellery. A survey was conducted in the business premises of the assessee on 01.02.2018 and statement was recorded by the Department. During the course of survey, an inventory of physical cash found was taken vide Annexure/CASH dated 01.02.2018 and the physical stock available at the business premises was also duly inventorised. When the inventorised cash and stock was compared with books of accounts, it was seen that there was excess of

physical cash of Rs.5,01,438/- as well as excess stock amounting to Rs.2,56,86,300/- was available. The assessee admitted the excess stock and cash found and offered as 'additional income'. It is admitted fact that, the AO has accepted that, the assessee is carrying on this business from long time and the excess stock and cash found at the current business premises of the assessee is relates to their business and the written statement by way of declaration was also obtained to this effect from the assessee during the survey. The AO have not found any other evidence to state that the excess stock and cash is from any other source of income and hence we do not countenance the action of the AO for treating the excess stock and cash as unexplained investment u/s.69B of the Act to levy tax u/s.115BBE of the Act.

10. We note that the assessee has declared 'additional income' of excess stock of Rs.2,56,86,300/- and excess cash Rs.5,01,438/- found during the course of survey apart from his regular business income and earned from regular jewellery business. The additional income offered is part of regular business income made during the year and the Id.AO has not done anything to dispute the claim of assessee, that the

source was not from the business income shown and the AO cannot expect the assessee to prove negative.

11. Further, the assessee has recorded these transactions in his books of accounts by crediting his capital account and debiting to corresponding stock account and the cash account, which is audited by the statutory auditor as per the provisions of Section 44AB of the Act, before filing it to Income Tax department as per the due date prescribed. The same has not been disputed by the AO and accepted the books of accounts. Therefore, we are of the considered view that, the lower authorities have erred by invoking the provisions of 'unexplained investment' u/s.69B and u/s. 69A of the Act r.w.s. 115BBE of the Act, on the additional income of stock and cash declared by the assessee is his return of income as his income from business.

12. Therefore, we do not countenance the action of AO and the Ld.CIT(A) and hence, we are inclined to allow the appeal of the assessee to accept the income offered by the assessee of Rs.2,56,86,300/- towards excess stock of gold & jewellery and Rs.5,01,438/- towards excess cash as income from regular

business. Therefore, the impugned addition made by the AO which is confirmed by the Id.CIT(A), as 'unexplained investment' u/s.69B and u/s. 69A of the Act r.w.s 115BBE is deleted.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24<sup>th</sup> July, 2024 at Chennai.

**Sd/-**

(एबी टी वर्की)

**(ABY T VARKEY)**

न्यायिकसदस्य/**Judicial Member**

**Sd/-**

(एस.आर.रघुनाथा)

**(S. R. RAGHUNATHA)**

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 24<sup>th</sup> July, 2024

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF