

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**Before Shri Laliet Kumar, Judicial Member**  
**And**  
**Shri Manjunatha, G. Accountant Member**

S.No	Appeal in ITA No	Revenue	Assessee	A.Y
1	432/Hyd/2022	ACIT, Central Circle 2(2) Hyderabad	Syed Zeeshanuddin Hyderabad PAN:BQGPS0128A	2018- 19
2	436/Hyd/2022 & 437/Hyd/2022	-do-	Syed Imranuddin Hyderabad PAN:AAJPI6494F	2017- 18
3				
4	442/Hyd/2022	-do-	Syed Irfanuddin Hyderabad PAN:AAPPI4693A	2018- 19

निर्धारिती द्वारा/Assessee by:	Shri P Murali Mohan Rao, CA
राजस्व द्वारा/Revenue by:	Shri Shakeer Ahmed, DR
सुनवाई की तारीख/Date of hearing:	27/05/2024
घोषणा की तारीख/Pronouncement:	08/07/2024

**आदेश/ORDER**

**Per Manjunatha, G. A.M**

These 4 appeals filed by the Revenue are directed against the separate, but identical orders of the learned CIT (A) - 12 Hyderabad, all dated 15-06-2022 and pertains to A.Ys 2017-18 and 2018-19 respectively. Since facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off by this common order. The

Revenue has more or less raised common grounds in all the 4 appeals and therefore, for the sake of brevity, grounds of appeal filed by the Revenue in ITA No.432/Hyd/2022 in the case of Syed Zeeshanuddin are reproduced as under:

*“1. The Ld. CIT(Appeals) erred both in law and on facts of the case in granting relief to the assessee.*

*2. On the facts and in the circumstances of the case, and in law, whether the learned CIT(Appeals) is correct in treating the additional income of Rs. 9,98,70,000/- as business income when the same was admitted by the assessee as his share of the undisclosed income of Rs. 44.44 Cr which was admitted towards money payments made for acquiring lands and unexplained loans introduced into the books of M/s. WIIZ Realtors LLP, by the key person and father of the assessee Sri Syed Hameeduddin u/s 132(4) of the Act on 16.07.2018 and confirmed in the affidavit filed on 09.08.2018?*

*3. On the facts and in the circumstances of the case, and in law, whether the ld. CIT(Appeals) is Correct in treating the additional income of Rs. 9,98,70,000/- as business income when in the ITR or during assessment and appellate proceedings the assessee has not explained the method and the manner of earning such income ?*

*4. On the facts and in the circumstances of the case, and in law, the ld. CIT(Appeals) erred in directing to treat the additional income of Rs. 9,98,70,000/- as business income merely because the AO had not quoted the relevant section relating to the deeming provisions under chapter VI of the Income Tax Act. 1961.*

*5. On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in law in directing to treat the amount of Rs. 2 Cr as business income when the same was admitted by the assessee as additional income in the ITR towards unexplained investment made in cash by M/s. WIIZ Realtors LLP, in which assessee is a partner, for purchasing 8 acres of land at survey no. 76,77 and 78, Mamidipally Village, Saroornagar Mandal, RR District as evidenced by page no. 171 of seized material marked as Annexure A/SO-2/OFF/01.*

6. On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in law in ignoring the statement of Mr Syed Hameeduddin, key person of the Redrose group and father of the assessee, given u/s. 132(4) to the extent that M/s. VWIIZ Realtors LLP paid on money of Rs. 649 Cr for purchasing 8 acres of land at survey no. 76,77 and (3. Mamidipaly Village. Saroornagar Mandal, RR District as evidenced by page no 171 of seized material marked as Annexure A/SO-2/OFF/01.

7. On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in law in directing to treat the amount of Rs. 2.01.82.000/- as business income when the same was admitted by the assessee as additional income in the ITR towards the unexplained investment made in cash by Mrs. Asia Fathima, w/o Mr. Syed Hameeduddin for purchasing 5 acres 28 Guntas of land at survey no. 48 and 45 at Mamidipally Village, Saroornagar Mandal, RR District as evidenced by page no. 6 to 8 of seized material marked as Annexure A/KMK/OFF/07.

8. On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in law in ignoring the statement of Mr. Syed Hameeduddin, key person of the Redrose group and father of the assessee, given u/s. 132(4) to the extent that Mrs. Asia Fathima paid on money of Rs. 5.49 Cr for purchasing 5 acres 28 Guntas of land at survey no. 48 and 45 at Mamidipally Village, Saroornagar Mandal, RR District as evidenced by page no. 6 to 8 of seized material marked as Annexure A/KMK/OFF/07.

09. On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in law in directing to treat the amount of Rs.4.70 Cr as business income when the same was admitted by the assessee as additional income in the ITR towards the unexplained investment made in cash by the family members of Mr. Syed Hameeduddin for purchasing 80 acres of land at Machanapally Revenue Village and Gram panchayat as evidenced by the notings in the seized material.

10. On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in law in ignoring the statement of Mr. Syed Hameeduddin, key person of the Redrose group and father of the assessee, given u/s. 132(4) to the extent that on money of Rs. 6,69,38.160/ was paid in

*cash for acquiring 80 acres of land at Machanapally Revenue Village and Gram panchayat by his family members.*

*11. On the facts and in the circumstances of the case, and in law, the learned CIT(Appeals) erred in law in not following the ratio laid down in the judgments of "[1993] 67 Taxman 532 (SC) Supreme Court of India in the case of Emil Webber Vs. Commissioner of Income Tax' and "[2003] 130 Taxman 82 (Andhra Pradesh) High Court of Andhra Pradesh in the case of Action for Welfare & Awakening in Rural Environment (AWARE) Vs. Deputy Commissioner of Income Tax" wherein it was held that mere mentioning of a wrong provision itself would not be fatal to the assessment proceedings when the Assessing Officer was justified on some other provisions of the Act.*

*12. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary."*

2. The brief facts of the case are extracted from the case of Shri Syed Zeeshanuddin in ITA No 432/Hyd/2022 are that a search and seizure operation u/s 132 of the Act was conducted in the Red Rose Group of cases on 12/07/2018. As part of the search operations, appellant was also searched. Consequent to the search, notice u/s 153A of the I.T. Act, 1961 was issued on 23.01.2019 to the assessee. In response to the notice, the assessee filed the return of income on 30.03.2019 admitting total income of Rs.12,11,00,450/- which includes additional income admitting amount of Rs.9,98,70,000/- on the basis of material found during the course of search. During the course of assesment proceedings, the Assessing Officer noticed that during the course of search in the case of M/s. WIZ Realtors LLP, a loose sheet describing the details of white amount and black amount paid to land lord found and seized which indicate

payment made by cheques and cash for purchase of property was noticed. The loose sheet was confronted with Mr. Syed Hameduddin and in response to specific question in the sworn statement recorded u/s 132(4) of the Act on 14.07.2018, Shry Syed Hameduddin admitted Rs.6,49,00,000/- as additional income on account of cash paid for purchase of land at Mamidipally Village and further the same has been offered in the hands Shri Syed Imranuddin (Rs.2.00 crores) and Shri Syed Irafanuddin (Rs.2.50 crores) and Shry Syed Zeeshanuddin (Rs.2.00 crores). The Assessing Officer further noted that during the course of search in the case of M/s. KM Kohinoor Infra, a loose sheet describing the details of white amount and black amount paid for purchase of land at Mamidipally village. The loose sheet was confronted with Shri Hameeduddin Syed and in response to specific question, sum of Rs.5,49,00,000/- was admitted as additional income in the hands of Shry Syed Imranuddin and Mr. Syed Zeeshanuddin. Similarly, during the course of search, various property transaction related to Shri Hameeduddin Syed were found and seized. The Assessing Officer confronted the evidenced with Shri Syed Hameeduddin and he admitted cash paid for purchase of property at Manchanapally Revenue Village and also admitted additional income of Rs.2.00 crores in the case of Shri Syed Imranuddin and Rs.4,70,00,000/- in the hands of Mr. Syed Zeeshanuddin both being sons of Mr. Syed Hameeduddin. The Assessing Officer further noted that during the course of search in the case of M/s. Kings Convention

Centre, a loose sheet describing the details of white amount and black amount paid for purchase of land at Mamidipally Village. The loose sheet was confronted with Mr. Hameeduddin and in response to specific questions, the sum of Rs.5,49,00,000/- was admitted as additional income in the hands of Shry Syed Imranuddin and Mr. Syed Zeeshanuddin. Similarly, during the course of search, various property transactions relate to Shri Syed Hameeduddin were found and seized. These evidences were confronted with Shri Syed Hameeduddin and he was admitted cash paid for purchase of property at Manchanapally Village and also admitted additional income of Rs.2.00 crores in the case of Shri Syed Imranuddin and Shri Zeeshanuddin. The Assessing Officer further noted that during the course of search in the case of M/s. Kings Convention Centre, a lease deed was found as per which the functional hall was leased out to the assessee for a monthly rental of Rs.5.00 lakh from February, 2015. Further, certain papers with lease rentals account were also found and seized. As per the loose sheet, the assessee was paying leased rental by way of cheques as well as cash. Lease rental paid by cheque payment was accounted whereas cash payment was not accounted. The document found during the course of search was confronted with the assessee and in response Mr. Syed Irfanuddin admitted additional income of Rs.3,75,00,000/-for possible discrepancies in payment of the lease rentals in cash. The assessee has admitted additional income of Rs.9,98,75,000/- in respect of the above cash payments in the return of income filed

in response to notice u/s 153A of the Act under the head "Income from business and profession" and paid taxes. The Assessing Officer accepted the income returned by the assessee. However, seized addition income offered by the appellant consequent to search amounting to Rs.9,98,75,000/- separately taxed as per section 115BBE of the I.T. Act, 1961. The relevant findings of the Assessing Officer are as under:

*"5. Unexplained expenditure:*

*During the course of search in the case of M/s. Kings Convention Centre is lease deed was found as per which the function hall was leased out to the assessee for a monthly rental of Rs.5,00,000/- from February 2015. Further, certain papers with lease rental account of Kings Convention Centre were found and seized. As per the loose sheets the assessee was paying lease rentals by way of cheque as well as cash. Initial lease rent of the function hall for the period from 01/02/2015 to 31/01/2016 was Rs.11,01,000/- p.m. out of which Rs.5,00,000/- is to be paid by cheque and the balance of Rs.6,01,000/- is to be paid by cash. Further, on going through the loose sheets, it is evident that every year, there is an increase of 7% in Lease Rent for the cheque portion as well as cash. The assessee has admitted only the cheque portion in the ITR and not admitting cash portion. For the period from 01 04-2017 to 31-03-2018 relevant to the AY. 2018-19, the cash paid works out to Rs.83,52,440/-. (Rs.6,88,010/- for 10 months and Rs.7,36,1 70/- for 2 months). During the course of scrutiny, the assessee was questioned as to why the said amount of Rs.83,52,440/- should not be brought to tax. The assessee furnished a reply as under:*

*"Cash paid for rent to Shanawaz for FY 2017-18 by Syed Irfanuddin from out of his additional income of Rs.375 lacs declared by him. Further, it is to bring to your kind notice that a detailed note on additional income offered in the group of Red Rose has been submitted on 17-02-2021. Copy of the note is enclosed."*

*Stating so, the assessee enclosed the note on additional income. As per the note, no additional income has been*

*offered on account of cash payment of lease rentals. However, On going through the note on additional income submitted by Mr.Syed Irfanuddin, it is seen that an amount of Rs.48,16,000/- is stated to have been admitted therein on account of payment of lease rentals in cash. The cash actually paid on account of lease rentals during the year is Rs.83,52,440/-. Therefore, there is a difference of Rs.35,36,440/-. The assessee submitted that the payment of Rs.35,36,440/- was borne by Mr. Samir Ur Rehman and the same has been offered as additional income by him for the said year. During the course of scrutiny in the case of Mr. Samir Ur Rehman, it is seen that additional income has been admitted on account of lease rentals.*

*6. It is seen that the assessee has admitted an amount of Rs.9,98,70,000/- on account of findings during the search”.*

6. Aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee contended that he had admitted additional income of Rs.9,98,70,000/- in the return of income filed and in response to the notice u/s 153A under the head “Income from business” and paid taxes. The said return of income has been accepted by the Assessing Officer and no further addition has been made. However, the additional income offered in consequent to the search has been taxed u/s 115BBE of the I.T. Act, 1961 without any reference to the provisions of section 68, 69A, 69B, 69C and 69D of the I.T. Act, 1961. The appellant further contended that in order to invoke the provisions of section 115BBE of the Act, there should be a finding from the Assessing Officer that the additional income offered by the appellant and accepted by the Assessing Officer is sustainable under the provisions of law. In absence of any reference to the above

provisions, the additional income offered by the assessee under the head "Income from business" cannot be taxed u/s 115BBE of the I.T. Act, 1961. The assessee further contended that as per the provisions of section 153A(1A) of the Act, the return filed in response to section 153 shall be treated as return filed u/s 139 of the Act and the provisions of section 139 shall apply as if such return was required to be furnished u/s 139 of the I.T. Act, 1961. Therefore, when the Assessing Officer has accepted the return filed by the assessee without there being any additional income, then the question of taxing the said income u/s 115BBE of the Act does not arise.

7. The learned CIT (A) after considering the relevant provisions of the Act and also following certain judicial precedents including the decision of the ITAT Chandigarh Bench of the Tribunal in the case of Bajaj Sons Ltd vs. DCIT (128 Taxmann 406) dated 24.05.2021 held that in order to invoke the provision of section 115BBE of the Act, it is incumbent on the Assessing Officer to invoke section 68 to 69D and treat the income as admitted income under those sections. The additional income declared in the return does not automatically fall under the sec 68 to 69D of the I.T. Act, 1961 unless the Assessing Officer specifically brought those additions in light of the above provisions with reasons. Since the Assessing Officer has accepted the return of income of the assessee without any modification, the income admitted in the return, the question of invoking the

provision of section 115BBE of the Act does not arise and further the income declared by the assessee continue to remain assessable u/s 28 of the I.T. Act, 1961. Therefore, directed the Assessing Officer to assessee additional income offered by the assessee and admitted in the return of income filed u/s 153A of the Act at normal rate of taxes instead of special rate of taxes as per provision of section 115BBE of the I.T. Act, 1961. The relevant findings of the learned CIT (A) are as under:

*“7.5.1. I have considered the submissions of the AR and the order of the AO and the case records. It is seen that the appellant has filed his return of income in response to the notice u/s. 153A for the current year on 30.03.2019, admitting additional income of Rs.9,98,70,000/-. The AO taxed this income as per the provisions of section 115BBE of the Act. Now, the question is whether this additional business income attracts the provisions of section 115BBE of the Act or not. To answer this, the provisions of sections 115BBE of the Act are reproduced as below:*

*115BBE(1). Where the total income of an assessee a. includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or*

*section 69D and reflected in the return of income furnished under section 139; or b. determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a). the income-tax payable shall be the aggregate of*

*i. the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and*

*ii. the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).*

*Notwithstanding anything contained in this Act, no deduction in respect of any Expenditure or allowance shall be allowed*

*to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).*

*On plain reading of Section 115BBE of the Act, it is seen that the said section is attracted when the total income includes any income referred to in Sections 68, 69, 69A, 69B, 69C or 69D in the return of income or determined as such by the Assessing Officer. In other words, there are two conditions when Section 115BBE is invoked. Firstly, return of income furnished should contain income in the nature of Sections 68, 69, 69A, 69B, 69C, 69D or secondly, the income is determined as deemed income under those sections by the AO during the assessment proceedings. Applying it to the facts of the present case, the assessee has declared in the return of income the additional income as business income which falls under Section 28 of the Act. The AO has not changed the head of income and has simply accepted the return of income. For invoking higher tax rate u/s. 115BBE of the Act it is incumbent to invoke the sections 68 to 69D and treat the income as deemed income under those sections. The additional income declared in the tax return does not automatically fall under the sections 68 to 69D unless specifically resorted to. Sections 68 to 69D deem certain unexplained cash credits, unexplained investment, unexplained money, bullion or jewellery or unexplained expenditure as income. One has to specifically state under which section the additional income falls and the reasons for doing so. The higher tax rate u/s. 115BBE is not applicable to business income declared u/s. 28 of the Act. The AO himself accepted the return of income of the assessee wherein the additional income was declared as business income. Simply stating that the provisions of Section 115BBE are attracted since the appellant admitted additional income would not suffice. The AO is required to make a case to bring the said additional income under one of the sections of Chapter VI in order to invoke Section 115BBE(1)(b) of the Act. Otherwise, the income continues to remain under Section 28 as returned by the assessee. Since the additional income was not covered under the provisions of Section 68, 69, 69A, 69B, 69C and 69D, the provisions of Section 115BBE were not attracted.*

*7.5.2 Reliance is placed on the decision of Hon'ble Chandigarh Tribunal in case of Bajaj Sons Ltd. Vs DCIT 128 taxmann 406, (24-05-2021) in which the question of invoking the provision of section 115BBE of the Act on the surrendered income to cover any discrepancy and thereby*

*accessing such income at higher rate of tax as against the normal rate of tax applicable to the business income was discussed. It was held that if no discrepancy is pointed by the AO, the provisions of sections 68, 69, 69A, 69B, 69C or 69D are not attracted to levy tax under section 115BBE of the Act. For ready reference, the operative portion of the ratio is reproduced below:*

"We find that a separate surrender of Rs. 97.11 lacs has been made by Shri S.B Baiaj Director of the assessee company on account of unexplained cash found during the search action. However, so far as the surrender of Rs. 15 lac to cover any discrepancy is concerned, the AO has not pointed out any unexplained credit in the books of account, any unexplained investment, any unexplained money, bullion or jewellery, any unexplained expenditure or any amount of loan repaid in the assessment order in this respect. Therefore, the provisions of Section 68, 69, 69A, 69B, 69C and 69D are not attracted on the surrendered amount of Rs. 15 lacs. The said amount of Rs. 15 lacs was offered in case any discrepancy is found in the books of account. However, in actual neither any unexplained investment nor any unexplained expenditure or otherwise any unexplained asset was found during the search action so far as the aforesaid surrender of Rs. 15 lacs was concerned. In these circumstances, the aforesaid surrender of Rs. 15 lacs can be said to have been offered to cover up the discrepancies in respect of likely disallowances of claims, if any, relating to its business income.

In 9. In view of this, since the aforesaid surrender is not covered under the provisions of Section 68, 69, 69A, 69B, 69C and 69D, the provisions of Section 115BBE are not attracted in this case".

*In view of the above reasons, the AO is directed to tax the amount of Rs.9,98,70,000/- at normal provisions of the IT Act. Accordingly, the grounds No. 5,6,7,8 & 9 of the appeal are ALLOWED."*

8. Aggrieved by the order of the learned CIT (A), the Revenue is in appeal before the Tribunal.

9. The learned DR submitted that the learned CIT (A) erred in directing the Assessing Officer to assess the additional income of Rs.9,98,70,000/- returned by the assessee under the head "Income from business" under normal rate of taxes without appreciating the fact that the appellant has admitted his share of undisclosed income out of total undisclosed income of Rs.44.44 crores admitted towards on money payment made for acquiring lands and unexplained loan introduced in the books of M/s WIZ Realtors LLP,. The DR further submitted that the learned CIT (A) erred in appreciating the fact that although the assessee has admitted additional income of Rs.9,98,70,000/- as business income, but failed to explain the method and the manner in which such income has been earned. The learned CIT (A) further erred in not appreciating the fact that mere not referring to a particular section in assessment order or reference to allowing provisions it self would not be fatal to the assesment proceedings when the Assessing Officer was justified on some other provisions of the act. The learned DR further referring to the various issues in the light of incriminating material found during the course of search submitted that the assessee has paid on money for purchase of property and also admitted additional income in the statement recorded u/s 132(4) of the I.T. Act, 1961. The additional income offered by the assessee is assessable under the head "Income from other sources" unless the assessee specifically stat that the said additional income was earned from the income from business. The learned CIT (A) without

appreciating the relevant fact simply directed the Assessing Officer to assess the income under the normal provisions of the Act.

10. The learned Counsel for the assessee, on the other hand, submitted that the assessee had admitted additional income of Rs.44.44 crores in the name of various entities and individuals towards cash found during the course of search, cash paid by WIZ Realtors Ltd to Ravi Rishi Educational Society for purchase of land, cash paid for purchase of lands at Mamidipally and Manchanapally Villages also explained that the said cash payment was earned or generated out of business activities. The assessee had also admitted additional income in the return of income filed in response to section 153A of the Act and also paid tax at normal rate. The Assessing Officer having accepted the return of income and income declared in the said return without any modification is erred in taxing additional income under the provision of section 115BBE of the I.T. Act, 1961 without referring to any provisions of the said income. After considering the relevant fact, the learned CIT (A) has rightly directed the Assessing Officer to assess the additional income offered by the assessee under the normal rate of taxes instead any provisions of section 115BBE of the I.T. Act, 1961 and therefore, the order of the learned CIT (A) should be upheld.

11. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that during the course of search based on incriminating material found, the appellant had admitted undisclosed income towards cash payment for purchase of property, cash payment for lease rentals and cash found during the course of search and further said income has been offered in the name of various family members. The appellant had offered the additional income on the basis of incriminating material found during the course of search coupled with statement recorded u/s 132(4) of the I.T. Act, 1961 where the Department has confronted with incriminating material and the assessee has explained the manner in which the additional income offered was generated from his business. The assessee had also declared additional income offered during the course of search in the return of income filed in response to notice u/s 153A of the Act and paid taxes at normal rate of taxes. The Assessing Officer accepted additional income offered by the assessee without any modifications including the head of income under which the said income was offered i.e. income from business and profession, levy of taxes under the provisions of section 115BBE of the Act. The provisions of section 115BBE of the Act is applicable where the total income of an assessee includes any income referred to in section 68 to 69D of the I.T. Act, 1961 and reflected in the return of income furnished u/s 139 or determined by the Assessing Officer. Therefore, from the plain

reading of section 115BBE of the Act, it is clear that in order to invoke the said section, any income referred to in section 68 to 69D as per the return of income filed by the assessee or determined as such by the Assessing Officer. In other words, in order to invoke section 115BBE(2) additions should be specified i.e. any income referred to u/s 68 to 69D of the I.T. Act, 1961 as per the return furnished by the assessee and further any income determined by the Assessing Officer under the provisions of section 68 to 69 D of the Act. In the present case, the assessee has admitted income under the head "Income from other sources" and also explained the manner in which such income has been derived which is evident from the assessment order passed by the Assessing Officer where the Assessing Officer has accepted income declared by the assessee without any modification as per the return filed u/s 153A of the I.T. Act, 1961. Therefore, the Assessing Officer having accepted the income declared by the assessee under the head "Income from business" cannot tax the income under the provisions of section 115BBE of the Act unless the Assessing Officer specifically charge the said income with necessary reasons that the said income is not sustainable under the provisions of section 68, 69, 69A, 69B, 69C or 69D of the I.T. Act, 1961. If we go by the assessment order passed by the Assessing Officer, there is no reference to any of the provisions nor is there any finding in the assessment order as to how the said provisions should be invoked to bring a particular income under the provisions of section 115BBE of the I.T. Act, 1961.

Therefore, in our considered view, the Assessing Officer having accepted the return of income and additional income declared under the head income represents erred in complying the provisions of section 115BBE of the Act without any valid reason. The learned CIT (A) after considering the relevant facts has rightly directed the Assessing Officer to assess the additional income declared by the assessee under the head "Income from business" to tax under the normal rate of taxes.

12. The assessee has relied upon the decision of the ITAT Chandigarh Bench in the case of Bajaj Sons Ltd vs. DCIT (Supra). The Coordinate Bench of the Tribunal under identical set of facts held as under:

*"We find that a separate surrender of Rs. 97.11 lacs has been made by Shri S.B Baiaj Director of the assessee company on account of unexplained cash found during the search action. However, so far as the surrender of Rs. 15 lac to cover any discrepancy is concerned, the AO has not pointed out any unexplained credit in the books of account, any unexplained investment, any unexplained money, bullion or jewellery, any unexplained expenditure or any amount of loan repaid in the assessment order in this respect. Therefore, the provisions of Section 68, 69, 69A, 69B, 69C and 69D are not attracted on the surrendered amount of Rs. 15 lacs. The said amount of Rs. 15 lacs was offered in case any discrepancy is found in the books of account. However, in actual neither any unexplained investment nor any unexplained expenditure or otherwise any unexplained asset was found during the search action so far as the aforesaid surrender of Rs. 15 lacs was concerned. In these circumstances, the aforesaid surrender of Rs. 15 lacs can be said to have been offered to cover up the discrepancies in respect of likely disallowances of claims, if any, relating to its business income.*

*In 9. In view of this, since the aforesaid surrender is not covered under the provisions of Section 68, 69, 69A, 69B,*

*69C and 69D, the provisions of Section 115BBE are not attracted in this case.*

13. The appellant had also relied upon the decision of the Hyderabad Bench of the Tribunal in the case of Mohd. Mujeeb Ur Rahman vs. ACIT in ITA No.357/Hyd/2022 dated.10.2023. The Coordinate Bench has considered an identical issue in the light of application of section 115BBE of the Act towards additional income offered by the assessee in consequent to the search conducted in the Red Rose Group of cases on 12.07.1918 and after considering the relevant facts held as under:

*"9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find a search & seizure operation u/s 132 of the I.T. Act was conducted in Red Rose Group of cases on 12.7.2018 and the case of the assessee was also covered on the same date. During the course of search at the residence of the assessee cash of Rs.70,30,000/- was found. Since the assessee could not explain the source of cash so found, the same was offered as additional income over and above his regular income for the financial year 2018-19 relevant to A.Y 2019-20 and the assessee admitted the amount of Rs.70.00 lakhs as additional income in the return of income filed. The Assessing Officer taxed the additional income of Rs.70.00 lakhs by invoking the provisions of section 115BBE ITA No 357 of 2022 Mohd Mujeeb Ur Rahman treating the additional income admitted as in the nature of income contemplated u/s 69A of the I.T. Act. We find the learned CIT (A) upheld the action of the Assessing Officer the reasons of which are already reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that since the assessee is engaged in real estate business and the accounting year had not ended on 12.07.2018, the amount of Rs.70.00 lakhs found on the date of search was from business income which the assessee has also declared in the return of income as "business income of the current year" and there cannot be any other source for the assessee.*

9.1 We find under somewhat similar circumstances, the Coordinate Bench of the Tribunal in the case of ACIT vs. Devender Rao Gorukanti (Supra) has observed as under:

"12. We have heard the rival arguments made by both the sides, perused the orders of the AO and the ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs. 5,08,98,100/- u/s.69C r.w.s. 115BBE on the ground that certain loose sheets were found and seized during the course of search operation conducted in the case of Yashoda group on 22.12.2022 which represent cash receipts/payments of Rs. 5,08,98,100/- and the assessee could not explain the source of the above expenses. We find the ld.CIT(A) deleted the addition made by the AO, the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the ld.CIT(A) on this issue. We find the AO in the instant case at para 3.4 of the order has mentioned that Yashoda group, apart from providing health care services, has invested in real-estate through number of legal 14 Devender Rao Gorukanti entities who are regularly filing returns of income. Further, the assessee during the course of search proceedings, in his statement recorded u/s. 132(4) has stated that he has earned business income from real-estate. We find Shri Bommanagiri Jaipal, Shri Circoori Prabhakar and Shri Srinivas Telugu have filed their affidavits individually before the AO stating that the assessee Shri G. Devender Rao is into real-estate business since past 10 years and was involved in the real- estate settlements deals for purchase and sale of lands situated at Velimela, Vikrabad, Sangaraddy etc. We find the AO thereafter, has not conducted any further enquiry to disprove the various evidences filed by the assessee during the course of assessment proceedings as well as before the DDIT(Inv.). Further, the assessee has paid advance tax thereon prior to the date of search. Therefore, under these circumstances, once the assessee has proved the initial ITA No 357 of 2022 Mohd Mujeeb Ur Rahman burden that he is engaged into real-estate business and has earned income from such real-estate, therefore, without making any further enquiry to disprove the various evidences filed before him, the AO could not have treated the amount of Rs. 5,08,98,100/- as unexplained expenditure. In our opinion, the provisions of section 115BBE are applicable when the source of income is not disclosed or source of expenditure is not disclosed. However, in the instant case, the assessee has disclosed the income after considering the expenditure and had paid advance tax thereon prior to the search. No new fact has surfaced during the course of search since the assessee has paid advance tax on such business activity prior to the date of search. Therefore, we find merit in the argument of ld.counsel for the assessee that the real-estate business income does not fall in the ambit of sections 68 to 69D and therefore, the provisions of section

*115BBE cannot be invoked. The various decisions relied on by the ld.counsel for the assessee also supports his case.*

*13. We find the Hon'ble Madras High Court in the case of A.J.Ramesh Kumar (supra) at para 7 of the order has observed as under:-*

*"7. Coming to the substantial questions of law relating to admissibility, relevancy and evidentiary value of statement obtained under section 132(4) of the Income-tax Act, 1961 this court is of the view that the same are no longer res integra. In the decision of the Supreme Court in the case of Bannalal Jat Constructions Pvt.Ltd. v. Asst.CIT reported in [2019] 413 ITR (St.) 322 (SC) ; [2019] 106 taxmann.com 128 (SC), after referring to the judgment of Pullangode Rubber Proudce co.Ltd. v. State of Kerala reported in [1973] 91 ITR 18 (SC), the legal position in relation to a statement under section 132(4) of the Income-tax Act, 1961 was set out as under:-*

*(a) An admission is an extremely important piece of evidence though it is not conclusive.*

*(b) A statement made voluntarily by the appellant could form the basis of assessment. (c) The mere fact that the appellant retraced the statement could not make the statement unacceptable.*

*(d) The burden lay on the appellant to show that the admission made by him in the statement earlier at the time of survey was wrong. Such retraction, however, should be supported by a strong evidence stating that the earlier statement was recorded under dress and coercion, and this has to have certain definite evidence to come to the conclusion that indicating that there was an element of compulsion for the appellant to make such statement.*

*(e) However, a bald assertion to this effect at much belated stage cannot be accepted.*

*Applying the aforesaid legal proposition herein, we are of the opinion that once a statement is recorded, it is open to the Assessing Officer to rely and proceed on the basis that such statement is correct and represents the true state of affairs and the burden is on the deponent to demonstrate by letting cogent, convincing and material evidence that the statement was incorrect. Therefore, the statement made under section 132(4) of the Income tax Act, 1961 has a strong evidentiary value and is binding on a person, who makes it.*

*13. We find the Chandigarh Bench of the Tribunal in the case of Bhuwan Goyal (supra) while deciding an identical case at para 10 of the order has observed as under:-*

10. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is not in dispute that the assessee surrendered the income of Rs. 3.64 Crores in the statement recorded under section 132(4) of the Act the said surrender was made on the basis of the entries in the pocket diary found & seized during the course of search in which certain transactions relating to the Real Estate business were noted and profit as well as commission was earned thereon. The aforesaid facts had been mentioned by the A.O. at page no. 4 of the assessment order dt. 30/12/2018 wherein copy of the show cause notice dt. 26/12/2018 has been reproduced. However, the A.O. considered only an income of Rs. 2.64 Crore earned from the Real Estate Business but did not accept Rs. 1 Crore and added the same separately under section 69 of the Act. The A.O. charged the tax @ 60% under section 115BBE of the Act. The provisions contained in the said section i.e; 115BBE of the Act read as under:

115BBE. (1) Where the total income of an assessee, -

(a) Includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

(b) Determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause(a), the income-tax payable shall be the aggregate of-

(i) the amount of income-tax calculated on the income referred to in clause(a) and clause(b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause(i).

2. Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause(a) and clause (b) of sub-section (1).

From the aforesaid provisions it would be clear that the provisions of Section 115BBE (1)(a) of the Act are applicable to the income which is referred in section 68, 69, 69A, 69B, 69C or 69D reflected in the return of income furnished under section 139 of the Act. However, in the present case no such income was reflected in the return filed under section 139 of the Act rather the income was declared in the return filed under section 153A of the Act after the search. The assessee declared the income under section 132(4) of the Act and disclosed the same in the return of income filed under section 153A of the Act. The

assessee explained the source of investment of Rs. 1.10 Crore in the reply to Question No. 11 which has been reproduced at page no. 8 of the impugned order by the Ld. CIT(A) and read as under:

" Q. 11. Do you want say anything else ? Ans: yes, one agreement dated 05/04/2016 was found from residence at the time of search on 31/08/2016 which was executed by Mr. Sumit Thaper on my behalf and Sh. Hernek Singh S/o Sh. Daulat Singh for an amount of Rs. 1,10,00,000/-. Out of this amount of Rs. 10 Lacs was transferred from my bank account to Mr. Sumit Thaper which is duly accounted for (proof of this will be submitted later on) and rest of the amount has been paid in cash. The source of Rs. 1 Cr. Paid in cash are out of commission income and profit earned from real estate transaction in past. However, no documentary evidence is available with me. Hence to BUY peace of mind and to avoid litigation. I hereby voluntarily offer Commission income as well as profit earned on real estate transactions as an additional income of Rs. 1 Cr. (One Crore) over and above my normal income for the F.Y. 2016-17 relevant to A.Y. 2017-18 subject to no penal action. I hereby reiterated that these transactions were entered by me in Individual capacity and nothing to do with the company i.e. M/s A.P. Refinery Pvt. Ltd."

The said explanation given by the assessee to the Ld. CIT(A) has not been rebutted, therefore the provisions of Section 69 of the Act were not applicable as the business transactions were recorded in the books of account and the assessee either earned commission or profit on all those Real Estate transactions. The income earned from the Real Estate transactions was claimed to be utilized for making the investment in the property. In the present case it is not brought on record to substantiate that the said income was utilized by the assessee elsewhere and not in the investment of the property. Therefore, we are of the view that the A.O. was not justified in taxing the aforesaid income of Rs. 1 Crore separately particularly when nothing is brought on record to substantiate that the assessee had made separate investment different from the income earned on real estate transactions recorded in the pocket diary found & seized during the course of search. Accordingly, the impugned order passed by the Ld. CIT(A) on this issue is set aside and the A.O. is directed to tax the entire surrendered income of Rs. 3.64 at the normal rate of tax.

14. We find the Bangalore Bench of the Tribunal in the case of Ragavs Diagnostic & Research Centre Pvt.Ltd.(supra) while deciding an identical issue has observed as under:-

12. We will look at the provisions of section 69C which are as follows:-

"69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is

*not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year : Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income."*

*13. From the plain reading of the section, it is clear that when an assessee offers no explanation or the explanation offered is not satisfactory in the ITA No 357 of 2022 Mohd Mujeeb Ur Rahman opinion of the AO, then the amount of such expenditure is to be taxed as income u/s. 69C of the Act. The satisfaction to be recorded by the AO should not be objective satisfaction exercised at his discretion, but a subjective satisfaction based on the facts of the case. It would then mean that justification for exercise of the power has to be found by the authority by making a subjective satisfaction on the basis of objective material and such satisfaction must be reflected in the reasons recorded in writing while exercising the power. (Vide: Dee Vee Projects Ltd. v/s. Union of India & Ors., Writ Petition No.2693/2021, dated 11.02.2022 (Bombay High Court)). In the present case, the assessee is in the business of running a diagnostic centre and the only source of income is the receipts from patients which is stated to be the source for unexplained expenditure. That being the case the AO has not brought any contrary material on record to state that the source for the expenditure was other than from business income and has formed the opinion based on conjectures and surmises. While exercising the quasi-judicial functions, the administrative authorities have to reach satisfaction on the basis of material available and not on conjectures and surmises. The test of reasonableness has to be satisfied which in our view failed in the case under consideration. Therefore, we are of the view that the additional income offered cannot be taxed u/s. 115BBE and the impugned addition is hereby deleted. Accordingly, the assessee is allowed to set off the current year loss against the additional income offered to tax as business income.*

*15. The various other decisions relied on by the ld.counsel for the assessee also support his case to the proposition that provisions of section 69C r.w.s. 115BBE are not applicable to the facts of the present case. In view of the above discussion and in view of the detailed reasoning given by the ld.CIT(A) on this issue, we do not find any infirmity in his order directing the AO to tax the amount of Rs. 5,08,98,100/- under normal provisions of the Act. Accordingly, the same is upheld and the grounds raised by the revenue are dismissed."*

*10. Since the assessee in the instant case has declared the amount of Rs.70,00,000/- as his business income and the books of account were not*

*closed on the date of search i.e. on 12.07.2018 and the assessee is engaged in business, therefore, following the decision of the Coordinate Bench of the Tribunal cited (Supra) we hold that the additional income of Rs.70,00,000/- cannot be taxed u/s 115BBE. The order of the learned CIT (A) is accordingly set aside and the grounds raised by the ass are accordingly allowed.”*

14. In this view of the matter and by following the decision of the ITAT Hyderabad Bench referred above, we are of the considered view that there is no error in the reasons given by the learned CIT (A) to direct the Assessing Officer to levy tax at normal rate of taxes on additional income admitted by the appellant in the return of income filed u/s 153A of the Act. Thus, we are inclined to uphold the findings of the learned CIT (A) and dismiss the appeals filed by the Revenue.

15. In the result, appeal filed by the Revenue is dismissed.

**ITA Nos.436, 437 & 442/Hyd/2022**

16. The facts and issues involved in these 3 appeals filed by the Revenue are identical to the facts and issues which we had considered in ITA No.432/Hyd/2022 in the case of Syed Zeeshanuddin, but for the figures the fact narrated by the Assessing Officer and the reasons given for taxing the additional income declared by the assessee in the return of income filed u/s 153A of the Act under the provisions of section 115BBE of the Act are identical. The reasons given by us in preceding Para No.13 & 14 shall mutatis mutandis apply to these appeals as

well. Therefore, for similar reasons, we are inclined to uphold the findings of the learned CIT (A) in directing the Assessing Officer to levy tax on additional income admitted by the assessee in the return of income filed u/s 153 of the I.T. Act, 1961 and under the head "Income from business" at normal rates as against special rate of tax applied by the Assessing Officer under the provisions of section 115BBE of the Act.

17. In the result, appeals filed by the Revenue in ITA Nos. 436, 437 and 442/Hyd/2022 are dismissed. As a result, all the 4 appeals filed by the Revenue are dismissed.

Order pronounced in the Open Court on 8<sup>th</sup> July, 2024.

Sd/-

Sd/-

<b>(LALIET KUMAR) JUDICIAL MEMBER</b>	<b>(MANJUNATHA, G.) ACCOUNTANT MEMBER</b>
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Hyderabad, dated 8<sup>th</sup> July, 2024

*Vinodan/sps*

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5	Pr. CIT - Hyderabad
6	DR, ITAT Hyderabad Benches
7	Guard File

*By Order*