

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **644/CHD/2023**

निर्धारण वर्ष / Assessment Year : 2019-20

B.K Enterprises, Bullepur Road, Near Golden Grain Club, G.T. Road, Khanna	Vs. बनाम	The DCIT / ACIT, Central Circle 1, Ludhiana
स्थायी लेखा सं./PAN No: AAEFB4147M		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

निर्धारिती की ओर से/Assessee by : None (written submissions)

राजस्व की ओर से/ Revenue by : Smt. Surinder Kaur Waraich, JCIT Sr.DR

सुनवाई की तारीख/Date of Hearing : 18.06.2024

उदघोषणा की तारीख/Date of Pronouncement : 30.08.2024

आदेश/Order

Per Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order dated 21.08.2023 of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana [herein referred to as CIT(A)].

2. Grounds of appeal taken by the Assessee are as under: -

1. *That invoking the provisions of sec 69A on the difference of cash found during the course of*

survey amounting Rs 550760/ and taxing the same as per provisions of Sec. 115BBE is against the facts and provision of law, so the demand created by assessing officer and confirmed by the CIT(A) should be deleted and same should be taxed as normal business income only.

- 2. That the Assessing Officer and CIT(A) completely ignore the written submission filed during the course of assessment as well during appellate proceedings and documents impounded during the course of survey and taxed the difference of cash from books of accounts amounting Rs. 550760/- as per provisions of sec 69A read with sec 115 BBE of Income Tax Act which is against the provisions of law, so the demand created by A.O. and confirmed by CIT(A) on this account should be deleted and the same should be taxed as normal business income as shown by assessee while filling his ITR.*
- 3. The provisions of sec 69A and 115BBE are not applicable to facts of our case specially when the surrender was made in the business income only and assessee is not doing anything else other than this business, so demand created by A.O. is against the provisions of law and should be deleted.*
- 4. That the Assessee seeks the permission to alter, add, amend any of the grounds of appeal.*

3. The only issue involved in this appeal is against the confirmation of Assessing Officer's action by the ld. CIT(A) in invoking the provisions of section 69A of the Income Tax Act, 1961 (in short 'the

Act') on the difference of cash found during the Survey amounting to Rs. 5,50,760/- and taxing the same as per the provisions of section 115BBE of the I.T. Act, 1961.

4. Brief facts of the case, as enumerated by the Assessee are:-

1) That we were working as manufacturer and Traders of Agriculture Machinery and machinery parts at Khanna during the year under consideration and survey operation u/s 133 A of Income Tax was conducted at our business premises by the Income Tax Department on 10/10/2018.

2) During survey proceeding there was no incriminating material found at the business premises, all the books were found in order, stock of raw material and finished goods were also found in order, along with that department impounded a Challan Pad (Pad) from the business premises on which the trade recoveries (On account of sale of Machinery /Machinery Parts) amounting Rs 16,42,460/- were noted down and there was difference in cash in hand to as per books and physical counting of Rs 5,50,760/- found at business premises during survey.

To purchase piece of mind and avoid litigation, assessee made the surrender to the tune of Rs 16,42,460/- on account of Trade Recoveries and Rs 5,50,760/- on account of Excess Cash in the business Income as per surrender letter dated 10/10/2018.

Then the case was taken up for Security Assessment by DCIT /ACIT Central Circle -1 Ludhiana and She assessed

surrendered Income as Income from other sources Invoking the provision of Sec 69 /Sec 69A of Income Tax Act, and assessed the same as per provisions of Sec 115BBE of Income Tax Act.

Then, against the order passed by DCIT / ACIT the Assessee filed an appeal before the CIT(A) Ludhiana-5/ The CIT(A) allowed relief to Assessee on account of Trade Recoveries considering that to be taxed as business Income, but on account of Cash surrendered he was not in agreement with assessee and agreed with the finding of Assessing officer to tax the same as other sources Income as per Sec 69 / 69A of Income Tax Act as per order dated 21/08/2023.

Now against the said order the Assessee is in appeal before this Tribunal.

5. The findings of the Id. CIT(A) on the issue is as under:

“5.3 Regarding the addition on account of unexplained Cash Rs. 5,50,760

5.3.1 The contentions of the assessee on the issue of applicability of provisions of Section 69A to the unexplained cash are not found acceptable as no sources for the same could be explained. The judgments quoted by the AR have gone through. It is important to emphasize here that in all the judgments quoted by the AR in his support, the Hon'ble High Courts / Ld. Tribunal Benches have very clearly held out that the AO shall give an opportunity to the assessee to establish a linkage between the surrendered income with the business income, if any. If the assessee is able to do that then

the income can be considered as from business. In the case of the assessee, the AO gave an opportunity to the assessee to establish a linkage between the surrendered income under the head of 'cash' and the business income but the assessee could not establish a direct nexus between the two. Hence, from above discussion, it is clear that in all the cases discussed above, the settled position of law is that the nexus between the surrendered income and business needs to be established before the same can be treated as income from business.

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

5.3.3 The requirement of proving these three essential ingredients to prove the source in order to escape the rigors of the deeming fiction has been upheld universally. The conjoint burden of proving the nature and source' is therefore, not restricted to merely claiming the nexus of any activity /

transaction to a particular credit/income/asset but also requires to establish with cogent evidence the nexus of such activity/transaction with source also by providing the name and identity, creditworthiness of person with whom the activity/ transaction was done along with proving the genuineness of transaction.

5.3.4 Thus, for the unexplained cash found during survey proceedings, there can be no presumption to treat the value representing such income as application of business income in absence of any evidence of earning that income or details as to when, how and from whom such income was derived.”

6. During the proceedings before us, nobody representing the Assessee appeared, rather written submissions dated 3.6.2024 were filed by the Counsel of the Assessee in the registry in which it was requested that the appeal may be decided on the basis of written submissions only. Accordingly, the written submissions filed by the Assessee, on the issue covered under the grounds of appeal, are reproduced as under:-

“Submissions of Assessee.

1) During Survey proceedings surrender letter was also given by the assessee.

Which is read as:

That the entire related to trade recoveries stated in the challan pad/Pad found during survey amounting Rs

16,42,460/- and difference in cash in hand amounting Rs 5,50,760/- were related to business only and were duly explainable, but just to purchase piece of mind and avoid litigation, assessee made the surrender to the tune of Rs 16,42,460/- on account of Trade Recoveries and Rs 5,50,760/- excess Cash in hand, as per surrender letter dated 10/10/2018 which is read as:

"During survey a Pads Containing 12 Slips totaling to Rs 16,42,460/-, was found, this pad containing 12 slips are the amount of receivables / trade recoverable and these relates to our business. These are the recoverable pertaining to the financial year 2018-19 and are yet to be updated in our books of accounts. Further there is also difference in cash as per physical verification and the cash in hand as per books amounting to Rs. 5,50,760/-. The said cash also relates to our business and is yet to be updated in our account books. However to avoid any dispute and litigation, I hereby declare that the said amounts are in any case to be included in the income for the current financial year and I hereby undertake to report the same as income for the current financial year in the Income Tax return for the assessment year 2019-20 over and above my normal Income. I also undertake to pay the due taxes thereon at the normal tax rate for the current assessment year. The due taxes shall be deposited well in advance ".

In surrender letter also the assessee has confirmed that difference in cash in hand as per books of accounts and

physical counting is related to business and yet to be updated in our books of accounts.

2) Alongwith that statement of Partner Mr Jatinder Devgun was recorded by Income Tax officer. Common Statement for M/s B.K. Engineers & M/s J.R. Agrovat was taken because he was partner in both the firms was survey was conducted on both the business premises.

In statement recorded during survey specific question was asked regarding the excess cash found during survey, It was specifically stated by the Assessee that the difference in cash is due to non updation of books and related to business only.

Question No 7 : During the course of survey, cash in hand as per trial balance is Rs 5,84,175/- and Rs 1,41,550/- respectively whereas the total cash found at this premises is Rs 17,15,350/- please explain the same.

Ans: The Discrepancies could be due to non-updation of books . however, I hereby undertake to include the same in the Income of the firms for the current year and above the Income for the preceding year.

So in both the statements assessee has confirmed that the difference in cash belongs to business only and due to non updation of books of accounts there is difference in cash in hand.

Hence, by no means the same should be assessed as Income from other sources as done by Assessing officer and confirmed by CIT(A).

The Action of the Assessing officer as well as CIT (A) was not as per provisions of law because of following reasons: - ,

- a) "Surrender was made under head business Income and tax was to be paid as per normal rates of taxes to purchase piece of mind" as per surrender letter.

But the Assessing officer has accepted the surrender letter only to extent which is in favour of department and ignored the part which belongs to assessee.

Assessing officer accepted the amount of surrender, but ignored the condition that surrender was made under the head business Income with the condition that tax will be paid as per normal rates of taxes, subject to no penalty and prosecution as stated in the surrender letter.

It has been held by the Hon'ble Jurisdiction High Court of Punjab and Haryana that "The statement of surrender has to be accepted in TOTO or it has get to be ignored."

For that I would like to draw your kind attention to :-

CIT V/s Suit. Sudarshan Gupta (2008) 10 DTR (P&H) 184

So in the light of the judgment passed by the Hon'ble jurisdictional High Court as stated above if department has agreed to the surrender they should also assessee the surrender amount as business Income and taxed the Income at Normal rate of Tax as per surrender letter & provision of Sec 115BBC read with Sec 69 should not be invoked

Same was brought to the knowledge of A.O as well as CIT(A), Both of them Just ignored surrender letter and invoked provisions of Sec 1 15BBE which is against the principle of law settled by Hon'ble Jurisdictional High Court in ease stated above.

b) Further, During Assessment proceedings Assessing officer has verified all the documents related to our business, our books of accounts along with the documents Impounded during survey proceedings, she find all the documents as well as books of accounts, along with closing and opening stock, Debtor/Creditor and cash in hand in order and accepted the books of accounts without point out any defect in the same Including the cash surrendered during survey.

When books of accounts along with cash in hand is accepted by Assessing officer without finding any defects in the same, then there is no point to assessee the Cash in hand difference during survey as per provisions of Sec 69A of Income Tax Act .

Moreover while doing so, she has ignored the submission and documents filed before her with respect to difference in cash.

During the Assessment proceedings in reply to question no 27 dated 13lh/09/2021 it has been brought to the knowledge of Assessing officer that the cash pertains to our business only and documents related to that were also produced/uploaded before her, but she did not gave any weightage to that and just ignored them.

Please ref to reply to Question No 29 as per letter dated 13/09/2021.

“This cash pertain to our business and there is no other source of Income except business I hereby enclosed copy of cash challan issued against supply of goods during the year under assessment to their different persons. These challan are generally issued by the assessee after receiving cash against those dispatched where the goods are supplied on returnable basis. After satisfaction of customers the Final Sale bill is issued against the respective challan”.

Similarly during the year under assessment also the firm has raised cash of Rs 5,50,760/-against such dispatches by issuing challan to Sh. Harjot Singh, Sh. Bhana Ram and Sh. Balwinder Singh but failed to raise final bill even after approval due to the negligence of the accountant. The copies of challan are enclosed herewith for your kind verification. The each challan specifically determine the name and complete address of the person to whom the goods has been dispatched alongwith the details of item sold and cash received. Further the copy of adhar card of these specified persons has also been enclosed which are taken at the time of supply of goods. From these details it is quite evident that the cash has been raised by the assessee against business supplies only and not from any other sources.

But A.O did not given any weightage to the documents viz Challan, Adhar card of the persons from whom cash was received, filed during assessment proceedings and mealy on

surmises and conjectures invoked the provisions of Sec 69A of Income Tax Act and taxed the Income as per provisions of Sec 115BBE, if A.O. had any doubt about the transaction, i.e., the transaction related to business or not she must have rebutted us with the same, but she failed to do so.

The same was brought to the knowledge of the CIT(A), but CIT(A) also did not give any weightage to same and confirmed the order of Assessing officer.

So invoking the provisions of Sec 115BBE read with Sec 69A on account of difference in cash found during survey for which explanation is duly filed by the assessee and which is not doubted by A.O is against the provisions of law.

So difference of cash found during survey should be assessed as Business Income only as offered by Assessee in Surrender letter as well as in Income Tax return filed.”

7. During the proceedings before us, the ld. DR relied on the orders passed by the authorities below.

8. We have considered the finding of the ld. CIT(A) on this issue in his appeal order and the arguments made by the ld. DR during the proceedings before us. As requested by the Assessee, we have also considered the detailed written submissions filed on this issue. We find that either during the survey or during the assessment proceedings or appellate proceedings, the Assessee could not explain the source of cash found. In fact, the CIT(A) has rightly given his

findings that it is important that in all the judgements quoted by the Assessee in his support, the Hon'ble High Courts / Benches of different Tribunals have clearly held that the A.O. could provide an opportunity to the Assessee to establish the linkages between surrendered income with the business income, if any. In case the Assessee was able to do it, then the surrendered income could be considered as income from business but in the instant case despite the fact that the Assessing Officer gave many opportunities to the Assessee to establish the linkage between the surrendered amount during the survey under the head cash and the business income. But the Assessee could not establish any linkage whatsoever between the two.

9. We are also of this considered view that it is settled position in law that the nexus between the surrendered income and the business is to be essentially provided and established in order to treat it as income from business. We further find that just because there is a business activity per se does not explain any income of the Assessee as business income. A burden of proving the source of cash found / any undisclosed income is on the Assessee to prove its source. From the discussion above, we find that the Assessee could not discharge its duty to prove the nexus between cash found during the survey and its business income. Therefore, we find that the lower authorities [i.e.

Assessing Officer and CIT(A)] are justified in treating the undisclosed income found during the survey proceedings without having any direct nexus with the business of the Assessee and, therefore, the invoking of the provisions of section 69A of the Act for this amount and taxing the same as per the provisions of section 115BBE of the Act is justified. Accordingly, Assessee's appeal on these grounds are dismissed.

10. In the result, the appeal is dismissed.

Order pronounced on 30.08.2024.

Sd/-
(A.D. JAIN)
Vice President

Sd/-
(KRINWANT SAHAY)
Accountant Member

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar