

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

HEARING THROUGH: HYBRID 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.341/Chd/2023  
निर्धारण वर्ष / Assessment Year : 2018-19

Karam Chand Prop. M/s Subhash Trading Co., Gurdwara Chowk, Mansa	बनाम	The Pr. CIT (Central) Ludhiana
स्थायी लेखा सं. / PAN NO: ABJPG4503A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sudhir Sehgal, Advocate  
राजस्व की ओर से / Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख / Date of Hearing : 13/06/2024  
उद्घोषणा की तारीख / Date of Pronouncement : 10/09/2024

## आदेश / Order

**PER VIKRAM SINGH YADAV, A.M. :**

This is an appeal filed by the Assessee against the order of the Ld. PCIT(Central), Ludhiana dt. 30/03/2023 pertaining to Assessment Year 2018-19.

2. In the present appeal, the assessee has raised the following grounds of appeal:

"1. That the Ld. PCIT(Central), Ludhiana has erred in assuming the jurisdiction u/s 263 and passing an order vide order dated 30.03.2023 and setting aside the assessment as framed by the Assessing Officer vide order dated 26.02.2021 u/s 143(3).

2. That the Ld. PCIT (Central), Ludhiana has erred while recording the finding vide order u/s 263 dated 30.03.2023 that the assessment order u/s 143(3) of the Act dated 26.02.2021 passed by the AO is erroneous and prejudicial to the interest of the Revenue within the meaning of Section 263 of the Act read with its explanation 1(c) below section 263 because the surrendered income declared during the course of survey has not been treated as unexplained money in the hands of the assessee u/s 69B of the Act and the tax has not been calculated u/s 115BBE of the Act of the surrendered income.

3. That the Ld. PCIT (Central), Ludhiana has failed to appreciate the settled principle of law, while recording the finding that the assessment order u/s 143(3) of the Act dated 26.02.2021 is erroneous and prejudicial to the interest of the revenue within the meaning of section 263 of the Act read with its explanation 1 (c) below section 263, that it was incumbent upon him to undertake an enquiry as regards the contention of the assessee raised during the course of proceedings u/s 263 of the Act which is substantiated by the documentary evidence placed on record that the additional income offered during the course of survey had not been credited in the books of account and no capitalization benefit of the same was taken as the additional income was only declared in the computation of income & even taxes were paid from the capital account and the provisions of section 69B of the Act r.w.s. 115BBE are not applicable.

4. That the Ld. PCIT has erred in not following the judgment of jurisdictional Bench of the ITAT in the case of Surya Hatchery Vs. PCIT (2023) 102 (ITR (trib.) 186 Chd and Surinder Kumar & Others reported in (2023) 102 ITR (Trib.)247 and Others, in which on similar facts and circumstances, the order 263 as passed by Ld. PCIT has been quashed.

5. That the detailed explanation and documentary evidence as furnished during the course of proceedings before the Ld. PCIT have not been considered properly.

6. That even otherwise order passed by the Ld. PCIT, (Central), Ludhiana is liable to be cancelled since, the PCIT (Central), Ludhiana is not of the confirmed view and has merely set aside the order as passed by the Ld. AO and which proves that he is not of the confirmed view and which is against the principles laid down in the case of M/s. Kanda Rice Mills vs. CIT of jurisdictional High Court as reported in 178 ITR 446 in which it has been held that merely setting aside of the order by the Ld. PCIT would not be in order.

7. That the appellant craves leave to add, amend, alter, delete, any other ground or grounds of appeal during the course of hearing."

3. Briefly the facts of the case are that the assessee filed his return of income on 29/09/2018 declaring total income of Rs. 1,35,00,330/- which includes an amount of Rs. 1,35,00,000/- surrendered during the course of survey and paid tax at normal rate on the surrendered income. Thereafter, the case of the assessee was selected for compulsory scrutiny being a survey case and notice under section 143(2) and 142(1) alongwith questionnaire was issued. In response to those notices, the assessee furnished the requisite information/ documentation and the explanation so sought by the AO. Thereafter, after perusal of the

documents and the explanation so submitted by the assessee, the returned income of Rs. 1,35,00,330/- was accepted by the AO vide order passed under section 143(3) dt. 26/02/2021. Thereafter, assessment records were called for and perused by the Ld. PCIT, (Central) Ludhiana and it was observed by him that the assessee had shown surrendered income as business income and income from other sources and tax was calculated at normal rate on the said income surrendered during the course of survey action but no explanation was given by the assessee in respect of income surrendered and no documentary evidence was submitted during the course of assessment proceedings. As per the Ld. PCIT, surrendered income should be treated as unexplained income as the assessee was in possession of unexplained money and tax liability thereon should be as per the provisions of Section 69B and the tax should have been calculated under section 115BBE of the Act. Accordingly, it was held that the assessment order passed by the AO under section 143(3) was apparently erroneous in so far as prejudicial to the interest of the Revenue within the meaning of Section 263 of the Act and the assessee was issued a show cause dt. 28/02/2023 as to why the order so passed by the AO should not be set aside.

4. In response to the show cause, the assessee referred to the statement recorded during the course of survey as well as letter addressed to ITO, Mansa dt. 21/09/2017 filed during the course of survey wherein the assessee has stated that he shall declared the income of Rs. 1,35,00,000/- on account of low G.P. rate from seeds. It was submitted that in the return of income, the assessee declared total income of Rs. 1,36,05,024/- wherein the business income was declared at Rs. 49,26,848/- and income from other sources was declared at Rs. 86,77,500/- and net income after claiming deduction was declared at Rs. 1,35,00,332/-. It was submitted that the income of Rs. 49,26,848/- has been taken from the P&L Account and the remaining amount of Rs. 86,77,500/- has been declared under the head "income from other sources" to make the total

income more than Rs. 1,35,00,000/- as committed during the course of survey. It was further submitted that no effect has been taken of the amount of Rs. 86,77,500/- in the books of account and it has been included only for taxation purposes under the head "income from other sources" in the computation of income. In this regard, reference was drawn to the trading and P&L Account as well as capital account of the assessee wherein no credit has been taken of the amount of Rs. 86,77,500/- and the amount of Rs. 45,75,000/- paid as advance tax has been debited to the capital account under the head advance tax. It was submitted that the AO, after calling for the necessary information, documentation, has therefore correctly assessed the returned income and the said order cannot be held as erroneous and prejudicial to the interest of the Revenue.

5. It was further submitted that the income declared during the course of survey was out of his business income from trading in seeds and it is only on account of inadvertent mistake while filing the return of income, that the income of Rs. 86,77,500/- has been shown under the head "income from other sources". It was submitted that the assessee has surrendered the income only on account of low G.P. Rate and during the course of survey and post survey proceedings, no other income has been unearthed by the Revenue on account of any other undisclosed income / investment and reference was again drawn to the statement recorded of the assessee during the course of survey, the letter filed during the course of survey as well as physical inventory of the stock as well as cash prepared during the course of survey wherein no discrepancy was pointed out. It was accordingly submitted that the revisionary proceedings may be set aside as there is no infirmity in the order so passed by the AO wherein the income surrendered on account of low G.P. Rate has been correctly assessed to tax by the AO without invoking the deeming provision of Section 69B r.w.s 115BBE of the Act, as so alleged in the show cause notice.

6. The submissions so filed by the assessee were considered but not found acceptable to the Ld. PCIT. As per the Ld. PCIT, the assessee had included the amount of Rs. 86,77,500/- in the returned income as "income from other sources" and sources thereof was neither explained by the assessee nor the AO conducted any inquiry as to examine the source of the said income. It was held how the said income under the head "income from other sources" was accounted for in the books of account was also not examined by the AO. It was held that from the reading of Section 115BBE of the Act and the provisions of Section 68 to 69D, where the assessee failed to offer explanation about any credit/income or expenditure or investment, the income is deemed as unexplained and has to be subjected to tax under section 115BBE of the Act and it is seen that the explanation of the assessee on this issue is not found on record therefore the non- inquiry by the AO rendered the assessment order as erroneous and prejudicial to the interest of the Revenue and the assessment order was set aside to the file of the AO to pass a fresh order after affording adequate opportunity to the assessee.

7. Against the findings and the direction of the Ld. PCIT, the assessee is in appeal before us.

8. During the course of hearing, the submissions made before the Ld. PCIT were reiterated. It was submitted that the Ld. PCIT is wrong in holding that no inquiry has been conducted by the AO. In this regard, our reference was drawn to the assessment order wherein the AO has stated that the case of the assessee was selected for complete scrutiny being a survey case and thereafter he has issued notices and detailed questionnaire and in response to these notices, the assessee has furnished requisite information, details and explanation which has been duly examined by the AO and thereafter the return of income has been accepted. It was accordingly submitted that there is a proper and independent application of mind by the AO and all requisite inquiries have been conducted

by the AO and thereafter the return of income which includes the amount surrendered on account of low G.P. Rate has been accepted by the AO.

9. It was further submitted that the case of the assessee was selected for conducting the survey action only on the ground that he has shown low margin from the regular business of trading in seeds and the same is evident from the copy of authorization under section 133A(1) of the Act dt. 20/09/2017 wherein it has been stated clearly that on account of lower profit margin, it is a fit case for action under section 133A of the Act and a copy of the said authorization is placed at page 57 to 59 of the assessee's paper book. Further our reference was drawn to the preliminary report filed by the survey team during the course of survey dt. 21/09/2023 which is available at assessee's paper book page 60 to 61 wherein it has been stated that no discrepancy has been found regarding the stock as well as the cash book and it has been further stated that during the course of survey proceedings and examination, it was found that the assessee has declared G.P rate at a very low rate in seeds account whereas there is a huge margin in seeds account and when confronted, the assessee has agreed to declare his return of income for the F.Y. 2017-18 relevant to A.Y. 2018-19 which will not be less than 1,35,00,000/- and tax will be paid thereon accordingly to cover up leakage in G.P. rate shown. It was accordingly submitted that where there has been no adverse opinion with respect to the business activity of the assessee and the increase in the income of the assessee is on account of low profit margin in the business of the seed which has been duly offered and accepted by the Department, the application of deeming provision as well as invocation of Section 115BBE is wholly invalid.

10. Regarding the amount of Rs. 86,77,500/- shown under the head "income from other sources", it was submitted that the said amount belongs to regular business of the assessee and it is only due to inadvertent error while filing the return of income, the said amount has been shown under the head "income

from other sources". It was submitted that merely because the assessee has taken the mistaken view of the correct legal position by showing said additional income under the head "income from other sources" the same cannot take away right of the assessee to which he is otherwise entitled to be assessed as business income and in support, reliance was placed on the Coordinate Jaipur Bench in case of Smt. Rekha Shekhawat in ITA No. 7/JP/2021 dt. 16/08/2022.

11. It was further submitted that where the assessee has no other source of income and the Department does not any material on record with respect to any other business of the assessee, the deeming provision as well as the provision of Section 115BBE of the Act cannot be invoked and in support, reliance was placed on the Coordinate Benches decision in case of Durga Dass Surender Kumar in ITA No. 397/Chd/2022 dt. 12/05/2023 and in case of Shri Jasjot Singh Garcha in ITA No. 378/Chd/2022 dt. 17/08/2023. It was accordingly submitted that the order so passed by the Ld PCIT be set aside and that of the AO be sustained.

12. Per contra, the Ld. CIT/DR has relied on the findings of the Ld. PCIT.

13. We have heard the rival contentions and perused the material available on record. The Id PCIT has invoked his jurisdiction u/s 263 stating that the surrendered income during the course of survey, though offered in the return of income by the assessee under the normal provisions, should be brought to tax under the deeming provisions of Section 69B read with Section 115BBE of the Act and since the AO has failed to do so, the order so passed has been held to be erroneous in so far as prejudicial to the interest of the Revenue.

14. What is therefore relevant to examine is the material and record basis which the Id PCIT has held that the deeming provisions are applicable in the instant case. In this regard, our reference was drawn to copy of authorization under section 133A(1) of the Act dt. 20/09/2017 wherein it has been stated that

on account of lower profit margin, it is a fit case for action under section 133A of the Act. Further, our reference was drawn to the preliminary report filed by the survey team during the course of survey dt. 21/09/2023 wherein it has been stated that no discrepancy has been found regarding the stock as well as the cash book and it has been further stated that during the course of survey proceedings and examination, it was found that the assessee has declared G.P rate at a very low rate in seeds account whereas there is a huge margin in seeds account and when confronted, the assessee has agreed to declare his return of income for the F.Y. 2017-18 relevant to A.Y. 2018-19 which will not be less than 1,35,00,000/- and tax will be paid thereon accordingly to cover up leakage in G.P. rate shown. The said authorization to carryout survey proceedings as well as preliminary report of the survey team is part of the record which is not just available to the AO but also to the Id PCIT and the same form the basis and foundation for selection of case of the assessee for compulsory scrutiny (being a survey case) and consequent assessment proceedings and passing of order by the AO u/s 143(3) which is the subject matter of revisionary proceedings u/s 263 of the Act.

15. We therefore find that it is on account of low GP rate in respect of trading in seeds that the assessee has agreed during the course of survey to file his return of income declaring income not less than Rs 1,35,00,000/-. The assessee has subsequently honoured the commitment so made and has filed the return of income declaring income of Rs 1,35,00,330/- and paid taxes thereon at normal rate of tax. The income so offered is clearly in respect of regular business activity undertaken by the assessee in terms of trading in seeds and where additional income has been offered by the assessee, the same is clearly in the nature of business income and mere disclosure thereof wherein part of such income has been disclosed under the head "business income" and part under the head "income from other sources", admittedly wrongly as so submitted

before us, will not change the very character of the income so disclosed. Further, there is no finding by the survey team that any other undisclosed income/investment/asset has been found during the course of survey. Even during the course of assessment proceedings, no such finding in terms of any other undisclosed income has been recorded by the AO and there is thus nothing on record available at the time of examination by the Id PCIT nor there is any finding to this effect by the Id PCIT. Therefore, the very basis of invocation of jurisdiction by the Id PCIT that the assessee was in possession of unexplained money as found during the course of survey is not discernable from the records and thus, liable to be set-aside. There is nothing on record to demonstrate that the assessee has been found in possession of any unexplained money. The mere fact that survey has been carried out on the business premises of the assessee and assessee has agreed to surrender additional business income on account of low GP rate, the same cannot be form the basis for invocation of jurisdiction u/s 263 holding that the income so offered under normal provisions should suffer taxation under the deeming provisions read with section 115BBE of the Act. For invocation of deeming provisions, the conditions specified therein needs to be specified and merely the fact that survey operations have been carried out, the said provisions cannot be applied by default which has apparently happened in the instant case where the Id PCIT has sought to invoke the same by exercise of his jurisdiction u/s 263 of the Act. We are therefore of the considered view that there is no material on record before the Id PCIT basis which he has invoked his jurisdiction u/s 263 of the Act and hold the assessment order as erroneous in so far as prejudicial to the interest of the Revenue.

16. The order so passed by the AO has taken into consideration the additional income so committed by the assessee during the course of survey, the findings of the survey team, return of income and the additional income being in the nature of business income, it has been offered in the return of income and

rightly brought to tax under the normal provisions and the deeming provisions as well as provisions of section 115BBE have no role to play and rightly not invoked by the AO.

17. In view of the aforesaid discussion and in the entirety of facts and circumstances of the case, we set-aside the order so passed by the Id CIT(A) and the order of the AO is hereby sustained.

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

Order pronounced in the open Court on 10/09/2024

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