

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.293/Ahd/2022  
(Assessment Year: 2017-18)

Kaneyalal Ramjibhai & Sons, Sharaf Bazar, Mahuva Mahuva, Bhavnagar-364290	Vs.	Principal Commissioner of Income Tax, Ahmedabad-1, Ahmedabad
[PAN No.AAFFK1392L]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, A.R.
<b>Respondent by:</b>	Shri R. N. Dsouza, CIT DR

<b>Date of Hearing</b>	25.09.2024
<b>Date of Pronouncement</b>	14.10.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax, (in short “Ld. PCIT”), Ahmedabad-1, vide order dated 01.03.2022 passed for A.Y. 2017-18.

2. The Assessee has taken the following grounds of appeal:-

“1. The ld. PCIT has grossly erred in law and on facts in assuming jurisdiction u/s.263 of the Act on the erroneous ground that the impugned assessment order is erroneous in so far as it is prejudicial to the interest of the revenue.

2. The ld. PCIT grossly erred in not appreciating that in order to invoke s.263, two conditions must be Fulfilled viz. the impugned assessment order must be erroneous and that error must be prejudicial to the interest of the revenue. In the present case, ld. AO has passed the reasoned assessment order after analysing all details and therefore there was no error in the impugned assessment order so as to justify action u/s.263 of the Act. Under the circumstances, the very assumption of power u/s.263 of the Act is unjustified and bad in law and therefore, order u/s.263 of the Act deserves to be quashed.

3. *The subject order u/s. 263 passed by ld. PCIT is illegal and bad in law in the absence of any finding of the ld. PCIT as to how the alleged error of the AO has resulted in loss of revenue particularly when tax has been duly paid on the impugned income.*

4. *The subject order u/s. 263 passed by ld. PCIT is illegal and bad in law in the absence of any finding of the Id. PCIT as to how the alleged error of the AO has resulted in loss of revenue particularly when business loss has rightly been claimed.*

5. *The ld. PCIT has further erred in law in not coming to any concrete conclusion and without conducting any inquiry or investigating the issue, merely directed the AO to frame the assessment order afresh. Without there being any positive finding about order being erroneous and prejudicial to the interest of the revenue, the action of ld. PCIT is without jurisdiction and illegal and hence deserves to be deleted.*

6. *Ld. PCIT has erred in not considering various facts and in not appreciating the facts and law in their proper perspective.*

7. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”*

3. The brief facts of the case are that the assessee firm, which is operating under the name M/s Kaneiyalal Ramjibhai & Sons, filed its return of income on October 27, 2017, for the assessment year 2017-18, declaring a total income of Rs. 3,94,98,230/-. This return was selected for scrutiny following a survey conducted by the Department on September 23, 2016, under Section 133A of the Income Tax Act. The assessment, was completed on December 18, 2019, under Section 143(3), which confirmed the declared income without any changes. However, Principal CIT upon reviewing the case of the assessee, observed that during the survey, the assessee had disclosed an unaccounted income of Rs. 4,29,81,942/-, which was not recorded in the firm's regular books of accounts and thus not taxed as required under Section 115BBE of the Act. **The firm's reported income of Rs. 3,94,98,230/- was calculated after accounting for expenses against this unaccounted income. This resulted in a reported business loss of**

**Rs. 34,83,712/-, which, according to Section 115BBE(2), is not allowable for set-off against the undisclosed income.** The Assessing Officer (A.O.) did not address these significant issues during the assessment process, leading to an erroneous order that was detrimental to the Revenue's interests. Consequently, a show cause notice under Section 263 of the Income Tax Act was issued to the assessee on February 7, 2022, requesting a written response by February 11, 2022. In the notice, the assessee firm was asked to demonstrate the connection between the unaccounted income and the firm's business, provide journal entries related to this income, and justify why the business loss should not be disallowed under Section 115BBE(2). In response, the assessee submitted arguments on February 9, 2022, contending that the assessment order was not erroneous or prejudicial to the Revenue. The assessee submitted that the A.O. had conducted adequate inquiries and that the unaccounted income had been properly disclosed during the survey. The assessee firm claimed that the figures disclosed were genuine, and the current year's business loss should not be considered as it was merely an expense against gross profit. However, Principal CIT found the assessee's arguments unconvincing for several reasons. The firm failed to submit required journal entries and could not substantiate the nature of the unaccounted income. The stock revealed during the survey was classified as undisclosed and treated as unexplained investments under Section 69 of the Act. The reported income and investment in stock, recorded after the survey, could not be treated as regular business income. Additionally, the firm did not provide details regarding the source of the unaccounted stock purchases. In light of these findings, Principal CIT held that the undisclosed income was liable to be

taxed under Section 115BBE, and the current year's business loss could not be set off against it due to the provisions of Section 115BBE(2). Principal CIT was of the view that the A.O. had not conducted the necessary verification of the claims made by the assessee, leading to an assessment order being both erroneous and prejudicial to the revenue's interests under Section 263. The order was therefore directed to be set aside, directing the A.O. to conduct a fresh assessment while providing the assessee an opportunity to be heard.

4. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). Before us, the first contention of the Counsel for the assessee is that the matter was examined in detailed during assessment proceedings and the Assessing Officer took a legally plausible view. It was submitted that the assessee's case for the assessment year 2017-18 was selected for scrutiny by way of issuance of notice issued on September 18, 2018, under Section 143(2) of the Act. Following this, the Assessing Officer (A.O.) sent a notice dated July 29, 2019, under Section 142(1), requesting various details and documents from the assessee, which included inquiries regarding the nature of the business, sources of income, computation of income, Tax Audit Report, audited annual accounts, books of accounts, and the stock register. In response to this notice, the assessee filed letter dated August 7, 2019, giving details of their business activities. The assessee firm submitted that it is engaged in the retail sale and purchase of gold ornaments, jewelry, and silver articles, and submitted that its only source of income was from trading in these items. Additionally, the assessee submitted several documentation for the year under consideration, which

included the computation of income, the Tax Audit Report, and the audited financial statements. The assessee also provided its cash book and ledger for the financial year, giving details of recorded excess gold stock valued at Rs. 3,95,24,694/- and excess silver stock valued at Rs. 34,57,248/- that were found during the survey. The evidence supporting these claims was backed by documents such as the day book and daily activity reports. Subsequently, on November 30, 2019, the A.O. issued another notice under Section 142(1), again calling for further details, particularly a reconciliation of the physical stock and book stock as of the survey date, as well as evidence establishing the accuracy and allowability of the purchases and other expenses claimed by the assessee. In response, the assessee filed a detailed submission dated December 4, 2019, and reiterated the findings from the earlier survey under Section 133A of the Act, confirming the excess physical stock of gold and silver that had been identified. The total value of the excess stock was confirmed as Rs. 4,29,81,940/-, which included the previously noted amounts of gold and silver. The valuation of this excess stock had been conducted by Government-approved valuer during the survey, and a copy of the valuation report was provided to the A.O. Additionally, the partner of the firm, Pareshkumar Vavadia, also made a statement during the survey that was also submitted for review. The assessee submitted that tax on the disclosed amount of Rs. 4,29,81,943/- related to the excess stock had already been paid as advance tax for the assessment year, with copies of all relevant challans and documentation included in the submission. Finally, the A.O. framed the assessment on December 18, 2019, under Section 143(3) of the Act, accepting the returned income of the assessee without any adjustments or modifications,

concluding that the documentation and explanations provided were satisfactory and in compliance with the legal requirements. Therefore, once the matter has been examined in detailed during assessment proceedings and the Assessing Officer took a legally plausible view, the assessment order cannot be held to be erroneous and prejudicial to the interests of the Revenue.

5. The second contention of the Counsel for the assessee is that the matter was examined in detailed even during the course of 263 proceedings and various details were submitted by the assessee during 263 proceedings, which were omitted to be considered by Principal CIT from a correct perspective. The Counsel for the assessee submitted Principal Ld. CIT(Appeals), during the course of 263 proceeding noted that an unaccounted income amounting to Rs. 4,29,81,942/- had not been routed through the regular books of accounts, which should have led to its taxation under Section 115BBE of the Act. Furthermore, the Principal CIT pointed out that **the current year's business loss was improperly set off against this unaccounted income declared during the survey.** Consequently, the assessee was called upon to provide evidence demonstrating that the unaccounted income of Rs. 4,29,81,942/- was indeed related to the firm's business for the year in question. They were also requested to submit all journal entries associated with this unaccounted income and relevant ledgers. Additionally, the Principal CIT sought an explanation as to why the current year's business loss of Rs. 34,83,712/- should not be disallowed, as the income calculated by the CIT after adjusting expenses against the unaccounted income left no room for this loss to be considered allowable

under Section 115BBE(2). In response, the assessee furnished a detailed letter on February 9, 2022, addressing the concerns raised in the show cause notice. The assessee clarified that during the survey, excess stocks of gold and silver were discovered, and the partner of the firm had made a statement recorded by the authorized officer. The disclosure of Rs. 4,29,81,942/- made during the survey was accepted as genuine by the survey team. The assessee confirmed that this amount had been credited to the Profit & Loss account. The response also included the partner's statement recorded during the survey and emphasized that the current year's business loss of Rs. 34,83,712 had not been set off against any income. The firm declared a gross profit of Rs. 3,20,82,598/- and reported the survey disclosure as a separate line item. Furthermore, the assessee listed the deductions claimed, which included business expenses amounting to Rs. 38,55,964/- and interest and remuneration to partners totalling Rs. 3,18,48,395/-. This resulted in a net profit of Rs. 3,93,60,181/-, leading the total of net profit and partner remuneration to Rs. 7,12,08,576/-. Since this final profit exceeded the disclosure of Rs. 4,29,81,942/-, the assessee argued that there was no basis for adjusting the current year's loss. The response was supported by a certificate from their Chartered Accountant, Maheshbhai Godani, and all requested details of the survey proceedings were provided to the A.O. The assessee contended that there was no error in the A.O.'s order and that the assessment order was neither erroneous nor prejudicial to the revenue's interest. Thus, the assessee submitted that the proceedings under Section 263 were unwarranted and amounted to a mere change of opinion. Despite the detailed response, Principal CIT was not satisfied with the explanations provided by the assessee. Therefore, the Counsel for the assessee argued

that Principal CIT had omitted to appreciate the facts from a correct perspective, and assessment order was neither erroneous nor prejudicial to the interests of the Revenue.

6. Thirdly, the Counsel for the assessee submitted that in the instant facts, the Assessment order is not erroneous and prejudicial to the interests of the Revenue. The Counsel for the assessee submitted that the income of Rs. 4,29,81,942/- disclosed by the assessee during the survey is characterized as "business income." This conclusion is supported by several critical facts arising from the statement of Shri Paresh K. Vavadiya, a partner in the firm, which was recorded during the survey. Notably, excess stock of gold worth Rs. 3,95,24,694/- and excess stock of silver amounting to Rs. 34,57,248/- were identified during this survey. The total disclosed amount of Rs. 4,29,81,942/-, which combines these figures, was reported by the partner due to the discovery of undisclosed stock. **Importantly, this excess stock was acquired from the current year's undisclosed income of the firm, and there were no other sources of income from which this amount could have been generated.** The A.O. found no substantial evidence to suggest that the income arose from activities outside of business operations. Therefore, it is concluded that the undisclosed income found and declared during the survey should be taxed as business income. Furthermore, the Counsel for the assessee submitted that Section 69 serves as a residuary provision and cannot be applied to tax any business income. The A.O. appropriately acknowledged that the income of Rs. 4,29,81,942/-, disclosed during the survey, is to be classified as business income. As a result, there is no error in the A.O.'s order, and the Principal CIT is not

justified in invoking jurisdiction under Section 263 of the Act. In terms of record-keeping, the income of Rs. 4,29,81,942/- is duly recorded in the firm's books of accounts. Section 69 can only be invoked for items not recorded, while in this case, the income in question is properly documented.

7. Additionally, the Counsel for the assessee submitted that section 115BBE, which was amended effective December 15, 2016, is applicable only prospectively. Since the survey occurred on September 23, 2016, the additional income disclosed is governed by the pre-amendment law, meaning the higher tax rate of 60% does not apply. The Counsel for the assessee relied on the case of *CIT v. Vatika Townships P. Ltd.* 367 ITR 466 (SC) and *Samir Shantilal Mehta v. CIT (ITA 42/SRT/2022)*. Consequently, Section 69 is not applicable in this scenario, and thus the question of applying the provisions of Section 115BBE, especially the amended sections, does not arise. The A.O.'s order stands correct, and the PCIT is not justified in taking revisionary action regarding this matter.

8. On the issue of denying the set-off of the current year's business loss of Rs. 34,83,712/- in light of Section 115BBE(2) of the Act, **the Counsel for the assessee submitted that no such loss has been adjusted against any income**. The firm declared a gross profit of Rs. 3,20,82,598/-, with the survey disclosure of Rs. 4,29,81,942/- reported separately. Deductions claimed include business expenses of Rs. 38,55,964/- and interest and remuneration to partners amounting to Rs. 3,18,48,395/-. This resulted in a net profit of Rs. 3,93,60,181/-, with the sum of net profit and partner remuneration totaling Rs. 7,12,08,576/-. **Given that this final profit exceeds the disclosed amount, there is no basis for adjusting the current**

**year's loss.** A certificate from Chartered Accountant Maheshbhai Godani was also provided to support these assertions. Therefore, the PCIT's statement regarding the current year's business loss is unfounded. Even if the undisclosed income is classified as business income, the application of Sections 69 and 115BBE does not support denying any losses. Thus, the A.O.'s order is not erroneous, and cannot be subjected to revision under Section 263 of the Act.

9. In response, DR placed reliance on the observations made by the Assessing Officer in the assessment order.

10. The Ld. D.R. placed reliance in the case of **Shiv Shakti Enterprise vs. PCIT, 157 taxmann.com 492 (Ahmedabad – Tribunal)**, wherein the ITAT held that where assessee firm admitted to have received certain amounts in cash, during course of survey proceedings under section 133 and working partner of assessee firm admitted such undisclosed income in cash outside books of account, case of assessee fell within purview of provisions of section 69A, read with section 115BBE and therefore, Commissioner rightly invoked section 263, for taxing said undisclosed income at a higher rate as provided under section 115BBE of the Act.

11. We have heard the rival contentions and perused the material on record.

12. On going through the facts of the assessee's case and the various documents produced before us for our perusal, we are of the considered view that Ld. PCIT erred in facts and in law in holding that the assessment

order is erroneous and prejudicial to the interest of the Revenue. On going through the statement of partner of the assessee firm, he admitted to be in possession of excess stock, which was purchased out of the undisclosed income of the assessee for the impugned year under consideration. Further, on perusal of the Profit & Loss Account for the impugned year under consideration, the income declared during the course of survey was also offered to tax by the assessee as it's business income during the impugned year under consideration. Further, we also observe that the Assessing Officer vide notice dated 29.07.2019 have called for the necessary details, to which response dated 07.08.2019 was furnished by the assessee. In the said response, the assessee had also filed copied of books of accounts i.e. cash book, ledger of stock register for the perusal of the Assessing Officer. Further, we observed that vide notice dated 30.11.2019, the Assessing Officer again inquired into the working of the stock as on the date of survey and asked the assessee to reconcile the stock physically found, with the stock as per books of accounts, along with supporting material to establish the accuracy, genuineness and allowability of purchase and other expenses claimed. In response, the assessee filed reply dated 04.12.2019, in which the necessary reconciliation was submitted to the Assessing Officer as per his requirements. We observe that the Assessing Officer had duly inquired into matter and had also taken the legally plausible view in the matter. In the case of **Parshottambhai Maganlal Ramotia vs. PCIT 157 taxmann.com 5148 (Rajkot)**, the ITAT held that where assesses, a medical practitioner, voluntarily surrendered certain amount during survey as his unaccounted professional receipts and taxed said receipts at normal rate, since assessee had no other source of income, other than business income

and AO had conducted inquiry and perused details submitted, and taken a decision to accept explanation provided by assessee after proper application of mind, provision of section 115BBE could not be invoked to tax income as deemed income. While passing the order the ITAT made the following observations:

*“12. Our attention was also drawn to judicial pronouncements to the effect that where the assessee has no other source of income, other than the business income and the AO had conducted inquiry and perused the details submitted, and taken a decision to accept the explanation provided by the assessee after proper application of mind, the provision of section 115BBE of the Act could not be invoked to tax the income as deemed income. That therefore the view of the Id.Pr.CIT invoking the provisions of section 263 on this aspect was not justified. Reference in this regard was made to the decision of ITAT, Bangalore Bench in the case of Karthik Estate v. Pr.CIT, [ITA No. 432/Bang/2022 dated 24.8.2022]. Copy of the order was placed before us.”*

13. Further, in the case of **Chokshi Hiralal Maganlal vs. DCIT 9 taxmann.com 300 (Ahmedabad)**, while passing the order the Ahmedabad Tribunal has made the following observations:

*“9. After hearing both the parties and perusing the record, we find that there is no dispute about the fact that AO while making the addition of Rs. 13 lacs by disallowing claim of the assessee of this amount in respect of partner's remuneration u/s. 40(b) of the Act against the income disclosed at the time of survey has placed reliance only on the statement of the partner of the assessee's firm at the time of survey. While going through this statement, we find that disclosure was made of Rs. 39,96,537/- as income from business. The AO however treated the sum of Rs. 3,93,537/- as income from business and the disclosure of Rs. 36,03,000/- on account of unaccounted net job work income was treated by him as income from other sources only on the ground that assessee has never shown income from job work in earlier years or till the date of survey during the year under appeal, therefore this disclosed income cannot be treated as income from business and profession. To verify this fact, assessee was directed to file details of job work income if any in earlier and subsequent years and it was found that assessee has shown income of Rs. 2,01,215/- and Rs. 48,551/- under the head "Veran Majoori income" during the assessment years 2008-09 and 2010-11 respectively. The finding of AO being on wrong facts is not sustainable. We also agree with the contention of the assessee that if statement of the partner at the time of survey was to be relied for making this addition/disallowance, the statement should not be relied in part and should have*

*been relied in full. Since at the time of survey, assessee disclosed the entire income as business income, the AO was not justified in bifurcating the same into income from other sources and income from business or profession. In view of this, the order passed by Ld. CIT(A) treating the disclosed income of the assessee as business income and allowing the partner's remuneration amounting into Rs. 13 lacs u/s. 40(b) of the Act is hereby upheld. Ground No. 1 & 2 of revenue's appeal are dismissed."*

14. In the instant case, admittedly assessee has only one source of income and therefore, looking into the instant facts, in our considered view the Assessing Officer has not erred in facts and law in not invoking the provisions of Section 115BBE of the Act. Further, we also observe that in the instant case, the survey was conducted on the assessee on 23.09.2016, whereas the amendment in Section 115BBE of the Act came into force on 15.12.2016 and therefore, on this count as well, the Assessing Officer has not erred in facts and in law invoking provisions of Section 115BBE of the Act which came into force only from 01.04.2017. It would be useful to club the relevant extracts of the case of **Samir Shantilal Mehta vs. ACIT in ITA No. 42/SRT/2022 for A.Y. 2017-18 vide order dated 08.05.2023**, wherein on identical set of facts, the ITAT made the following observations:

*"8. We note that case of the assessee, under consideration is that the amendment in section 115BBF, came into force only on 15.12.2016 whereas the search was conducted on 16.08.2016 and the assessee has paid tax @ 30%. Since the search in the case of the assessee was carried out before the amendment the addition ought to have been made in terms of the prevailing provision and therefore, the addition made by the assessing officer invoking section 115BBE, provision of which came into force only on 01.04.2017. is not sustainable. Therefore, we note that assessee's issue is squarely covered by the aforesaid precedents, hence we allow the appeal of the assessee."*

15. Accordingly, looking into the instant facts in view of the above discussion, we are of the considered view that the assessment order is not

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erroneous in so far as and prejudicial to the interest of the Revenue and accordingly, the appeal of the assessee is allowed.

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

<b>This Order pronounced in Open Court on</b>	<b>14/10/2024</b>
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 14/10/2024

TANMAY, Sr. PS

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2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad