

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 1045/DEL/2024 (A.Y 2019-20)

Sanjay Jewellers Private Limited Moti Bazar, Near Minar Gate, Palwal, Faridabad, Haryana PAN No. AALCS8413M (APPELLANT)	Vs.	DCIT Central Circle-2 New CGO complex, NH 4, NIT, Faridabad, Haryana (RESPONDENT)
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Assessee by :	Sh. Jinendra Wadhwa, Adv
Department by:	Sh. Satya Prakash Sharma, Sr. DR

Date of Hearing	09.10.2024
Date of Pronouncement	12.11.2024

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the Assessee for the Assessment Year 2019-20 against the order of the Assistant Commissioner of Income Tax- (Appeals)-3, Gurgaon dated 16/01/2024.

2. The grounds of Appeal are as under: -

“1. That the Ld. Commissioner of Income Tax (Appeals) has erred, in law as well as on facts in upholding the invocation of provisions of section 69 of the Act on the surrendered amount of Rs. 1,60,00,000/- treating the same to be unexplained investment against declared business income which is arbitrary and unjustified.

2. That the provisions of Section 69 are not attracted to Rs. 1,60,00,000/- on account of excess stock already stands declared in books as business income and as such treating it to be unexplained is illegal, arbitrary and unjustified. Also, the assessee had established the source of surrendered income (to be business income) through documentary evidence at the time of survey proceeding and assessment proceedings.

3. That the order of the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding that charging of tax at 60% applying the provisions section 115BBE which are not attracted in the instant case.

4. Reliance is placed on the following judgements:

- Veer Enterprises Vs DCIT, Ludhiana ITA No. 255/Chd/2023 dt. 23.01.2024 (ITAT Chandigarh)*

income surrendered by the assessee during the survey cannot be brought to tax under the deeming provisions of Section 69A and 69B of the Act as the same has been rightly offered to tax by the assessee under the head of business income.

- Sham Jewellers v. DCIT, ITA No. 375/Chd/2022 dated 22.08.2022 (ITAT Chandigarh)*

The AO has not brought on record any iota of evidence to demonstrate that the assessee had any other source of

income except income from business and, therefore, it is our considered view that deeming such income under the provisions of sections 68 or 69 would not hold good.

- *CIT v/s Bajargan Traders D.B. I.T. No. 258/2017 dated 12/09/2017 (Rajasthan High Court)*

investment in procurement of excess stock was clearly identifiable and related to the regular business stock of the assessee and hence, the investment in the excess stock is to be brought to tax under head "business income" and not under the head income from other sources.

- *Shri Lovish Singhal vs. ITO (2018) 53CC 250 Jodhpur Tribunal*

Income surrendered during survey not taxable at 60% U/s

5. *That having regard to the facts and circumstances of the case, reliance is also placed on the judgement of the Hon'ble Supreme Court in the case of Nalinikant Ambalal Mody v CIT [1966] 61 ITR 428, wherein it was held that whether an income falls under one head or another is to be decided according to the common notions of practical man because the Act does not provide any guidance in the matter.*
6. *That having regard to the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in framing the assessment order by not observing the principles of natural justice.*
7. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing.*

3. Brief facts of the case are that, the Assessee is a Private Limited Company engaged in trading business of gold/silver jewellery and ornaments. A survey u/s 133A of the Income Tax Act 1961, ('Act' for short) was conducted at the premises of the Assessee by the Income Tax Authorities on 21/02/2019. During the survey, the survey team found an excess stock of gold/silver jewellery worth Rs. 1,60,00,000/-. The Assessee surrendered the excess stock and paid income tax on it as per normal provisions of the Act. However, as per the A.O. the surrendered income should be tax u/s 115BBE as the said income falls u/s 115BBE of the Act. Accordingly, passed the assessment order on 28/09/2021 by assessing the total income of the Assessee at Rs. 2,60,46,669/- as against the income declared in the Return of Income including surrender of Rs. 1,60,00,000/- at Rs.2,07,47,416/-.

4. Aggrieved by the assessment order dated 28/09/2021, the Assessee preferred an Appeal before the CIT(A) and the Ld. CIT(A) vide order dated 16/01/2019, held that the A.O. has rightly charged the tax under the provision of Section 115BBE as the said income has been found covered under the provision of Section

69 of the Act and upheld the addition subject to charging of tax at 60% upon the income of Rs. 1,60,00,000/-.

5. Aggrieved by the said order of the Ld. CIT(A) dated 16/01/2019 in sustaining the addition, the Assessee preferred the present Appeal on the grounds mentioned above.

6. The Ld. Counsel for the Assessee submitted that the Ld. CIT(A) committed error in upholding the invocation of provision of Section 69 of the Act on the surrendered amount of Rs. 1,60,00,000/- treating the same to be unexplained investment against the declared business income which is arbitrary and unjustified. The Ld. Counsel relying on the plethora of Judgments sought for deletion of the addition made by the A.O.

7. Per contra, the Ld. Departmental Representative submitted that the excess stock of gold/silver jewellery surrendered by the Assessee covered under the provision of Section 69 of the Act, therefore, charging of tax at 60% by the A.O. which has been upheld by the Ld. CIT(A) is in accordance with law, which requires no interference at the hands of the Tribunal. By relying on the

orders of the Lower Authorities, the Ld. Departmental Representative sought for dismissal of the Appeal.

8. We have heard both the parties and perused the material available on record. The only question to be decided in the present Appeal as to whether the income surrendered by the Assessee during the survey can be brought to tax under the deeming provision of Section 69 of the Act or to be taxed under the heads of business income as claimed by the Assessee.

9. During the assessment proceedings as well as at the time of survey, the Assessee contended that the customers were charged for the jewellery and bullions purchased by them on the basis of gross weight of the item (i.e. including Zarkan/Meena etc). Due to the inclusion of other stones, the net amount of gold used in the jewellery item was reduced to certain extent, however, the purchase of those items were exclusive and was only on the basis of net gold weight. Due to the same, there was certain raise in gold held in stock by the Assessee. Further, it was the case of the Assessee that while making jewellery item at the premises, there is some mixing of other metal such as copper for making jewellery

from pure gold and said mixture varies from 8% to 20%, therefore, the net gold available in the stock got increased as compare to what it was recorded in the books. Thus, as per the Assessee the excess stock is an inherent nature of business as mentioned above and is part of overall physical stock found, therefore, the Assessee has rightly treated the amount of excess stock as business income.

10. The Ld. CIT(A) while sustaining the addition relied on the Judgment of Hon'ble Punjab and Haryana High Court in the case of Dulari Digital Photo Services Vs. CIT(2013) 219 Taxman126. The said Judgment of the Hon'ble High Court of Punjab and Haryana is not applicable to the present case, as in the said case, it has been held that where the income is not related to any known or any bona-fide source, it would be necessarily be brought to tax as income of the Assessee u/s 68 of the Act. On the other hand, in the presentcase, the Assessee has explained the source which is very well connected to the business. Thus the Assessee has discharged his onus to prove that that excess stock surrendered during the surveywas the part of overall physical stock. The Co-ordinate Bench of the Tribunal at Chandigarh in the case of Veer

Enterprises Vs. DCIT, Ludhiana in ITA No. 255/Chad/2023 held that the income surrendered by the Assessee during the survey cannot be brought to tax under deeming provision of Section 69A and 69B of the Act as the same has been rightly offer to tax by the Assessee under the head of business income in the following manners: -

“19. Thereafter, the matter came up for consideration before the Tribunal after considering the and no source fried that the amount surrendered that the AO, the Id. CIT(A) and elected in the books of account and no source from where it was derived tendered during the survey was and therefore it was deemed income of was held that under section 69A of the Act declared by the settings of the Tribunal were affirmed and are find that the to substantial question of law and accordingly the findings see was dismissed. We therefore find and was Latement of the General Manager as recorded during the course of survey played a decisive role and was taken into consideration by the Tribunal wherein he had admitted that cash has been generated out of income from other sources and in the absence of nature of source of cash being proved, it uphold the order of the CIT(A) and thereafter, on further appeal, the order of the Tribunal was upheld by the Hon'ble High

Court. Unlike the said case, in the present case, has noted herein above, the partner of the assessee firm, in his Statement recorded during the survey, had clearly stated that he was one of the two partners of the assessee firm, that the business of the assessee firm, i.e., manufacturing clothes of small children was the only source of income of the assessee firm. When he was confronted with discrepancies as found by the Department in the survey, the assessee was so confronted not only with the discrepancies found but also the nature and source thereof and it has emerged that the source of income of the assessee is from its business operations. This being so, the decision of the Hon'ble High Court does not support the case of the Revenue.

30. For the above discussion, in the facts and circumstances of the case, following the decisions taken into consideration, we hold that the income surrendered by the assessee during the survey cannot be brought to tax under the deeming provisions of Section 69A and 69B of the Income Tax Act and the same has been rightly offered to tax by the assessee under the head of business income. In the absence of applicability of the deeming provisions, there is no question of the provisions of Section 115BBE.

31. In the result, the appeal is allowed.”

11. The Co-ordinate Bench of the Indore Tribunal in the case of M/s Suresh Aluminum, Bhopal Vs. ACIT Central Circle-1, Indore in ITA No. 62/Ind/2024 vide order dated 09/08/2024 by reversing the similar addition directed the A.O. to calculate the tax on the surrendered stock under normal provision of the Act and not to apply the provision of Section 115BBE of the Act in following manners: -

“6.1 The question before me is whether the surrendered income is to be treated as ‘business income or as Income from other source u/s 69 of the Act’. For this the nature of surrendered income needs to be examined. Undisputedly except the physical stock taken and calculation of excess stock, no other incriminating material was found during the course of survey nor any other reference to any evidence has been made in the assessment order which could indicate that the assessee carries out any other activity or has income from any other source. Now coming to the surrender of excess stock, I note that on the day of survey physical stock was taken and as per the inventory of stock sheet placed at page 37 of paper book 6 items are mentioned and after taking the quantity and applying the rate, value of physical stock calculated at Rs.79,84,723/-. Now for calculating the excess stock, survey team has to take note of the value of stock shown in the books of accounts. Now the assessee admittedly is not maintaining the stock records. This fact is proved firstly, at the time of survey no stock record was found and secondly even in the tax audit report, auditor has not mentioned about any stock records being maintained by the

assessee nor any quantitative details is appearing in Form 3CD annexed to Form 3CB. The assessee admits to be calculated the closing stock on an estimated basis applied the method cost or market value, whichever is less and taking gross profit rate into consideration. In other words the closing stock is estimated by the assessee. Now on the date of survey when the survey team noticed that assessee is not maintaining any stock records then they based on the records of opening and closing stock as well as gross turnover calculated the stock in hand as per books as on 27.02.2019 at Rs.27,59,426/- and same is referred in Question-18 in the statement recorded during the survey proceedings (copy placed at page-35 of the paper book). I find that there is no calculation by the survey team as to how they arrived at the book stock of Rs.27,59,426/-. It itself proves that survey team has estimated the stock in hand and then calculated the excess stock after reducing the value of physical stock calculated by them. Now the Ld. A.O has invoked the provisions of Section 69 of the Act which provides that "where in the financial year immediately preceding the assessment year, the assessee has made investment which are not recorded in the books of accounts, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of investment or explanation offered by him, is not in the information of the A.O, satisfactory the value of the investments may be deemed to be the income of the assessee of such financial year'. So far as the contentions of the Ld. Counsel for the assessee, it has been claimed through out the proceedings and further supported by the affidavit placed before Ld. CIT(A) that there is no unexplained investment but it is purely business income which accumulated from past period and now offered to tax. Now provisions of Section 69 of the Act comes into play when there are certain investment which are

not recorded in the books of accounts but in the case of the assessee since the stock records are not maintained and they are merely estimated there is no concrete evidence of any unaccounted investment in stock. Had there been the stock records available at the time of survey and the quantitative details of the same was available in the stock records and then during the course of survey if the excess stock in quantitative form had been found then the case of the revenue could have been more stronger.

6.2 But in the instant case I observe that the assessee estimated the stock at the year end and even the revenue authority have estimated the stock in hand on survey date at Rs.27,59,426/-. But the method applied by survey team for calculating such stock and whether it was actually the stock as per books is nowhere discernable from the records. Further it is also noted that no other incriminating material was found during the survey proceedings. So in all it is purely an exercise based on estimation and there is no concrete evidence put-forth by the revenue authorities which could support their action of treating the alleged surrender as Income from other sources and not business Income for invoking Section 115BBE of the Act.

6.3 Under these given facts and circumstances I find that the alleged sum surrendered by the assessee was only to buy peace of mind and it was admittedly business income which has been offered to tax and by no canon can be treated as unexplained investment u/s 69 of the Act. Ld. CIT(A) thus erred in confirming the addition of Ld. A.O of taxing the excess income as per the provisions of Section 115BBE of the Act. Though plethora of decisions have been referred by Ld. Counsel for the assessee which supports the view taken by me, however I would like to first refer and rely to the finding of this

Tribunal in the case of Italian Edibles Pvt. Ltd (supra) wherein the Tribunal referring to plethora of decisions held as under:

“11. Therefore, once the facts emerging from record shows that the excess stock found during survey was a part of entire lot of stock of assessee, part of which is recorded in books of account and part of the same was not found recorded and therefore, treated as excess stock at the time of survey and consequently surrendered by the assessee and also offered to tax in the return of income then the excess stock cannot be treated as deemed income u/s 69 or 69B of the act in view of the judgment of Hon'ble Rajasthan High Court and Coordinate Bench of this Tribunal cited above. Accordingly, this issue is decided in favour of the assessee and against the revenue. The orders of the authorities below qua this issue is set aside. The assessee succeeds to this extent. Accordingly in the facts and circumstances of the case and by following the decision of this tribunal in M/s Brij Mohandas Devi Prasad (supra), we do not find any error or illegality in the impugned order of the CIT(A) same is upheld.”

6.4 Further reliance is placed on the following finding given in the decision of this Tribunal in the case of DCIT V/s Krishna Kumar Verma (supra) as under:

“7. After considering the above factual matrix of the case now we proceed to consider the proposition relied by learned representative of both the sides. The Ld. Senior DR has relied on the judgment of Punjab & Haryana High Court in the case of Kim Pharma (P.) Ltd. vs. CIT(supra) to submit that where the amount surrendered during survey was not reflected in the books of accounts and no source from where it was derived was declared by the assessee, then it is assessable as deemed

income of assessee u/s. 69A of the Act and not as business income. In this case the Assessing Officer made addition of surrendered amount u/s. 69 of the Act as the assessee could not explain the source from where it was derived by the assessee. In the present case undisputedly the Assessing Officer has not made any addition u/s. 69 or any provision of the Act and has accepted return income of the assessee. In the present case we are in agreement with the contention of the learned AR that the orders of the authorities below clearly reveal that the amount of excess stock & excess cash found during the course of survey business income of the assessee as the assessee is in the business of trading in jewellery, metal of bullion and the excess stock found during the search & survey was accumulated from transaction of metal of bullion carried out in the forward community trading and mediation and the same was surrendered as excess stock and offered to taxation as business of the assessee. The Ld. CIT(DR) could not dislodge the contention and observations of the Ld. CIT(A) that the surrendered amount was pertaining to excess stock & excess cash which was business income of the assessee and such additional income offered by the assessee for taxation was nothing but business income of the assessee. Therefore it was offered for taxation under the head income from business and profession. In the present case since the assessee in his statement recorded during the course of search & survey explained that the source of excess stock was the income earned during the relevant financial period from the trading of bullion, jewellery etc. and income from Adat/dalali and regarding excess cash found in his business premises the assessee also explained that though it was not recorded in the

books of accounts but it was accrued to him on account of sale of jewellery in cash and the same pertains to his business activity of trading in business of jewellery. Therefore in the present case the assessee has successfully explained the source of excess stock and excess cash found during the course of search & survey operation and surrendered during the said operation. The Ld. CIT(DR) has not disputed or controverted very factual position that the assessee filed return of income including the surrendered amount and which was accepted by the Assessing Officer without any dispute and without making any further addition in the hands of assessee u/s. 69A or any other section of the Act. In view of above as the assessee has successfully explained and established the source of excess stock and excess cash as his business activity and of trading in jewellery and gems and activity of Adat/dalali thus the benefit of proposition rendered by Hon'ble Punjab & Haryana High Court in the case Kim Pharma (P.) Ltd. vs. Commissioner of Income Tax (supra) is not available for the department in the present case.

8. In view of forgoing discussion we reach to a logical conclusion that the Assessing Officer without making any addition u/s. 69A or any other provision of the Act has accepted returned income of the assessee wherein the assessee has included surrendered amount on account of excess stock and excess cash as business income and has successfully explained the source from where the said surrendered excess stock and excess cash was earned, which was business activity of assessee of trading in jewellery & gems and Adat/dalali in the same field. The coordinate bench of the Tribunal in the various orders including order in the case

of Shri Lovish Singhal v/s. ITO (supra) by following the judgment of Hon'ble Rajasthan High Court in the case of Bajrang Traders (supra) observed that the excess stock found during the course of survey and surrendered made thereof was found to be taxable as business income under the head "Income from business & profession". Identical facts and circumstances as noted above have been found to be existing in the present case then the Ld. CIT(A) was correct and justified in dismissing the contention of the AO and holding that the AO was not right in observing that the assessee is liable to be taxed as per provision of section 115BBE. Therefore, we too have no hesitation in concluding that the facts of present case do nothing the impugned income in the clutches of section 69/69A/69B and therefore do not warrant application of section 115BBE at all. We conclude so and dismiss the ground raised by revenue being devoid of merit."

6.5 Reliance is further placed on the decision of this Tribunal in the case of ACIT V/s Anoop Neema (supra) wherein this Tribunal observed as under: "8. We on perusal of the above finding and the various judgments and decisions referred hereinabove by Ld. CIT(A) find that the alleged excess stock was not kept separately at any other place and was part of the total business stock found at the assessee's business premises are sufficient enough to indicate that the alleged investment in excess stock is part of the business income we also find that alleged excess stock was duly accepted by assessee as part of unaccounted business and source thereof stated during the course of search itself and no other incriminating material was found during search proceedings and therefore is not an undisclosed income as held by the L.d. AO. We, therefore, find no infirmity in the finding of Ld. CIT(A)

rightly holding that the provision of Section 115BBE of the Act are not applicable on the surrendered income on account of excess stock valuing at Rs. 1,41,75,568/-found during the course of search. Thus, grounds no. 1 to 3 raised by the revenue are dismissed”.

6.6 On examining the facts of the instant case and in the light of the above decisions I find that the ratio laid down in these decision is applicable on the facts placed before me and therefore respectfully following the same and also considering the fact that the alleged excess stock was found at the business premises and related to the same business which is carried out by the assessee and more importantly there is no case of difference in quantity of excess stock being found at the business premises and lastly the excess stock has been calculated by the survey team on estimated basis only, I reverse the finding of Ld. CIT(A) and Ld. A.O is directed to calculate the tax on the surrendered stock under normal provisions of I.T. Act and not to apply the provisions of Section 115BBE of the Act. In the result Ground No.1 & 2 raised by the assessee are allowed. Ground No.3 being general in nature which needs no adjudication.”

By respectfully following the above judicial pronouncements and considering the facts and circumstances of the present case, we are of the opinion that the excess stock which was founded in the business premises which was surrendered by the Assessee during the survey which is incidence of business, thus cannot be brought to tax under the deeming provision of Section 69 of the Act and the

same has been offered to tax by the Assessee under the head of business income. In the absence of applicability of the deeming provision there is no question of invoking the provision of Section 115BBE of the Act. Therefore, we direct the A.O. to calculate the tax on the surrendered stocks under the normal provision of the Income Tax Act and not to apply the provision of Section 115BBE of the Act. Accordingly, we allow the Grounds of the Appeal of the Assessee.

12. In the result, the Appeal of the Assessee is allowed.

Order pronounced in the open court on 12th November, 2024.

Sd/-

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 12/11/2024

*R.N, Sr. PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI