

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: VIRTUAL 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.416/Chd/2023
निर्धारण वर्ष / Assessment Year : 2019-20

Rav Sharan Singh 6, Ranjit Singh, Near State College Patiala-147001- Punjab	बनाम	The Asst. CIT Central Circle, Patiala
स्थायी लेखा सं. / PAN NO: BVBPS5943M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Sudhir Sehgal, Advocate and
Shri Rishabh Marwah, C.A
राजस्व की ओर से / Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख / Date of Hearing : 20/08/2024
उद्घोषणा की तारीख / Date of Pronouncement : 30/10/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-5, Ludhiana dt. 24/05/2023 pertaining to Assessment Year 2019-20, wherein the assessee through his various grounds of appeal has effectively challenged the invocation of provision of Section 69 r.w.s 115BBE of the Act in respect of amount of Rs. 25,02,000/- which was surrendered during the course of survey offered to tax under normal provisions in the return of income.

2. Briefly the facts of the case are that the assessee is a medical practitioner and also engaged in the business of medical store under the name and style of M/s Gursharan Chemist, 39-43, Shopping Complex, Tripuri Patiala. A survey operation under section 133A was carried out at the business premises of the assessee on 23/04/2018 wherein the assessee surrendered a sum of Rs. 25,02,000/- in respect of excess stock. Subsequently, the assessee filed his return

of income on 24/10/2019 wherein the amount so surrendered during the course of survey was duly offered to tax under the normal provisions. Thereafter case of the assessee was selected for compulsory scrutiny and notices under section 143(2) and 142(1) were issued and thereafter, taking into consideration the response filed by the assessee to the specific show cause but not finding the same acceptable, the AO invoked the provisions of Section 69 in respect of additional income so surrendered by the assessee amounting to Rs. 25,02,000/-.

3. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) and has sustained the said action on the part of the AO, against which the assessee is in appeal before us.

4. During the course of hearing, the Ld. AR submitted that the assessee is a medical practitioner and also running a medical store from past many years and no other source of income has been identified during the course of survey and the only source of income is from the identified business of medical practitioner and medical store.

4.1 It was submitted that similar submissions were made before the lower authorities and our reference was drawn to the reply to the show cause filed during the course of assessment proceedings wherein the assessee has submitted that the excess stock found at the business premises of the assessee is nothing but only the result of suppression of profit from previous few years and stock is not separately identifiable but is part of the mixed lot of stock found at the premises of the assessee which include declared stock as per books and also the excess stock as computed by the survey team. It was accordingly submitted that since excess stock is a result of suppression of profit from business over the years and has not been kept identifiable separately but is the part of overall physical stock found, the investment in the excess stock has to be

treated as business income and the same has been rightly accepted by the survey team@30%.

4.2 It was further submitted that once a specific surrender was made by the assessee and which has been accepted by the survey team as business income and tax on the same has been realized, the Revenue cannot take different position while framing the assessment by taxing the same under section 69 of the Act.

4.3 It was further submitted that the stock brought by the assessee was of medicines which is part of the regular business operations of the assessee and the survey team has itself compared the physical stock as found during the course of survey with the stock as per books of account which duly justifies that the Revenue itself accepts that the stock pertains to the regular business of the assessee and the same should be brought to tax under the head "business income" and not by invoking the deeming provision under section 69 of the Act. Further, in support reliance was placed on various Coordinate Benches decisions.

5. Per contra, the Ld. DR submitted that for the unaccounted stock found during the survey operation, there can be no presumption to treat the value representing such excess stock as application of business income in absence of any evidence of earning that income or details thereof which has been invested in stock. It was submitted that the assessee has not been able to establish necessary nexus between the excess stock and normal business income. It was accordingly submitted that the action of the AO in applying the deeming provisions r.w.s 115BBE of the Act cannot be disputed and accordingly the Ld. CIT(A) has rightly affirmed the order of the AO in treating the surrender on account of unaccounted stock found during the course of survey as

deemed income. It was accordingly submitted that the order so passed by the Ld. CIT(A) be confirmed and the appeal so filed by the Assessee be dismissed.

6. We have heard the rival contentions and perused the material available on record. We find that the matter is squarely covered by our decision in case of Shri Parmod Singla, Prop. M/s Singla Wire & Allied Products Vs. ACIT (*in ITA No. 516/Chd/2022 dt. 24/07/2023*) wherein we have discussed the matter in detail including the various authorities quoted at Bar. It would be relevant to refer to the discussions and findings therein which are equally relevant in the instant case and same read as under:

"13. We have heard the rival contentions and perused the material available on record. The genesis of the present case lies in the survey operations u/s 133A conducted at the business premises of the assessee on 8/07/2016 wherein the assessee surrendered a sum of Rs 84.80 lacs, thereafter the return of income filed by the assessee on 23/03/2018 was selected for compulsory manual scrutiny as per CBDT guidelines presumably to examine whether the assessee has honoured the surrender so made at the time of survey while filing his return of income, as also evident from the conduct of the assessment proceedings by the AO in terms of issuing the show-cause and seeking comments of the assessee on the amount so surrendered during the course of survey and subsequent passing of the assessment order. As per the AO, the amount so surrendered by the assessee during the course of survey though has been offered in the return of income and thus, the assessee has honoured the surrender of income so made but at the same time, the income so offered in the return of income falls under the deeming provisions of section 69 and 69A of the Act and thus, the tax liability thereon has to be determined in terms of section 115BBE of the Act. As per the Id AR, the assessee has honoured the surrender so made at the time of survey not just in terms of the quantum of income so surrendered but also in terms of nature of income so surrendered, and the rate of tax at which the surrender has been made and surrender so made has been accepted by the survey team and thus, the deeming provisions of section 69 and 69A r/w section 115BBE are not attracted in the instant case.

14. To appreciate the aforesaid rival positions, we refer to the provisions of section 69 and 69A of the Act. Section 69 provides that where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by

him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year. Section 69A provides that where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

15. In the instant case, for the deeming provisions of section 69 to be attracted, there has to be a finding that the assessee has made investments during the financial year in the stock and by way of advances, such investments are not recorded in the books of accounts so maintained by the assessee, and the assessee offers no explanation about the nature and source of the investments or the explanation so offered is not found satisfactory in the opinion of the AO. Similarly, for the deeming provisions of section 69A to be attracted, there has to be a finding that the assessee was found to be owner of cash so found at the time survey, such cash has not been recorded in the books of accounts so maintained by the assessee, and the assessee offers no explanation about the nature and source of the cash or the explanation so offered is not found satisfactory in the opinion of the AO.

16. Recently, in case of *Surender Kumar & others* (ITA No. 398/Chd/2022), the Coordinate Chandigarh Benches has held that there is difference between the undisclosed income and unexplained income and the deeming provisions are attracted in respect of undisclosed income however, the condition before invoking the same is that the assessee has either failed to disclose the nature and source of such income or the AO doesn't get satisfied with the explanation so offered by him and the relevant findings read as under:

"10. We have considered the rival contentions and have gone through the record. As per the provisions of Section 115BBE of the Act, the income tax on income referred to in Section 68 or Section 69 or Section 69A or Section 69B or Section 69C or Section 69D are chargeable to tax at a higher rate. Now a perusal of the provisions of Section 68, 69, 69A, 69B, 69C and 69D would reveal that those provisions are attracted in respect of the credits, cash, expenditure, investment etc. regarding which the assessee offers no explanation about the nature and source thereof. It is to be pointed out that the income is to be assessed u/s 68 wherein any sum is found credited in the books, of which the assessee offers no explanation about the 'nature and source thereof' or the

explanation offered by him is not found satisfactory by the AO. Section 69 is attracted to the unexplained investments of which the assessee offers no explanation about the 'nature and source' thereof or the explanation is not found satisfactory. Similarly, Section 69A is attracted in case of money, bullion, jewellery or other valuable articles, Section 69B refers to the investments, Section 69C refers to the expenditure and Section 69D refers to the amount borrowed or repaid on hundi. The provisions of these Sections are attracted and the income is assessed under these Sections, if, the assessee fails to give the explanation about the 'nature and source' of such undisclosed income. The Id. PCIT in our view, in this case has confused himself between the 'undisclosed income' and the word 'unexplained income'. As per provisions of Section 68 to 69D are attracted in respect of the undisclosed income but the condition for assessing such income under the said provisions is that the assessee has either failed to disclose the nature and source of such income or the AO does not get satisfied with the explanation offered by him.

15. The perusal of the above relevant part of the Audit Report proposal of the AO and Show Cause Notice issued by the Id. PCIT u/s 263 of the Act, would show that all the aforesaid authorities have been swayed by the notion that the income surrendered by the assessee was undisclosed income of the assessee and therefore, the same has to be assessed u/s 68 to 69D, as the case may be, of the Income Tax Act and thereby would be charged to higher rate of tax u/s 115BBE of the Act. However, as noted above, for an income to be taxed u/s 68 to 69D, as the case may be, it should not only be the undisclosed income but the essential condition is that the assessee has failed to disclose the 'nature and source' of such undisclosed income or that the explanation offered by the assessee is not found satisfactory by the AO. In the case in hand, as noted above, the AO duly made enquiries from the assessee as to the nature and the source of the aforesaid surrendered income and has also show caused the assessee as to why the same should not be charged at a higher rate of tax as per provisions of Section 115BBE of the Act. The Id. AO after considering the submissions and explanations of the assessee accepted the contention of the assessee that the surrendered income was out of the business income of the assessee. The perusal of the impugned order of the Id. PCIT would show that the Id. PCIT has not pointed out as to why the explanation offered by the assessee to the AO was not satisfactory and further what more enquiries are required to be conducted in this case, which the AO had failed to conduct. The Id. PCIT has simply based his opinion and order on the Audit Objections/Report as pointed out even in the Audit Report that since the same was undisclosed income of the assessee which was surrendered by the assessee during the survey action and therefore, the same was to be assessed under the provisions of Section 68 to 69D of the Act. The above reasoning of the survey party is not in accordance with the relevant provisions of the Act. Therefore, we

do not find any justification on the part of the Id. PCIT in invoking the Revisionary jurisdiction in this case."

17. Therefore, the foundational requirement before invoking the deeming provisions is not that there were certain survey operations u/s 133A and some undisclosed income has been detected and surrendered by the assessee and thus, the deeming provisions are automatically attracted. Rather the foundational requirement is whether the assessee has made the investment/has been found to be owner of cash and the explanation offered by the assessee explaining the nature and source of such undisclosed income and the reasonability of the explanation so offered by the assessee keeping into account the facts and circumstances of the relevant case. In fact, if we look at the provisions of section 133A, clause (iii) of sub-section (3) provides that an income tax authority acting under this section shall record the statement of any person which may be useful for or relevant to any proceedings under this Act. Therefore, what explanation has been offered by the assessee as part of his statement recorded u/s 133A needs to be analysed and examined before drawing any conclusions in this regard.

18. In the instant case, in the statement so recorded of the assessee during the course of survey, in Question No. 3 raised by the survey team, the assessee was asked about the source of his income and in response, the assessee submitted that he was sole Proprietor of M/s Singla Wire and Allied Products, Patiala and except the said business, he has no other source of income. Further, he stated that he was not partner/Director in any of the firm or company. In Question No. 4 raised by the survey team, he was asked to state the date of commencement of his concern and the nature of activity carried out alongwith details of manufactured products. In response, the assessee submitted that the concern started business in the year 2008 and it is involved in manufacturing of aluminum and copper wires and thereafter, he has given the details of manufacturing process. In Question No. 10, he was asked by the survey team that as per assessee's books of account, there was cash in hand of Rs. 66,400/- however on physical verification, Rs. 10,46,000/- is found from your business premises thus there is excess cash of Rs. 9,80,000/- and the assessee was asked to explain the discrepancy. In response, the assessee submitted that at this point in time, he was not in a position to explain the said discrepancy found in cash and offered the difference of Rs. 9,80,000/- for taxation. In Question No. 11, the survey team noted that one note pad (katcha) was found during the course of survey and advance to various persons to the tune of Rs. 55,00,000/- has been found noted therein and the assessee was asked to explain the nature of these advances. In response, the assessee submitted that these advances relates to his business activity, however he is not in a position to explain the same at this moment of time and to buy peace of mind, he offered this amount of Rs. 55,00,000/- for taxation for the F.Y. 2016-17 pertaining to A.Y 2017-18. In Question

No. 12, the survey team stated that stock to the tune of Rs. 17,38,400/- has been found as per the books of account maintained by the assessee, however on physical verification, stock to the tune of Rs. 37,38,210/- has been determined and the assessee was asked to explain the difference of excess stock valued at Rs. 20,00,000/-. In response, the assessee submitted that at this moment of time, he is not in a position to explain the said difference of Rs. 20,00,000/- however to buy peace of mind, he offered this amount of Rs. 20,00,000/- for taxation for the F.Y. 2016-17 pertaining to A.Y. 2017-18. Thereafter, in the statement so recorded, it is mentioned that taxes on total additional income of Rs. 84,80,000/- so surrendered by the assessee were worked out and three post dated cheques were given by the assessee to the survey team for securing the payment of due taxes amounting to Rs. 26,20,000/-. Thereafter, in terms of surrender letter dt. 08-09/07/2016 addressed to the Additional CIT, Patiala Range, Patiala, the assessee has reiterated the amount surrendered of Rs. 84,80,000/- which were offered as additional income at the time of survey on account of certain discrepancies noticed in terms of advances to various persons amounting to Rs. 55,00,000/-, cash in hand of Rs. 9,80,000/-, excess stock of Rs. 20,00,000/- and the tax liability of Rs. 26,20,000/- which has been worked out at the time of survey and the details and particulars of the cheque issued were mentioned.

19. We therefore find that through various questions raised during the course of survey, the assessee has been asked about the nature and source of his income and various discrepancies so found during the course of survey. In response, the assessee has stated that he is running a sole proprietorship business concern in name of M/s Singla wires and allied products since 2008 wherein he manufactures and sells aluminum and copper wires and all along, the same is his only source of income and thereafter, he has been confronted with discrepancies in terms of cash found excess as compared to what has been recorded in the books of accounts, certain advances relating to his business written in a rough diary and excess value of stock as compared to what has been recorded in the books of accounts. Therefore, we find that the assessee has been confronted with not just the discrepancy so found during the course of survey but the nature and source thereof during the course of survey proceedings and it is clearly emerging that the source of such income is from his business operations. There is a clear statement of the assessee that the advances are related to his business, however since the same have not been recorded in the books of accounts, he has offered the same to taxation. Similarly, the stock physically found has been valued and then, compared with stock as recorded in the books of accounts, thus, there is clear nexus of stock with the assessee's business. The statement of the assessee is available on record and related documents so found during the course of survey are stated to be in possession of the Revenue authorities. Apparently, the AO has failed to take into consideration the statement of the assessee

recorded during the course of survey holistically, and other documents and findings of the survey team which are very much part of the records. Following the surrender so made during the course of survey, the assessee has honored the surrender so made and offered the additional income as business income in his return of income and paid due taxes thereon.

20. In our view, what is relevant before invoking the deeming provisions is not just the factum of survey action but besides that, what is the explanation so offered by the assessee explaining the nature and source of income so found during the course of survey proceedings and which has not been recorded in the books of accounts and the same is the essence of the statutory provisions as duly recognized by the Courts and various Benches of the Tribunal and which has been reiterated from time to time. The statement of the assessee has to be read as a whole and not in piecemeal especially where the Revenue is relying on the same statement and in such circumstances, the defence available to the assessee in terms of part of the statement not been considered by the Revenue cannot be ignored. The mere fact that survey/search proceedings have been initiated at the business premises of the assessee doesn't mandate the Assessing officer to automatically invoke the deeming provisions and before invoking the deeming provisions, he has to call for the explanation of the assessee and only where the explanation so offered is not found satisfactory, he can proceed and invoke the deeming provisions.

21. In case of Gandhi Ram (ITA No. 121/CHD/2021 dated 04/08/2022), speaking through one of us, it was held that it is like laying a general rule which is beyond the mandate of law that wherever there is a survey and some income is detected or surrendered by the assessee, the deeming provisions are attracted by default and by virtue of the same, provisions of section 115BBE are attracted and the relevant findings read as under:

5. "Firstly, how the Id PCIT has arrived at a conclusive finding that the discrepancies found, confronted and accepted by the assessee during the course of survey attract the deeming provisions of section 68, 69, 69A, 69B & 69C is not apparent from the impugned order. Merely stating that excess cash is clearly covered u/s 68 or 69A, excess stock is covered u/s 69 or 69B, construction of Shed/Godown is covered u/s 69B or 69C and advances made to Sundry Parties is covered u/s 69, 69B or 69D is like an open ended hypothesis which is not supported by any specific finding that the matter shall fall under which of the specific sections and how the conditions stated therein are satisfied before the said provisions are invoked. It is like laying a general rule, which to our mind is beyond the mandate of law, that wherever there is a survey and some income is detected or surrendered by the assessee, the deeming provisions are attracted by default and by virtue of the same, provisions of section 115BBE are attracted. The Id PCIT has to record his specific findings as to the applicability of the relevant provisions and how the explanation called for and offered by the assessee is not acceptable in the facts of the present case which is clearly absent in the instant case. Therefore, where the Id PCIT himself is not clear about the applicability of

relevant provisions and in the same breath holding the Assessing officer to task by not invoking the said provisions is clearly shooting in the dark which cannot be sustained in the eyes of law and the order so passed therefore cannot be held as erroneous in the eyes of law."

22. In case of *Chokshi Hiralal Maganlal Vs. DCIT (Supra)*, briefly the facts of the case were that during the course of survey under section 133A which was carried out at the premises of the assessee, excess stock of gold and silver ornaments were found and in the return of income subsequently filed by the assessee, he had included the value of excess stock as part of closing stock inventory. However the AO observed that the said disclosure was not consistent with the provisions of Section 69B of the Act and same was accordingly brought to tax under section 69B. The Ld. CIT(A) confirmed the order of the AO and thereafter on further appeal, the Coordinate Ahmedabad Bench held that the excess stock found during the survey is not separately and clearly identifiable but is part of mix lot of stock found at the premises which included declared stock as per books and also the excess stock as computed by the Survey Officers and therefore the provisions of Section 69B cannot be made applicable as primary condition for invoking the said provision is that the asset should be separately identifiable and it should have independent physical existence of its own and since excess stock as a result of suppression of profit from business over the years and has not kept identifiable separately but as part of overall physical stock found, the investment in the excess stock has to be treated as business income and thereafter has referred to the decision of the Tribunal in case of *Fashion Fashion World Vs. ACIT (IT Appeal No. 1634(Ahd.) of 2006, dt. 12/02/2010)* wherein the Tribunal had observed as under:

"11. But this does not mean that loss computed under any of the five heads mentioned in section 14 – (i) 'salary', (ii) 'income from house property', (iii) 'profits and gains from business or profession', (iv) 'capital gains' and (v) 'income from other sources' – cannot at all be adjusted against unexplained investment or expenditure. What is necessary as per Hon. Gujarat High Court is that source of acquisition of asset or expenditure should be clearly identifiable. In the case before Hon. Gujarat High Court the source of gold confiscated was not identifiable and hence adjustment was not permitted.

12. Thus the important aspect that emerges from the entire discussion is that for invoking deeming provisions under sections 69, 69A, 69B & 69C there should be clearly identifiable asset or expenditure. In the present case we find that entire physical stock of Rs.25,14,306/- was part of the same business. Both kind of stock i.e. what is recorded in the books and what was found over and above the stock recorded in the books, were held and dealt uniformly by the assessee. There was no physical distinction between the accounted stock or unaccounted stock. No such

physical distinction was found by the Revenue either. The assessee has repeatedly claimed that unaccounted business income is invested in stock and there is no amount separately taxable under section 69. The department has ignored this claim of the assessee and sought to tax the difference between book-stock and physical-stock as unaccounted investment under section 69 without considering the claim of the assessee that first the business receipt has to be considered and then investment should be treated as coming out of such unaccounted income. The difference in stock so worked out by the authorities below had no independent identity of its own and it is part and parcel of entire lot of stock. The difference between declared stock in the books and what is physically found would only be a mathematical expression in terms of value and not a separate independent identifiable asset. Therefore, it cannot be said that there is an undisclosed asset existed independently. Once this is so then what is not declared to the department is receipt from business and not any investment as it cannot be co-related with any specific asset.

13. Thus in a case where source of investment/expenditure is clearly identifiable and alleged undisclosed asset has no independent existence of its own or there is no separate physical identity of such investment/expenditure then first what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset and only on failure it should be considered to be taxed under section 69 on the premises that such excess investment is not recorded in the books of account and its nature and source is not identifiable. Once such excess investment is taxed as undeclared business receipt then taxing it further as deemed income under section 69 would not be necessary. Therefore, the first attempt of the assessing authority should be to find out link of undeclared investment/expenditure with the known head, give opportunity to the assessee to establish nexus and if it is satisfactorily established then first such investment should be considered as undeclared receipt under that particular head. It is only where no nexus is established with any head then it should be considered as deemed income under section 69, 69A, 69B & 69C as the case may be. It is because when assessee fails to explain satisfactorily the source of such investment then it should be taxed under section 69, 69A, 69B & 69C as the case may be. It should not be done at the first instance without giving opportunity to the assessee to establish nexus. Therefore, there is no conflict with the decision of Hon. Gujarat High Court in the case of Fakir Mohmed Haji Hasan (supra) where investment in an asset or expenditure is not identifiable and no nexus was established then with any head of income and thus was not available for set off against any loss under any other head. Therefore, we hold that where asset in which undeclared investment is sought to be taxed is not clearly identifiable or does not have independent identity but is integral and inseparable (mixed) part of declared asset, falling under a

particular head, then the difference should be treated as undeclared business income explaining the investment.

14. To conclude sum of Rs.8,10,011/- being difference in stock is represented by undeclared business income. It does not have a separate physical identity. It is to be only taxed under the head 'business'. Other assets have separate physical identity being furniture and fixtures, air conditioners etc. They cannot have a direct nexus with business and therefore investment therein has to be considered under section 69 only."

15. In view of the above, AO is directed to consider the sum of Rs.8,10,011/- as undisclosed business income assessable under the head 'business' and other two sums under section 69. The business income including application of section 40(b) has to be considered accordingly. For calculation of income in view of our above observations, we restore the matter to the file of AO.

23. In the instant case as well, we find that the difference in stock so found out by the authorities has no independent identity and is part and parcel of entire stock, therefore, it cannot be said that there is an undisclosed asset which existed independently and thus, what is not declared to the department is receipt from business and not any investment as it cannot be co-related with any specific asset and the difference should thus be treated as undeclared business income.

24. Following the said decision of the Coordinate Ahmedabad Bench, the Jaipur Bench in case of DCIT Vs. Shri Ram Narayan Birla (Supra) has taken a similar view holding that the excess stock so found during the course of survey was part of the stock and the Revenue has not pointed out the excess stock has any nexus with any other receipts other than the business being carried on by the assessee. The relevant findings are contained at para 4.3 which read as under:

"4.3. We have heard rival contentions and perused the material available on record. Undisputed facts emerged from the record that at the time of survey excess stock was found. It is also not disputed that the assessee is engaged in the business of jewellery. During the course of survey excess stock valuing Rs. 77,66,887/- was found in respect of gold and silver jewellery. The Coordinate Bench in the case of Chokshi Hiralal Maganlal vs. DCIT, 131 TTJ (Ahd.) 1 has held that in a cases where source of investment/expenditure is clearly identifiable and alleged undisclosed asset has no independent existence of its own or there is no separate physical identity of such investment/expenditure then first what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset and only on failure it should be considered to be taxed under section 69 on the premises that such excess investment is not recorded in the books of account and its nature and source is not identifiable. Once such excess investment is

taxed as undeclared business receipt then taxing it further as deemed income under section 69 would not be necessary. Therefore, the first attempt of the assessing authority should be to find out link of undeclared investment/expenditure with the known head, give opportunity to the assessee to establish nexus and if it is satisfactorily established then first such investment should be considered as undeclared receipt under that particular head. It is observed that there is no conflict with the decision of Hon'ble Gujarat High Court in the case of Fakir Mohd. Haji Hasan (supra) where investment in an asset or expenditure is not identifiable and no nexus was established then with any head of income and thus was not available for set off against any loss under any other head. Therefore, the Hon'ble Coordinate Bench held that where asset in which undeclared independent identity but is integral and inseparable (mixed) part of declared asset, falling under a particular head, then the difference should be treated as undeclared business income explaining the investment. In the present case the excess stock was part of the stock. The revenue has not pointed out that the excess stock has any nexus with any other receipts. Therefore, we do not find any fault with the decision of the Id. CIT (A) directing the AO to treat the surrendered amount as excess stock qua the excess stock found."

25. Thereafter, the Coordinate Jaipur Benches in case of Bajargan Traders Vs. ACIT (Supra) has similarly held as under:

"2.10. We have heard the rival contentions and perused the material available on record. During the course of survey, the assessee has surrendered an amount of Rs. 70,04,814/- towards investment in stock of rice which had not been recorded in the books of accounts. Subsequently, in the books of accounts, the assessee has incorporated this transaction by debiting the purchase account and crediting the income from undisclosed sources. In the annual accounts, the purchases of Rs. 70,04,814/- were finally reflected as part of total purchases amounting to Rs. 33,47,19,658/- in the profit and loss account and the same also found included as part of the closing stock amount to Rs. 1,94,42,569/- in the profit/loss account since the said stock of rice was not sold out. In addition to the purchase and the closing stock, the amount of RS. 70,04,814/- also found credited in the profit and loss account as income from undisclosed sources. The net effect of this double entry accounting treatment is that firstly the unrecorded stock of rice has been brought on the books and now forms part of the recorded stock which can be subsequently sold out and the profit/loss therefrom would be subject to tax as any other normal business transaction. Secondly, the unrecorded investment which has gone in purchase of such unrecorded stock of rice has been recorded in the books of accounts and offered to tax by crediting the said amount in the profit and loss account. Had this investment been made out of known source, there was no necessity for assessee to credit the profit/loss account and offer the same to tax. Accordingly, we do not see any infirmity in assessee's bringing such

transaction in its books of accounts and the accounting treatment thereof so as to regularise its books of accounts. In fact, the same provides a credible base for Revenue to bring to tax subsequent profit/loss on sale of such stock of rice in future.

2.11. Having said that, the next issue that arises for consideration is whether the amount surrendered by way of investment in the unrecorded stock of rice has to be brought to tax under the head "business income" or "income from other sources". In the present case, the assessee is dealing in sale of foodgrains, rice and oil seeds, and the excess stock which has been found during the course of survey is stock of rice. Therefore, the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. The decision of the Co-ordinate Bench in case of Shri Ramnarayan Birla (supra) supports the case of the assessee in this regard. Therefore, the investment in the excess stock has to be brought to tax under the head "business income" and not under the head income from other sources". In the result, ground No. 1 of the assessee is allowed."

26. The said decision of Coordinate Jaipur Benches has since been confirmed by the Hon'ble Rajasthan High Court in case of PCIT vs Bajargan Traders (DB Appeal No. 258/2017 dt. 12/09/2017).

27. Similarly, the Coordinate Chandigarh Benches in case of M/s Gaurish Steels Pvt. Ltd. Vs. ACIT (Supra) has held as under:

"10. We have heard the rival contentions and perused the material available on record. This is a fact on record that the assessee surrendered an amount of Rs.70 lacs as additional income during the course of survey conducted at its premises on account of following heads:

(i)	Discrepancy on account of cash found	Rs. 9 lacs
(ii)	Discrepancy on cost of construction of building	Rs. 21 lacs
(iii)	Discrepancy in stock	Rs. 10 lacs
(iv)	Discrepancy in advances and receivable	Rs. 30 lacs

11. These facts have not been disputed by any one at any stage. The only issue to be considered by us is whether the income of Rs.70 lacs surrendered is to be taxable as business income or income from other sources or as deemed income under [sections 69A, 69B and 69C](#) of the Act as held by the Assessing Officer. A number of judicial pronouncements have been cited during the course of hearing, however, we have to bow down to the

proposition laid down by the Jurisdictional Punjab & Haryana High Court in the case of M/s Kim Pharma Pvt. Ltd.(supra) since this is the only judgment of the Jurisdictional High Court which were brought to our notice.

12. On perusal of the said judgment, we find ourselves in agreement with the submission of the learned counsel for the assessee, that the only issue in that case was the taxability of cash surrendered during the course of survey, as the assessee had also surrendered income of Rs.10 lacs in assessment year 2005-06 on account of sundry credits, repairs to building and advances to staff, which being relatable to business carried on by the assessee was already included as income from business.

13. In the present case, we see that the Assessing Officer has nowhere disputed the business losses incurred by the assessee. The books have not been rejected. It was stated at the Bar that even at the time of survey, in the trading account prepared by the survey team, there were losses incurred by the assessee. All these facts have not been disputed by the Assessing Officer. Further, the surrender made by the assessee was on account of cash found during the course of survey, discrepancy in the cost of construction of building, discrepancy in stock and discrepancy in advances and receivables. By no stretch of imagination, any of these incomes apart from cash can be considered as income under any head other than the 'business income'.

14. Nowhere in his order the Assessing Officer has been able to bring on record the fact that the income surrendered during the course of survey was not out of the business of the assessee. Also nowhere he has objected to the heads under which the assessee had surrendered these amounts, i.e. cash, construction of building, discrepancy in stock and discrepancy in advances and receivable. Further, even the survey team has not found any source of income except the business income. Now, following the judgment of Jurisdictional High Court, in the background of the facts of the present case, we can safely infer that apart from cash all other income surrendered may be brought to tax under the head 'business income' while the cash has to be taxed under the head deemed income under [section 69A](#) of the Act."

28. Similarly, the Coordinate Chandigarh Bench in case of Famina Knit Fabs Vs. ACIT (Supra) has held as under:

"19. In the facts of the case in ITA No.408/Chd/2018, the income surrendered was on account of unaccounted receivables of the business of the assessee amounting to Rs.1.25 crores. The Ld.CIT(A) in para 9 of the order has outlined the facts relating to the surrender made by the assessee stating that during survey a pocket diary was found from the account section of the assessee company which contained entry of receivables amounting to Rs.1.25 crores on pages 27, 28, 31 and 33, which were not recorded in the regular

books of the assessee and were subsequently surrendered stating that these entries were unaccounted sundry receivables being surrendered as income under the head business, to buy piece of mind and subjected to no penalty and further that the losses incurred by the assessee in the impugned year will be adjusted against this surrendered income. The relevant facts as stated by the CIT(A) in para 9 of his order and which are not disputed, are reproduced hereunder:

"9. Adverting now to the facts of the instant case, it is seen that when survey proceedings were conducted at the business premises of the appellant company, a pocket diary was found from the accounts section which contained entries of receivables amounting to Rs.1.25 crores on page nos. 27, 28, 31 and 33, which were not recorded in the regular books of accounts. When these entries were confronted to the appellant company while recording the statement on 15/09/2012, it was stated: "that these entries are sundry receivables which has not been accounted for in the books of accounts and in order to buy peace of mind, the same is surrendered as income under the head business for F.Y.2012-13 relevant to asstt. Year 2013-14 subject to no penalty and prosecution under the I.T. Act, 1961. Since the company is incurring losses in current F.Y.2012-13, the surrendered income will be adjusted against these losses." [Extracted from the impugned assessment order; pages 5 &6]."

20. Clearly, it is evident from the above that the surrender was on account of debtors/receivables relating to the business of the assessee only. The Revenue has accepted the surrender as such, as being on account of receivables. It follows that the debtors were generated from the sales made by the assessee during the course of carrying on the business of the assessee, which was not recorded in the books of the assessee. Though the said income was not recorded in the books of the assessee but the source of the same stood duly explained by the assessee as being from the business of the assessee. Even otherwise no other source of income of the assessee is there on record either disclosed by the assessee or unearthed by the Revenue. The preponderance of probability therefore is that the debtors were sourced from the business of the assessee. Therefore, there is no question of treating it as deemed income from undisclosed sources u/s 69, 69A, 69B and 69C of the Act and the same is held to be in the nature of Business Income of the assessee. Having held so, the same was assessable under the head 'business and profession' and as stated above, the benefit of set off of losses both current and brought forward was allowable to the assessee in accordance with law.

21. The contention of the Revenue therefore that the income be treated as deemed income u/s 69,69A/B/C of the Act is accordingly rejected and as a consequence thereto the plea that no set off of losses be allowed against the same u/s 115BBE of the Act also is rejected.

22. Therefore, as per the facts of the case in ITA No.408/Chd/2018 and as per the provisions of law relating to the issue, the surrendered income, we hold, was assessable as business income of the assessee and set off of losses was to be allowed against the same as rightly claimed by the assessee.

The appeal of the Revenue, therefore, in ITA No.408/Chd/2018 is dismissed.

23. Now coming to the facts of the case in ITA No/1494/Chd/2017, the income surrendered was on account of the following as narrated above in earlier part of our order:

(i) investment of Rs. 60 lacs in Kothi at Sukhmani Enclave in the name of Smt. Rekha Miglani;

(ii) Sundry creditors and advances received from customers amounting to Rs. 132 lacs;

(iii) Gross profit on sale out of books amounting to Rs. 198 lacs and;

(iv) surrender to cover miscellaneous discrepancies in loose papers etc. amounting to Rs. 10 lacs.

24. As far as the surrender made on account of investment in Kothi of Rs.60 lacs, neither is the same disclosed in the books of the assessee nor source of the same disclosed. Therefore, the same is to be assessed as deemed income u/s 69 of the Act. The same applies to the surrender of Rs.10 lacs made to cover the miscellaneous discrepancies in loose paper of Rs.10 lacs. Neither the nature of the discrepancies, nor any source relating to the same has been disclosed and, therefore, the same is also to be assessed as deemed income u/ss 69, 69A, 69B and 69C of the Act.

25. As far as the surrender of Rs.132 lacs made on account of sundry creditors and advances received from customers and Rs.198 lacs on account of gross profit on sale out of the books, both of them clearly are in relation to the business carried on by the assessee and are thus in the nature of business income. Therefore, the set off of business losses, both current and brought forward are to be allowed as per the provisions of law. As far as the income surrendered and to be assessed u/s 69, 69A, 69B and 69C of the Act, as held above before us, the same is to be subjected to tax as per the provisions of section 115BBE of the Act."

29. In the instant case as well, the surrender on account of advances were relating to the business being carried on by the assessee. The Id CIT(A) has also returned a finding that the advances were admitted as being related to business activity of the assessee. Where the same has been found unrecorded in the books of accounts, the same has to be brought to tax under the head "business income".

30. Similarly, the Coordinate Chandigarh Bench in case of *M/s Sham Jewellers Vs. The DCIT (Supra)* has held as under:

"10.17 Ground Nos. 8 & 9 challenge the action of the lower authorities in applying the provisions of section 115BBE and thereby charging tax at the rate of 60%. The main thrust of the arguments of the Ld. AR has been that all the additions made or sustained relate only to the business income of the assessee and that nowhere in the assessment order has it been alleged that some other source of income had been detected which gave rise to additional income. It is seen that during the course of assessment proceedings, the various explanations submitted by the assessee have duly mentioned that the surrendered income was derived from the business. A perusal of the assessment order would also show that nowhere in the body of the assessment order, the AO has even contradicted this explanation of the assessee. 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. In our view, in such a situation, the AO could not have legally and validly resorted to taxing the income of the assessee at the rate of 60% in terms of provisions of section 115BBE of the Act.

10.18 The Hon'ble Andhra Pradesh High Court in the case of *Principal Commissioner of Income Tax Vs. Deccan Jewellers Ltd.* reported in (2021) 438 ITR 131 (AP) held that where the assessee was engaged in the business of Gold and Diamond jewellery and Silver articles and during the search and seizure operation u/s 132, excess stock was found to be declared and the assessee had submitted that excess stock was result of suppression of profit from business over the years and the same had not been kept identified separately and the AO had duly considered and accepted the assessee's explanation that investment in excess stock was to be treated as business income, the revisional powers invoked by the Principal Commissioner u/s 263 of the Act were not correct in the eyes of law.

10.19 The ITAT Chandigarh Bench in the case of *Famina Knit Fabs Vs. ACIT* reported in (2019) 176 ITD 246 (Chd-Trib) has held that, wherein during the course of survey, a surrender was made by the assessee on account of debtors / receivables which was based on a diary found during the course of survey and the Revenue had accepted that the surrender was on account of receivables, it followed that the debtors were generated from the sales made by the assessee during the course of carrying on the business of the assessee which was not recorded in the books of the assessee. The Coordinate Bench of the ITAT went on to further hold that though the said income was not recorded in the books of the assessee but the source of the same stood duly explained by the assessee as being from the business of the assessee and even otherwise no other source of income of the assessee was on record either

disclosed by the assessee or unearthed by the Revenue. The Bench further held that the preponderance of probability, therefore, is that the debtors were sourced from the business of the assessee. Therefore, there was no question of treating it as deemed income from undisclosed sources u/s 69, 69A, 69B, or 69C of the Act and the same was held to be in the nature of business income of the assessee.

10.20 Thus, as in the present case, where the source of investment or expenditure is clearly identifiable and the alleged undisclosed asset has no independent existence of its own or there is no separate physical identity of such investment or expenditure, then, first, what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset and only on failure can it be considered to be taxed u/s 69 of the Act and further where once such investment or expenditure is brought within the purview of tax as undeclared business receipt, then taxing it further as deemed income u/s 69 would be completely out of place.

10.21 Similar view was taken by the Coordinate Bench of ITAT Ahmedabad in the case of Chokshi Hiralal Maganlal Vs. DCIT reported in 131 TTJ 1 (Ahd.)

10.22 It is also seen that the Ld. CIT(A) has relied on the judgement of the Hon'ble Punjab & Haryana High Court in the case of Kim Pharma Ltd. Vs. CIT in ITA No. 106 of 2011 (O&M) and the Ld. CIT DR has also quoted the same in his arguments before us. However, after going through the aforesaid judgement of the Hon'ble Punjab & Haryana High Court, it is seen that in that particular case, the only issue was with regard to the cash surrendered at the time of survey and no other income. The cash found could not be related to the already disclosed and accepted source of income of the assessee and, therefore, the Hon'ble Punjab & Haryana High Court held that such surrendered cash was to be treated as deemed income u/s 69 of the Act. However, in the present case before us, the assessee has only one source of income i.e. business income and nowhere has it been brought on record that the assessee had any other source of income except business income and, therefore, we respectfully state that judgement of the Hon'ble Punjab and Haryana High Court in the case of Kim Pharma Pvt. Ltd (supra) would not apply on the facts of the present case.

10.23 Accordingly, keeping in view the various judicial precedents as cited above and respectfully following the same, we hold that the AO could not have legally invoked the provisions of section 115BBE of the Act in the present case and further the Ld. CIT(A) was also not legally correct in upholding of the application of provisions of section 115BBE of the Act. Accordingly, ground Nos. 8 and 9 are also allowed."

31. Now, coming to the decision of Kim Pharma (P) Ltd. Vs. CIT [2013] 35 taxmann.com 456 (P&H). Briefly the facts of the case

were that the survey under section 133A was conducted at the business premises of the assessee and during the course of survey, cash amounting to Rs. 5,00,000/- was found which was surrendered by the assessee for A.Y 2006-07 and another amount of Rs. 10,00,000/- was surrendered for A.Y. 2005-06 on account of sundry credits, repair to building and advances to staff. The matter pertaining to A.Y 2006-07 came up for consideration before the Coordinate Chandigarh Benches and taking note of the statement of the General Manager of the assessee company recorded during the course of survey wherein he had admitted the said 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) in including the additional income as deemed income u/s 69A of the Act and relevant findings read as under:

"9. In the facts of the present case before us, we find that unaccounted cash was found during the course of survey operation in the possession of the assessee company and the same was surrendered as additional income for the year under appeal. The assessee has failed to explain the nature and source of the said cash found which was not recorded in the books of account, though while surrendering the additional income it was admitted by the Manager of the assessee company, in the statement recorded during the course of survey that the said additional income is its income from other sources. The Hon'ble Gujrat High Court in *Fakir Mohmed Haj Hussain Vs C IT* had held as under :

"The scheme of sections 69, 69A, 69B, and 69C of the Income-tax Act, 1961, would show that in cases where the nature and source of acquisition of Money, bullion, etc., owned by the assessee or the source of expenditure incurred by the assessee are not explained at all, or not satisfactorily explained, then the value of such investments and money or the value of articles not recorded in the books of account or the unexplained expenditure may be deemed to be the income of such assessee."

In the absence of the explanation / evidence regarding the sources of the additional income being satisfactorily explained by the assessee and applying the ratio of the Hon'ble Gujrat High Court in *Fakir Mohmed Haji Hasan Vs. C IT (supra)*, we hold that the additional income offered is deemed income assessable u/s 69A of the Act and no deduction is allowable against such deemed income assessed u/s 69A of the Act in the hands of the assessee. Following the ratio laid down by the Gujrat High Court in *Fakir Mohmed Haji Hasan Vs. CIT (supra)*, once the assessee has failed to explain the nature and source of cash found available with it and the same is assessed as deemed income u/s 69A of the Act, therefore, the corresponding deductions under the head Profits and gains are not available to the assessee. The business loss determined for the year is not allowed to be setoff against such deemed income included in the books of account. The alternative plea of the assessee of assessing the income under the head

income from other sources and allowing set off of losses u/s 71 of the Act also fail in view of the above.

9. The learned AR for the assessee had placed reliance in CIT & Another Vs. S.K.Srigiri & Bros. (supra) for the proposition that even in cases of survey, the additional income surrendered is includible as income from business. In the facts of that case, we find that the Tribunal after considering the records and statement given by the partners of the assessee firm, on facts, came to the conclusion that assessee had received additional income from business only and not from other sources. The said conclusion of the Tribunal was upheld by the Hon'ble Karnataka High Court in CIT & another vs. S.K.Srigiri & Bros. (supra) and the remuneration paid to the partners was held allowable against the additional income from business. The said precedent has been taken note of by the Hon'ble Gujrat High Court.

10. In the facts of the present case, we find that assessee during the course of survey had surrendered the income as income from other sources though a plea has been raised by the assessee that the income was surrendered as income from job work but no evidence to prove the stand of the assessee has been brought on record. The assessee had also surrendered additional income of Rs. 10 lacs in Assessment Year 2005-06 on account of sundry credits, repairs to building and advances to staff, which being relatable to business carried on by assessee was included as income from business. However, in respect of cash found during survey, which was not reflected in the books of account, no source was declared by the assessee and in the absence of nature of source of cash being proved, the same is not assessable as income from business. In the circumstances, we uphold the order of the CIT(A) in including the additional income as deemed income u/s 69A of the Act and not allowing the benefit of the business losses determined against the said deemed income. The grounds of appeal raised by the assessee are dismissed."

32. Thereafter, the matter came up for consideration before the Hon'ble Punjab & Haryana High Court and the Hon'ble High Court has stated that the AO, the Ld. CIT(A) and the Tribunal after considering the factual aspect noticed that the amount surrendered during the survey was not reflected in the books of accounts and no source from where it was derived was declared by the assessee and therefore it was deemed income of the assessee under section 69A of the Act and accordingly the findings of the Tribunal were affirmed and it was held that no substantial question of law arises and the appeal of the assessee was dismissed. We therefore find that the statement 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 instant case, as we have noted above, the assessee in his statement recorded during the course of survey has clearly stated that he is running a sole proprietorship business concern in name of M/s Singla Wires and Allied products since 2008 wherein he manufactures and sells aluminum and copper wires and all along, the same is his only source of income and thereafter, he has been confronted with discrepancies in terms of cash found excess as compared to what has been recorded in the books of accounts, certain advances relating to his business written in a rough diary and excess value of stock as compared to what has been recorded in the books of accounts. Therefore, we find that the assessee has been confronted with not just the discrepancy so found during the course of survey but the nature and source thereof during the course of survey proceedings and it is clearly emerging that the source of such income is from his business operations. Thus, the decision of the Hon'ble High Court, being rendered in the specific facts and circumstances of the said case, doesn't support the case of the Revenue in the instant case.

33. In light of aforesaid discussion and in the entirety of facts and circumstances of the case and following the decisions supra, the income of Rs 84,80,000/- surrendered during the course of survey cannot be brought to tax under the deeming provisions of section 69 and 69A of the Act and the same has been rightly offered to tax under the head "business income". In absence of deeming provisions, the question of application of section 115BBE doesn't arise for consideration."

7. In the instant case as well, it is an admitted fact that the surrender on account of excess stock is of regular stock in which the assessee deals in and thus related to the business being carried on by the assessee. Further the stock so found is not physically distinguishable and there is as such no physical distinction between accounted stock and unaccounted stock and no such physical distinction was found by the Revenue either. We therefore find that the difference in stock so found out by the authority has no independent identity and is in terms of value terms only and thus part and parcel of entire stock therefore it cannot be said that assessee has a undisclosed asset which existed independently and thus what is not declared to the Department is receipt from the business operation and not any investment as it cannot be correlated with any specific asset and difference thus be treated as business income. In light of

aforesaid discussion and in the entirety of facts and circumstances of the case the amount representing the excess stock found during the course of survey cannot be brought to tax under the deeming provisions of Section 69 of the Act and the same has to be assessed to tax under the head business income and in absence of any deeming provision the question of application of Section 115BBE does not arise and normal tax rate shall apply which has been applied by the assessee while filing the return of income. The order of the Id CIT(A) is accordingly set -aside and the AO is directed accordingly.

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

Order pronounced in the open Court on 30/10/2024.

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