

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

HEARING THROUGH: VIRTUAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 203/Chd/2023
निर्धारण वर्ष / Assessment Year : 2019-20

M/s Amarjit & Sons 80 Back Side Guru Nanak Dev Market, Gill Road, Ludhiana-141001	बनाम	The DCIT, CC-2, Ludhiana
स्थायी लेखा सं. / PAN NO: ABAFA8805E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR
सुनवाई की तारीख/Date of Hearing : 26/08/2024
उद्घोषणा की तारीख/Date of Pronouncement : 21/11/2024

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. 01/03/2023 pertaining to Assessment Year 2019-20.

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

1. "That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer in taxing the amount of Rs. 50,00,000/- u/s 69 read with section 115BBE of the Income Tax Act, 1961.

2. That the Ld. CIT (A) has failed to appreciate the various judgments of the Jurisdictional Bench of the ITAT, Chandigarh Bench in many cases, where the amount offered during survey under similar circumstances have been taxed at the normal rate of tax especially the judgment in the case of Surya Hatcheries reported in [2023] 102 ITR (Trib.) 186 and also the judgment in the case of Surinder Kumar reported in [2023] 102 ITR (Trib.) 247.

3. That the various submissions and arguments/case laws as quoted before the Ld. CIT(A) have not been appreciated.

4. That the Ld. CIT(A) has failed to appreciate that during the course of survey, no other income was noticed by the department and, as such, taxing the amount offered as deemed income, is against the facts and circumstances of the case.

5. That the Ld. CIT(A) has also failed to appreciate that at the time of survey, it was agreed that the applicant shall pay the taxes on the amount offered during survey at the normal rate of taxes, for which, the payment of advance tax was made within the stipulated time.

6. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed-off."

3. Briefly the facts of the case are that a survey operation under section 133A was conducted on 17/09/2018 at the business premises of the assessee. During the course of survey, the assessee surrendered a sum of Rs. 50,00,000/- on account of excess stock. Subsequently, the assessee filed its return of income on 23/10/2019 declaring total income of Rs. 59,78,000/- which includes surrendered income of Rs. 50,00,000/- offered to tax under the head "business income".

3.1 During the course of assessment proceedings, the AO observed that during the course of survey, excess stock amounting to Rs. 50,00,000/- was found as a result of which the assessee surrendered the additional stock so found during the course of survey vide surrender letter dt. 17/09/2018 and a copy thereof was reproduced in the assessment order. The AO further observed that the assessee has treated the surrendered income as business income in the Profit & Loss Account and the assessee has not given any explanation about the source of making the investments in purchase of excess stock. Thereafter, he referred to the provisions of Section 69B and a show cause was issued to the assessee as to why the amount so surrendered on account of additional stock should not be taxed as per the provisions of Section 115BBE of the Act.

3.2 In response, the assessee filed his submission stating that the assessee has surrendered the stock of nickel quantity 5650 Kgs valuing Rs. 50,00,000/- in order to cover any discrepancy in the stock already recorded in the books of accounts and copy of the stock tally was submitted. It was further submitted that the assessee duly revised the stock value in its trading account and discharged the

due tax liability thereon by offering the said amount as business income. It was submitted that the sale value of the stock is also recorded in the books of account and due tax liability thereon has been discharged. It was further submitted that the said stock quantity was also duly reflected in the stock register and stock tally reported in the Tax Audit Report certified by the Chartered Accountant and therefore the amount so surrendered was not on account of any unexplained transaction, rather, it was to cover any discrepancy found during the course of survey, if any. It was further submitted that neither any unexplained credit in the books of account nor any unexplained investment, or any unexplained expenditure had been found during the course of survey and the amount so surrendered was purely in order to buy peace of mind and to cover discrepancy if any in the books of account and not on account of any unexplained transaction which is covered under the provisions of Section 69B of the Act.

3.3 The submissions so filed by the assessee were considered but were found to be without any cogent documentary evidence by the AO. As per the AO, the assessee has claimed that the investment in the excess stock was derived from the business but the assessee has not given any explanation regarding the sales and purchases on account of which such business income was earned. Further, the assessee has not given details of the persons from whom the excess stock, which was found at its premises on the date of survey, was purchased. Even during the course of survey, the assessee was having the full opportunity to show the sources of the income from where the investment was made in the excess stock but the assessee had not given any explanation showing that such income was its business income. Further, the assessee had not provided the bills and vouchers which were not recorded in the regular books of accounts and which the assessee did not want to update in his books of accounts and because of which the assessee had generated unaccounted business income as claimed by him. Therefore, in view of the facts of the case and the material available on record, it was noted by

the AO that the sources of investment in the excess stock remain unsubstantiated and unexplained and thus, the provisions of section 69B of the Income-tax Act, 1961 are applicable.

3.4 The AO further noted that the facts of the case are that excess stock was found not recorded in books of accounts of the assessee on the date of survey and the assessee had not explained the nature & sources of investment in such stock either during the course of survey or post survey or during the assessment proceedings by presenting the documents related to those entries due to which the income was earned for investment in stock. The condition of proving the source of such investment in stock is the primary condition for applicability of provisions of Section 69B of the Income Tax Act which the assessee has not fulfilled and thus such income cannot be considered as income from business as claimed by the assessee. The offer to surrender had been made by the assessee only after a survey u/s 133A was conducted at the premises of the assessee and detailed physical verification of the stock in possession of the assessee was made. The assessee has neither recorded the investment in stock in the books nor the assessee has explained the sources of the same during the survey and assessment proceedings.

3.5 The AO further noted that the assessee failed to provide the sources of investment in excess stock found during survey. The assessee could not explain and failed to furnish any bills and source of payment of such excess stock found during survey. The stock and the capital for investment in such stock cannot come from vacuum and there ought to be some source. The assessee failed to submit any material evidences that the investment in stock was out of the unaccounted sales made by the business or the capital was introduced from some hidden source of the firm which the assessee do not want to disclose. The onus to prove the sources of the surrendered income lies entirely on the assessee and just because the assessee is carrying on certain business. Thus the sources of such investment in

excess stock remains unexplained and the unaccounted investment cannot be treated as income from regular business income. Moreover, the offering of such income without any supporting evidences to the nature and sources of the income which were not recorded in the books of accounts of the assessee itself tantamount to having accepted that the sources are unexplained and thus the preponderance of probability is that such investment in excess stock is considered as unexplained investment of the assessee u/s 69B of the Income Tax Act and as the income is to be assessed u/s 69B of the Income-tax Act, 1961, it would be subject to tax as per the provisions of the section 115BBE of the Income-tax Act, 1961.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A), who has since sustained the said findings of the AO.

5. Against the said findings and the direction of the Ld. CIT(A) the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the case of the assessee was selected for scrutiny only on account of the amount of Rs. 50,00,000/- surrendered by the assessee during the course of survey. It was submitted that the said surrender was made by the assessee on account of difference in valuation of stock as evident from the surrender letter dt. 17/09/2018 which is placed at paper book page no. 27 and on perusal thereof, it is clear that the surrender has been made on account of difference in the valuation of inventory. It was submitted that after such surrender, the assessee increased the value of closing stock by passing the general entry and increase the value of stock in the stock ledger and the copy of the stock ledger and the general entries and the vouchers so maintained was submitted before the AO and also placed at page no. 63 of the assessee's paper book. It was further submitted that the AO compared the physical stock as on the date of survey with the stock in the books of account of the assessee which makes

it evidently clear that the Department itself accepted that the stock in question belongs to the business of the assessee. It was further submitted that during the course of survey, the statement of the Partner of assessee firm, Shri Amarjit Gandhi was recorded and in the said statement, he has stated that the amount has been surrendered on account of additional stock as business income for F.Y. 2018-19. It was submitted that the Revenue has not given any adverse remark on the said statement of the assessee which makes it clear that the Revenue itself is of the opinion that the excess stock found during the course of survey pertains only to the business of the assessee. It was further submitted that during the course of survey as well as during the course of assessment proceedings, the AO accepted the fact that the assessee has been engaged in the business of trading of ferrous and non ferrous metals and other than this, the assessee is not engaged in any other business and there is no other source of income from where the assessee can earn income and moreover, the stock found during the course of survey is the stock from the only business of the assessee. Hence the income so surrendered should be treated as normal business income of the assessee on account of valuation difference of stock and cannot be brought to tax under the deeming provisions read with Section 115BBE of the Act. Further in support, the reliance was placed on various Coordinate Bench decisions including the decision in case of M/s A P Knit Fab Vs. The DCIT in ITA No. 732/Chd/2022 dt. 15/02/2024 .

7. Per contra, the Ld. DR submitted that for the unaccounted stock found during the survey proceedings, 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 as to when, how and from whom such income was derived which has been invested in stock. It was submitted that the assessee has not been able to establish nexus between the excess stock and normal business income. Further no documentary evidence has been submitted to justify the additional income of Rs 50,00,000/- as business income. It was

accordingly submitted that the action of the AO in applying the deeming provisions of section 69B and tax rate as prescribed u/s 115BBE of the Act on the surrendered income is justified and 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 under section 69B of the Act and which has been brought to tax as per the provisions of Section 115BBE of the Act. 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.

8. We have heard the rival contention and perused the material available on the record. We find that the matter is squarely covered by the decision of Coordinate Chandigarh Benches in case of **M/s A P Knit Fab Vs. The DCIT (Supra)** wherein under identical set of facts and discussing at length various authorities quoted at the Bar, the matter has been decided and we deem it appropriate to refer to the findings of the Coordinate Bench which read as under:

"8. We have heard the rival contentions and perused the material available on record. The AO has invoked the deeming provisions of section 69B and brought to tax excess stock found during the course of survey which is under challenge before us. It is a settled legal proposition 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 explain the nature and source of such income or the AO doesn't get satisfied with the explanation so offered by him.

8.1 In particular, for the deeming provisions of Section 69B to be attracted in the instant case, there has to be a finding that the assessee has made investments in the stock during the financial year and such investments are not fully 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, the latter can proceed and the value of the investment may be deemed as income of the assessee for such financial year. Therefore, the explanation so offered by the assessee explaining the nature and source of such undisclosed income and the reasonability of the explanation so offered by the assessee needs to be analysed and examined to draw necessary conclusions in this regard and discretion so vested in the AO for invocation of the deeming fiction so envisaged in the statute can be exercised.

8.2 For the purposes, we refer to the statement so recorded of the one of the partners of the assessee firm during the course of survey on 26/10/2017. In Question

no. 18, it was stated that during the course of survey proceedings u/s 133A, physical verification of stock lying in the business premises was done and after physical verification, it comes to Rs 3,34,55,282/- whereas as per profit/loss account, the stock is Rs 2,34,31,000/- so there is a difference of Rs 1,00,24,282/- in the stock and the assessee was asked about the difference in stock found and recorded in the books of accounts. In response, the assessee submitted that he was unable to explain the difference of Rs 1,00,24,282/- and to buy peace of mind, he surrendered a sum of Rs 1,00,00,000/- on account of excess stock found on physical verification. We find that the stock physically found has been valued and then, compared with the value of stock so recorded in the books of accounts and the difference in the value of the stock so found belonging to the assessee firm has been offered to tax. There is thus no dispute that there is a commonality in the stock so found and as recorded in the books and in absence of which, the comparison would not have been possible and difference would not have been worked out. The Revenue has not pointed out that the excess stock has any nexus with any other receipts other than the business being carried on by the assessee. There is thus a clear nexus of stock physically so found with the stock in which the assessee regularly deals in and recorded in the books of accounts and thus with the business of the assessee and the difference in value of the stock so found is clearly in nature of business income. The statement of the partner of the assessee firm 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 appreciate the statement of the assessee recorded during the course of survey and other documents and findings of the survey team which are very much part of the records. Further, in the surrender letter dated 27/10/2017, the assessee through its partner has stated that during the course of survey operations, certain discrepancy out of excess stock of Rs 1,00,24,282 has been found and to purchase piece of mind and to avoid litigation, the additional income of Rs 1,00,00,000/- is voluntarily surrendered on account of excess stock found out of their normal business income for the current financial year 2018-19 over and above normal business income. We therefore find that the nature and source of such unaccounted stock is nothing but arising out of assessee's business operations. No doubt, these transactions were not recorded at the time of survey thus qualify as unrecorded transactions satisfying one of the essential conditions, at the same time, the assessee has provided the necessary explanation about the nature and source of such unrecorded transactions and the necessary nexus with assessee's business has been established, thus, it cannot be said that these are unexplained transactions thus, doesn't satisfy the second condition for invoking the deeming provisions of section 69B of the Act.

8.3 In case of **Chokshi Hiralal Maganlal vs. DCIT, 131 TTJ (Ahd.) 1**, briefly the facts of the case before the Coordinate Ahmedabad Benches 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.

8.4 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.

8.5 Following the said decision of the Coordinate Ahmedabad Bench, the Jaipur Bench in case of **DCIT Vs. Shri Ram Narayan Birla (ITA No. 482/JP/2015 dt. 30/09/2016)** 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. HajiHasan (*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."

8.6 Thereafter, the Coordinate Jaipur Benches in case of **Bajargan Traders Vs. ACIT (in ITA No. 137/JP/2017 dt. 17/03/2017)** 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 Coordinate 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."

8.7 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)**.

8.8 Similarly, the Coordinate Chandigarh Benches in case of **Gaurish Steels Pvt. Ltd. Vs ACIT 43 ITR (Trib) 414** 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."

8.9 Similarly, the Coordinate Chandigarh Bench in case of **Famina Knit Fabs Vs. ACIT reported in (2019) 176 ITD 246 (Chd-Trib)** 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."

8.10 In the instant case as well, the surrender on account of excess stock, being the regular stock in which assessee deals in and thus related to the business being carried on by the assessee.

8.11 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."

8.12. In the instant case as well, there is no physical distinction between the accounted stock and unaccounted stock. No such physical distinction was found by the Revenue either. We therefore find that the difference in stock so found out by

the authorities 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 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 correlated with any specific asset and the difference should thus be treated as business income.

8.13. *In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the income so surrendered on account of investment in excess stock during the course of survey cannot be brought to tax under the deeming provisions of section 69B of the Act and the same has to be assessed to tax under the head "business income". In absence of deeming provisions, the question of application of section 115BBE doesn't arise and normal tax rate shall apply. The AO is thus directed to assess the income under the head "Income from Business/profession" and apply the normal rate of tax."*

9. 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, as evident from the surrender letter, which infact has formed the basis of findings of the AO, and thus part and parcel of entire sock therefore it cannot be said that assessee has an 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.

10. 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 69B 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.

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

Order pronounced in the open Court on 21/11/2024.

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)

न्यायिक सदस्य / JUDICIAL MEMBER

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