

IN THE INCOME TAX APPELLATE TRIBUNAL  
JAIPUR BENCH "A", JAIPUR  
**BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**  
**ITA No. 502/JPR/2024 (A.Y. 2018-19)**

**Mahesh Kumar, Prop.**

M/s. Bhagwan Sahai & Sons,

Station Road, Rajgarh,

Alwar – 301 408.

PAN No.: ADRPK 4704 K

..... Appellant

Vs.

**Pr. CIT, (Central) Jaipur,**

Jaipur – 302 005

..... Respondent

Appellant by	:	Mr. S. B. Natani, CA, Ld. AR
Respondent by	:	Mr. Arvind Kumar, Ld. CIT-DR
Date of hearing	:	27/11/2024
Date of pronouncement	:	27/11/2024

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of Ld. PCIT (Central), Jaipur dated 19.03.2024 passed u/s. 263 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds of appeal:-

*1. That in the facts and circumstance of the case and in law the order passed by the learned Pr. CIT Central, Jaipur under section 263 of the income Tax Act, 1961 is bad in law*

*2. That in the facts and circumstance of the case and in law the learned Pr. CIT Central, Jaipur has erred in holding that the assessment order passed by the learned AO DCIT Central Circle, Alwar on 22.04.2021 is erroneous in so far as it is prejudicial*

*to the interest of revenue for the purposes of section 263 of the Income Tax Act, 1961.*

*3. That in the facts and circumstance of the case and in law the learned Pr. CIT central, Jaipur has erred in holding that the learned AO did not make any query regarding the source of investment in the excess stock and excess cash found during the survey conducted under section 133A of the Act.*

*4. That in the facts and circumstance of the case and in law the learned Pr. CIT central, Jaipur has erred in law in holding that provision of section 115BBE are applicable on income of Rs. 10,00,118/- surrendered by the assessee during the course of survey under section 133A of the Act.*

*5. That the appellant craves to add/alter/amend the Grounds of appeal before the final hearing is completed.”*

2. The brief facts of the case are that there was a survey in the case of the assessee on 01-11-2017 at the business premises of the assessee. The assessee individual filed his return of income u/s. 139(1) of the Act on 18-10-2018 declaring total income at Rs. 8,30,860/-. The case was selected for scrutiny being a survey case as per prevailing CBDT Guidelines. It was observed and accepted by the AO during the assessment proceedings that income surrendered during the survey duly disclosed in the return of income filed. The assessment of the assessee was completed at returned income of Rs. 8, 30,860/-.

3. Thereafter, a notice u/s. 263 of the Act vide dated: 07-03-2024 was issued by the Ld. PCIT (Central), Jaipur on ground of “Assessment order passed u/s. 143(3) of the Act is erroneous and prejudicial to the interest of the revenue” and matter was fixed for hearing on 14.03.2024. In response to this notice there was no response by the assessee and based on this single notice proceedings u/s. 263 of the Act was concluded *ex-parte*. As per available record before us, it can be safely concluded that other than the notice mentioned (supra) no other notice

was being issued and the proceedings u/s. 263 of the Act were concluded *ex-parte* which is a clear violation of Principle of Natural Justice and solely on this ground the order of the Ld. PCIT (Central), Jaipur is bad in law and liable to be quashed. In view of this established fact, Ground No. 1 raised by the assessee is allowed and order passed is set-aside as Principle of Natural Justice was not followed. **In these terms, Ground No. 1 is allowed.**

4. Still, as a matter of fact that the Income Tax Appellate Tribunal is a final fact finding body, we deem it fit to adjudicate the matter on the relevant facts and applicable law also. We have gone through the order of the AO, order of the Ld. PCIT (Central), Jaipur and submissions of the assessee along with the grounds taken before us. It is observed that the facts mentioned (*supra*) and as narrated in the assessment order are not under challenge by the either side and the only issue involved is applicability of section 69B of the Act r.w.s. 115BBE of the Act. It is observed that the surrendered amount was duly routed through the Audited Financial Results of the assessee. As the moot question involved is whether the income declared during the survey can be taxed u/s. 69B of the Act r.w.s. 115BBE of the Act or not, scope of section 133A of the Act has to be analysed alongwith the guidelines of the CBDT applicable to the search cases.

5. There was no material/documentation on record which even remotely demonstrated that assessee had expended any sum of money on excess stock found over and above amount which had been recorded in its books of accounts, excess cash found and loans given to various parties. The only source of income of the appellant is its income from trading in sanitary goods etc. The revenue was not able to advance any evidence during assessment proceeding that the said

income is not connected with the business income of the assessee, hence all the income earned by the assessee relate to business income only. To attract deeming provision of sections 69B of the Act the foremost requirements that is to be followed is that the income should be from any other source rather than from its regular source of earning. 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 account and the same is the essence of the statutory provisions as duly recognized by the Hon'ble Courts and various Benches of the Hon'ble Tribunal and which has been reiterated from time to time. The statement of the assessee must be read as a whole and not in piecemeal especially where the revenue is relying on the same statement and in such circumstances, the defense available to the assessee in terms of part of the statement having 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 must 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.

6. There are several judicial pronouncements wherein it was held that “ Where miscellaneous business income of certain amount surrendered by assessee was taken as income from undisclosed source under section 69B of the Act and tax was calculated on it under section 115BBE of the Act, since revenue was not able to submit any evidence to effect that said income was not connected with

business income of assessee or was accumulated from non-recognizing source, entire addition was certainly without forming proper basis and thus impugned application of section 69B of the Act upon income disclosed by assessee and taxing same at special rate as per section 115BBE of the Act was improper”.

7. The powers of survey under section 133A of the Act have been clarified by the CBDT from time to time. By its Circular No. 7-D (LXIII- 7 of 1967), dated May 3, 1967, it is clarified that the place of survey must be one where business or profession of an assessee is carried on, although it is not necessary that it should be the principal place of business or profession. The place where entry can be made under the section must not be a place where the assessee does not carry on business. Business or residential premises of third parties, including a chartered accountant, a pleader or income-tax practitioner, of whom the assessee may be a client, are not places which could be entered into for the purpose of section 133A of the Act. It would be improper for an ITO (now Assessing Officer) or an Inspector, authorised in this behalf, to enter the office of a chartered accountant for the purpose of inspecting the books of his client. It is also necessary that the place entered should be the business premises and not residential premises of the assessee and the entry should be made during business or office hours.

8. By an *Explanation* to section 133A (1) of the Act, it is clarified that a place where business or profession is carried on shall also include any other place, whether any business or profession is carried on therein or not, in which the person carrying on the business or profession states that any of his books of account or other documents or any part of his cash or stock or other

valuable article or thing relating to his business or profession are or is kept. Based on above, the primary objects of the survey may be categorized as under:

Broaden the country's tax base by discovering new taxpayers.

Gather information for checking whether the existing taxpayers are discharging their tax obligations correctly and truthfully and to get information for detecting evasion of tax by the existing taxpayers.

To do spot checking to find out whether the books of account and records are being maintained on day-to-day basis and not manipulated later.

To check the correctness of the cash and stocks shown in the books of account maintained in the ordinary course of business /trading.

9. In, a nutshell, the proceedings u/s. 133A of the Act introduced in the statute to have a check and balance on the business/ professional behavior of the assessee. The survey conducted u/s. 133A of the Act is there in the statute just to verify the business affairs of the assessee. If found correct, no consequences. If something is missing out of business affairs, alarm the assessee to incorporate the same in his books of accounts and rectify their statutory computation of total income. Nowhere in the scheme it is ever anticipated or desired to change the head of income. Rather, undisclosed income if any discovered during the survey proceedings, there is a compulsion to treat the same as income under the head business and profession. As the department surveyed business premises only and interacted and verified with business employees and documents only.

10. We have thoroughly examined the judicial pronouncements relied upon by the Ld. CIT (A) and found the same as not tenable and applicable on the facts of the matter under consideration, as the same pertains to the matter where additions were made in the regular assessment and not in the case where a survey has been conducted. It is absolutely misinterpretation of the law and forceful imposition of judicial pronouncements. The Ld. CIT (A) totally ignored the judicial pronouncements relied upon by the assessee and that is too when they are relevant and applicable to the facts of the case.

11. To strengthen our view we placed our reliance on the following judicial pronouncement by the coordinate benches after considering and dealing with the case laws relied upon by the Ld. PCIT (Central), Jaipur as under:

- [2023] 155 taxmann.com 293 (Amritsar - Trib.)/ [2023] 106 ITR (T) 125 (Amritsar - Trib.) [17-07-2023]
- [2023] 157 taxmann.com 817 (Chandigarh - Trib.) [29-11-2023]

12. It was held by the Coordinate benches that:

“Where during course of survey assessee surrendered certain amount on account of addition made to factory building, since source of investment in said building was stated to be out of business income which was duly honoured by the assessee while filing return of income wherein amount was offered to tax under the head "business income" and tax was paid on same at normal rate, provisions of section 69B read with section 115BBE of the Act could not be invoked so as to make addition on account of said surrendered amount treating it as unexplained investment.

- [2024] 158 taxmann.com 679 (Amritsar - Trib.) [06-12-2023]: it was held that

Where assessee claimed that entire amount of excess cash found from business premises was generated from undisclosed sale of medicine, since revenue was unable to show any other sources related to excess cash, excess cash was from business of assessee and, thus, application of section 115BBE of the Act on amount of excess cash was bad in law.

- **[2024] 160 taxmann.com 239 (Surat-Trib.) [21-12-2023]**

Where Competent Authority carried out survey under section 133A of the Act at hospital of assessee and found certain unaccounted receipts in name of doctors and assessee thereafter filed revised return and disclosed unaccounted receipts as part of profit or gain of business of hospital, as unaccounted receipts were relating to business operations of assessee's hospital, they were taxable as business income under section 28 of the Act; section 68 of the Act was not applicable

- **[2024] 158 taxmann.com 655 (Chandigarh - Trib.) [23-01-2024]:**

Where during course of survey, assessee surrendered excess stock, cash and receivables and offered same to tax as business income, however, AO treated said surrendered amount as unexplained investment under sections 69A and 69B of the Act, since it emerged that source of income of assessee was from its business operations, income surrendered by assessee during survey could not be brought to tax under deeming provisions of sections 69A and 69B of the Act.

- **[2023] 152 taxmann.com 595 (Chennai - Trib.)/ [2023] 107 ITR**

**INCOME TAX :** Where assessee had admitted certain sum towards excess stock found during course of survey, since excess stock found during course of survey did not have any independent identity as asset was a mixed part of overall stock found in business premises of assessee, which represented business income and moreover, assessee had explained source for excess stock i.e., out of income earned from current year business, Assessing Officer was not justified in treating additional income

admitted towards excess stock as unexplained investment under section 69B of the Act and levying tax as per section 115BBE of the Act.

- [2024] 161 taxmann.com 44 (Madhya Pradesh) [19-03-2024]

Where undisclosed income surrendered during search and seizure proceedings is derived from regular business activities, it is liable to be taxed at normal rate instead of tax rate stipulated under section 115BBE of the Act.

- [2023] 157 taxmann.com 5148 (Rajkot - Trib.) [30-11-2023]

Where assessee, a medical practitioner, voluntarily surrendered certain amount during survey as his unaccounted professional receipts and taxed said receipts at normal rate, since assessee had no other source of income, other than business income and AO had conducted inquiry and perused details submitted, and taken a decision to accept explanation provided by assessee after proper application of mind, provision of section 115BBE of the Act could not be invoked to tax income as deemed income.

- [2023] 154 taxmann.com 347 (Chandigarh - Trib.) [24-07-2023]

Mere fact that survey/search proceedings have been initiated at business premises of assessee doesn't mandate Assessing officer to automatically invoke deeming provisions of sections 69 and 69A of the Act; said provisions can be invoked only where explanation offered by assessee is not found satisfactory; where from explanation offered by assessee it clearly emerged that source of income offered during survey was from his business operations, such income could not be taxed under sections 69 and 69A of the Act.

13. Based on above, Ground Nos. 2, 3 and 4 raised by the assessee are allowed and the order of the Ld. PCIT (Central), Jaipur is set-aside.

**14. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open court on 27<sup>th</sup> day of November 2024.

Sd/-

Sd/-

(Dr. S. SEETHALAKSHMI)

JUDICIAL MEMBER

Jaipur, दिनांक/Dated: 27/11/2024

(GAGAN GOYAL)

ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)  
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	27.11.2024		Sr.PS/PS
2	Draft Placed before author	27.11.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			