

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.1541/Bang/2024
Assessment Year: 2020-21

DCIT Central Circle-1 Mangaluru	Vs.	M/s. Raj Diamonds 27/28, 1 st Floor 145/146 L.K. Market Near Punjab National Bank Zaveri Bazar Mumbai 400 002 Maharashtra PAN NO : AAJFM7227J
APPELLANT		RESPONDENT

Assessee by	:	Sri V. Srinivasan, A.R.
Revenue by	:	Sri Subramanian S., D.R.

Date of Hearing	:	04.12.2024
Date of Pronouncement	:	16.12.2024

O R D E R

PER PRAKASH CHAND YADAV, JUDICIAL MEMBER:

Present appeal of the revenue arising from the order of Id. CIT(A) dated 26.12.2023 having DIN No.ITBA/APL/M/250/2023-24/1059047892(1) and relates to the assessment year 2020-21.

2. Undisputed facts as coming out from the orders of authorities below. The assessee is a firm and engaged in the manufacturing and also trading of jewellery and diamonds. A search & seizure action took place at the premises of the assessee on 28.6.2019 relevant to financial year 2019-20 and assessment year 2020-21. During the course of search, cash of Rs.40,58,450/- was found at the premises of the assessee, when the search team tallied unearthed cash with the cash balance as per the books of the assessee then it has come

to the notice that only an amount of Rs.5,93,448/- was present in the cash book and hence an amount of Rs.34,65,000/- was found to be excess in the hands of the assessee. At the time of recording of statement, the assessee conceded that this cash is unaccounted cash and has been admitted as an **additional income for the impugned assessment year**. Similarly, when the search team reconciled the possession of stock of goods with the stock of goods recorded in the books of accounts, it found that stock of Rs.1,38,36,083/- has been found in excess. The Managing Partner of the assessee firm has conceded that this is the excess stock not recorded in the regular books of accounts and offered the same as business income for the impugned year. During the course of assessment proceedings, the AO asked for the source of cash deposited. However, the assessee could not be able to substantiate the source of the cash. Similarly, the assessee failed to substantiate the possession of excess stock found at the time of search. It is pertinent to note here that at the time of filing of the return of income, the assessee could not offer the undisclosed cash and in assessment proceedings the assessee submitted that the impugned cash was advance received from customers, to whom the goods were supplied later on. However, the AO disbelieving the version of the assessee, added this amount of cash to the return of income and finally computed the assessment.

3. Aggrieved with the order of AO, the assessee preferred an appeal before the ld. CIT(A). The ld. CIT(A) while dealing with the issue of cash seized from the premises of the assessee, categorically held that the assessee failed to substantiate the source of cash hence explanation rendered is liable to be discarded. However, the ld. CIT(A) took a view that excess cash found and seized during the search would have to be taxed as an additional business income of the assessee for the impugned year instead of section 69A of the Act. Similarly, the ld. CIT(A) has held that excess stock amounting to

Rs.1,38,36,083/- is to be taxed as business income u/s 68 of the Act instead of section 69A of the Act.

4. Aggrieved with the order of the ld. CIT(A), the revenue has come up in appeal. The ld. D.R. has made the following submissions: -

- a) The observation of the ld. CIT(A) that no specific notice with respect to the application of section 69A of the Act has ever been given to the assessee is factually incorrect. Ld. D.R. draws the attention of the bench towards notice issued u/s 142(1) of the Act dated 25.6.2021.
- b) The ld D.R. contended that view of the ld. CIT(A) that the cash and unaccounted stock found during search is also become the business income of the assessee is not tenable. The ld. D.R. relied upon the judgement of Hon'ble Madras High Court in the case of SVS Oil Mills (113 Taxmann.com 388).

5. The ld. Counsel for the assessee relied upon the order of ld. CIT(A) and contended that the ld. CIT(A) was correct in holding that the amount of undisclosed cash as well as unaccounted stock is to be taxed as business income and not as undisclosed investment u/s 69A of the Act.

5.1 Ld. Counsel for the assessee relied upon the judgement of coordinate bench in the case of ITO Vs. Ramchandra Shetty (163 taxmann.com 666), wherein coordinate bench in somewhat similar situation has held that "excess stock found cannot be assessed u/s 69B of the Act and hence special rate of tax prescribed u/s 115BBE of the Act is not applicable".

6. We have heard the rival submissions and perused the materials available on record. In this case, undisputed facts are that excess cash and excess stock were found in the course of search conducted by the department. This stock and cash were admitted to be business income of the assessee, it pertinent to note that incriminating material has been found in search. It is also relevant to note that the assessee has not retracted from its statement recorded u/s 132(4) of the Act as well as u/s 131 of the Act. The Hon'ble Apex Court while dismissing the appeal of an assessee in the case of **Roshan Lal Sanchiti** 292 Taxman 549(SC) has held that statement recorded during the course of search u/s 132(4) has evidentiary value and if any of the party would like to deviate from such statement then such party has to rebut the disclosure with cogent material. Here in this case the revenue did not want to rely on the statement of the Mangging partner. However, the lower authorities have failed to bring on record any material to prove that the cash and additional stock was not the business income of the assessee. Further the AO has also not disturbed the audited books of the assessee. Now the moot question which we have to decide is whether this cash and unexplained stock when offered by the assessee would have to be taxed as business income or as unexplained investment in terms of provisions of section 69A of the Act. Revenue has relied on the decision of Hon'ble Madras High Court in the case of SVS Oil Mills reported in 113 taxmann.com 388 (Mad.)

6.1 Facts before the Hon'ble Madras High Court were totally difference in as much as in that case the proceedings were emanating as a result of survey. There is a vast difference between the statement recorded under survey and search, in as much as the evidentiary value of statement recorded under survey carries less weightage as compare to the statements recorded under section 132(4), as in later

provisions the authorities have power to record a statement on oath. Further it is also an admitted position of facts that in the case before Hon'ble Madras High Court the assessee therein has not passed corresponding entries in the regular books even after admissions the relevant observations of the ITAT, which in turn affirmed by the Hon'ble High Court as under: -

"There is a clear admission by the assessee that the difference in stock as on date of survey was added in its stock register but no corresponding entry was passed in the books of accounts. Stock cannot come in from vacuum. When stock is introduced in the stock register, there has to be a corresponding entry in the financial books of accounts. Either it has to be a purchase or shown as paid out of explained or unexplained source. Once stock to the extent of the surplus found at the date of survey, is included in the stock register, assessee has to give an explanation for the source from which it acquired such stock. Assessee having not passed any entry in financial books, addition of stock made by it, in its stock register, can only be considered as made out of undisclosed source"

7. The above finding of fact as has been recorded by the ITAT is not there in the present case as evident from the fact that the AO himself has treated the additional amount as income from business while computing the final income. Further coordinate Bench of Chennai in the case of Overseas Leathers Vs DCIT reported in 152 Taxman. Com 595 (Chennai) while distinguishing the decision of Hon'ble Madras High Court in SVS(Supra) has observed as under: -

*"Coming back to the case laws relied upon by the AO and the Ld. Counsel for the assessee. The AO has relied upon the decision of **Hon'ble High Court of Madras in the case of SVS Oils Mills (supra)**. We find that in the said case, although excess stock was found during the course of survey u/s. 133A of the Act, **which the assessee did not accounted in his books of accounts and also not brought to tax in the relevant assessment years.** The AO has made additions towards excess stock as unexplained investment u/s. 69B of the Act **in absence of necessary explanation with regard to source for said excess stock.** Under those facts, the Hon'ble Madras High Court came to the conclusion that excess stock found during the course of survey should be assessed u/s. 69B of the Act. In this case, facts are entirely different. The excess stock found during the course of survey was mixed with regular stock in trade of the assessee in its business. The survey team was also not identified excess stock separately, but was valued because the assessee could not reconcile the difference in stock in trade when compared to book stock. Further, the*

assessee has explained the source for excess stock and argued that it is out of current year income generated from the business. The explanation of the assessee was not disproved. Therefore, we are of the considered view that the facts of the present case are not applicable to the case laws relied upon to the Assessing Officer”

8. The facts of the present case are *pari-materia* with that of the Chennai Bench in the case of Overseas Leathers(Supra). Therefore, respectfully following the view of the coordinate bench we are of the view that additional income offered by the assessee on account of cash and excess stock is liable to be taxed as business income and not unexplained investment in terms of provisions of section 69A at special rates of 115BBE.

9. The appeal of the revenue is dismissed as indicated above.

Oder pronounced in the open court on 16th Dec, 2024

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore,
Dated 16th Dec, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.