

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**(HYBRID COURT)**

**BEFORE SH. UDAYAN DASGUPTA, JUDICIAL MEMBER  
AND SH. KRINWANT SAHAY, ACCOUNTANT MEMBER**

**I.T.A. No. 542/Asr/2024**  
Assessment Year: 2019-20

Dashmesh Timber And Furniture  
House, Chogawan Road, Ajnala  
Bye Pass, Ajnala- Distt. Amritsar  
143001 Punjab

[PAN: AALFD 7766K]

**(Appellant)**

Vs.

The Deputy Commissioner of Income  
Tax, Central Circle-Amritsar,  
Aayakar Bhawan, Mazbook Road,  
C.R. Building, Amritsar 143001  
Punjab

**(Respondent)**

Appellant by : Sh. P. N. Arora, Adv.  
Respondent by : Mrs. Neelam Sharma, Sr. D.R.  
Date of Hearing : 23.12.2024  
Date of Pronouncement : 22.01.2025

**ORDER**

**Per Udayan Dasgupta, J.M.:**

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 30.08.2024 passed u/s 250(6) of the Income Tax Act, 1961 which has emanated from the order of the AO DCIT, Central Circle, Amritsar, passed u/s 143(3) of the I.T. Act, 1961 dated 28.09.2021.

2. Grounds of appeal preferred by the assessee in the memorandum of appeal are as under:

- “1. That the Assessment Order dated 28/09/2021 passed by the DCIT, Central Circle, Amritsar u/s 143(3) of the Income Tax Act, 1961 and the order of the Learned Commissioner of Income Tax (Appeals)-5, Ludhiana dated 30/08/2024 thereby confirming the order of the Assessing Officer (AO) are both against the facts of this case and are untenable under the law.
2. That no reasonable and proper opportunity of being heard was allowed by the AO before passing the order. As such the order passed by the AO is liable to be cancelled. Similarly, the CIT(A) has also grossly erred in confirming the order of the AO without appreciating the facts of this case and without applying his mind. As such the order passed by the Ld. CIT(A) thereby confirming the order of the AO is bad in the eyes of law and the same is liable to be cancelled.
3. That the Ld. CIT(A) has grossly erred in confirming the addition of Rs.8,00,000/- by treating the same as taxable u/s 69A r.w.s. 115BBE of the IT Act, 1961. The CIT(A) did not appreciate that the surrender of Rs.8,00,000/- on account of excess cash found was also a part of business income and Ld. CIT(A) has grossly erred in confirming the same as deemed income u/s 69A with reference to section 115BBE also. The CIT(A) should have treated Rs.8,00,000/- as normal business income at normal tax rate.
4. That the Ld. CIT(A) also should have treated the excess cash at Rs.8,00,000/- as normal business income like excess stock of Rs.57,00,000/-
5. That any other ground of appeal which may be argued at the time of hearing of the appeal.”

3. The facts of the case are that the assessee is a partnership firm (consisting of four partners), engaged in the business of trading in timber and manufacturing and

sales of furniture, under the trade name of *M/s Dashmesh Timber and Furniture House*. Survey u/s 133A, of the Act, 1961, was carried out at the business premises on 8<sup>th</sup> February, 2019, and excess stock of Rs.57 lakhs plus excess cash of Rs. 8,00,000/- ( Rs. Eight Lakhs), were found by the survey team .

4. During the course of survey, statement of one of the partners of the firm was recorded, where the assessee has offered an additional business income of Rs.65 lakhs (Rs.57 lakhs on account of excess stock plus Rs.8 lakhs on account of excess cash found outside regular books), as business profits for the year 2019-20, under survey.

5. The declaration as recorded by the partner of the assessee firm, in the statement given to the survey team on 8<sup>th</sup> February, 2019, in response to question number 13 and 14 (*contained in page - 5 of the statement u/s 133A(3)(iii) of the Act, 1961*). The said statement was also followed by a surrender letter from the assessee, addressed to the Ld JCIT, Amritsar, dated 08/02/2019, declaring that an additional business income of Rs 65 lakhs is being offered, to cover up the discrepancy of excess stock and the additional cash, found in the survey premises, which is over and above the normal business profits of the assessee firm.

6. Subsequently, regular return of income filed by the assessee firm, declaring total income at Rs. 67,35,500/- on 26/09/2019, ( including the surrender of additional

income of Rs. 65 lakhs, over and above the normal business profits), has been assessed (accepted) in scrutiny proceedings u/s 143(3) of the Act, 1961, after examination of regular books of accounts supported by relevant bills and vouchers, but the surrender amount of Rs.65 lakhs , has been treated as deemed income u/s 69 A of the Act, 1961, and subjected to tax at special rates as per provisions of section 115BBE, on the ground that the assessee has not been able to substantiate the source of undisclosed investment in cash and purchase of excess stock that has been found during survey.

7. The matter was carried in first appeal before the Ld. CIT (A)-5, Ludhiana , and the Ld. first appellate authority, after an elaborate discussion, contained in the appellate order, has granted part relief by treating the excess stock of Rs. 57 lakhs surrendered by the assessee in his return to have been explained to have been derived out of regular business activity of timber and furniture, but has considered the excess cash surrender of Rs. 8 lakhs by the assessee as deemed income as per provisions of section 69A and has upheld the application of section 115BBE of the Act, 1961 for rate purpose on the said amount.

8. The reasons as flowing from the appeal order of the first appellate authority holding the excess stock as business income is reproduced below for ready reference:

**“Decision with regard to surrender made under the head excess stock**

*During the appellate proceedings, the AR has submitted copy of documents which was impounded by the Department, and which were the very basis of disclosure by the appellant during survey. These documents were available to the AO as well as submission on the basis of these documents was made by the appellant before the AO during assessment proceedings.*

*During the appellate proceedings, the AR has submitted the details of inventory of stock made by the Department on the date of survey, surrender letter and other which were the very basis of disclosure by the appellant during survey. These documents were available to the AO as well as submission on the basis of these documents was made by the appellant before the AO during assessment proceedings.*

*Further, on perusal of the documents, it is reveals that the entire inventory found are related to stock of the assessee in which the assessee is dealing in his regular business. The inventory of stock made also reveals that the nature of difference is linked to the business. Further perusal of the surrender letter also reveals that there is a categorical disclosure by the appellant that the amount of surrendered income is from the same business of the assessee which he is carrying on.*

*Close scrutiny of these documents shows that the difference in the stock is related to the business of the appellant. Hence, it is not difficult to draw the conclusion that the said documents and the difference in inventory found physically and as per trading account is related to the normal working of the business.*

***The Ld. Tribunal Bench in the case of Bunty Kumar vs. ACIT Central Circle, Jammu in ITA No. 215/Asr/2023 held in para 7, 8 & 9 of its order as under:***

*“7. Heard the rival contention, perused the material on record, the impugned order and case laws cited before us. Admittedly, the CIT appeal has restricted the addition made on account of excess stock found during survey of at Rs. 18,85,319/- as against Rs. 40 lacs, surrendered by the assessee but taxed u/s 69B r.w.s. 115BBE of the Act. The Id. counsel contended that the excess stock found during the survey was business income out of business carried out by the assessee but not declared in the books of account. Since, the excess stock found during the survey primarily pertains to the business carried out by the assessee, and secondly surrendered as business income during survey as accepted by the AO and hence, the excess stock would only be treated as income under the head business income and not as*

*deemed income. In our view, the Id. CIT(A) was wrong in confirming the action of the AO regarding the applicability of the provisions of section 115BBE in case of the excess stock which was not separate or part of another lot of stock. Accordingly, the value of article/stock of the impugned investment was being fully disclosed in the books of account, being regularized by way of surrender of business income as accepted by the AO, would certainly not fall in the mischief of section 69B of the Act.*

8. *Respectfully following Hon'ble Apex Court judgment in the case of M/s D. N. Singh v. CIT, Central (Supra) we hold that in the given facts of the present case, the excess stock would not fall in the mischief of section 69B of the Act. Accordingly, the impugned order of Id. CIT(A) is held to be infirm and perverse and as such, the addition is deleted.*

9. *In the result, the appeal filed by the assessee is allowed."*

***The Ld. Tribunal Bench in the case of Sharp Chucks & Machines Pvt. Ltd. vs. DCIT Central Circle-1, Jalandhar in ITA No. 169Asr/2023 held in para 7, 8 & 9 of its order as under:***

*"7. From the record, it is evident that the expenditure incurred for creating a business asset must have been generated through the business carried out by the assessee and that expenditure laid out for the purpose of business is to be allowed deduction either as expenditure or to be capitalized on which depreciation will be allowed. In the present case, to the extent of the expenditure incurred for construction of the building, out of unexplained source is concerned, it is to be construed as income earned from the business and it will take character of the business income. The case law relied upon by the Ld. CIT(A) is distinguishable on the facts as in that case the amount surrendered during survey was not reflected in the books of account and the source from where it was derived was not declared/explained whereas in the present case the amount surrendered during survey was duly reflected in the books of account and the source it was declared/explained as business activity with due payment of Tax liability and the authorities below failed to prove the contrary to disprove source of income other than Business income.*

8. *Respectfully following the order of the Co-ordinate Bench, Chandigarh in the case of M/S. ARORA ALLOYS LTD Vs. DCIT (Supra), we direct the Assessing Officer to treat surrendered income to the extent of expenditure on building at Rs.81,95,0000/- lakhs as business income.*

9. *In the backdrop of the aforesaid discussion, the appeal of the assessee is disposed of in the terms as above."*

***The Ld. Tribunal Bench in the case of Kanpur Organics Pvt. Ltd. v. DCIT ITA No. 675/Lkw/2018 held in para 7.2 of its order as under:***

“7.2 We find that provisions of section 115BBE are overriding provisions which provide for taxing the income referred to in section 68 and from section 69 to 69D at a flat rate of tax and do not allow any deduction in respect of expenditure or allowance under the provisions of the Act. Therefore, it is important for application of section 115BBE that the assessee should first fall in any of these sections. In our opinion, in the present case, the addition u/s 69A could have been made only if no explanation, regarding source of such income, was offered or the explanation offered by the assessee was not satisfactory in the opinion of the Assessing Officer. In the present case, as we have already noted that the assessee had given complete explanation regarding the source of entries recorded in the diary, which were explained to be part of unrecorded sales and Assessing Officer also did not object to the said explanation made u/s 69A of the Act and if the addition cannot be made u/s 69A, the provisions of section 115BBE will not be applicable.”

**The *Ld. Tribunal Bench in the case of Lovish Singhal & Others v. ITO ITA No. 143/Jodh/2018* held in para 14 of its order on the issue of incriminating documents as under;**

“14. So far as the surrender of income is on account of incriminating documents, it is not clear as to whether it was out of the business transaction, the assessee was carrying on in the regular course of business. However, authorities had not given any finding on the nature of such incriminating documents nor with regard to income surrender with respect to these documents. Therefore, in the interest of justice, I restore the issue with regard to surrender of income arising out of incriminating documents to the file of the Assessing Officer to find out the nature of such income if arising out of the business transaction carried on by the assessee and to decide the issue afresh as per law. Needless to say that the assessee should be given due opportunity before deciding the issue.”

**Similar view has been taken by the various Hon'ble Tribunals, including jurisdictional Tribunal, in the following cases:**

Recently, Hon'ble ITAT Chandigarh Bench in a number of cases has held that surrendered income on account of stock is taxable as business income, some of them are cited as under;

“a. *M/s DDK Spinning Mills Vs. The DCIT in HA No, 19/Chd/2023 dated 29.11.2023 - Even the ITAT has held that surrender of building is also taxable as business income.*”

- b. M/s Montu Shallu Knitweaves Vs, The DCJT in HA No. 21/Chd/2023 dated 01.12.2023 has held that surrender income on account of stock is taxable as business income.
- c. Jaswinder Singh Vs. The DCIT in ITA No. 530/Chd/2022 dated 01.12.2023 has held that surrender of stock is taxable as business income.
- d. M/s New Vishwakarma Agro Industries Vs. The Asst/Deputy CIT in JTA No. 215/Chd/2023 dated 22.11.2023 has held that surrendered stock is taxable as business income.
- e. Shri Ravinder Kumar Bansal Vs. The Pr. CIT in ITA No. 319/Chd/2Q22 dated 29.11.2023.
- f. Khurana Steel Rolling Mills V/s DCIT Circle-I (Ludhiana) ITA No. 745/CHD/2016 (CHD)
- g. M/s Bajaj Sons Ltd vs. DCIT in ITA No. 1127/CHD/2019AY 2017-18 dated 25 May 20211
- h. Prashanti Surya Construction Co. Pvt Ltd. V/s DCIT ITA No.315/CHD/2014, ITAT, Chandigarh Bench, Chandigarh

**Further, the Hon'ble ITAT Amritsar has also upheld the same principle. Few of the cases are as under:**

- a. Dy. Commissioner of Income Tax V/s Sh. Inderjit Mehta Bathinda (30th Nov 2017)
- b. M/s Dev Raj Hi-tech Machine Limited V/s DCIT (ITAT Asr) ITA 326 of 2014
- c. M/s J B Resorts V/s Income Tax Officer in ITA No,488/ASR/2015, ITAT, Amritsar Bench, Amritsar

Hence, various Hon'ble Tribunal Benches held that the nature of incriminating documents is the key which needs to be examined to reach the conclusion whether the source of money in the said documents is related to the regular course of business of the assessee. In the assessment order, there is no material on record which suggests that the appellant is running some other activity.

*Therefore, the facts & circumstances of the case, the arguments of the AR are found acceptable that the income surrendered by the appellant on account of stock difference during the survey was 'business income' of the appellant and must be taxed at normal rate of taxes applicable in the case of the appellant. It is a case where the surrender was made on the basis of business-related inventory only as each of the items in the list of inventories drawn on the date of survey was related to its normal/routine business. Secondly, in the surrender letter, the appellant has mentioned that these are transaction in the nature of difference in inventory is its income from the same business. Thirdly, the appellant in its return of income filed, maintained the same instance. Fourthly, neither the survey team nor the AO has brought any other material on record to show that there was some other business activity. Thus, it to a logical conclusion that investment in excess stock was on account of same business only. Hence the action of AO in charging tax at the rate prescribed u/s 115BBE in this case of Rs. 57,00,000/- on account of excess stock is not found sustainable and therefore deleted."*

9. Now, the assessee is before the tribunal on the grounds contained in the memorandum of appeal. Challenging the applicability of the deeming provision of section 69/A, on the surrendered cash amounting Rs. 8 lakhs. The Ld AR of the assessee has submitted a short paper book containing the copy of written submission filed before the first appellate authority and copies of the following decisions of the coordinate benches in support of his argument:

- 1) New Vishvakarma Agro Industries Vs DCIT - Central, Patiala , ITA No :215/Chd/ 2023*
- 2) Gagnish Puri vs DCIT -Cir-1, Bhatinda , ITA No: 32/ASR/2024*

10. The Ld AR of the assessee, submitted that in the instant case the assessee is a partnership firm , consisting of four partners and is engaged in the business of timber trading and manufacturing and sales of furniture , and has explained before the survey team that the excess stock and the excess cash which is being surrendered is wholly and exclusively related to the business and the surrender is also made as additional business income ( *as evident from the surrender letter dated 08/02/2019* ) , and the assessee firm does not have any other income earning activity and no other business activity was found in course of survey and no documentary evidences pertaining to any other activity was found .

11. He further submitted that in course of the statement being recorded during survey u/s 133A(3)(iii) of the Act'61, it is categorically stated by the partner that the additional income surrendered is on account of business income over and above the normal business profits and vide the surrender letter it was stated that the same is being done voluntarily to buy peace , and the said surrender was duly accepted by the survey team and eventually the AO has also accepted the said surrender in scrutiny proceedings u/s 143(3) , without any variation of the quantum surrendered , except for the fact that the AO has applied the tax rates u/s 115BBE of the Act 61 , treating the said offer as income under the deeming provisions of section 69 of the Act 1961.

12. The AR further relying on the jurisdictional High court judgment in the case of *Sudarshan Gupta, (2008) 10 DTR (P&H) 184*, submitted that when an offer of surrender is being accepted by the department, the same should be *accepted in toto* and it should not be part accepted and part rejected.

13. The Ld AR , of the assessee further submitted that , the Ld first appellate authority , due to reasons contained in his appellate order , has accepted the surrender of stock amounting to Rs.57,00,000/- as income from business carried on by the assessee, but has treated the surrender on account of excess cash amounting to Rs. 8,00,000/-, as deemed income u/s 69/69A of the Act 61 .

14. He further stated that on the facts of the case there is a clear finding of the Ld CIT(A) “ *that the items in the list of inventories drawn on the date of survey was related to its normal routine business* . It has been further observed by the Ld CIT (A), that the appellant has mentioned in the surrender letter that the nature of difference in inventory is its income from business, and has disclosed the same in his return accordingly, and the survey team has not been able to show that there are some other business activity of the assessee.

15. The Ld AR further submitted that , considering the facts and circumstances of the case , and the above logical conclusion derived by the first appellate authority , in

case of **stock** , which is found in excess treating the same to be business income , the same logic should be made applicable *mutatis mutandis* to the excess CASH of Rs. Eight lakhs, found in the course of survey in the same business premises relating to the same assessee in absence of any other income earning activity , and by the same logic, the excess cash should also be considered as business income.

16. He further submitted that the Ld CIT ( A ) was probably swayed by the judgment of the jurisdictional high court in the case of *PCIT vs M/s Khushi Ram and Sons ITA No 126 of 2015 dated 21/07/2016*, where the Hon'ble court has held “ *Merely because the assessee carries on certain business , it does not necessarily follow that the amounts surrendered by him are on account of its business transactions. There is no presumption that absent anything else an amount surrendered by an assessee is his business income. It is for the assessee to establish the source of such surrendered amount.*”

17. Further the Ld CIT ( A ) relied on case of *Kim Pharma vs CIT in ITA NO 106 of 2011 dated 27/04/2011* , where the Hon'ble Punjab and Haryana High Court , has opined that where the amount surrendered during survey was not reflected in books and the source from where it was derived was not declared , the same was assessable as deemed income u/s 69A of the Act 61.

18. *The Ld CIT(A) further relied upon the Hon'ble Apex court judgement in the case of Roshan Di Hatti vs CIT [1977] 107 ITR 938 , and Kale Khan Md Hanif vs CIT 1963 50-ITR-1, where the Honb'le court has laid down the law that proving the source of a sum of money found to have been received by an assessee is on him . Where the nature and source of a receipt , whether it is of money or other property , cannot be satisfactorily explained by the assessee , it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source.*

19. With reference to the above judicial decisions cited by the Ld CIT(A) , the Ld AR of the assessee, submitted that in the instant case, it has been categorically explained that the source of the cash is generated from the regular business activity of the assessee firm, from the regular business of ***timber and furniture trading***. The excess stock rolling in the business are liquidated by way of sales in usual course of business and the CASH that is found in the business premises, is just the liquid form of the same stock, and since, the excess stock is considered as business income by the appellate authority, the liquid form of the same stock, being held as CASH, should also be qualified to be considered as business income.

20. He further submitted that the above noted judgments, relied upon by the Ld CIT(A), are distinguished on facts, because in the cited case, the assessee could not

give any explanation regarding source , but in the instant case the source has been explained successfully in course of first appellate proceedings , that the excess stock is out of regular business activity and the same is already accepted and treated as business income ,by the Ld CIT(A) , so consequently the liquidation of the same stock , will also result in business income itself.

21. *The Ld AR further tried to explain the matter by citing an example , on hypothetical basis , that had the survey been conducted a month earlier, the excess quantity of stock in the premises would have been probably more and excess cash found would have been much less, and similarly , had the survey been conducted a month later , the excess stock would have been much less with corresponding increase in excess cash , because it is the same stock that is being liquidated over passage of time.*

22. As such, the Ld AR concluded that it is the same excess business stock that has been sold outside the books to generate the excess cash found at the premises, and since the surrender of excess stock is already treated as business income, the surrender of excess cash should also be treated as business income.

23. Per contra, the Ld DR relied on the order of the Ld CIT(A) and has retreated the arguments contained in the said appellate order, relating to the excess cash surrendered in course of survey.

24. We have considered the rival submission and the materials on record and we also find that on the prevailing facts of this case , the Ld first appellate authority has already arrived at a conclusion due to reasons contained in his appellate order , firstly

observing that the stock ( or inventory ) surrendered was related to business because each item in the list of inventories drawn was related to the normal business activity , secondly, in surrender letter the appellant has mentioned that these are transaction in the nature of difference in inventory is its income from same business, thirdly , the appellant has also returned the same accordingly and fourthly the survey team has not been able to unearth any other materials to show that there was some other income earning activity.

25. We further take note of the decisions of the co-ordinate benches cited by the Ld AR of the assessee , in the case of *New Vishvakarma Agro Industries Vs DCIT - Central, Patiala , ITA No :215/Chd/ 2023 , and in the case of Gagnish Puri vs DCIT -Cir-1, Bhatinda , ITA No: 32/ASR/2024*, where it has been held under almost similar circumstances that excess cash found out of sale of goods in which the assessee was dealing was also found to be taxable as business income , and there was no justification for taxing such income under section 115BBE of the Act 61.

26. We further observe that in the instant case the **excess stock and the excess cash surrendered by the assessee are interlinked** and the assessee has been *able to discharge his onus of proof* , which is to be understood with reference to facts of each case and proper inference has to be drawn from such facts , and we find in the instant case, that the explanation put forth by the assessee regarding the excess

CASH found at the business premises, to have been generated out of the liquidation of the same excess stock rolling in the business ( *which is already considered as business stock* ) , **is a probable explanation** , and there is nothing brought on record by the revenue , to brush aside or counter the said probability .

27. As such considering all factual aspects of the matter and also considering the fact that the surrendered stock is already considered as business income by the first appellate authority, the surrendered cash amount of Rs.eight lakhs, can be considered to have been generated out of the same business, because the excess stock rolling in business over the years , needs to be sold and the explanation of the assessee is **a probable explanation** which cannot be ignored, and as such we hold that the said excess cash surrendered should also be considered as business income to be charged to tax at normal rates.

28. In the result, the appeal filed by the assessee is allowed.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 22.01.2025

**Sd/-**  
**(Krinwant Sahay)**  
**Accountant Member**

**Sd/-**  
**(Udayan Dasgupta)**  
**Judicial Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

(1)The Appellant:

- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

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By Order