IN THE INCOME TAX APPELLATE TRIBUNAL RANCHI BENCH
VIRTUAL HEARING MODE

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

ITA No.418/RAN/2024
Assessment Year: 2021-22

Rajesh Badri Pd. Modi Sarawgi Sadan, Dumri Road, Giridih, Jharkhand-815301. (PAN: AADPM4022B)	Vs	ACIT, Central Circle Dhanbad
(Appellant) (Respondent)		

&

ITA No. 420/RAN/2024
Assessment Year: 2021-22

Paras Kumar Sarawgi Sarawgi Sadan, Dumri Road, Giridih, Jharkhand-815301. (PAN: AEJPS3050B)	Vs	ACIT, Central Circle Dhanbad
(Appellant)		**(Respondent)**

&

ITA No. 421/RAN/2024
Assessment Year: 2021-22

Sangita Devi Sarawgi Sarawgi Sadan, Dumri Road, Giridih, Jharkhand-815301. (PAN: AEJPS3047Q)	Vs	ACIT, Central Circle Dhanbad
(Appellant)		**(Respondent)**

&

ITA No. 422/RAN/2024
Assessment Year: 2021-22

Kanta Devi Sarawgi Sarawgi Sadan, Dumri Road, Giridih, Jharkhand-815301. (PAN: AEJPS3046R)	Vs	ACIT, Central Circle Dhanbad
(Appellant)		**(Respondent)**

&

ITA No. 82/RAN/2024
Assessment Year: 2021-22

Manju Devi Sarawgi Sarawgi Sadan, Dumri Road, Giridih, Jharkhand-815301. (PAN: AEJPS3052D)	Vs	ACIT, Central Circle Dhanbad
(Appellant)		**(Respondent)**

&

ITA No. 83/RAN/2024
Assessment Year: 2021-22

Akriti Sarawgi Sarawgi Sadan, Dumri Road, Giridih, Jharkhand-815301. (PAN: AGNPC2979H)	Vs	ACIT, Central Circle Dhanbad
(Appellant)		**(Respondent)**

&

ITA No. 423/RAN/2024
Assessment Year: 2021-22

Samir Kumar Sarawgi Sarawgi Sadan, Dumri Road, Giridih, Jharkhand-815301. (PAN: AEJPS2818F)	Vs	ACIT, Central Circle Dhanbad
(Appellant)		**(Respondent)**

&

ITA No. 425/RAN/2024
Assessment Year: 2021-22

Harish Kumar Sarawgi Sarawgi Sadan, Dumri Road, Giridih, Jharkhand-815301. (PAN: ALDPS5357E)	Vs	ACIT, Central Circle Dhanbad
(Appellant)		**(Respondent)**

&

ITA No. 426/RAN/2024
Assessment Year: 2021-22

Santosh Kumar Sarawgi Sarawgi Sadan, Dumri Road, Giridih, Jharkhand-815301. (PAN: AEJPS3084B)	Vs	ACIT, Central Circle Dhanbad
(Appellant)		**(Respondent)**

&

ITA No. 427/RAN/2024
Assessment Year: 2021-22

Sunila Devi Sarawgi Sarawgi Sadan, Dumri Road, Giridih, Jharkhand-815301. (PAN: AEJPS3045N)	Vs	ACIT, Central Circle Dhanbad
(Appellant)		**(Respondent)**

Present for:

Appellant by : Shri Devesh Poddar, Advocate
Respondent by : Shri Khubchand T. Pandya, Sr. DR

Date of Hearing : 05.03.2025
Date of Pronouncement : 05.03.2025

O R D E R

Per Bench :

As all these appeals have only a single issue which are common and are all connected appeals, they are being disposed of by this common order. These are appeals filed by the different assessee against the separate orders of the Ld. CIT(A), Patna-3 vide order Nos.-

ITBA/APL/S/250/2024-25/1068623686(1),
ITBA/APL/S/250/2024-25/1068623004(1),
ITBA/APL/S/250/2024-25/1068625750(1),
ITBA/APL/S/250/2024-25/1068622529(1),
ITBA/APL/S/250/2024-25/1061395569(1),

ITBA/APL/S/250/2024-25/1061402193(1),
ITBA/APL/S/250/2024-25/1068624370(1),
ITBA/APL/S/250/2024-25/1068621763(1),
ITBA/APL/S/250/2024-25/1068626528(1) &
ITBA/APL/S/250/2024-25/1068628718(1) all dated 12.09.2024

for Assessment Years 2021-22 respectively.

2. Shri Devesh Poddar, Advocate appeared on behalf of the appellant and Shri Khubchand T. Pandya, Sr. DR appeared on behalf of the revenue.

3. It was submitted by the Ld. AR that the assessees are individuals who are family members of a group called Atibir Group. There was a search in the Atibir Group of cases on 27.03.2021. In the course of search, certain declarations were made and the abovementioned assessees had filed their returns of income u/s. 139(1) of the Act. In the returns filed, the assessees had disclosed the cash and jewellery which were found in the course of search as business income. It was the submission that the returns filed by the assessees were assessed u/s. 143(3) of the Act and the returned income shown by the assessees were accepted without making any additions. However, the Assessing Officer treated the income disclosed by the assessee as business income to such extent as related to the disclosure made u/s. 132(4) of the Act as unexplained investment, unexplained cash credits etc. u/s. 68 to 69D of the Act. Consequently, the Assessing Officer invoked the provisions of section 115BBE of the Act and applied the special rates of tax by treating it as undisclosed income. The Ld. AR has also filed a written submission as under:

"1. That a search action U/s 132 was conducted upon the Atibir Group on 17/03/2021 and subsequent dates. The assesses in the above captioned appeals were all part of the Group and thus were covered under the search operation.

2. That during the search operation Cash and Jewellery was found and seized which was disclosed by the assesses in their ITR and declared as Business Income or as the case may be

3. *That the Ld AO during the assessment proceedings has accepted the returned income of the assessee and not made any addition over and above the retimed income. However, the Ld AO has re-characterized the disclosed income as income U/s 69/69A and taxed the same at a special rate U/s 155BBE which has been confirmed by Ld CIT(A).*

4. *That the chart below summarises the issue:*

Appeal No.	*Name*	*Issue*
ITA No.418/Ran/2024	*Sri Rajesh Badri Prasad Modi*	*The assessee declared Rs. 32,39,560/- as Business Income (Trading & supply) against the disclosure of cash - Rs. 6,55,260/-- and Jewellery Rs. 25,84,300/-.*
ITA No. 419/Ran/2024	*Sri Sandeep Kumar Sarawgi*	*----------*
ITA No.420/Ran/2024	*Sri Paras Kumar Sarawgi*	*The assessee declared Rs. 27,20,000/- as Business Income (Trading of Billet & Iron Rod) against the disclosure of cash - Rs. 22,10,000/-.*
ITA No.421/Ran/2024	*Sri Sangita Devi Sarawgi*	*The assessee declared Rs. 54,66,147 as Business Income (Designing of Mould & Iron Casting) against the disclosure of Jewellery Rs.54,66,147/-.*
ITA No.422/Ran/2024	*Smt Kanta Devi Sarawgi*	*The assessee declared Rs, 99,21,585/- as Business income (Transportation & Trading) against the disclosure of cash Rs. 21,24,000/- and Jewellery Rs. 77,97,582/-. Rs. 21,24,000/- and Jewellery Rs.77,97,582/-.*
ITA No.423/Ran/2024	*Sri Samir Kumar Sarawgi*	*The assesses declared Rs. 30,50,000/- as Business Income (Transporting Commission) against the disclosure of cash -Rs. 30,41,310/-.*
ITA No.424/Ran/2024	*Sri Sharad Sarawgi*	*----------*
ITA No. 425/Ran/2024	*Sri Harish Kumar Sarawgi*	*The assessee declared Rs. 9,00,000/- as Income against the disclosure of cash - Rs 8,97,800/-.*
ITA No. 426/Ran/2024	*Sri Santosh Kumar Sarawgi*	*The assessee declared Rs. 23,15,000/- as Business Income { Trading of Iron & Steel Scrap) against the disclosure of cash - Rs. 23,11,000/-.*
ITA No. 427/Ran/2024	*Smt Suni la Devi Sarawgi*	*The assessee declared Rs. 24,12,442/- as Income against the disclosure of Jewellery - Rs. 24,42,442/-.*
ITA No. 82/Ran/2024	*Smt Manju Devi Sarawgi*	*The assessee declared Rs. 23,10,000/- as income against the disclosure of cash - Rs. 20,61,000/-.*

ITA No.83/Ran/2024	*Smt. Aakriti Sarawgi*	*The assessee declared Rs. 14,11,858/- as Income as against the disclosure of Jewellery Rs. 14,11,858/-.*

5. *That as stated above, the Ld AO has simply re-characterized the disclosed income and taxed the same at special rate U/s 115BBH without making any addition to the returned income.*

6. *We would like to quote the decision of the following decisions in support of our contentions:-*

a) *ITAT Delhi Bench in the case of DCIT Vs Tapesh Tyagi in ITA No. 1344/Del/2021 dated 27/10/2023 has held that:- (Copy of the order is attached)*

   9. *Having held so, -we may further add that a reading of section 115BBE of the Act makes it clear that the special rate of tax provided under the said provisions shall be applicable under two conditions. Firstly, where the total income includes any income referred to in sections 68, 69A, 69B, 69C or 69D and reflected in the return of income under Section 139 of the Act. Secondly, if the income determined by the Assessing Officer includes any income referred to. in sections 68, 69, 69A, 69B, 69C or 69D, if such income is not covered the first condition. In the facts of the present appeal, admittedly assesses has not offered the income under Section 69A of the Act. Even, the Assessing Officer has not made any separate addition under Section 69A of the Act. He has merely re-characterized the nature of income offered by the assessee. Thus, in our considered opinion, the provisions of sections 115BBE would not be applicable to the facts of the present appeal.*

b) *ITAT Chandigarh in the case of Gandhi Ram Vs PCIT in ITA No. 121/Chd/2021 dated 04/08/2022 has held that:-*

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

C) ITAT Chandigarh in the case of M/s Famina Knit Fabs Vs ACIT in ITA No. 1494/Chd/2017 dated 08/02/2019 has held that:-

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.

d) Tejpal singh Vs Assistant/Deputy commissioner of Income=tax (2024) 158 taxmann.com 679 (Amritsar-Trib) (06-12-2023], the Hon'ble Tribunal has 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 on amount of excess cash was bad in law.

6.1 We respectfully considered the order of the jurisdictional High Court Kim Pharma (P.) Ltd(supra) but the case is not factually same with the assessee's case. In fact of the Kim Pharma (P) Ltd the source was unexplained by the assessee. In impugned appeal the assessee has accepted the source of cash from business transaction. We respectfully relied on the order of the Smt. Sudarshan Gupta(supra) and followed accordingly. The ld. AR respectfully relied on the order of the ITAT Amritsar Bench in the case of Deepak Setia (supra) and Sharp Chuks and Machines (P.) Ltd (supra). The order was delivered by the same combination of the ITAT Amritsar Bench. The revenue was unable to show any other sources related to excess cash found in the survey. During statement recorded in survey the assessee clearly declared that the assessee had not made any investment in immovable property within 6 years and the entire amount of the excess cash was generated from undeclared sale of medicine. So, the source of excess cash is from business. Therefore, we are setting aside the impugned appeal order. Accordingly, the application of section 115BBE an amount of Rs.7,12,805/- is bad in law. Hence, the assessee will be assessed related to excess cash under normal rate of tax not U/s 115BBE of the Act.

As such, in view of the above mentioned facts and laws quoted, we would like to submit that the ld. AO was not justified in taxing the disclosed amount U/s 115BBE which otherwise has been surrendered as income from business.

We shall be grateful for you kind consideration and necessary orders."

4. The ld. AR also placed reliance on the various decisions of the Coordinate Bench of the Tribunal, Delhi Bench and Amritsar Bench. It was the submission that as the assessee has disclosed the amount in their original returns and the same has been offered as business income and no addition having been made or proposed by the Assessing Officer the provisions of section 115BBE cannot be applied, the income of the assessee may be assessed at the regular rates of taxes.

5. In reply, the Ld. Sr. DR vehemently supported the orders of the Assessing Officer and the Ld. CIT(A). It was the submission that if the search was not there such disclosure would not have taken place and, therefore, the amount as disclosed by the assessee in their returns to the extent that it relates to the disclosure in 132(4) the same is liable to be treated as unexplained cash credits or unexplained investments as the case may be and the provisions of section 68 to 69D be applied. It was the submission that the provisions of section 115BBE as applied by the Assessing Officer was rightly made.

6. We have considered the rival submissions. A perusal of the assessment order clearly shows that the date of search is 17.03.2021 which relates to AY 2021-22. Admittedly, notice u/s. 153A has not been issued to the assessee in these years and the return has been filed by the assessee u/s. 139(1) of the Act. The Assessing Officer has also recognized that the return has been filed u/s. 139(1). A return filed u/s. 139(1) is an original return and in such original return the assessee has disclosed his business income. It may be true that such business income made included certain disclosures which has been made u/s. 132(4) of the Act. However, it does not mean that the assessee would not disclose its correct income in the impugned assessment year especially when the return has been filed u/s. 139(1) of the Act. Further, a perusal of the assessment order clearly shows that the Assessing Officer has not made any addition

u/s. 68 or 69A, 69B, 69C and 69D only a presumption has been drawn by the Assessing Officer and the provisions of section 115BBE cannot be brought into effect on the basis of presumptions and there has to be an addition u/s. 68, 69A, 69B, 69C or 69D. This being so, we are of the view that the provisions of section 115BEE of the Act cannot be made applicable to the accepted income as disclosed by the assessee in their return filed u/s. 139(1) of the Act. Under these circumstances, the Assessing Officer is directed to apply regular rates of taxes as against the provisions of section 115BEE as applied by him.

7. In the result, all the appeals filed by the assessee are allowed.

Order dictated and pronounced in the open court.

Sd/- Sd/-

(Ratnesh Nandan Sahay) (George Mathan)
Accountant Member Judicial Member

Dated: 5th March, 2025

JD, Sr. P.S.

Copy to:

1. The Appellants:
2. The Respondent.
3. CIT(A), Patna-3
4. Pr. CIT
5. DR, ITAT, Ranchi Bench, Ranchi
6. Guard file.

True Copy By Order

AssistantRegistrar
ITAT, Ranchi