

आयकर अपीलीय अधिकरण  
गुवाहाटी पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य  
एवं  
श्री रकेश मिश्रा, लेखा सदस्य  
के समक्ष  
Before

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 151/GTY/2024  
Assessment Year: 2018-19**

|                        |     |                                     |
|------------------------|-----|-------------------------------------|
| Pawan Agarwal          | Vs. | ACIT, Central Circle-2,<br>Guwahati |
| <b>(Appellant)</b>     |     | <b>(Respondent)</b>                 |
| <b>PAN: ADFPA4260N</b> |     |                                     |

**Appearances:**

**Assessee represented by** : Sanjay Mody, FCA.

**Department represented by** : Kausik Ray, JCIT.

Date of concluding the hearing : 24-Mar-2025

Date of pronouncing the order : 20-June-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-Central NER, Guwahati [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2018-19 dated



09.05.2024, which has been passed against the assessment order u/s 143(3) of the Act, dated 18.04.2021.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*“1. For that the ld. CIT(A) ought to have hold that the order of assessment passed by the ld. ACIT, Central Circle-2, Guwahati (AO) under section 143(3) of the Act on 18.04.2021 was bad in law, facts and procedure.*

*2. For that the ld. CITA) was not justified in not holding that in absence of any valid notice under section 143(2) of the Act having been issued by the Jurisdictional Assessing Officer, the order of assessment passed under section 143(3) of the Act by the ld. AO is without jurisdiction, void and bad in law.*

*3. For that the ld. CIT(A) ought to have hold that in absence of any valid order under section 127 of the Act having been passed and served upon the appellant, the impugned order of assessment passed by the ld. ACIT, Central Circle-2, Guwahati is without jurisdiction and is void ab-initio.*

*4. For that on the facts and circumstances of the case, the ld. CIT(A) was not justified in not holding that the ld. Assessing Officer was not justified in arbitrarily treating additional business income of Rs. 54,72,788/- on account of difference in valuation of business stock as unexplained investment in stock within the meaning of section 69 of the Act and consequent By, charging the same to tax under section 115BBE of the Act.*

*5. For that on the facts and circumstances of the case and in absence of any material to show that the appellant has actually made any purchase of business stock of which source could not be explained by it, the ld. CIT(A) ought to have hold that the treatment by the ld. AO of the amount of Rs. 54,72,788/- as assessable under section 69 of the Act is without jurisdiction and bad in law.*

*6. For that on the facts and circumstances of the case, the Id. CIT(A) has erred in not holding that the assessment of Rs. 54,72,788/- as income of the appellant is bad in law and is liable to be deleted in its entirety.*

*7. For that the Id. CIT(A) ought to have hold that the order of assessment was passed by the Id. AO by ignoring and not considering and without controverting the submissions, explanations and reply of the appellant to the Show Cause Notice filed before passing of the said order of assessment and therefore, the order of assessment so passed is in gross violation of*



*principles of natural justice, bad in law and unsustainable on this count alone.*

*8. For that the Id. CIT(A) ought to have hold that the order of assessment has been passed by the Id. AO in gross violation of principles of natural justice and without allowing reasonable opportunity of hearing to the appellant, the same is bad in law and is liable to be quashed.*

*9. For that the Impugned appellate order passed by the Id. CIT(A) being in gross violation of principles of natural justice, the same is bad in law and untenable.*

*10. For that your appellant craves leave of your honours to take additional ground or grounds and/or to modify any ground(s) of appeal at or before the time of hearing.”*

3. Brief facts of the case are that the assessee had furnished his return of income for AY 2018-19 on 30.01.2019 showing total income of ₹62,33,330/-. A survey u/s 133A of the Act was conducted in the business premise of the assessee on 14.03.2018. In the course of the survey, books of accounts marked as Annexures MH-01 to MH-25 were impounded. On examination of the Survey Report, it was noted by the Ld. AO that the assessee was engaged in the retail business of hardware items and during the course of the survey on 14.03.2018 in the business premises of the assessee, physical inventory of stock was taken and found to be ₹1,24,72,788/-. In the statement recorded u/s 133A of the Act, the assessee estimated the value of the stock as on the date of the survey to be ₹70,00,000/-. So, there was a discrepancy in valuation of closing stock as on 14.03.2018 which was detected to the extent of ₹54,72,788/-. In response to the summons issued and the statement recorded u/s 131 of the Act on 29.03.2018, the assessee once again admitted the discrepancy and disclosed additional income of ₹54,72,788/- on account of undisclosed stock found during the course of the survey in the statement recorded on 29.03.2018 and the same was declared in the return as Income-tax Disclosure under the head



'Income from other sources' for AY 2018-19. The Assessing Officer (hereinafter referred to as Ld. 'AO') thereafter, issued a show cause notice to the assessee requiring him to explain as to why the additional income of ₹54,72,788/- should not be treated as deemed income within the meaning of section 69 of the Act and be charged to income-tax u/s 115BBE of the Act. There was no compliance by the assessee which was inferred by the Ld. AO as that the assessee had no explanation to offer in this regard and a sum of ₹54,72,788/- was added as unexplained investment in stock within the meaning of section 69 of the Act and charged to tax u/s 115BBE of the Act.

3.1 Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A). In the appeal memo, the statement of facts was stated to be "In terms of grounds of appeal". The assessee raised several legal issues and also agitated against the treatment of the sum of ₹54,72,788/- as unexplained investment in stock u/s 69 of the Act for treating it as additional business income. The Ld. CIT(A) has reproduced the assessment order, and also went through the submission of the assessee and thereafter dismissed the appeal of the assessee after holding as under:

*"6.5. Decision on Ground(s) of Appeal No(s). 6,7 & 8 :*

*6.5.1. The appellant contended that addition u/s 69 of Rs. 54,72,788/- made on account of stock discrepancy needs to be deleted. It is observed that the Appellant had declared Rs. 54,72,788/- as 'Income Tax Disclosure in IT Survey' under the Head Income from Other Sources in his ITR for the relevant year. When the SCN was issued by the AO to explain why additional income 'disclosed' in the ITR on account of 'Undisclosed stock' should not be treated as deemed income u/s 69 of the Act, there was no compliance on the part of the appellant. The AO proceeded to make the addition accordingly. The appellant now contends that excess business stock was found only due to difference in valuation of stock by Appellant and the survey officials. It was further averred that no investment was*



made during the year that was not recorded in the books of account. However, the appellant has not furnished any documentary evidence in this office which suggests that all the purchases, payments, investments and stock details are duly recorded in the books. The AO relied on the documents impounded during the survey but the appellant did not contradict the contents of the same till date.

6.5.2. The Appellant relied on the decision of the Hon'ble Rajasthan High Court in the case of Bajargan Traders. In the said case, the investments in procurement of excess stock found during survey was stated to be clearly identifiable and relatable to the business stock of the assessee. However, in the instant case, the appellant has not furnished any details regarding purchases and actual stock. The 'disclosure' made in the ITR was done in an arbitrary manner without any explanation regarding camouflage of 'excess stock' as 'regular business stock' and declaring 'additional income' within the scope of 'regular income'.

6.5.3. Reliance was also placed on the decision of the Hon'ble ITAT, Ahd in the Chokshi H Maganlal case wherein it was held that investment in excess stock may be treated as business income, subject to certain conditions. In the said case, the assessee was able to prove that the value of excess stock was included in the closing stock inventory. However, in the instant case, the Appellant was unable to explain as to why the declared stock as per books on the date of survey was different from physical stock found on the same day. Further, the appellant failed to establish that the discrepancy was accounted for in the closing stock for the relevant year. Thus, the above judgment does not support the appellant's case.

The appellant quoted a long list of judicial pronouncements but did not elaborate as to how they are applicable in the instant case.

6.5.4. The Appellant did not furnish the details of purchases and the ledger extracts from the books of account of the relevant year. The appellant did not submit such details as they would further strengthen the observations made in the assessment order. It can be inferred that the Appellant has nothing further to say in this matter. It is clear that the appellant is trying to suppress the facts of his own case while relying on the facts of other cases in the judicial pronouncements. In such circumstances, it can be concluded that the stock discrepancy remains unexplained and the same needs to be considered as Unexplained Investment and deemed income within the meaning of provisions of Section 69 of the IT Act. Hence, addition u/s 69 of the IT Act amounting to Rs. 54,72,788/- is hereby confirmed. Thus, Grounds 6,7 & 8 are dismissed accordingly.”



3.2 Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. Rival contentions were heard and the submissions made and the paper book filed have been examined. Before us, it was argued by the Ld. AR that the main grievance was relating to ground no. 4. It was submitted that the assessee is engaged in retail business of hardware and in the course of survey on 14.03.2018 physical inventory of stock was taken at ₹1,24,72,788/-. In the preliminary statement recorded prior to the survey carried out, the assessee was asked to estimate the stock which he estimated at ₹70,00,000/-. The inventory of stock was taken during the survey and the difference between the physical stock and initially estimated stock was worked out at Rs. 54 Lakh which was shown as excess income in the return of income. No stock register was reportedly maintained and found and only on the basis of statement of the assessee and the physical inventory of the stock prepared, the excess stock was worked out. The assessee had agreed to pay tax and included the amount of excess stock in the return of income on which tax was paid at the normal rate. However, the Ld. AO assessed the same u/s 69 of the Act and also charged tax u/s 115BBE of the Act. It was submitted that the issue whether the excess stock is to be charged at the normal rate or under section 115BBE is no longer *res integra* and Hon'ble Rajasthan High Court in the case of **Principal CIT v. Bajargan Traders (I.T. Appeal No. 258/2017 dated 12.09.2017) [2017] 86 taxmann.com 295 (Raj)**, a copy of which is placed along with the paper book from page 51 to 55, has settled the issue. Our attention was drawn to para 2.10 of the same which is reproduced 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.”*

5. It was submitted that the excess stock should be treated as business income and the same view had also been taken by the SMC Indore Bench of the Tribunal in the case of **Suresh Aluminium v. ACIT in ITA No. 62/Ind/2024** dated 09.08.2024 and para 6.6 of the same is relied upon in which it is held that the alleged excess stock found at the business premises related to the same business which was carried



out by the assessee and there was no excess stock being found and the excess stock had been calculated on estimated basis, the finding of the Ld. CIT(A) was reversed and the Ld. AO was directed to calculate the tax on the surrendered stock under normal provisions of the Act and not to apply the provisions of section 115BBE of the Act and the appeal of the assessee was allowed. The Ld. AR therefore, requested that the appeal of the assessee may be allowed and the excess income shown in the return of income may be charged to normal rate of tax.

5.1. The Ld. DR argued that the assessment order was made on the basis of the documents found as per the Annexure MH-01 to MH-25 and the statement of the assessee was recorded on 14.03.2018. However, we observe that the statement was recorded on 29.03.2018 but neither in the assessment order nor in the paper book filed before us by the Ld. AR, the copy of the statement recorded on 29.03.2018 has been enclosed. The Ld. AR submitted that the assessee himself had shown the excess stock as income from other sources and our attention was drawn to the order of the Ld. CIT(A) at page 11, para 6.5. Our attention was also drawn by the Ld. AR to pages 8 to 10 of the order of the Ld. CIT(A) in which reliance has been placed on the decisions of i) **Principal CIT v. Bajargan Traders (I.T. Appeal No. 258/2017 dated 12.09.2017) (Rajasthan High Court) [2017] 86 taxmann.com 295 (Raj)**, ii) **Chokshi Hiralal Maganlal v. DCIT reported in 131 TTJ 1 (Ahd.)**, iii) **Bajaj Sons Ltd. V. DCIT [2021] 190 ITD 128 (Chandigarh)**, iv) **Lovish Singhal v. ITO [ITA Nos. 142 to 146/Jodh/2018 dated 25-5-2018]**, v) **Dy. CIT v. Ram Narayan Birla [IT Appeal No. 482/JPR/2015 for AY 2011-12 dated 30-9-2019]**.



5.2. The Ld. AR submitted that the details of stock shows that it was business stock and complete inventory was prepared. The statement of the assessee has been filed at page 1 to 3 of the paper book and the assessee, in order to buy peace of mind had disclosed the same as income even though no stock register was found. The assessee in the course of appeal before the Ld. CIT(A) had relied on several decisions which are quoted in order of the Ld. CIT(A) and placed reliance upon the following two decisions as well in i) *Chokshi Hiralal Maganlal* (supra) and ii) *Bajaj Sons Ltd.* (supra). The Ld. DR drew our attention to page 2 of the assessment order and para 6.1 of the order of the Ld. CIT(A).

6. We have considered the submission made. The assessee's statement was recorded on two occasions i.e. on 14.03.2018 before the start of the survey and on 29.03.2018 i.e. subsequent to the survey which was carried out on 14.03.2018. Subsequent to the survey, the assessee had filed the return of income on 30.01.2019 i.e. after nine months after the survey in which the excess amount was disclosed under the head 'Income from other sources'. While the inventory of the stock prepared is detailed however, in the absence of books of account, it cannot be ascertained as to what was the value of stock on the date of survey as per the books of account. The books of account found were marked as Annexures MH-01 to MH-25 but no working appears to have been carried out so as to ascertain the stock as per the books of account and there after work out the excess stock found in the course of the survey. In the statement recorded of the assessee, not only the excess stock was worked out on the basis of statement recorded but the stock register etc. was not found while in the decisions relied upon by the assessee, not only the items were also similar but also the excess was worked out on the basis of the books of account, therefore, the findings



were made on peculiar facts of the case and the case is being distinguishable on facts are not directly applicable to the facts of the case of the assessee. In the case of the assessee, the assessee had himself only given a preliminary statement of the stock being of an amount of ₹70 Lakh without working out the same as per the books of account. Even the survey team has not worked out the stock as per the books of account. However, there was no compulsion for the assessee to disclose the income as 'income from other sources' which in the absence of no defined source of income, as even the income from other sources has to have some known source, has been added by the Ld. AO u/s 69 of the Act. However, in order to be fair to the assessee as well as to the Revenue, the orders of the Ld. CIT(A) as well as the assessment order are hereby set aside and the matter is remanded to the Ld. AO to pass the assessment order de novo after examining the impounded books of account, the statements recorded on 14/03/2018 and 29.03.2018 and thereafter work out the stock of the assessee as per the books of account on the date of the survey and recompute the undisclosed income of the assessee. In case, the same is at par with the income from other sources shown in the return of income, the Ld. AO shall, on the basis of the documents filed and in view of the judicial pronouncements relied upon the assessee, examine as to whether the excess stock is to be added u/s 69 of the Act as the business income or the difference if any in case the excess is less than the amount computed, under the head 'income from other sources'. In case no excess stock is worked out, and the assessee is not able to explain the source of additional income, the addition made by the Ld. AO shall be confirmed. Since in the appeal before us, the assessee had argued only ground no. 4 and did not make any other submissions either in the



course of the hearing or even in the paper book on other grounds of appeal, the ground nos. 5, 6, 7 and 8 are allowed for statistical purposes while other grounds of appeal being academic in nature do not need separate adjudication.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced on 20<sup>th</sup> June, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.**

*Sd/-*

**[Manomohan Das]**

Judicial Member

*Sd/-*

**[Rakesh Mishra]**

Accountant Member

Dated: 20.06.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

1. **Pawan Agarwal, Maruti Hardwares, 29 Cantonments, Shillong, Meghalaya, 793001.**
2. **ACIT, Central Circle-2, Guwahati.**
3. CIT(A)- Central NER, Guwahati.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

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By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata