

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.99/Nag./2025
(Assessment Year : 2017-18)

Shri Vishwakarma Jewellers
M.G. Road, Akola 444 001
PAN – ADBFS5406Q

..... Appellant

v/s

Dy. Commissioner of Income Tax
Akola Circle, Akola

..... Respondent

Assessee by : Shri S.G. Gandhi
Revenue by : Shri Surjit Kumar Saha

Date of Hearing – 24/06/2025

Date of Order – 22/09/2025

ORDER

PER K.M. ROY, A.M.

This appeal filed by the assessee is against the impugned order dated 20/01/2025, passed by the learned Commissioner of Income Tax (Appeal)-3, Nagpur, [*learned CIT(E)*] for the A.Y. 2017-18.

2. The assessee has raised following grounds of appeal: –

"1] Whether on the facts and circumstances of the case and in law, The Ld Commissioner of Income Tax (Appeals), NFAC, Delhi was right in confirming action of AO (NaFAC) in not allowing the excess stock found during the survey due to valuation difference which is not separate from the entire lot of stock of the assessee as stock pertaining to the business of assessee and treat as undisclosed income?"

2] Whether on the facts and circumstances of the case and in law, Ld. CIT (A) has erred in law as much as in fact in not holding that valuation report obtained by the Survey Team during the course of survey was incorrect though the assessee has accepted the same and offered the amount of difference as business income of the assessment year under consideration?

3] Whether having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in treating a sum of Rs.69,37,859/- as undisclosed investment u/s 69B and further erred in charging tax as per provisions of section 115BBE and not considering the amount offered as income for the purpose of allowance of partners' remuneration ?

4] Whether on the facts and circumstances of the case, action of Ld.CIT (A) in treating Rs.69,37,859/- as undisclosed income/investment u/s 69B of IT Act and not appreciating/considering the fact that income offered and assessed has got direct nexus with the business income of assessee and the basis of stock valuation was same as followed consistently in earlier years and accepted by the "Department" ?

3. Facts in Brief:- The assessee commenced its business on 01/06/2016 as partnership firm constituted by three brothers by taking over a running business of erstwhile proprietorship concern of one of the partners. It is engaged in the business of trading in gold, silver, diamonds etc. A survey action under section 133A of the Income Tax Act, 1961 (for short "*the Act*") was conducted on the business premise of the assessee on 18/01/2017. During the survey, the stock with the assessee was valued at ₹ 13,43,14,843, by the Govt. Registered Valuer, whereas as per the Trial Balance prepared by the assessee, the stock was valued at ₹ 12,60,56,250. This difference of ₹ 82,58,593, along with the cash difference of ₹ 61,377, was offered by the assessee as additional income over and above the regular income for the assessment year 2017-18. The

total declaration was given of ₹ 85,00,000, which covers up the above two discrepancies mentioned. Subsequently, the assessee filed return of income for the assessment year 2017-18 on 09/10/2017 declaring total income of ₹ 97,04,550. The case was selected for complete scrutiny. During the assessment proceedings, the Assessing Officer did not accept the contention of the assessee that the declaration of additional income of ₹ 85,00,000 was part of its business income. The Assessing Officer held this additional income as income from undisclosed sources under section 69B of the Act. Accordingly, the Partners' remuneration was reduced proportionately. Further, the Assessing Officer taxed the income under section 69B at higher rates as per provisions of section 115BBE of the Act. The assessment proceedings were completed by passing order under section 143(3) of the Act on 17/12/2019. The difference in valuation of stock is as follows:-

"The assessee reproduces below details of stock as on the day of survey as mentioned in the assessment order and as determined by the Department and its comparison with stock valued by Department:

<i>Commodity</i>	<i>Stock as on 18/01/2017, as mentioned in assessment order</i>	<i>Stock as valued by the Department on the date of survey</i>	<i>Difference (+Excess - Short)</i>
<i>Silver articles</i>	<i>46754225</i>	<i>46767168</i>	<i>12943</i>
<i>Gold jewellery and gold bullion gold jewellery 18 ct</i>	<i>47683760</i>	<i>47689390</i>	<i>5630</i>
<i>Platinum jewellery</i>	<i>820527</i>	<i>886340</i>	<i>65813</i>
<i>Gift articles</i>	<i>4498632</i>	<i>4500000</i>	<i>1368</i>
<i>Frames showpiece</i>	<i>2607702</i>	<i>2600000</i>	<i>-7702</i>

Diamond jewellery	16121848	24225424	8103576
D'damas jewellery and Hammer Plus	5474776	5524000	49224
Precious stones	2054512	2080521	26009
A D Jewellery	40268	42000	1732
Total	126056250	134314843	8258593

4. After comparing quantitative analysis of stock, the undisclosed investment in stock was arrived as under:-

Undisclosed Investment in Silver	₹ 3,98,282
Undisclosed investment in precious stones	₹ 6,21,348
Undisclosed investment in diamond jewellery	₹ 58,55,236
Undisclosed investment in platinum jewellery	₹ 62,993
Total undisclosed investment	₹ 69,37,859

5. The learned CIT(A) partially allowed the appeal by holding as follows:-

"Accordingly, the arguments of the appellant that the surrendered income is to be treated as its business income is not acceptable and the additions made u/s 69B is upheld. However, the AO is directed to restrict the addition to Rs. 69,37,859/- u/s 69B of the Act since the nature and source of this amount was not explained by the appellant either during the assessment proceedings or during the appellate stage. This income is clearly on account of suppressed investment in stock to be taxed under section 69B rws 115BBE of the Act. For the balance amount of Rs. 15,62,141/-(85,00,000-69,37,859)/the quantitative difference cannot be made out and the same needs to be accepted purely on account of valuation difference. As the valuation difference cannot lead to taxation u/s 69B of the Act, the AO is directed to treat an amount of Rs. 15,62,141/- as the business income. The appellant gets partial relief on this aspect. Ground nos. 1 to 10 are decided accordingly.

5.11 Ground No. 11: Vide this ground, the appellant has challenged the conclusion of the AO treating the remuneration to partners as tool for reducing tax liability. The AO, in this case, has restricted the salary to

partners to Rs. 30,92,732/-which was allowable salary on book profit of Rs. 50,04,554/- after reducing unaccounted stock of Rs. 85,00,000/- As stated above, I have restricted the undisclosed investment u/s 69B at Rs. 69,37,859/- As this income is taxed as deemed income under Chapter VI of the Act, the appellant is not eligible to treat this as business income and cannot claim Partner's remuneration on it as correctly held by the AO. The AO is, however, required to rework the allowable remuneration after reducing an amount of Rs. 69,37,859/- as against Rs. 85,00,000/- which was done in the assessment order. The appellant gets partial relief on this ground."

6. The learned Authorised Representative for the assessed (for short "the learned A.R.") at the very onset submitted that he does not want to agree on the sustainability of addition of ₹ 85 lakh since the same has already attained finality. His bone of contention is on three counts; (i) ₹ 69,37,859 is not undisclosed investment under section 69B; (ii) the rate of tax under section 115BBE of the Act is not leviable upon it; and (iii) ₹ 69,37,859, is to be considered as book profit for calculation of partnership remuneration as it is business income. He has relied upon certain judicial precedents to bolster his claim that normal rate of taxation shall apply instead of section 115BBE.

7. Per-contra, the learned Departmental Representative has relied on the concurrent finding of the authorities below and relied on the decision of the Hon'ble P&H High Court in Kim Pharma Pvt. Ltd. v/s CIT, 35 taxmann.com 456 (P&H).

8. We find that the Co-ordinate Bench of the Tribunal, Chandigarh Bench, was in seisin of similar matter in Veer Enterprises v/s DCIT, 206

ITD 289, and had propounded their meticulous findings as narrated below vide their judgment dated 23/01/2024.

"13. Heard. To appreciate the aforesaid rival positions, we refer to the provisions of Section 69A of the Act. Section 69A provides that where in any financial year the Assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the Assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the Assessee for such financial year. As per Section 69B where in any Financial Year, the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the AO finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the hands of the AO, satisfactory, the excess amount may be deemed to be the income of the assessee for such Financial Year.

14. In the instant case, for the deeming provisions of section 69 to be attracted, there has to be a finding that the Assessee has made investments during the financial year in the stock and by way of advances, such investments are not recorded in the books of account so maintained by the Assessee, and the Assessee offers no explanation about the nature and source of the investments or the explanation so offered is not found satisfactory in the opinion of the AO. Similarly, for the deeming provisions of section 69A to be attracted, there has to be a finding that the Assessee was found to be owner of cash so found at the time survey, such cash has not been recorded in the books of account so maintained by the Assessee, and the Assessee offers no explanation about the nature and source of the cash or the explanation so offered is not found satisfactory in the opinion of the AO. Likewise, for the deeming provisions of Section 69B to be attracted. There has to be a finding that the amount expended on making investment in or acquiring any bullion, jewellery or other valuable article exceeds the amount recoded in this behalf in the books of account maintained by the assessee for any source of income and that the assessee has not offered any explanation about such excess amount, or that, in the hands of the AO, the explanation offered by the assessee is not satisfactory.

15. Therefore, the foundational requirement before invoking the deeming provisions is not that there were certain survey operations u/s 133A and some undisclosed income has been detected and surrendered by the Assessee and thus, the deeming provisions are automatically attracted. Rather the foundational requirement is whether the Assessee has made the investment/has been found to be owner of cash and the explanation offered by the Assessee explaining the nature and source of such undisclosed income and the reasonability of the explanation so offered by the Assessee keeping into account the facts and circumstances of the relevant case. In fact, if we look at the provisions of section 133A, clause (iii) of sub-section (3) provides that an income tax authority acting under this section shall record the statement of any person which may be useful for or relevant to any proceedings under this Act. Therefore, what explanation has been offered by the Assessee as part of his statement recorded u/s 133A needs to be analyzed and examined before drawing any conclusions in this regard.

16. We therefore find that through various questions raised during the course of survey, the Assessee has been asked about the nature and source of its income and various discrepancies so found during the course of survey. In response, Shri Veer Prakash, partner of the assessee firm, on behalf of the, the assessee, has stated that he is a partner in the Assessee firm, which is engaged in the business of manufacture of clothes for small children, like suits, knickers, pyjamas, etc. and all along, the same is his only source of income and thereafter, he has been confronted with discrepancies in terms of cash found excess as compared to what has been recorded in the books of account, certain advances relating to his business written in a rough diary and excess value of stock as compared to what has been recorded in the books of account. Therefore, we find that the Assessee has been confronted with not just the discrepancy so found during the course of survey but the nature and source thereof during the course of survey proceedings and it is clearly emerging that the source of such income is from its business operations. There is a clear statement of the partner of the assessee that the advances are related to its business, however since the same have not been recorded in the books of account, he has offered the same to taxation. Similarly, the stock physically found has been valued and then, compared with stock as recorded in the books of account, thus, there is clear nexus of stock with the Assessee's business. The statement of the partner of the assessee is available on record and related documents so found during the course of survey are stated to be in possession of the Revenue authorities. Apparently, the AO has failed to take into consideration the statement of the partner of the assessee recorded during the course of survey holistically, and other documents and findings of the survey team which are very much part of the records. Following the surrender so made during the course of survey, the Assessee has honored the surrender so made and has offered the additional income as business income in its return of income and has paid due taxes thereon.

17. We find that through various questions raised during the survey, partner of the assessee was asked about the nature and source of its income and the various discrepancies found during the survey. In response, vide his statement (copy at APB 1-11), recorded during the survey, on 10-10-2018, Shri Veer Prakash, Partner of M/s Veer Enterprises, the assessee stated that their firm comprised of two partners including the assessee; that their firm manufactures garments for small children, like suits, knickers, pyjama, etc.; that there was no other source of income. He was confronted with the discrepancies found in terms of excess cash, excess stock and receivables. We find that rather, the assessee was confronted with not just the discrepancies so found during the survey, but the nature and source thereof and it is clearly emerging that the source of such income is the business operations of the assessee. The assessee offered the amount of Rs. 9 lacs, thus amount being the difference between the amount of Rs. 23,19,000/-found at the premises and the amount of Rs. 14,90,000/-shown in the books of account as cash in hand. The assessee offered, for surrender, an amount of Rs. 10 lacs on account of stock not entered in the books of account, relating to debtors. The assessee further offered an amount of Rs. 21 lacs representing the amount entered in the books of account towards stock as against the excess stock found in the books of account towards stock as against the excess stock found in the physical verification during the survey. The statement of the Assessee is available on record and related documents so found during the course of survey are stated to be in possession of the Revenue authorities. Apparently, the AO has failed to take into consideration the statement of the Assessee recorded during the course of survey holistically, and other documents and findings of the survey team which are very much part of the records. Following the surrender so made during the course of survey, the Assessee has honored the surrender so made and offered the additional income as business income in his return of income and paid due taxes thereon.

18. In our view, 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 Courts and various Benches of the Tribunal and which has been reiterated from time to time. The statement of the Assessee has to be read as a whole and not in piecemeal especially where the Revenue is relying on the same statement and in such circumstances, the defence available to the Assessee in terms of part of the statement 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 has to 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.

19. In case of *Gandhi Ram v. Pr. CIT* [2022] 145 taxmann.com 109/197 ITD 677 (Chd. - Trib.)/[ITA No. 121/CHD/2021 dated 04-08-2022), speaking through one of us, it was held by the Chandigarh Bench of the Tribunal, that it is like laying a general rule which 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 and the relevant findings read as under:

"5. Firstly, how the Id. PCIT has arrived at a conclusive finding that the dis-crepancies found, confronted and accepted by the Assessee during the course of survey attract the deeming provisions of sections 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 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 Id. 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 Id. 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."

20. In case of *Chokshi Hiralal Maganlal v. Dy. CIT* [2011] 9 taxmann.com 300/45 SOT 349 (Ahd. - Trib.) briefly, the facts of the case were that during the course of survey under section 133A which was carried out at the premises of the Assessee, excess stock of gold and silver ornaments were found and in the return of income subsequently filed by the Assessee, he had included the value of excess stock as part of closing stock inventory. However the AO observed that the said disclosure was not consistent with the provisions of Section 69B of the Act and same was accordingly brought to tax under section 69B. The Ld. CIT(A) confirmed the order of the AO and thereafter on further appeal, the Coordinate Ahmedabad Bench held that the excess stock found during the survey is not separately and clearly identifiable but is part of mix lot of stock found at the premises which included declared stock as per books and also the excess stock as computed by the Survey Officers and therefore the provisions of Section 69B cannot be made applicable as primary condition for invoking the said provision is that the asset should be separately identifiable and it should have independent physical existence of its own and since excess stock as a result of suppression of profit from business

over the years and has not kept identifiable separately but as part of overall physical stock found, the investment in the excess stock has to be treated as business income and thereafter has referred to the decision of the Tribunal in case of Fashion World v. Asstt. CIT [IT Appeal No. 1634 (Ahd.) of 2006, dated 12-2-2010] wherein the Tribunal had observed as under:

"11. But this does not mean that loss computed under any of the five heads mentioned in section 14-(1) 'salary', (ii) income from house property, (iii) 'profits and gains from business or profession', (iv) 'capital gains' and (v) 'income from other sources cannot at all be adjusted against unexplained investment or expenditure. What is necessary as per Hon'ble Gujarat High Court is that source of acquisition of asset or expenditure should be clearly identifiable. In the case before Hon'ble Gujarat High Court the source of gold confiscated was not identifiable and hence adjustment was not permitted.

12. Thus the important aspect that emerges from the entire discussion is that for invoking deeming provisions under sections 69, 69A, 69B & 69C there should be clearly identifiable asset or expenditure. In the present case we find that entire physical stock of Rs. 25,14,306/- was part of the same business. Both kind of stock i.e. what is recorded in the books and what was found over and above the stock recorded in the books, were held and dealt uniformly by the Assessee. There was no physical distinction between the accounted stock or unaccounted stock. No such physical distinction was found by the Revenue either. The Assessee has repeatedly claimed that unaccounted business income is invested in stock and there is no amount separately taxable under section 69. The department has ignored this claim of the Assessee and sought to tax the difference between book-stock and physical-stock as unaccounted investment under section 69 without considering the claim of the Assessee that first the business receipt has to be considered and then investment should be treated as coming out of such unaccounted income. The difference in stock so worked out by the authorities below had no independent identity of its own and it is part and parcel of entire lot of stock. The difference between declared stock in the books and what is physically found would only be a mathematical expression in terms of value and not a separate independent identifiable asset. Therefore, it cannot be said that there is an undisclosed asset existed independently. Once this is so then what is not declared to the department is receipt from business and not any investment as it cannot be co-related with any specific asset.

13. Thus in a case where source of investment/expenditure is clearly identifiable and alleged undisclosed asset has no independent existence of its own or there is no separate physical identity of such investment / expenditure then first what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset and only on failure it should be considered to be taxed under section 69 on the premises that such excess investment is not recorded in the books of account and its nature and source is not identifiable. Once such excess investment is taxed as undeclared business receipt then taxing it further as deemed income under section 69 would not be necessary. Therefore, the first attempt of the assessing authority should be to find out link of unde-

clared investment/expenditure with the known head, give opportunity to the Assessee to establish nexus and if it is satisfactorily established then first such investment should be considered as undeclared receipt under that particular head. It is only where no nexus is established with any head then it should be considered as deemed income under sections 69, 69A, 69B & 69C as the case may be. It is because when Assessee fails to explain satisfactorily the source of such investment then it should be taxed under section 69, 69A, 69B & 69C as the case may be. It should not be done at the first instance without giving opportunity to the Assessee to establish nexus. Therefore, there is no conflict with the decision of Hon'ble Gujarat High Court in the case of Fakir Mohmed Haji Hasan (supra) where investment in an asset or expenditure is not identifiable and no nexus was established then with any head of income and thus was not available for set off against any loss under any other head. Therefore, we hold that where asset in which undeclared investment is sought to be taxed is not clearly identifiable or does not have independent identity but is integral and inseparable (mixed) part of declared asset, falling under a particular head, then the difference should be treated as undeclared business income explaining the investment.

14. To conclude sum of Rs. 8,10,011/- being difference in stock is represented by undeclared business income. It does not have a separate physical identity. It is to be only taxed under the head 'business'. Other assets have separate physical identity being furniture and fixtures, air conditioners etc. They cannot have a direct nexus with business and therefore investment therein has to be considered under section 69 only.

15. In view of the above, AO is directed to consider the sum of Rs. 8,10,011/- as undisclosed business income assessable under the head 'business' and other two sums under section 69. The business income including application of section 40(b) has to be considered accordingly. For calculation of income in view of our above observations, we restore the matter to the file of AO."

21. We find that in the present case, the difference in stock found by the authorities has no independent identity and it is part and parcel of the entire stock. Therefore, it cannot be said that there is an undisclosed asset which existed independently and thus, what has been declared before the Department is received from business and it is not any investment, since it cannot be co-related with any specific assets. The difference, therefore, should be treated as the undeclared business income of the assessee.

22. Following the said decision of the Coordinate Ahmedabad Bench, the Jaipur Bench of the Tribunal in case of Dy. CIT v. Ram Narayan Birla [IT Appeal No. 482 (JP) of 2015, dated 30-9-2016] has taken a similar view holding that the excess stock so found during the course of survey was part of the stock and the Revenue has not pointed out the excess stock has any nexus with any other receipts other than the business being carried on by the Assessee. The relevant findings are contained at para 4.3 which read as under:

"4.3. We have heard rival contentions and perused the material available on record. Undisputed facts emerged from the record that at the time of survey excess stock was found. It is also not disputed that the Assessee is engaged in the business of jewellery. During the course of survey excess stock valuing Rs. 77,66,887/- was found in respect of gold and silver jewellery. The Coordinate Bench in the case of Chokshi Hiralal Maganlal v. DCIT 131 TTJ (Ahd.) 1 has held that in a cases where source of investment/expenditure is clearly identifiable and alleged undisclosed asset has no independent existence of its own or there is no separate physical identity of such investment/expenditure then first what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset and only on failure it should be considered to be taxed under section 69 on the premises that such excess investment is not recorded in the books of account and its nature and source is not identifiable. Once such excess investment is taxed as undeclared business receipt then taxing it further as deemed income under section 69 would not be necessary. Therefore, the first attempt of the assessing authority should be to find out link of undeclared investment/expenditure with the known head, give opportunity to the Assessee to establish nexus and if it is satisfactorily established then first such investment should be considered as undeclared receipt under that particular head. It is observed that there is no conflict with the decision of Hon'ble Gujarat High Court in the case of Fakir Mohd. Haji Hasan (supra) where investment in an asset or expenditure is not identifiable and no nexus was established then with any head of income and thus was not available for set off against any loss under any other head. Therefore, the Hon'ble Coordinate Bench held that where asset in which undeclared independent identity but is integral and inseparable (mixed) part of declared asset, falling under a particular head, then the difference should be treated as undeclared business income explaining the investment. In the present case the excess stock was part of the stock. The revenue has not pointed out that the excess stock has any nexus with any other receipts. Therefore, we do not find any fault with the decision of the Id. CIT(A) directing the AO to treat the surrendered amount as excess stock qua the excess stock found."

23. Thereafter, the Coordinate Jaipur Benches in the case of Bajargan Traders v. ACIT [IT Appeal No. 137 (JP) of 2017, dated 17-3-2017] has similarly held 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 account. Subsequently, in the books of account, 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 account 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 account and the accounting treatment thereof so as to regularise its books of account. 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.

2.11. Having said that, the next issue that arises for consideration is whether the amount surrendered by way of investment in the unrecorded stock of rice has to be brought to tax under the head "business income" or "income from other sources". In the present case, the Assessee is dealing in sale of foodgrains, rice and oil seeds, and the excess stock which has been found during the course of survey is stock of rice. Therefore, the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the Assessee. The decision of the Co-ordinate Bench in case of Shri Ramnarayan Birla (supra) supports the case of the Assessee in this regard. Therefore, the investment in the excess stock has to be brought to tax under the head "busi-ness income" and not under the head income from other sources". In the result, ground No. 1 of the Assessee is allowed.'

24. The said decision of Coordinate Jaipur Benches has since been confirmed by the Hon'ble Rajasthan High Court in case of Pr. CIT v. Bajargan Traders c/o. Kalani & Co. DB [IT Appeal No. 258 of 2017, dated 12-9-2017].

25. Similarly, the Coordinate Chandigarh Bench in case of Gaurish Steels (P.) Ltd. v. Asstt. CIT [2017] 82 taxmann.com 337 has held as under:

"10. We have heard the rival contentions and perused the material available on record. This is a fact on record that the Assessee surrendered an amount of Rs. 70 lacs as additional income during the course of survey conducted at its premises on account of following heads:

<i>(i)</i>	<i>Discrepancy on account of cash found</i>	<i>₹ 9 lakh</i>
<i>(ii)</i>	<i>Discrepancy on account of construction of building</i>	<i>₹ 21 lakh</i>
<i>(iii)</i>	<i>Discrepancy in stock</i>	<i>₹ 10 lakh</i>
<i>(iv)</i>	<i>Discrepancy in advance and receivables</i>	<i>₹ 30 lakh</i>

11. These facts have not been disputed by any one at any stage. The only issue to be considered by us is whether the income of Rs. 70 lacs surrendered is to be taxable as business income or income from other sources or as deemed income under sections 69A, 69B and 69C of the Act

as held by the Assessing Officer. A number of judicial pronouncements have been cited during the course of hearing, however, we have to bow down to the proposition laid down by the Jurisdictional Punjab & Haryana High Court in the case of M/s Kim Pharma Pvt. Ltd. (supra) since this is the only judgment of the Jurisdictional High Court which were brought to our notice.

12. On perusal of the said judgment, we find ourselves in agreement with the submission of the learned counsel for the Assessee, that the only issue in that case was the taxability of cash surrendered during the course of survey, as the Assessee had also surrendered income of Rs. 10 lacs in assessment year 2005-06 on account of sundry credits, repairs to building and advances to staff, which being relatable to business carried on by the Assessee was already included as income from business.

13. In the present case, we see that the Assessing Officer has nowhere disputed the business losses incurred by the Assessee. The books have not been rejected. It was stated at the Bar that even at the time of survey, in the trading account prepared by the survey team, there were losses incurred by the Assessee. All these facts have not been disputed by the Assessing Officer. Further, the surrender made by the Assessee was on account of cash found during the course of survey, discrepancy in the cost of construction of building, discrepancy in stock and discrepancy in advances and receivables. By no stretch of imagination, any of these incomes apart from cash can be considered as income under any head other than the 'business income'.

14. Nowhere in his order the Assessing Officer has been able to bring on record the fact that the income surrendered during the course of survey was not out of the business of the Assessee. Also nowhere he has objected to the heads under which the Assessee had surrendered these amounts, i.e. cash, construction of building, discrepancy in stock and discrepancy in advances and receivable. Further, even the survey team has not found any source of income except the business income. Now, following the judgment of Jurisdictional High Court, in the background of the facts of the present case, we can safely infer that apart from cash all other income surrendered may be brought to tax under the head 'business income' while the cash has to be taxed under the head 'deemed income' under section 69A of the Act."

26. Similarly, the Coordinate Chandigarh Bench in case of *Famina Knit Fabs v. Asstt. CIT* [2019] 104 taxmann.com 306/176 ITD 246 has held as under:

"19. In the facts of the case in ITA No. 408/Chd/2018, the income surrendered was on account of unaccounted receivables of the business of the Assessee amounting to Rs. 1.25 crores. The Ld. CIT(A) in para 9 of the order has outlined the facts relating to the surrender made by the Assessee stating that during survey a pocket diary was found from the account section of the Assessee company which contained entry of receivables amounting to Rs. 1.25 crores on pages 27, 28, 31 and 33, which were not recorded in the regular books of the Assessee and were subsequently surrendered stating that these entries were unaccounted sundry receivables being surrendered as income under the head business,

to buy piece of mind and subjected to no penalty and further that the losses incurred by the Assessee in the impugned year will be adjusted against this surrendered income. The relevant facts as stated by the CIT(A) in para 9 of his order and which are not disputed, are reproduced hereunder:

"9. Adverting now to the facts of the instant case, it is seen that when survey proceedings were conducted at the business premises of the appellant com-pany, a pocket diary was found from the accounts section which contained entries of receivables amounting to Rs. 1.25 crores on page nos. 27, 28, 31 and 33, which were not recorded in the regular books of account. When these entries were confronted to the appellant company while recording the statement on 15/09/2012, it was stated: "that these entries are sundry receivables which has not been accounted for in the books of account and in order to buy peace of mind, the same is surrendered as income under the head business for F.Y.2012-13 relevant to Asst. Year 2013-14 subject to no penalty and prosecution under the I.T. Act, 1961. Since the company is incurring losses in current F.Y.2012-13, the surrendered income will be adjusted against these losses. [Extracted from the impugned assessment order, pages 5 &6]."

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/ss. 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 con-sequence thereto the plea that no set off of losses be allowed against the same u/s 115BBE of the Act also is rejected.

22. Therefore, as per the facts of the case in ITA No. 408/Chd/2018 and as per the provisions of law relating to the issue, the surrendered income, we hold, was assessable as business income of the Assessee and set off of losses was to be allowed against the same as rightly claimed by the Assessee.

The appeal of the Revenue, therefore, in ITA No. 408/Chd/2018 is dismissed.

23. Now coming to the facts of the case in ITA No. 1494/Chd/2017, the income surrendered was on account of the following as narrated above in earlier part of our order:

(f) Investment of Rs. 60 lacs in Kothi at Sukhmani Enclave in the name of Smt. Rekha Miglani;

(ii) Sundry creditors and advances received from customers amounting to Rs. 132 lacs:

(iii) Gross profit on sale out of books amounting to Rs. 198 lacs and;

(iv) Surrender to cover miscellaneous discrepancies in loose papers etc. amounting to Rs. 10 lacs.

24. As far as the surrender made on account of investment in Kothi of Rs. 60 lacs, neither is the same disclosed in the books of the Assessee nor source of the same disclosed. Therefore, the same is to be assessed as deemed income u/s 69 of the Act. The same applies to the surrender of Rs. 10 lacs made to cover the miscellaneous discrepancies in loose paper of Rs. 10 lacs. Neither the nature of the discrepancies, nor any source relating to the same has been disclosed and, therefore, the same is also to be assessed as deemed income u/s 69, 69A, 69B and 69C of the Act.

25. As far as the surrender of Rs. 132 lacs made on account of sundry creditors and advances received from customers and Rs. 198 lacs on account of gross profit on sale out of the books, both of them clearly are in relation to the business carried on by the Assessee and are thus in the nature of business income. Therefore, the set off of business losses, both current and brought forward are to be allowed as per the provisions of law. As far as the income surrendered and to be assessed u/ss. 69, 69A, 69B and 69C of the Act, as held above before us, the same is to be subjected to tax as per the provisions of section 115BBE of the Act."

27. Similarly, the Coordinate Chandigarh Bench in case of Sham Jewellers v. Dy. CIT [IT Appeal No. 375 (Chd.) of 2022, dated 22-8-2022] has held as under:

"10.17 Ground Nos. 8 & 9 challenge the action of the lower authorities in applying the provisions of section 115BBE and thereby charging tax at the rate of 60%. The main thrust of the arguments of the Ld. AR has been that all the additions made or sustained relate only to the business income of the Assessee and that nowhere in the assessment order has it been alleged that some other source of income had been detected which gave rise to additional income. It is seen that during the course of assessment proceedings, the various explanations submitted by the

Assessee have duly mentioned that the surrendered income was derived from the business. A perusal of the assessment order would also show that nowhere in the body of the assessment order, the AO has even contradicted this explanation of the Assessee. The AO has not brought on record any iota of evidence to demonstrate that the Assessee had any other source of income except income from business and, therefore, it is our considered view that deeming such income under the provisions of section 68 or 69 would not hold good. In our view, in such a situation, the AO could not have legally and validly resorted to taxing the income of the Assessee at the rate of 60% in terms of provisions of section 115BBE of the Act.

10.18 The Hon'ble Andhra Pradesh High Court in the case of Principal Com-missioner of Income-tax v. Deccan Jewellers Ltd. reported in (2021) 438 ITR 131 held that where the Assessee was engaged in the business of Gold and Diamond jewellery and Silver articles and during the search and seizure operation u/s 132, excess stock was found to be declared and the Assessee had submitted that excess stock was result of suppression of profit from business over, the years and the same had not been kept identified separately and the AO had duly considered and accepted the Assessee's explanation that investment in excess stock was to be treated as business income, the revisional powers invoked by the Principal Commissioner u/s 263 of the Act were not correct in the eyes of law.

10.19 The ITAT Chandigarh Bench in the case of Famina Knit Fabs v. ACIT reported in (2019) 176 ITD 246 (Chd.-Trib.) has held that, wherein during the course of survey, a surrender was made by the Assessee on account of debtors/receivables which was based on a diary found during the course of survey and the Revenue had accepted that the surrender was on account of receivables, it followed 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. The Coordinate Bench of the ITAT went on to further hold that 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 and even otherwise no other source of income of the Assessee was on record either disclosed by the Assessee or unearthed by the Revenue. The Bench further held that the preponderance of probability, therefore, is that the debtors were sourced from the business of the Assessee. Therefore, there was no question of treating it as deemed income from undisclosed sources u/s 69, 69A, 69B, or 69C of the Act and the same was held to be in the nature of business income of the Assessee.

10.20 Thus, as in the present case, where the source of investment or expenditure is clearly identifiable and the alleged undisclosed asset has no independent existence of its own or there is no separate physical identity of such investment or expenditure, then, first, what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset and only on failure can it be con-sidered to be taxed u/s 69 of the Act and further where once such investment or expenditure is brought within the purview of tax as undeclared business receipt, then taxing it further as deemed income u/s 69 would be completely out of place.

10.21 Similar view was taken by the Coordinate Bench of ITAT Ahmedabad in the case of Chokshi Hiralal Maganlal v. DCIT reported in 131 TTJ 1 (Ahd.)

10.22 It is also seen that the Ld. CIT(A) has relied on the judgment of the Hon'ble Punjab & Haryana High Court in the case of Kim Pharma Ltd. v. CIT in ITA No. 106 of 2011 (O&M) and the Ld. CIT DR has also quoted the same in his arguments before us. However, after going through the aforesaid judgment of the Hon'ble Punjab & Haryana High Court, it is seen that in that particular case, the only issue was with regard to the cash surrendered at the time of survey and no other income. The cash found could not be related to the already disclosed and accepted source of income of the Assessee and, therefore, the Hon'ble Punjab & Haryana High Court held that such surrendered cash was to be treated as deemed income u/s 69 of the Act. However, in the present case before us, the Assessee has only one source of income i.e. business income and nowhere has it been brought on record that the Assessee had any other source of income except business income and, therefore, we respectfully state that judgment of the Hon'ble Punjab and Haryana High Court in the case of Kim Pharma Pvt. Ltd. (supra) would not apply on the facts of the present case.

10.23 Accordingly, keeping in view the various judicial precedents as cited above and respectfully following the same, we hold that the AO could not have legally invoked the provisions of section 115BBE of the Act in the present case and further the Ld. CIT(A) was also not legally correct in upholding of the application of provisions of section 115BBE of the Act. Accordingly, ground Nos. 8 and 9 are also allowed."

28. Now, coming to the decision of Kim Pharma (P.) Ltd. (Supra) Briefly the facts of the case were that the survey under section 133A was conducted at the business premises of the Assessee and during the course of survey, cash amounting to Rs. 5,00,000/- was found which was surrendered by the Assessee for A.Y 2006-07 and another amount of Rs. 10,00,000/- was surrendered for A.Y. 2005-06 on account of sundry credits, repair to building and advances to staff. The matter pertaining to A.Y 2006-07 came up for consideration before the Coordinate Chandigarh Benches and taking note of the statement of the General Manager of the Assessee company recorded during the course of survey wherein he had admitted the said cash has been generated out of income from other sources and in the absence of nature of source of cash being proved, it uphold the order of the CIT(A) in including the additional income as deemed income u/s 69A of the Act and relevant findings read as under:

"9. In the facts of the present case before us, we find that unaccounted cash was found during the course of survey operation in the possession of the Assessee company and the same was surrendered as additional income for the year under appeal. The Assessee has failed to explain the nature and source of the said cash found which was not recorded in the books of account, though while surrendering the additional income it was admitted by the Manager of the Assessee company, in the statement recorded during the course of survey that the said additional income is its

income from other sources. The Hon'ble Gujarat High Court in *Fakir Mohmed Haj Hasan v. CIT* had held as under:

*"The scheme of sections 69, 69A, 69B, and 69C of the Income-tax Act, 1961, would show that in cases where the nature and source of acquisition of Money, bullion, etc., owned by the Assessee or the source of expenditure incurred by the Assessee are not explained at all, or not satisfactorily explained, then the value of such investments and money or the value of articles not recorded in the books of account or the unexplained expenditure may be deemed to be the income of such Assessee." In the absence of the explanation/evidence regarding the sources of the additional income being satisfactorily explained by the Assessee and applying the ratio of the Hon'ble Gujarat High Court in *Fakir Mohmed Haji Hasan v. CIT (supra)*, we hold that the additional income offered is deemed income assessable u/s 69A of the Act and no deduction is allowable against such deemed income assessed u/s 69A of the Act in the hands of the Assessee. Following the ratio laid down by the Gujarat High Court in *Fakir Mohmed Haji Hasan v. CIT (supra)*, once the Assessee has failed to explain the nature and source of cash found available with it and the same is assessed as deemed income u/s 69A of the Act, therefore, the corresponding deductions under the head Profits and gains are not available to the Assessee. The business loss determined for the year is not allowed to be set off against such deemed income included in the books of account. The alternative plea of the Assessee of assessing the income under the head income from other sources and allowing set off of losses u/s 71 of the Act also fail in view of the above.*

9. *The learned AR for the Assessee had placed reliance in *CIT & Another v. S.K. Srigiri & Bros. (supra)* for the proposition that even in cases of survey, the additional income surrendered is includible as income from business. In the facts of that case, we find that the Tribunal after considering the records and statement given by the partners of the Assessee firm, on facts, came to the conclusion that Assessee had received additional income from business only and not from other sources. The said conclusion of the Tribunal was upheld by the Hon'ble Karnataka High Court in *CIT & another v. S.K. Srigiri & Bros. (supra)* and the remuneration paid to the partners was held allowable against the additional income from business. The said precedent has been taken note of by the Hon'ble Gujarat High Court.'*

10. *In the facts of the present case, we find that Assessee during the course of survey had surrendered the income as income from other sources though a plea has been raised by the Assessee that the income was surrendered as income from job work but no evidence to prove the stand of the Assessee has been brought on record. The Assessee had also surrendered additional income of Rs. 10 lacs in Assessment Year 2005-06 on account of sundry credits, repairs to building and advances to staff, which being relatable to business carried on by Assessee was included as income from business. However, in respect of cash found during survey, which was not reflected in the books of account, no source was declared by the Assessee and in the absence of nature of source of cash being proved, the same is not assessable as income from business. In the circumstances, we uphold the order of the CIT(A) in including the additional income as deemed income u/s 69A of the Act and not allowing*

the benefit of the business losses determined against the said deemed income. The grounds of appeal raised by the Assessee are dismissed."

29. Thereafter, the matter came up for consideration before the Hon'ble Punjab & Haryana High Court and the Hon'ble High Court has stated that the AO, the Id. CIT(A) and the Tribunal after considering the factual aspect noticed that the amount surrendered during the survey was not reflected in the books of account and no source from where it was derived was declared by the Assessee and therefore it was deemed income of the Assessee under section 69A of the Act and accordingly the findings of the Tribunal were affirmed and it was held that no substantial question of law arose and the appeal of the Assessee was dismissed. We therefore find that the statement of the General Manager as recorded during the course of survey played a decisive role and was taken into consideration by the Tribunal wherein he had admitted that cash has been generated out of income from other sources and in the absence of nature of source of cash being proved, it uphold the order of the CIT(A) and thereafter, on further appeal, the order of the Tribunal was upheld by the Hon'ble High Court. Unlike the said case, in the present case, as noted hereinabove, the partner of the assessee firm, in his statement recorded during the survey, had clearly stated that he was one of the two partners of the assessee firm, that the business of the assessee firm, i.e., manufacturing clothes of small children was the only source of income of the assessee firm. When he was confronted with discrepancies as found by the Department in the survey, the assessee was so confronted not only with the discrepancies found but also the nature and source thereof and it has emerged that the source of income of the assessee is from its business operations. This being so, the decision of the Hon'ble High Court does not support the case of the Revenue.

30. For the above discussion, in the facts and circumstances of the case, following the decisions taken into consideration, we hold that the income surrendered by the assessee during the survey cannot be brought to tax under the deeming provisions of Sections 69A and 69B of the Income Tax Act and the same has been rightly offered to tax by the assessee under the head of business income. In the absence of applicability of the deeming provisions, there is no question of the provisions of Section 115BBE.

31. In the result, the appeal is allowed."

9. Insofar as foundational requirement is concerned, we refer to the decision of the Co-ordinate Bench of the Tribunal, Chandigarh Bench in Shri Pramod Singla v/s ACIT, reported as [2023] (8) TMI 525 – ITAT

Chandigarh, ITA no.516/Chd./2022, order dated 24/07/2023, wherein the Tribunal held as under:–

"Head Note – Characterization of income income surrendered during the course of survey u/s 133A - deemed income u/s 69 and 63A or business income-HELD THAT Foundational requirement before invoking the deeming provisions is not that there were certain survey operations u/s 133A and some undisclosed income has been detected and surrendered by the assessee and thus, the deeming provisions are automatically attracted. Rather the foundational requirement is whether the assessee has made the Investment has been found to be owner of cash and the explanation offered by the assessee explaining the nature and source of such undisclosed income and the reasonability of the explanation so offered by the assessee keeping into account the facts and circumstances of the relevant case.

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 has to 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.

In the instant case as well, we find that the difference in stock so found out by the authorities has no independent identity and is part and parcel of entire stock, therefore, it cannot be said that there is an undisclosed asset which existed independently and thus, what is not declared to the department is receipt from business and not any investment as it cannot be co-related with any specific asset and the difference should thus be treated as undeclared business income..

Following the said decision of DCIT Vs. Shri Ram Narayan Birla [2016 (9) TMI 1354-ITAT JAIPUR) has taken a similar view holding that the excess stock so found during the course of survey was part of the stock and the Revenue has not pointed out the excess stock has any nexus with any other receipts other than the business being carried on by the assessee.

The surrender on account of advances were relating to the business being carried on by the assessee. The Id CIT(A) has also returned a finding that the advances were admitted as being related to business activity of the assessee. Where the same has been found unrecorded in the books of accounts, the same has to be brought to tax under the head "business income".

Thus the income surrendered during the course of survey cannot be brought to tax under the deeming provisions of section 69 and 69A of the Act and the same has been rightly offered to tax under the head

"business income". In absence of deeming provisions, the question of application of section 115BBE doesn't arise for consideration Decided in favour of assessee."

10. In the light of the aforesaid contentions and the entire conspectus and dimensions of the lis pendenlite, income of ₹ 69,31,859, surrendered during survey cannot be characterized under section 69B and the same has been rightly offered to tax under business income. In the absence of deeming provisions, the application of provisions of section 115BBE fails in limine. Ex-consequenti, the sum so surrendered pertains to business income and forms part of book profit under section 40(b). The artificial dissection carried out by the learned CIT(A) is flawed and baseless. The assessee succeeds in all its grounds raised before us.

11. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 22/09/2025

Sd/-
N.K. CHOUDHRY
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 22/09/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur