

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 778/Ind/2025
Assessment Year: 2019-20

Ramanlal Pirodia, 68, Azad Chowk, Chandani Chowk Ratlam (Assessee / Appellant)	<u>बनाम/</u> <u>Vs.</u>	ACIT, Central-3 Indore (Revenue / Respondent)
PAN: AFKPP3302F		
Assessee by	Shri P.D. Nagar, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.12.2025	
Date of Pronouncement	19.01.2026	

आदेश/O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 10.07.2025 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["CIT(A)"], which in turn arises out of assessment-order dated 29.09.2021 passed by learned ACIT, Central Circle-3, Indore ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2019-20, the assessee has filed this appeal on following grounds:

"1. The appellant further craves leave to add, alter, and OR to amend the aforesaid grounds of appeal as when necessary.

2) That the learned Commissioner of Income tax (A) erred in law in not considering overall facts and circumstances i.e. the nature of business of the appellant in a small town. The appellant did not retract the surrender made during survey just to avoid litigation and to buy peace of mind yet bonafide and true explanation given regarding excess stock was not considered legitimate by treating the same as unexplained investment u/s 69B of the Act. Levy of tax at higher rate u/s 115BBE of the Act is wholly unjustified, improper, bad in law and deserves to be quashed.

3) Without prejudice to above, the learned Commissioner of Income tax (A) further erred in law in not considering the fact that in case of small business entities, it is practically not possible to prepare physical inventory of stock at the close of the year and as per normal trade practice and tradition, the stock valuation is made on estimates based on average gross profit on sales. Adoption of such method resulted into accumulation of additional stock in trade over a number of years offered for tax but it was income from business only. Therefore, treatment of such additional income offered for tax as unexplained investment u/s 69B of the Act read with section 115BBE of the Act is wholly unjustified, improper, bad in law and deserves to be quashed.

4. That the learned Commissioner of Income tax (A) further erred in law in not appreciating the fact that the gold ornaments and jewellery found as excess stock over and above the books of the accounts cannot be identified individually because besides accumulation year after year, even purchase invoices of ornaments are being raised by the sellers in an consolidated manner by weighing the ornaments. Therefore, even from such invoices specific jewellery cannot be identified after they are mixed in the stock and for this reason, excess stock found cannot be considered as un-identified so as to treat the same as unexplained investment u/s 69B of the Act

5. That the Ld. CIT(A) further erred in not following various judgments of Income tax Appellate Tribunals including that of Jewellers wherein excess stock of ornaments found during survey which did not have any independent identity and mixed part of overall stock, was held to be represented by business income only. The practical approach in relation to specific trade carried on by the appellant should have been considered by Ld. CIT(A) while confirming the levy of tax u/s 115BBE of the Act instead of normal rate of tax on income surrendered. The order so passed by the Ld. CIT(A) confirming the taxability at higher rate on the value of excess stock found during survey is wholly unjustified, improper, bad in law and deserves to be quashed."

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The background facts leading to present appeal are such that the assessee is an individual engaged in the business of trading of gold and silver items/ornaments. A survey u/s 133A was conducted upon assessee on 08.03.2019 falling within previous year 2018-19 relevant to AY 2019-20 under consideration. During survey proceeding, the statements of assessee were recorded wherein the assessee surrendered excess stock of Rs. 1,80,27,537/-, consisting of gold items of Rs. 1,69,40,880/- and silver items of Rs. 10,86,657/-. Thereafter, in the return of income filed to Income-tax Department, the assessee honoured the surrender made and disclosed additional income of Rs. 1,80,27,537/- as "Income from Business" u/s 28 and paid taxes @ normal rate of tax as applicable to business income. The case of assessee was selected for scrutiny assessment and during scrutiny proceedings, the AO issued notice asking assessee to explain as to why the excess stock should not be treated as unexplained income u/s 68 to 69D r.w.s. 115BBE of the Act. In response to AO's notice, the assessee filed a detailed reply citing the facts as well as judicial rulings holding the proposition that the provisions of section 68 to 69D r.w.s. 115BBE cannot be applied to his case. The assessee's reply is re-produced by AO in Para 6 of assessment-order. However, vide Paras 7 to 9 of assessment-order, the AO rejected assessee's submission and although the AO accepted the additional income of Rs. 1,80,27,537/- as declared by assessee in return of

income without any variation but, however, taxed the same u/s 69B and thereby applied higher rate of tax u/s 115BBE. Aggrieved, the assessee went in first-appeal to CIT(A). During first-appeal, the assessee again made a detailed submission which is re-produced by CIT(A) in Para No. 3.1.1 of impugned order. However, the CIT(A) did not grant any relief to assessee. Now, the assessee has come in next appeal before us assailing the orders of lower-authorities.

4. During hearing before us, Ld. AR for the assessee filed a Paper-Book, a detailed Written-Synopsis and also made oral submissions raising vehement contentions as under:

(i) He straightaway carried us to the following questions raised by survey authorities and replies made by assessee in the Statements recorded during survey:

“प्रश्न 12 - आज आपके व्यावसायिक स्थल पर सर्वेक्षण की कार्यवाही के दौरान आपकी लेखा पुस्तकों के अनुसार नगदी आज दिनांक को रु. 18,79,852/- है जबकि भौतिक सत्यापन पर नगदी रु. 1,76,240/- ही पाई गई । कृपया इस अन्तर की राशि रु. 17,03,612/- का स्पष्टीकरण दें ।

उत्तर - आज दिनांक को मेरे द्वारा रु.17,03,612/- का गोल्ड खरीदा गया जिसकी प्रविष्टी लेखा पुस्तकों में दर्ज नहीं की गई है । इसलिए नगदी में अंतर पाया गया ।

प्रश्न 13 - आज आपके व्यावसायिक स्थल पर सर्वेक्षण की कार्यवाही के दौरान आपके द्वारा प्रस्तुत टेंटेटिव ट्रेडिंग/ पीएण्डएल एकाउन्ट के अनुसार सोना (Gold) का क्लोजिंग स्टॉक 7498 ग्राम है जबकि भौतिक सत्यापन /

वैल्यूअर की रिपोर्ट के अनुसार सोना (Gold) 13639 ग्राम पाया गया । कृपया सोने के वजन के अन्तर 6141 ग्राम के बारे में स्पष्टीकरण दीजिए।

उत्तर - जैसा कि मैंने ऊपर निवेदन किया है कि मेरे द्वारा आज दिनांक को रु. 17,03,612/- में 561 ग्राम सोना क्रय किया गया था । शेष 5580 ग्राम सोने का मैं स्पष्टीकरण देने में असमर्थ हूँ तथा आपसे निवेदन करता हूँ कि सोने के उक्त अंतर 5580 ग्राम की राशि रु. 1,69,40,880/- (5580 X 30360) को अपनी चालू वर्ष की नियमित आय के अतिरिक्त अघोषित आय के रूप में घोषित करता हूँ एवं इस पर नियमानुसार टैक्स अदा करने का वचन देता हूँ ।

प्रश्न 14- आज आपके व्यावसायिक स्थल पर सर्वेक्षण की कार्यवाही के दौरान आपके द्वारा प्रस्तुत टेंटेटिव ट्रेडिंग/ पीएण्डएल एकाउन्ट के अनुसार चांदी (Silver) का क्लोजिंग स्टॉक 291 किलोग्राम है जबकि भौतिक सत्यापन /आथोराइज्ड वैल्यूअर की रिपोर्ट के अनुसार चांदी (Silver) 342 किलोग्राम पाई गई । कृपया चांदी (Silver) के वजन के अन्तर 51 किलोग्राम के बारे में स्पष्टीकरण दें।

उत्तर - मैं चांदी के अन्तर 51 किलोग्राम का स्पष्टीकरण देने में असमर्थ हूँ । मैं उक्त अन्तर 51 किलोग्राम की राशि रु. 10,86,657/- (51 X 21307) को अपनी चालू वर्ष की नियमित आय के अतिरिक्त अघोषित आय के रूप में घोषित करता हूँ एवं इस अघोषित आय पर नियमानुसार टैक्स अदा करने का वचन देता हूँ ।

प्रश्न 15- मैं आपको चार डायरियां दिखा रहा हूँ जो आज आपके व्यावसायिक परिसर पर सर्वेक्षण की कार्यवाही के दौरान पाई गई हैं जिन्हें क्रमशः D/1 (22 Pages), D/2(15 pages), D/3 (42Pages), D/4 (54Pages) के रूप में इन्वेस्ट्राइज किया गया है । कृपया इन्हें देखे और बताएं कि वह किससे संबंधित है ।

उत्तर - श्रीमान जी मैं चारों डायरियां देख रहा हूँ । उक्त चारों डायरियाँ आज सर्वेक्षण का कार्यवाही के दौरान पाई गई जिसे आपके द्वारा D/1, D/2, D/3 एवं D/4 के रूप में इन्वेस्ट्राइज मेरे समक्ष ही किया गया है । उक्त डायरियां मेरे व्यवसाय के विक्रय से संबंधित है ।

प्रश्न 16- मैं आपको तीन डायरियाँ एवं एक लूज पेपर का बंडल दिखा रहा हूँ जो आपके व्यावसायिक परिसर पर सर्वेक्षण के दौरान पाई गई हैं जिन्हे क्रमशः D/5 (160 Pages), D/6 (37 Pages), D/7 (44 Pages), D/8 (34 Pages) के रूप में इन्वेस्ट्राइज की गई है। कृपया इन्हें देखकर बताए कि यह किससे संबंधित है।

उत्तर- श्रीमान जी मैं तीनों डायरियाँ एवं एक लूज पेपर बंडल देख रहा हूँ। उक्त डायरियाँ एवं लूज पेपर आज सर्वेक्षण की कार्यवाही के दौरान पाई गई है जिसे आपके द्वारा D/5, D/6, D/7 एवं D/8 के रूप में इन्वेस्ट्राइज मेरे समक्ष ही किया गया है। उक्त डायरियाँ एवं लूज पेपर मेरे व्यवसाय में विक्रय से संबंधित है।

प्रश्न 18- कृपया बताए कि उपरोक्त के अलावा आपको और कुछ कहना है।

उत्तर - श्रीमान जी आज सर्वेक्षण की कार्यवाही के दौरान मेरे व्यावसायिक स्थल पर लेखा पुस्तकों एवं भौतिक सत्यापन के सोने के स्टॉक के अन्तर 6141 ग्राम की राशि रु. 1,69,40,880/- एवं चांदी के स्टॉक में अन्तर 51 किलो ग्राम राशि रु. 10,86,657, इस प्रकार कुल अन्तर की राशि रु. 1,80,27,537/- (एक करोड अस्सी लाख सत्ताइस हजार पाच सौ सैतीस) को अपनी चालू वर्ष की नियमित आय के अतिरिक्त अघोषित आय घोषित करता हूँ एवं इस अघोषित आय पर नियमानुसार टैक्स अदा करने का वचन देता हूँ।”

Ld. AR analysed, line by line and word by word, the above questions and replies as under:

- (a) The Q.No. 12 relates to cash shortage. The authorities found shortage of Rs. 17,03,612/- in physical cash as compared to the cash balance recorded in books of account. When the authorities questioned assessee about such shortage, the assessee instantly replied that the

cash was utilized for making purchases which had not been recorded in books of account. The survey authorities accepted the reply given by assessee. This clearly shows that the assessee was in the practice of making unrecorded purchases of business.

- (b) The Q.No. 13 relates to excess stock of gold items. The authorities found physical stock of 13,639 grams and concluded that as per books of assessee, the stock should have been 7,498 grams, accordingly a difference of 6,141 grams was observed. From this difference, credit is allowed for 561 grams of gold purchased by assessee by utilizing cash shortage as noted in preceding Q.No. 12 and the net excess stock of 5,580 grams of gold was determined and the same was valued at Rs. 1,69,40,880/- applying the average rate of Rs. 30,360/-. Similarly, as per Q.No. 14, the authorities found physical stock of 342 kilograms of silver and concluded that as per books of assessee, the stock should have been 291 kilograms, accordingly excess stock of 51 kilograms was determined and the same was valued at Rs. 10,86,657/- applying the average rate of Rs. 21,307/-. When the authorities questioned assessee about such excess, the assessee instantly admitted to accept the excess stock as "additional undeclared income" in addition to regular income of current financial year and pay tax thereon.
- (c) The Q.No. 15 & 16 relate to the documents found and impounded by survey authorities in the shape of various diaries and loose papers

which were inventorized as "D/1" to "D/8". The survey authorities questioned assessee to explain those documents and the assessee instantly replied that they related to the sales (of course unrecorded) of his business. The survey authorities accepted the reply given by assessee. This clearly shows that the assessee was in the practice of making unrecorded sales of business.

- (d) The Q.No. 18 is the last question raised by authorities to assessee. In reply to same, the assessee again admitted to accept the excess stock as "additional undeclared income" in addition to regular income of current financial year and pay tax thereon.

Therefore, according to Ld. AR, the survey authorities have questioned the assessee to explain the excess stock as well as the documents impounded and in reply, the assessee has instantly explained the factum of unaccounted purchases and unaccounted sales being done. Further, the suppressed purchases/sales/business being carried on by assessee is also evident from the very documents impounded during survey and inventorized by authorities. To show this, Ld. AR narrated that the diaries and loose paper impounded by survey authorities being "D/1" to "D/8" as referred in Q.No. 15 & 16 of the Statements, run over 300 pages and they contain the notings of unaccounted transactions of purchases and sales made by assessee. He invited our attention to Paper-Book Pages 11 to 43 where copies of sample papers forming part of the impounded documents are placed and demonstrated successfully, in the presence of Ld. DR, that those

documents contain the details of unaccounted sales made to customers; old ornaments given by customers to assessee, etc. Accordingly, the assessee made a surrender of excess stock as "additional undeclared income" in addition to regular income of current year and subsequently honouring his surrender, the assessee credited the surrendered income in his Trading and P&L A/c (Page No. 58-59 of Paper-Book); disclosed the same as forming part of "Income from Business" u/s 28 in the return of income filed; and paid tax to department without disputing the same. Therefore, the disclosure made by assessee in return of income is very correct and the lower authorities must accept assessee's disclosure.

(ii) Then, the Ld. AR re-iterated and emphasized the same submission as made to lower authorities that the assessee is solely engaged in the business of gold and silver items; in fact assessee's entire family is engaged in this business only and drawing salary from business. That, no piece of evidence whatsoever had been found during the course of survey indicating any other source of income of assessee. He submitted that the assessee has been in this line of business for more than 30 years and the excess-stock found during survey is the outcome of suppressed business income over the years.

(iii) That, the assessee is engaged in the business of gold and silver items and the excess-stock found during survey was a part of overall physical stock lying with the assessee; there was no separate identity, identification, existence, holding or any other difference in the normal stock and so-called excess stock. Ld. AR submitted that the excess stock was merely a

mathematical expression of the difference arrived at by survey-team in the value of "available stock" and the stock "that ought to have been from books of account". Therefore, the difference is merely an "undeclared business income"; it cannot be attributed in any manner other than as part of business. He relied upon the decision of ITAT, Ahmedabad in **M/s Fashion World Vs. ACIT, ITA No. 1634/Ahd/2006 order dated 12.02.2010**, relevant paras are re-produced below:

"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 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 only where no nexus is established with any head then it should be considered as deemed income under [section 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. 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."

(iv) That, an identical issue of excess stock in a similar situation has been decided by **ITAT, Indore in M/s Brij Mohan Das Devi Prasad Vs. ACIT/DCIT, Central Circle-2, Bhopal, ITA No. 428/Ind/2022** wherein the bench has accepted that the deeming provision of section 69 or 69B cannot be applied in such a case. Copy of the order of ITAT is also filed as part of Written-Synopsis and our attention is invited to relevant paras, reading as under:

"Excess-Stock:

9. Firstly, we are in agreement with the very first and foremost contention of Ld. AR that in Q.No. 6 and 7 of statement, the survey-officer has nowhere asked the assessee to explain the source of excess-stock/excess-cash; he has simply asked the assessee to explain the difference. Going further to replies,

we do not find that the assessee's partner has admitted the same as having been earned from "undisclosed sources"; he has only admitted the same as "additional undeclared income" in addition to regular income. Therefore, from the questions raised and replies given, it is little difficult to deduce that the "additional undeclared income" was earned from undisclosed or unknown sources. Needless to mention that it is also undisputed that the assessee is a partnership firm and its sole source of income for last 30 years is the business of jewellery and no evidence had been found during survey indicating any other source of income and the assessee claims that the excess-stock was outcome of suppressed business income over the years.

10. Secondly, it is pertinent to note that during the course of survey what was detected in respect of the stock was that the physical stock found at the business premises of the assessee was excess in comparison to the stock recorded in the books of account. It is not the case of the AO that the excess stock found during the survey was separated from other stock of the assessee but it is one and common nature of stock found during survey except the quantity of the stock on physical verification was found to be excess in comparison to the stock recorded in books of accounts. Thus, there is no separable identifiable stock found during survey then the stock regularly held by assessee in the normal course of business of jewellery. Once the stock found during survey is part of total stock of business, then the said excess stock cannot be given a separate identity than the other stock of assessee. Further, even if excess stock found during survey was not recorded in the books of account but when the survey was conducted before closure of financial year then the assessee was at liberty to incorporate excess stock in books of account at the time of finalizing accounts, which also the present assessee has done which is evident from a separate credit entry made in Profit & Loss A/c. The Hon'ble Rajasthan High Court in case of **Pr. CIT vs. Bajarang Traders (supra)** has upheld the finding of the Tribunal that excess stock found during the survey is not separable and identifiable but it is part of mixed stock found at the premises which including declared stock as per books as computed by the survey team. Therefore, it is held that the provision of section 69B of the Act cannot be made applicable as primary condition for invoking the provision is that asset should be separately identifiable and it should have independent physical existence on its own. Further, the Coordinate Bench of this Tribunal in case of **ACIT vs. Anoop Neema (supra)** has also considered an identical issue as under:

"7. We have heard rival contentions and perused the records placed before us. Revenue's sole grievance is that Ld. CIT(A) erred in not treating the income of Rs. 1,41,75,568/- declared during the course of search carried out on 15.12.2016 as unexplained investment u/s 69 r.w.r.t. 115BBE of the Act. We notice that during the course of search excess stock of gold weighing 6433.812 gms was found amounting to Rs.1,41,75,568/-. Mr. Anoop Neema in his statement recorded on oath on 16.12.2016 u/s 132(4) of the Act accepted the value of excess stock as additional business income for financial year 2016-17. So far as, admission of undisclosed income of Rs.1,41,75,569/- is concerned there is no dispute at the end of both the parties. The bone of contention is that whether the provision of section 115BBE of the Act

are applicable on the surrendered income of Rs.1,41,75,568/- we find that Ld. CIT(A) on examination of the fact, settled judicial precedence, also appreciating that the alleged income is business income earned by the assessee during the normal course of its business and was part of the total business stock available at the business premises and also observing that provisions of section 115BBE of the Act are applicable from 01.04.2017 and are thus not applicable on the case of assessee as the search was carried out on 15.12.2016 observing as follows:

Ground No 1 to 5:- Through these grounds of appeal, the appellant has challenged the treating of Rs. 1,41,75,568/- declared during search as unexplained investment u/s 69 r.w.s 115BBE of the Act and not as a business income. During the course of search, valuation of stock was taken by registered valuer and net weight of gold was found at 25,857.490 gms valued at Rs. 5,67,73,734/-, however, the value of gold as per books of accounts of the assessee was at 19,423.678 gms valued at Rs. 4,25,98,165/-. Therefore, a difference in stock of 6433.812 gms was found amounting to Rs. 1,41,75,569/-. Statement of Shri Anoop Nema was recorded on oath on 16.12.2016, wherein, he has accepted value of excess stock of gold as additional income for FY 2016-17 (AY 2017-18). The relevant extract of statement is also scanned on page no 4 & 5 in the body of assessment order. The AO during the course of assessment proceedings observed that the assessee has declared excess stock as undisclosed income in return of income for AY 2017-18. However, the AO required the assessee to separately credit the excess stock of Rs. 1,41,75,568/- in P/L account but the same was not done by him. The AO therefore, considering the excess stock as unexplained investment made addition of Rs. 1,41,75,568/- to the income of the appellant u/s 69 r.w.s 115BBE of the Act.

4.1.1 The appellant during the course of appellate proceedings has stated that an excess stock of gold was found during the course of search and the same was also not recorded in regular books of accounts, thereby the AO has invoked provisions of section 69, however, no enquiry was made by the AO regarding the source of acquisition of excess stock, therefore, the disallowance made by the AO u/s 69 r.w.s 115BBE is unlawful. Further, the amended provisions of section 115BBE are applicable from 01.04.2017 and not from the date of search.

4.1.2 I have considered the entire matrix of the case, various case law cited by the appellant and also perused assessment order. It is undisputed fact that during the course of search excess stock of gold worth Rs. 1,41,75,568/- was found in possession of appellant. Therefore, appellant during search made disclosure of 1,41,75,568/- on account of undisclosed income, however, the appellant while filing return of income has directly credited the same in his capital account and without showing the same as additional income. Therefore, the additional income offered was not shown in profit and loss account.

Thus, the AO was justified in making addition on account of undisclosed income declared in statement recorded on oath u/s 132(4) during search. Also, the appellant has accepted the addition made by the AO amounting to Rs. 1,41,75,568/- vide written submissions dated 26.07.2019. However, the appellant has objected to the findings of the AO on treating the additional income offered (or say business income) by the appellant as unexplained investment u/s 69 r.w.s 115BBE of the Act. After considering the plea of appellant inter alia facts of the case it can be easily said that the instant case revolves around applicability of two different sections i.e. section 69A and section 115BBE of the IT Act.

(a) Applicability of provisions of section 69A (unexplained investment) of the Act:-

The AO found appellant of guilty of invoking provisions of section 69 of the Act and has re-classified the income of the appellant u/s 69A of the Act. before moving ahead, I find it important to quote relevant provision section 69 of the Income Tax Act which is as under:-

“69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are 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 the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.”[emphasis supplied]

Any assessee can be held guilty of invoking provisions of section 69 of the Income Tax Act if, (i) where in any financial year, the assessee is found to have made certain investments; (ii) such investments are not recorded in the books of account, if any, maintained by the assessee; (iii) the assessee offers no explanation about the nature and source of such investments; and finally, (iv) even if any explanation is offered by the assessee, such explanation in the opinion of the Assessing Officer is not satisfactory. Conditions (i) and (ii) are mandatory in nature and out of condition (iii) and (iv) only one or both as the case may be fulfilled. In the instant case condition no (i) and (ii) has been fulfilled by the appellant, however, on perusal of copy of assessment order it has been observed that neither the search party nor the AO has ever enquired about source of acquisition of excess stock. During the course of search statement of appellant was also recorded on oath u/s 132(4) of the Act wherein in reply to Q.No 8 the appellant has specifically and clearly admitted that the undisclosed income has been earned out of business income in the relevant previous year. Thus, condition (iii) or (iv) has not been invoked by the appellant, therefore, addition u/s 69 alone of this fact is untenable as held by Hon'ble Jurisdictional ITAT, Indore Bench in the case of Mukesh Sangla HUF vs. DCIT (2016) 27 ITJ 172 (Trib.-Indore).

Nonetheless, neither the search party during course of search nor the AO during assessment proceeding found that appellant has been doing business other than manufacturing and trading of gold ornaments or has any other undisclosed source of income. Further the excess stock found in possession of the appellant was not kept separately and was not easily identifiable. The excess stock was part of the mixed lots of stock found at the premises of the appellant which included declared stock as per books of account and also the excess stock as found during the search. Since the excess stock in possession was not clearly identifiable or was not kept at a secret place, therefore, it can be safely held that the same could have been earned/accumulated over the time. However, this presumption of accumulating over a period of time is ruled out with simple stroke of statement of appellant wherein he has admitted that the same has been earned in FY 2016-17 (AY 2017-18). Further, the appellant does not have any income other than manufacturing and trading of gold ornaments, therefore, the excess stock found during search was earned out of business income by the appellant. Hon'ble Ahmadabad ITAT in the case of Chokshi Hiralal Maganlal vs DCIT, (ITA No 3281/Ahd/2009 dated 05.08.2011) has held that "the provisions of section 69A/69B of the IT Act can only be applied the case where the asset is separately applicable and separately identifiable and it should have independent physical existence of its own. Since the excess stock is a result of suppression of profit from business over the years and has not been kept identifiable separately but is the part of overall physical stock found, the investment in the excess stock has to be treated as business income. Similar, view has been taken by Hon'ble jurisdictional Indore tribunal in the case of M/s Shahnai Shriram Market vs ITO 1(1), Ujjain (ITA No 658/Ind/2014 dated 15.05.2015.

(a)(i) It is a settled law that additional income declared on account of excess stock is business income of the assessee. This proposition finds support from the following case laws:-

***(a)** Bajrang Traders Vs. ACIT (Circle)-2, Alwar (ITA No. 137/Jp/17 dated 17.03.2017). In this case, it is held as under:-*

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 food grains, 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 "business income" and not under the head

income from other sources". In the result, ground No.1 of the assessee is allowed.

(b) DCIT (Central), Ajmer Vs. Ramnarayan Birla (ITA No. 482/Jp/2015 dated 30.09.2016) In this case, it is held 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 vs. 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 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. 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.

(c) Fashion World Vs. ACIT (Circle)-12, Ahemdabad (ITA No. 1634/Ahd/2016 dated 12.02.2010) In this case, it is held as under:-

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.

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.

(d) *Chokshi Hiralal Maganlal Vs. DCIT, Ahemadabad (ITA No. 3281/Ahd/2009 dated 05.08.2011)* In this case, it is held as under:-

9. Since in the present case excess stock found during the survey is not separately and clearly identifiable but is part of mixed lots of stock found at the premises which included declared stock as per books and also the excess stock as computed by the survey officers, the provisions of section 69B cannot be made applicable as primary condition for invoking the provisions of section 69A, 69B is that the asset should be separately identifiable and it should have independent physical existence of its own. Since excess stock is a

result of suppression of profit from business other the years and has not been kept identifiable separately but i.e. the part of overall physical stock found, the investment in the excess stock 'has to be treated as business income as per detailed reasons given in the case of Fashion World (supra). Once excess stock is treated as business income then assessee is entitled for higher remuneration to the partners as per section 40(b). As a result, this ground -of assessee is allowed.

(e) *Shri Lovish Singhal Vs. ITO, Ward-2, Sriganganagar (ITA No. 143/Jodh/2018 dated 25.05.2018) In this case, it is held as under:-*

I have heard the rival contentions and record perused. I have also carefully gone through the orders of the authorities below. I have also deliberated on the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by the Id AR during the course of hearing before the ITAT in the context of factual matrix of the case. From 18 ITA 142 to 146/Jodh/2018 Vasu Singhal Vs ITO with 4 Ors. cases the record, I find that during the course of survey, income was surrendered by the assessee on account of stock, excess cash found out of sale of stock and also in respect of incriminating documents. As per judicial pronouncements cited by the Id. AR and also the decision of Hon'ble Rajasthan high court in the case of Bajrang Traders in Income Tax Appeal No. 258/2017 dated 12/09/2017 I observe that the Hon'ble High Court in respect of excess stock found during the course of survey and surrender made thereof was found to be taxable under the head 'business and profession'. Similarly in respect of excess cash found out of sale of goods in which the assessee was dealing was also found to be taxable as business income. Applying the proposition of law laid down in the judicial pronouncements as discussed above, I hold that the lower authorities were not justified in taxing the surrender made on account of excess stock and excess cash found U/s 69 of the Act. Thus, there is no justification for taxing such income U/s 115BBE of the Act.

(f) *ACIT Vs. Sanjay Bairathi Gems Ltd – 189 TTJ 487/492 (Jp). In this case, it is held as under:-*

From the above, it is seen that the excess stock found during the search operation is not separately and clearly identifiable but is part of mixed lots of stock found at the premises which included declared stock as per books and also the excess stock as computed by the authorized officers during the search operation at the premise. Since excess stock is a result of suppression of profit from business over the years and has not been kept identifiable separately but is the part of overall physical stock found, the investment in the excess stock has to be treated as business income. Further, the excess stock so found is part of the regular business, therefore, following decision of Hon'ble Tribunal Bench Jaipur in case of Ramnarayan Birla (cited supra), the same has to be taxed under the business income. Otherwise even if

the same is taxed under s. 115BBE of the Act, the provisions of not allowing the set off has come into effect from 1st April, 2017.

(g) ACIT vs M/s A Star Exports and M/s Asian Star Diamonds International Pvt Ltd (2015) 5 TMI 1312 (ITAT Mumbai) wherein it has been held as under:-

"8. We have considered rival contentions, carefully gone through the orders of the authorities below and also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by Id. DR and AR during the course of hearing before us. From the record we found that the assessee a partnership firm is in the business of trading, import, export, manufacturing, wholesale and retail dealing in diamonds, gems and jewellery. The main object of the assessee firm is to carrying out the business of import, export, manufacturing, wholesale and retail dealing in diamonds, gems and jewellery. The partnership business was of importers, exporters, manufacturers, processors, investors, wholesalers, distributors, retailers, dealers and indenting agent of diamonds, synthetic stones, gems and jewellery, precious and semi-precious metals and miners and ornaments and article made thereof including jewellery, decorative and precious objects of arts and crafts and to cut, design polish rough diamond, gems and precious stones and that of investment and lending and to do any other business as may be mutually agreed upon by the partners. In the return of income filed for the year under consideration, the assessee has shown income under the head profit and gains of business and profession and other sources. In the search action, three loose papers were found and seized as part of Annx - 5 of the panchnama prepared on 29.10.2011 at the office premises of 114/116, Mittal Court, C-Wing, 11th floor, Nariman Point, Mumbai - 400021. These documents mention the carat value, rate per carat and total value of diamonds. In the course of search proceedings Shri Vipul Shah confirmed that these loose papers were containing stock details of M/s A*Star Exports, M/s. Asian Star Diamond International P. Ltd. and M/s. Rahil Agencies. The stock mentioned in the above referred seized papers was stated as placed in one safe located at the office premises. The stock of diamonds found from the safe was valued by the Govt. Approved valuer appointed by the Income Tax Department at the time of prohibitory order execution and was valued as follows:

The statement of Shri Vipul Shah was again recorded on 27/12/2010, wherein he admitted the unaccounted stock of 34,50,00,516/- including unaccounted stock of 13,47,63,640/- pertain to the assessee. The computation of the total income of the assessee had declared undisclosed income of 13,47,63,640/- in the form of stock of polished diamonds under the head "profit and gains of the business and profession". In the course of assessment the assessee submitted .its explanation on why the undisclosed stock should be treated as a business income. In this connection it was stated that at the time of

search, the investigating officers found unaccounted stock in the business premise of the assessee at 114/116, Mittal Court, 'C' Wing, 11th Floor, Nariman Point, Mumbai - 400021. This stock was valued at 13,47,63,640/- by the income tax valuer. Consequently the assessee declared this amount as stock in trade and this contention of the assessee was accepted by the Investigating officer. Who has released the stock after valuation and not impounded/seized. The statement of Shri Vipul P. Shah Partner of the firm was again recorded on 20.11.2012 wherein in reply to the question no. 22 he has stated that this undisclosed income is generated through unrecorded trading of diamonds. Q.22 Please explain as to how this undisclosed income is generated? Ans: it is through unrecorded trading of diamonds."

It is clear from the above facts that the declaration was related to business stock in trade hence it is evident that the declaration amount is required to be assessed under the head' Income from Business or profession. Thus, the undisclosed income of 13,47,63,640/- declared voluntarily by the assessee for A.Y. 2011-12, is undisclosed stock held under the customary trading of the business and hence should be treated as the business income of the assessee firm and not as undisclosed investment as held by the AO. If all the three conditions of Section 69 exist together, the unrecorded investment or value of assets can be deemed to be assessee's income of the relevant financial year. In the present case all three conditions as required under section 69 are not fulfilled because the appellant has offered explanation and nature of source of acquisition as undisclosed stock received from the unaccounted trading of diamond as source of income. The partner of the firm has time and again stated in his statement that diamond found in the premises during the search is out of unrecorded trading of diamonds hence the third part of section 69 is not satisfied hence the said stock is not taxable under section 69 of the Act."

(h) M/s Surekh Jewellers vs DCIT ITA No 18/PN/2016 dated 12.06.2016.

(i) M/s Silver Palace vs DCIT ITA No 893/PUNE/2016 dated 29.06.2018 (ITAT Pune)

(j) M/s Solanki Jewellers vs DCIT ITA No 858/PN/2016 dated 18.11.2016.

(k) ITO vs Jmandas Muljibahai (2006) 99 TTJ 197 (ITAT Rajkot).

(l) M/s Dev Raj Hi Tech Machines vs DCIT ITA No 326 of 2014 dated 07.10.2015 (ITAT Amritsar)

(a)(ii) From the above discussion and in view of the plethora of judgments on this settled issue, I am of the considered view that section 69 was clearly not applicable in the case of appellant and the

suppressed income found by way of excess stock was business income of the appellant and cannot be treated as unexplained investment u/s 69A of the IT Act.

8. We on perusal of the above finding and the various judgments and decisions referred hereinabove by Ld. CIT(A) find that the alleged excess stock was not kept separately at any other place and was part of the total business stock found at the assessee's business premises are sufficient enough to indicate that the alleged investment in excess stock is part of the business income. We also find that alleged excess stock was duly accepted by assessee as part of unaccounted business and source thereof stated during the course of search itself and no other incriminating material was found during search proceedings and therefore is not an undisclosed income as held by the ld. AO. We, therefore, find no infirmity in the finding of Ld. CIT(A) rightly holding that the provision of section 115BBE of the Act are not applicable on the surrendered income on account of excess stock valuing at Rs. 1,41,75,568/- found during the course of search. Thus, grounds no. 1 to 3 raised by the revenue are dismissed."

11. Therefore, once the facts emerging from record shows that the excess stock found during survey was a part of entire lot of stock of assessee, part of which is recorded in books of account and part of the same was not found recorded and therefore, treated as excess stock at the time of survey and consequently surrendered by the assessee and also offered to tax in the return of income then the excess stock cannot be treated as deemed income u/s 69 or 69B of the act in view of the judgment of Hon'ble Rajasthan High Court and Coordinate Bench of this Tribunal cited above. Accordingly, this issue is decided in favour of the assessee and against the revenue. The orders of the authorities below qua this issue is set aside. The assessee succeeds to this extent."

(v) A strong reliance is also placed on the decision of **ITAT, Indore in DCIT Vs. Shri Krishna Kumar Verma (2023) 46 ITJ 345** which stands upheld by **Hon'ble Jurisdictional High Court of M.P. in Appeal No. 130 of 2023 order dated 19.03.2024**. We quote relevant paras of the order of ITAT and Hon'ble High Court both for an immediate reference:

ITAT Indore Bench:

"7. After considering the above factual matrix of the case now we proceed to consider the proposition relied by learned representative of both the sides. The Ld. Senior DR has relied on the judgment of Punjab & Haryana High Court in the case of Kim Pharma (P.) Ltd. vs. CIT (supra) to submit that where the amount surrendered during survey was not reflected in the books of accounts

and no source from where it was derived was declared by the assessee, then it is assessable as deemed income of assessee u/s. 69A of the Act and not as business income. In this case the Assessing Officer made addition of surrendered amount u/s. 69 of the Act as the assessee could not explain the source from where it was derived by the assessee. In the present case undisputedly the Assessing Officer has not made any addition u/s. 69 or any provision of the Act and has accepted return income of the assessee. In the present case we are in agreement with the contention of the learned AR that the orders of the authorities below clearly reveal that the amount of excess stock & excess cash found during the course of survey was business income of the assessee as the assessee is in the business of trading in jewellery, metal of bullion and the excess stock found during the search & survey was accumulated from transaction of metal of bullion carried out in the forward community trading and mediation and the same was surrendered as excess stock and offered to taxation as business of the assessee. The Ld. CIT(DR) could not dislodge the contention and observations of the Ld. CIT(A) that the surrendered amount was pertaining to excess stock & excess cash which was business income of the assessee and such additional income offered by the assessee for taxation was nothing but business income of the assessee. Therefore it was offered for taxation under the head income from business and profession. In the present case since the assessee in his statement recorded during the course of search & survey explained that the source of excess stock was the income earned during the relevant financial period from the trading of bullion, jewellery etc. and income from Adat/dalali and regarding excess cash found in his business premises the assessee also explained that though it was not recorded in the books of accounts but it was accrued to him on account of sale of jewellery in cash and the same pertains to his business activity of trading in business of jewellery. Therefore in the present case the assessee has successfully explained the source of excess stock and excess cash found during the course of search & survey operation and surrendered during the said operation. The Ld. CIT(DR) has not disputed or controverted very factual position that the assessee filed return of income including the surrendered amount and which was accepted by the Assessing Officer without any dispute and without making any further addition in the hands of assessee u/s. 69A or any other section of the Act. In view of above as the assessee has successfully explained and established the source of excess stock and excess cash as his business activity and of trading in jewellery and gems and activity of Adat/dalali thus the benefit of proposition rendered by Hon'ble Punjab & Haryana High Court in the case Kim Pharma (P.) Ltd. vs. Commissioner of Income Tax (supra) is not available for the department in the present case.

8. In view of forgoing discussion we reach to a logical conclusion that the Assessing Officer without making any addition u/s. 69A or any other provision of the Act has accepted returned income of the assessee wherein the assessee has included surrendered amount on account of excess stock and excess cash as business income and has successfully explained the source from where the said surrendered excess stock and excess cash was earned, which was business activity of assessee of trading in jewellery & gems and Adat/dalali in the same field. The coordinate bench of the Tribunal in the various orders including order in the case of Shri Lovish Singhal v/s. ITO

(supra) by following the judgment of Hon'ble Rajasthan High Court in the case of Bajrang Traders (supra) observed that the excess stock found during the course of survey and surrendered made thereof was found to be taxable as business income under the head "Income from business & profession". Identical facts and circumstances as noted above have been found to be existing in the present case then the Ld. CIT(A) was correct and justified in dismissing the contention of the AO and holding that the AO was not right in observing that the assessee is liable to be taxed as per provision of section 115BBE. Therefore, we too have no hesitation in concluding that the facts of present case do not bring the impugned income in the clutches of section 69/69A/69B and therefore do not warrant application of section 115BBE at all. We conclude so and dismiss the ground raised by revenue being devoid of merit."

Hon'ble Jurisdictional High Court of MP:

"7. The respondent/assessee is the proprietor of M/s Bhayaji Jewellers and derives income from the business activities of gems and jewellery. The assessee filed Return of Income for the A.Y. 2017-18 on 31.10.2017 declaring total income of Rs. 5,30,55,260/-. The income so disclosed in Return of Income was inclusive of undisclosed income surrendered during the course of Search and Seizure. The return of income for assessment year 2017-18 was selected for scrutiny assessment under Section 143(3) of the Act of 1961 on 30.02.2018. No fresh addition was made to the total income and income so declared was taxed at special rate in view of the provisions under Section 115BBE of the Act of 1961. The Assessing Officer himself has admitted that at the time of Search and Seizure that the undisclosed income so surrendered was not entered in regular books of accounts. The undisclosed income falls within the ambit of Section 69A of the Act and therefore, liable to be taxed at special rate within the meaning of Section 115BBE of the Act of 1961. Being aggrieved with the order of the Assessing Officer, the respondent/assessee preferred an appeal before the CIT(A), Bhopal. The CIT(A) allowed the appeal vide order dated 31.01.2020 relying upon the contention put forth by the assessee that the undisclosed income so surrendered is derived from regular business activities, therefore, it is liable to be taxed at normal rate instead of under the provisions stated under Section 115BBE of the Act.

8. Being aggrieved by the order of CIT(A) dated 31.01.2020, the appellant/Revenue filed an appeal before the ITAT, Indore Bench which was dismissed vide order dated 10.02.2023 on the ground that the Assessing Officer without making any addition under Section 69A or other provisions of the Act, has accepted the returned income wherein the assessee has included the surrendered amount on account of excess stock and excess cash as business income and successfully explained the source from where the said surrendered amount was earned, which was the business activity of the assessee of trading in jewellery and gems. There was no application of Section 115BBE of the Act.

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18. When tested on the anvil of the aforesaid legal principles, we are of the opinion that in the instant case no substantial question of law arises from the order of the Tribunal as the appellant has raised all the question of facts and have disputed the fact findings of the ITAT in the garb of substantial questions of law which is not permitted by the statute itself. This Court refrains from entertaining this appeal as there is no perversity in the order passed by the ITAT since the ITAT has dealt with all the grounds raised by the appellant in the order impugned and has passed a well reasoned and speaking order taking into consideration all the material available on record. The Tribunal being a final fact finding authority, in the absence of demonstrated perversity in its finding, interference with the concurrent findings of the CIT(A) as well as the ITAT therewith by this Court is not warranted."

Thus, the Hon'ble Jurisdictional High Court has upheld ITAT Indore's order holding that if the surrendered excess stock is found to have been derived from business activities, the deeming provision of section 69A shall not apply. The view taken by ITAT and upheld by Hon'ble Jurisdictional High Court is directly applicable to assessee.

5. Having submitted as above, the Ld. AR also addressed certain observations made by lower authorities in their orders, as under:

- (i) It is pointed out that the Ld. CIT(A) has, in Para 3.1.30 of impugned order, noted that the assessee failed to give explanation for the quantitative difference of stock of gold and silver ornaments which were not recorded in the books and that the assessee could not provide evidences of source transactions details of the excess stock - like the seller parties involved in transactions, names of parties involved, bills, vouchers, date, mode of payments, receipts/payments, credit/debit notes, challans, etc. and accordingly, the CIT(A) has concluded that the assessee had not been able to prove the source of

excess stock and upheld invocation of deeming section 69B by AO. But, the Ld. AR submitted, the CIT(A) has ignored the vital point that the diaries and loose-papers impounded during survey themselves contain the details of unaccounted business transactions of purchase and sales of gold/silver ornaments as also the movement of unrecorded goods/ stocks. Furthermore, the CIT(A) should not expect assessee to maintain so many evidences of unrecorded transactions which no single assessee would keep/maintain when the transactions are unrecorded. The CIT(A) must be practical and judicious in accepting assessee's facts which are duly corroborated by the diaries and loose paper impounded during survey and take a judicious conclusion.

- (ii) It is submitted that the decisions relied by lower authorities have different facts and not applicable to present case. For example, in the case of ***M/s SVS Oil Mills Vs. The Assistant Commissioner of Income-tax, ITA No. 765 of 2018 (Madras HC)*** relied by lower authorities, the AO, CIT(A) and ITAT, all three authorities, recorded a clear finding that the assessee neither recorded the excess-stock in books of account nor declared in the return of income and based on such finding, the Hon'ble High Court was pleased to hold that no substantial question of law arose in assessee's appeal. But, in the present case, the assessee has recorded excess-stock in books of account, credited to P&L A/c and finally included in the Return of

Income as additional business income. Further, in Para 3.1.26 of impugned order, the CIT(A) has noted about ***Principal Commissioner of Income-tax Vs. Deccan Tobacco Company (2022) 137 taxmann.com 470 (SC)*** but in that case, the Hon'ble Supreme Court has only admitted the SLP filed by revenue against the Judgement of Hon'ble Andhra Pradesh High Court in favour of assessee and issued notice to parties but, however, the matter is still pending before Hon'ble Supreme Court and not yet decided. Therefore, as of now the decision rendered by Hon'ble High Court of Andhra Pradesh in favour of assessee is applicable which also supports the present assessee's case. Therefore, the CIT(A)'s reliance on the decisions, which are distinguishable on facts, is mis-placed.

6. Per contra, Ld. DR for the Revenue strongly defended the orders of lower-authorities. He particularly supported the observations made by CIT(A) in Para 3.1.30 of impugned order [already discussed by us in earlier Para 5 of this order] that the assessee failed to submit contemporary evidences of unrecorded transactions and therefore the AO was right in invoking deeming provision of section 69B r.w.s. 115BBE.

7. We have considered rival submissions of both sides and carefully perused the case record including the orders of lower-authorities in the light of applicable provisions of law and judicial rulings cited before us. The controversy before us is only with regard to the applicability of the provision

of section 69B and consequential higher rate of tax u/s 115BBE of the Act to the income surrendered during survey and subsequently offered to tax on account of excess stock. While the assessee has declared such surrendered income as "business income" in the return of income, the lower-authorities have treated the same as deemed income u/s 69B of the Act and accordingly charged higher rate of tax u/s 115BBE and this has given rise to controversy. There was a vehement discussion by both sides as noted by us in earlier part of this order. After a careful consideration, we find and adjudicate as under:

- (i) We are in agreement with the very first and foremost contention of Ld. AR that the Q.No. 12 of Statements clearly reveal that there was a cash shortage utilized by assessee for making unaccounted purchase of business, which clearly shows that the assessee was in the practice of making unrecorded purchase. Then, in reply to the Q.No. 13, 14 and 18, the assessee has clearly admitted the excess stock as "additional undeclared income" in addition to regular income. Further, in reply to the Q.No. 15 & 16 qua the diaries and loose papers impounded and inventorised as "D/1" to "D/8", the assessee immediately stated to authorities that those diaries and loose papers were related to unaccounted sales of business. Further, the Ld. AR has filed samples papers from impounded documents in Paper-Book and narrated in open court that there are notings of transactions of unaccounted purchases, sales and movements of stocks in those

documents. Further, it is also an undisputed fact that the assessee is engaged in this business for last 30 years and there is no evidence having been found during survey indicating any other source of income available to assessee. Therefore, the claim of assessee that the excess-stock was outcome of suppressed business income over the years is fully credible and acceptable.

- (ii) It is also pertinent to note that during the course of survey what was detected in respect of the stock, was mere possession of physical stock by assessee in excess of the stock recorded in books of account. It is not the case of the AO that the excess stock found during the survey was separated from other stock of the assessee but it is one and common nature of stock found during survey except the quantity of the stock on physical verification was found to be excess in comparison to the stock recorded in books of accounts. Thus, there is no separable identifiable stock found during survey than the stock regularly held by assessee in the normal course of business of jewellery. Once the stock found during survey is a part of total stock of business, then the said excess stock arrived during survey, which is only a mathematical expression, cannot be given a separate identity than the recorded stock of assessee. Further, even if excess stock found during survey was not recorded in the books of account but when the survey was conducted before closure of financial year, then the assessee was at liberty to incorporate excess stock in books of

account at the time of finalizing accounts, which also the present assessee has done as is evident from a separate credit entry made in P&L A/c. Therefore, when the excess stock found during survey is not separable and identifiable and does not have a separate existence but it is a part of mixed stock found at the premises which included declared stock as per books as computed by the survey team, the provision of section 69B of the Act cannot be made applicable. This claim of assessee is very much supported by the decisions cited by Ld. AR for assessee, namely (i) ***M/s Fashion World (ITAT, Ahmedabad)*** and (ii) ***M/s Brij Mohan Prasad (ITAT, Indore)***, as narrated in earlier para. The Hon'ble Jurisdictional High Court of Madhya Pradesh has also approved ITAT Indore's order holding such a view in ***Shri Krishan Kumar Verma (supra)***.

- (iii) The Ld. AR for assessee has also addressed certain adverse observations made by lower authorities in their orders. We agree with the submissions made by Ld. AR as noted by us in earlier Para 5 of this order and we do not wish to repeat the same for the sake of brevity and to avoid repetition.

8. In view of detailed discussion made above and the reasoning stated therein, we accept that the assessee has rightly offered the impugned additional income surrendered during survey as business income and the lower authorities are not justified to assess the same as deemed income u/s 69B r.w.s. 115BBE. Accordingly, the issue is decided in favour of assessee

and against revenue. The orders of the authorities *qua* this issue are set aside. The assessee succeeds in this appeal.

9. Resultantly, this appeal of assessee is allowed.

*Order pronounced by putting up on notice board
as per Rule 34 of ITAT Rules, 1963 on 19/01/2026.*

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 19.01.2026

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*