

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

**ITA No.2399/PUN/2025
Assessment year : 2020-21**

ITO, Ward 1, Ahmednagar	Vs.	Deepak Baburao Vispute Vispute Saraf, Sambhaji Chowk, Kopargaon, Ahmednagar – 413601
		PAN: ACCPV9055C
(Appellant)		(Respondent)

Assessee by : Shri Prasad S Bhandari
Department by : Smt Deepak Kumar Kedia, JCIT
Date of hearing : 11-02-2026
Date of pronouncement : 16-02-2026

ORDER

PER R.K. PANDA, VP:

This appeal filed by the Revenue is directed against the order dated 29.08.2025 of the Ld. CIT(A), Pune-11 relating to assessment year 2020-21.

2. Facts of the case, in brief, are that the assessee is an individual and engaged in the business of sale of gold and silver jewellery under the name and style of M/s. Vispute Saraf, a proprietary concern. He filed his return of income for the assessment year 2020-21 on 27.03.2021 declaring total income of Rs.4,12,22,620/-. In this case a survey action u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was conducted at the business premises

of the assessee on 04.10.2019. The case of the assessee was selected for complete scrutiny and accordingly statutory notice u/s 143(2) of the Act was issued and served on the assessee. Subsequently the Assessing Officer issued notice u/s 142(1) of the Act along with a questionnaire in response to which the AR of the assessee appeared before the Assessing Officer from time to time and filed the requisite details.

3. During the course of assessment proceedings the Assessing Officer noted that during the course of survey proceedings the valuation of stock present in the business premises of the assessee was performed and additional stock of Rs.9,25,37,493/- was detected being the difference between the stock as per valuation report and that as per the books of account. Out of the said amount, the assessee submitted party-wise details received for approval amounting 11335.560 grams valued at Rs.4,15,96,578/-. The assessee accordingly admitted that the stock amounting to Rs.4,42,86,847/- is his excess stock. The assessee declared that this excess stock of Rs.4,42,86,847/- is his additional income over and above the regular income for financial year 2019-20 relevant to assessment year 2020-21.

4. The Assessing Officer on perusal of the profit and loss account submitted by the assessee during the course of assessment proceedings noted that the assessee declared the amount of Rs.4,42,86,847/- under the head 'Additional Sales Declared in Survey u/s 133A' as a part of Sales Accounts even though the said sum was

actually undisclosed stock detected during survey proceedings. The assessee filed 2 audit reports for the assessment year 2020-21 i.e. one dated 15.01.2021 and another dated 25.03.2021. On perusal of the Form 3CB filed by the auditor, the Assessing Officer noted that the auditor has mentioned different comments in Form 3CB pertaining to the survey declaration. He noted that the auditor in his comments in Form 3CB dated 15.01.2021 with respect to the survey declaration has mentioned as under:

"On 04.10.2019 i.e. in FY 2019-20, Income tax department has conducted a Survey under section 133A of the Income Tax Act, 1961 at the business premises of the Assessee. Assessee has prepared the books of accounts declaring the Additional Stock of Gold & Silver as declared in the Statement U/s 133A."

5. Similarly, the comments of the Auditor as mentioned in Form 3CB dated 25.03.2021 with respect to the survey declaration read as under:

"On 04.10.2019 Income tax department has conducted a Survey under section 133A of the Income Tax Act, 1961 at the business premises of the Assessee. During the course of survey there was additional sales of Rs.4,42,86,847 during the year which was remained to be recorded in the books of accounts. Out of said additional sales, the assessee purchased the stock of gold of Rs.4,42,86,847 which was found during the course of survey. However while giving the statement during the course of survey, the declaration was made inadvertently in the form of stock instead of additional sales. This happened because of assessee's mental stress & tension during the course of survey which may please be noted. Therefore while filing the Return of Income the assessee has correctly shown the disclosure as additional sales & stock purchased out of the same has been duly reflected in the Balance Sheet. The assessee has complied with the provision of GST on the same accordingly."

6. According to the Assessing Officer the Auditor in his audit report filed on 15.01.2021 had mentioned that the survey declaration has been made on account of

additional stock of gold and silver whereas, the comments of the auditor in Form 3CB dated 25.03.2021 says the survey declaration is on account of unaccounted sales and therefore this is an afterthought. He further noted that during the course of assessment proceedings the assessee did not provide any supporting documents to prove that the survey declaration was on account of unaccounted sales and not unaccounted stock. He, therefore, issued a show cause notice asking the assessee to explain as to why the additional stock detected during the course of survey proceedings u/s 133A should not be treated as undisclosed investment u/s 69 of the Act and why it should not be taxed as per provisions of Section 115BBE (1)(a) of the Act. The assessee in response to the same relying on various decisions submitted that the excess stock declared during the course of survey cannot be brought to tax by applying the provisions of section 69B r.w.s. 115BBE of the Act.

7. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. Distinguishing the various decisions relied on by the assessee and following certain other decisions, he treated the undisclosed stock detected during the course of survey proceedings u/s 133A of the Act amounting to Rs.4,42,86,847 as unexplained investment to be taxed by applying the provisions of section 115BBE of the Act.

8. The Assessing Officer similarly made addition of Rs.2,83,490/- out of sales promotion expenses being not supported by satisfactory evidences and therefore,

not genuine. He further made addition of Rs.4,12,520/- debited to the Profit and Loss Account under the head 'meal expense' being duplicate in nature. The Assessing Officer also made addition of Rs.1,30,341/- out of vehicle expenses by disallowing 15% of the expenses incurred on vehicles on the ground that personal use of vehicles has been accepted by the assessee.

9. The Assessing Officer also made addition of Rs.1,03,850/- on account of GST late fee paid. The Assessing Officer, thus, determined the total income of the assessee at (-) Rs.22,14,437/- and made addition of Rs.4,42,86,847/- u/s 69B r.w.s. 115BBE of the Act.

10. In appeal, the Ld. CIT(A) deleted the addition made by the Assessing Officer on account of excess stock found during the course of survey wherein the Assessing Officer has invoked the provisions of section 69B r.w.s. 115BBE of the Act. So far as the disallowance of expenses are concerned, the Ld. CIT(A) gave part relief to the assessee out of sales promotion expenses disallowed by the Assessing Officer at Rs.2,83,490/-. He directed the Assessing Officer to restrict the same at Rs.28,350/- being 10% of such disallowance. Similarly, out of meal expenses of Rs.4,12,520/- disallowed by the Assessing Officer, the Ld. CIT(A) directed the Assessing Officer to restrict the same to Rs.1,51,052/-. As regards the disallowance of vehicle expenses of Rs.1,30,341/- by the Assessing Officer being 15% of the expenses, he restrict the same to 10% of the same.

11. Aggrieved with such order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:

- i) *On the facts and the circumstances of the case and in law, the Ld. CIT(A) is not justified in directing to tax the unaccounted excess stock declared during survey action u/s 133A of Rs.4,42,86,847/- as regular income instead of taxing u/s 115BBE of the Act when the case of the assessee is fully covered by the provisions of section 69B of the Act as the assessee failed to furnish sources of unaccounted excess stock unearthed during the survey action.*
- ii) *On the facts and the circumstances of the case and in law, the Ld. CIT(A) is not justified in restricting the disallowance at 10% of Rs.2,83,490/- made on account of sales and promotion expenses instead of upholding the complete disallowance of expenses as the assessee failed to substantiate his claim of expenses with necessary documentary evidences.*
- iii) *On the facts and the circumstances of the case and in law, the Ld. CIT(A) is not justified in restricting the disallowance at 10% of Rs.2,90,520/- made on account of meal expenses instead of upholding the complete disallowance of expenses as the assessee failed to substantiate his claim of expenses with necessary documentary evidences.*
- iv) *On the facts and the circumstances of the case and in law, the Ld. CIT(A) is not justified in restricting the disallowance at 10% of Rs.8,68,741/- made on account of vehicle related expenses instead of upholding disallowance of expenses made by the AO at 15% of Rs.8,68,741/-, as the assessee failed to substantiate his claim of expenses with necessary documentary evidences.*
- v) *The appellant craves to add, amend, alter or delete the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal.*

12. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. So far as the order of the Ld. CIT(A) in directing the Assessing Officer to tax the excess stock declared during the course of survey u/s 133A as regular income

instead of taxing u/s 69B r.w.s. 115BBE is concerned, we find the Ld. CIT(A) deleted the same by observing as under:

4.4 I have considered the facts of the case and the submissions made by the appellant. The issue involved in this appeal is that when during a survey or search action, certain undisclosed income is found, under which head can it be brought to tax and at what rate, the tax should be charged.

4.5 The appellant has relied upon following jurisdictional Hon'ble ITAT, Pune's decisions wherein it is held that declaration made during the survey/search on account of excess stock/excess expenditure generated in regular business carried out by the appellant is nothing but the business income and hence required to be taxed as business income at normal rate.

- a) DCIT, Central Circle-1 Vs. Shri Balaji Ramchandra Ande vide ITA no. 625/PUN/2024 for AY 2018-19 dated 12.01.2025.
- b) Kolhapur Timber and Furniture Mart Vs. ACIT, Central Circle vide ITA no. 2697/PUN/2024 for AY 2019-20 dated 27.03.2025.
- c) Silver Palace, Income Tax Appeal No. 893/PUN/2016 dated 29/06/2018.
- d) Vijay Shriram Gundale, Income Tax Appeal No. 79,80/81/PUN/2023 dated 29/06/2018.

4.6 Hon'ble Rajasthan High Court in the case of Bajrang Traders (supra) held in para 2.11 of the order that

"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 "business income" and not under the head income from other sources". In the result, ground No. 1 of the assessee is allowed".

4.7 The facts in the present case are similar to that in the case of Bajrang Traders (supra) except the nature of stock – in the case of Bajrang Traders, the stock was of rice, whereas in the present case of the appellant, the stock was Gold, Silver and Daimond.

4.8 Further, the Hon'ble Jurisdictional Pune Tribunal in the case of Vijay Shriram Gundale (supra) (order dated 03.08.2025), relying on the ratio laid down by the Hon'ble Rajasthan high court in the case of Bajrang Traders (supra), held that the excess stock found during the course of survey is taxable under the head of business income and provisions u/s. 115BBE of the Act are not attracted on it.

4.9 Further, the Hon'ble Jurisdictional Pune Tribunal in the case of Shri Balaji Ramchandra Ande (supra), relying on various decisions of the Hon'ble Jurisdictional Pune Tribunal and other Courts noted by the CIT(A) in that case and also taking note of the fact that the Revenue had accepted in one year such additional income declared on the basis of survey at normal rate treating the same as business income, held that excess stock and excess expenditure cannot be taxed as per provisions of sec. 69B and 69C r.w.s. 115BBE of the Act. The relevant part of it is as under:

"7. We have heard the rival arguments made by both the sides and perused the material on available record. It is an admitted fact that the assessee during the course of survey has admitted additional income on account of payments made to URD purchases, transportation charges for Asphalt transport, payments made towards repairs and maintenance and labour charges etc., which the assessee declared in the return of income for the assessment year 2017-2018 as well as assessment year 2018-2019. We find the return of income for assessment year 2017-2018 was processed u/sec.143(1) and such additional income declared by the assessee on the basis of the same survey conducted on 09.08.2017 has been accepted and no proceedings u/sec.147 or 263 have been initiated. We, therefore, find merit in the submissions of the Learned Counsel for the Assessee that once the Revenue has accepted during assessment year 2017-2018 that such additional income declared by the assessee has to be taxed at normal rate and not u/sec.115BBE, the Revenue cannot change it's stand and tax the additional amount surrendered during the course of survey by applying provisions of sec.115BBE of the Act. Although the principles of res judicata do not apply to the income tax proceedings, however, once the income is taxed in a particular manner, unless there is change in facts and circumstances of the case, the Revenue should not take a different view for the immediately next assessment year when the income for both the years are declared on the basis of the same survey action and in one year the Revenue has accepted such additional income declared on the basis of survey at normal rate treating the same as business income. In view of the above discussion and in view of the detailed reasoning given by the Ld. CIT(A) on this

issue, we do not find any infirmity in his order by deleting the tax calculated at special rate as per the provisions of sec.69B and 69C r.w.s.115BBE of the Income Tax Act on the declaration made for excess stock found and excess expenditure. The grounds raised by the Revenue are accordingly dismissed.”

4.10 As noted above, in the present case also, the assessee had made disclosure of unaccounted expenditure to the extent of Rs. 53,06,000/- for AY 2019-20 during the survey and the same was also disclosed in the return of income filed for AY 2019-20 as an additional sale and taxed at normal rate and not u/s. 115BBE. The returned income was accepted by the AO in the assessment order passed on 21.09.2021 for the AY 2019-20. Thus, the facts in the present case are similar to that in the case of Shri Balaji Ramchandra Ande (supra)

4.11 There are judgements which held that the surrendered income is taxable under the provisions of section 68, 69, 69A to 69D of the Act such as the decision of Hon'ble Gujrat High Court in case of Fakir Mohmed Haji Hasan vs CIT 120 TAXMAN 11 (Gujarat), the decision of Hon'ble Punjab and Haryana High Court in case of Kim Pharma Pvt Ltd vs. CIT [2013] 216 Taxman 153 (P&H), the decision of Hon'ble Madras HC in case of M/s. SVS Oils Mills vs. ACIT [2020] 113 taxmann.com 388 (Madras), the decision of the Hon'ble High Court of Chhattisgarh in the case of Dhanush General Stores vs. CIT reported in [2012] 20 taxmann.com 853 (Chhattisgarh).

4.12 Further, there are various decisions, some of which are quoted above which held that excess stock and excess expenditure cannot be taxed as per provisions of sec. 69B and 69C r.w.s. 115BBE of the Act.

4.13 Wherein there exists contradictory judgments, judgments favourable to the assessee should be followed relying on Hon'ble Supreme Court judgment in CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 had observed that if two reasonable constructions of a taxing provision are possible, then the construction which favours the taxpayers must be adopted.

4.14 In view of the above discussion and the above judicial decisions in favour of the assessee including that the Hon'ble Jurisdictional Pune Tribunal in the case of Shri Balaji Ramchandra Ande (supra), I am of the view that the impugned amount of Rs. 4,42,86,847/- being excess stock found during the survey action cannot be taxed as unexplained investment as per the provisions of sec. 69B r.w.s.115BBE of the Act as done by the AO. The additional income declared by the appellant is to be taxed as 'income from business' and the provisions of section 115BBE of the Act are not applicable to the income of Rs. 4,42,86,847/-. The ground no. 1 is, accordingly, **allowed.**

13. We do not find any infirmity in the order of the Ld. CIT(A) on this issue. Admittedly the excess stock of Rs.4,42,86,847/- was declared during the course of survey u/s 133A at the premises of the assessee which is engaged in the business of sale of gold and silvery jewellery under the name and style of M/s. Vispute Saraf. No other business activity whatsoever was detected during the course of survey other than the above jewellery business. It is also an admitted fact that the assessee has credited Rs.4,42,86,847/- in the trading and profit and loss account and has shown the same while filing the return of income for the year under consideration. The assessee has explained before the Assessing Officer that the said stock has been accumulated over a period of time out of cash sales which remained to be accounted for during the year. It was explained before the Ld. CIT(A) that the disclosure made during the course of survey action has direct nexus with the business carried on by the assessee. Since the excess stock was declared in the form of gold, silver and diamond and there is no other business activity carried on by the assessee other than the jewellery business, therefore, we find merit in the arguments of the Ld. Counsel for the assessee that the source of excess stock found is nothing but out of the business receipts.

14. It has been held in various decisions that when the assessee surrenders income on account of excess stock found during the course of survey u/s 133A or search and no other activities other than the same business activities are carried on by the assessee during the year under consideration, then such income declared by

the assessee shall be taxed under the head 'business income' only and not as undisclosed investment and the provisions of section 69B r.w.s. 115BBE of the Act cannot be applied. Since the Ld. CIT(A) while deciding the issue has followed the decision of Hon'ble Rajasthan High Court in the case of Bajrang Traders (supra) and the decision of the Coordinate Bench of the Tribunal in the case of DCIT vs. Shri Balaji Ramchandra Ande vide ITA No.625/PUN/2024 order dated 12.01.2025 for assessment year 2018-19 (supra), therefore, in absence of any contrary material brought to our notice by the Revenue that the assessee in fact was having some other activities other than the business of trading in gold and silver jewellery, we do not find any infirmity in the order of the Ld. CIT(A) directing the Assessing Officer to treat such income as regular income instead of applying provisions of section 69B r.w.s. 115BBE of the Act. The ground No.(i) raised by the Revenue on this issue is accordingly dismissed.

15. So far as the remaining three grounds are concerned, these relate to the order of the Ld. CIT(A) in restricting the disallowance of expenses made by the Assessing Officer. We find the Revenue is aggrieved by the order of the Ld. CIT(A) in restricting the disallowance of sales promotion expenses, meal expenses and the vehicle expenses. So far as the sales promotion expenses are concerned, we find the Assessing Officer disallowed an amount of Rs.2,83,490/- in absence of any supporting documentary evidence. Since the assessee did not provide satisfactory explanation, the Assessing Officer had added the same as non-genuine

expenditure. The order of the Ld. CIT(A) restricting the same to 10% of the expenses in our opinion is without any basis and not based on sound footing, especially in absence of any further documentary evidence filed before him. The vouchers earlier produced before the Assessing Officer were rejected by him being self-made vouchers and all the expenses were incurred in cash. We, therefore, reverse the order of the Ld. CIT(A) on this issue and the order of the Assessing Officer making addition of Rs.2,83,490/- is restored. Ground of appeal No.(ii) by the Revenue is accordingly allowed.

16. So far as disallowance of meal expenses of Rs.4,12,520/- by the Assessing Officer is concerned, we find the Assessing Officer had given a categorical finding that the assessee has already booked the expenditure under the head 'staff welfare expenses' and again booked the expenses of Rs.4,20,168/- under the head 'meal expenses'. Since the assessee has claimed the expenditure twice, therefore, the Ld. CIT(A) in our opinion is not justified in granting part relief of Rs.2,61,468/- to the assessee without any logic. We, therefore, set aside the order of the Ld. CIT(A) and the ground of appeal No.(iii) raised by the Revenue is allowed.

17. So far as the disallowance of vehicle expenses of Rs.1,30,341/- is concerned, we find the assessee before the Assessing Officer has accepted that he owns two motor cars and four motor cycles and the cars are used for personal purpose as well. The assessee had requested the Assessing Officer to restrict the disallowance

to 5% whereas the Assessing Officer, in absence of any log book or any supporting evidence to prove that the vehicles are used for personal use only at 5% of the total use, disallowed at 15% of the expenses at Rs.1,30,341/-. We find the Ld. CIT(A) without any sound reasoning has restricted the same to 10% which in our opinion is not justified under the facts and circumstances of the case. We, therefore, reverse the order of the Ld. CIT(A) and restore the order of the Assessing Officer on this issue. Thus, the ground of appeal No.(iv) raised by the Revenue is allowed.

18. To sum up, the ground No.1 raised by the Revenue is dismissed and the remaining 3 grounds raised by the Revenue are allowed.

19. In the result, the appeal filed by the Revenue is partly allowed.

Order pronounced in the open Court on 16th February, 2026.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER
पुणे Pune; दिनांक Dated : 16th February, 2026
GCVSR

Sd/-
(R. K. PANDA)
VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण ,पुणे
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S.No.	Details	Date	Initials	Designation
1	Draft dictated on	11.02.2026		Sr. PS/PS
2	Draft placed before author	12.02.2026		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
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9	Date on which the file goes to the Office Superintendent			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			