

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN “DB” BENCH: DEHRADUN**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

[THROUGH VIRTUAL MODE]

ITA No.215/DDN/2025

[Assessment Year : 2023-24]

DCIT Central Circle Dehradun Uttarakhand	vs	Stonefield Construction G-165, Nehru Colony, Dehradun, Uttarakhand-248001 PAN-ABSPS3380A
APPELLANT		RESPONDENT
Revenue by		Ms. Poonam Sharma, CIT DR
Assessee by		Shri Subhash Gupta, CA
Date of Hearing		16.01.2026
Date of Pronouncement		08.04.2026

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by the Revenue against the order dated 27.08.2025 by Ld. Commissioner of Income Tax (A)-3, Noida [“Ld. CIT(A)”] in Appeal No. CIT(Appeals) Noida-3/10019/2022-23 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 10.03.2025 passed u/s 143(3) of the Act pertaining to Assessment Year 2023-24.

2. Brief facts of the case are that the assessee is a partnership firm, engaged in the business of construction of roads in the State of Uttarakhand for various State govt. Departments and for other principal contractors. The return of income was e-filed on 18.01.2024 u/s 139 of the Act, declaring total income of INR 9,54,06,730/- which

includes the additional income of INR 3.89 crores declared on account of difference in closing stock and INR 1.79 crores on account of cash payment u/s 40A(3) of the Act, as admitted during the course of survey conducted u/s 133A of the Act on 13.10.2023 at the business premises of Bharat Construction Group of which the assessee is one of the sub-contractor. Thereafter, the assessment was completed wherein AO has made following additions:-

- (a) Unexplained and undisclosed expenditure u/s 69C by alleging purchases from Two parties as bogus amounting to INR 33,24,865/-;
- (b) Disallowance u/s 40a(ia) of INR 16,18,500/-;
- (c) Disallowance u/s 40A(3) of the Act INR 30,000/-

3. Besides this, AO treated the income declared in the return of income filed at INR 3.89 crores on account of difference in survey during the course of search as unexplained investment u/s 69A of the Act as against the business income declared by the assessee and charged special rate of tax as provided u/s 115BBE of the Act. Accordingly, the total income of the assessee was assessed at INR 10,03,80,095/-.

4. Against the said order, the assessee preferred appeal before Ld. CIT(A) wherein except the disallowance of INR 30,000/- made u/s 40A(3) of the Act, the other additions/disallowances were challenged. Ld. CIT(A) vide impugned order dated 27.08.2025 has allowed the appeal of the assessee and deleted the additions/disallowance made and further, accepted the contention of the assessee that the

additional income offered at INR 3.89 crores was business income as against unexplained money u/s 69A held by the AO.

5. Aggrieved by the said order, Revenue is in appeal before the Tribunal by raising various Grounds of appeal.

6. **Ground of appeal No.1** raised by the Revenue is with respect to deletion of disallowance of INR 33,24,865/- towards purchases made from Two parties namely, M/s. Raj Lubricants and M/s. Paras Enterprises of INR 18,21,966/- and INR 15,02,899/- respectively holding as bogus.

7. Before us, Ld. CIT DR for the Revenue submits that during the course of assessment proceedings, assessee has failed to prove the genuineness of the purchases made from these two parties and filed additional evidences before Ld. CIT(A) however, Ld. CIT(A) without waiting for the Remand Report from the AO has decided the issue in favour of the assessee in haste manner and therefore, requested that this issue be sent back to the AO for verification of the facts.

8. On the other hand, Ld.AR for the assessee submits that Ld. CIT(A) has provided Two opportunities to the AO however, when the AO has not submitted any report, Ld. CIT(A) by exercising the power conferred u/s 250(2) of the Act, has decided the issue by verifying the documents filed by the assessee, therefore, the order of Ld. CIT(A) on this issue deserves to be upheld.

9. Heard the contentions of both the parties at length and perused the material available on record. From the perusal of the order of Ld. CIT(A), it is observed that Ld. CIT(A) has asked the AO to file the report on the evidences filed by the assessee on the behest of Ld. CIT(A) vide e-mail dated 24.07.2025. Subsequently reminder was sent on 17.08.2025 and when the AO has failed to respond, the Ld. CIT(A) passed the order on 28.07.2025 deleting the additions made. It is observed that Ld. CIT(A) within a period of around 40 days has decided the appeal after giving two opportunities to the AO to file the remand report. It appears that the AO was not provided sufficient opportunity to examine/verify the details filed by the assessee before the Ld. CIT(A) which are crucial/ goes root of the issue in hand. Under these circumstances, in our considered view, AO should be provided sufficient opportunity and accordingly, we restore this issue to the file of AO with the directions to make necessary verifications of the details of filed by the assessee to establish the purchases made from the alleged two suppliers as genuine and decide the issue in accordance with law. With these directions, Ground of appeal No.1 raised by the Revenue is allowed for statistical purposes.

10. **Ground of appeal No.2** raised by the Revenue is with respect to the deletion of disallowance of INR 16,18,500/- made u/s 40(a)(ia) of the Act.

11. Heard the contentions of both the parties at length and perused the material available on record. The AO alleged that assessee made purchases of INR 53,94,983/- from one party namely, M/s. Tripura

Enterprises and not deducted tax at source @ 0.1% as per section 194Q of the Act. It was the claim of the assessee that TDS is required to be made on the net amount of purchases i.e. net of GST and if the amount of GST is reduced from gross value of purchases, the net amount of purchases made from M/s Tripura Enterprises reduced to INR 45,72,020/- which is less than the threshold limit of INR 50.00 as provided in section 194Q of the Act, therefore, the provisions of this section are not applicable. A clarification issued by the CBDT dated 13.06.2021 vide Circular No.13/2021 was also relied upon. Ld. CIT(A) after considering these facts and the circular of CBDT has deleted the disallowance. Under these circumstances and considering the fact that the net purchases made by the assessee was below the threshold limit prescribed u/s 194Q of the Act, we find no error in the order of Ld. CIT(A) in deleting the disallowance made by the AO. Ground of appeal No.2 raised by the Revenue is thus dismissed.

12. **Grounds of appeal Nos. 3 & 4** raised by the Revenue are with respect to the findings of ld. CIT(A) in disregarding the action of AO in treating the additional income of INR 3.89 crores offered during the course of survey on account of different in stock and was included in the total income as business income while filing the return of income and was treated as unexplained money u/s 69A by the AO and charged special rates of tax as provided u/s 115BBE of the Act.

13. Heard the contentions of both the parties at length and perused the material available on record. It is an admitted fact that the

additional income was offered on account of discrepancy in the stock physically found at the time of survey and as per books of accounts. The said stock is forming part of the business of the assessee and earned from the day-to-day business activity. The AO has failed to bring on record any other source of income of the assessee from which this excess stock could be accumulated by the assessee. Once the income from contract business stood accepted which is the only source of income of assessee and assessee had admitted that the excess stock was accumulated from such activity and offered the same for tax as business income which fact has remained uncontroverted. Under these circumstances on such business income, provisions of section 69A cannot be invoked and the additional income in the shape of excess stock so admitted by the assessee should be treated as part of the business income of the assessee. Ld. CIT(A) after considering the facts, has treated the said income as income from business by making following observations:-

- 5.3. *“Ground of Appeal No.3-In this ground of appeal, the AR has stated that the AO considered the difference of closing stock as unexplained u/s 69A which was offered for tax and addition of same income will lead to double taxation. In para 2 of the assessment order, the AD has clearly stated that the assessee had voluntarily disclosed unaccounted business income of Rs. 3.89 crores being difference in the value of the closing stock. The AO during the assessment proceedings stated that the assessee has surrendered the said amount in the return as business income but the assessee was liable to declare the same as unaccounted business income. As per AO, since the nature & source of the business income was not explained, hence the said amount was taxed u/s 69A r.w.s. 115BBE of the Income Tax Act, 1961.*

The AR during the appellate proceedings stated that the stock surrendered by the assessee is related to the business of the assessee and the said fact is not disputed by the AO. Further, as per AR, the surrender was made under the head 'business

income and not under the head 'unaccounted receipts'. Perusal of the assessment order also shows that the AO has acknowledged the fact that the surrender was made under the head 'business income. The AO in the conclusive part of the assessment order has stated that as the source of the business income/stock is not clear, the same is treated as unexplained u/s 69A. There is no finding in the assessment order that the stock surrendered by the assessee is not related to the business of the assessee. Hence, there is a basic presumption here that the surrendered stock is related to the business of the assessee. Further, perusal of the assessment order para 2 clearly reveals that the assessee vide its letter dated 26.10.2023 has categorically surrendered the excess stock as business income. Hence, it is not difficult to draw the conclusion that the said difference in inventory is related to the normal working of the business of the assessee.

On the above issue, the Hon'ble HIGH COURT OF MADHYA PRADESH in the case of Principal Commissioner of Income-tax vs. Krishna Kumar Verma reported at [2024] 161 taxmann.com 44 (Madhya Pradesh) has held as under:

Section 69A, read with sections 28(i) and 1158BE, of the Income-tax Act, 1961-Unexplained moneys (Surrender during search) Assessment year 2017-18 Assessee during search and seizure action surrendered undisclosed income on account of excess stock and excess cash which was not entered in regular books of account Assessing Officer was of view that undisclosed income falls within ambit of section 69A and, therefore, is liable to be taxed at special rate within meaning of section 115BBE On appeal, Commissioner (Appeals) allowed appeal of assessee and held that undisclosed income so surrendered was derived from regular business activities, therefore, it was liable to be taxed at normal rate instead of under provisions stated under section 115BBE On second appeal, Tribunal dismissed appeal of revenue Whether since Tribunal had dealt with all grounds raised by assessee in order impugned and had passed a well reasoned and speaking order taking into consideration all material available on record, interference with concurrent findings of Commissioner (Appeals) as well as Tribunal therewith was not warranted Held, yes [Para 18] [In favour of assessee]

Further, the Ld. ITAT Chandigarh Bench in the case of Gurinder Makkar vs. Deputy Commissioner of Income-tax reported at [2024] 162 taxmann.com 731 (Chandigarh-Trib.) has held as under:

I. Section 20(1) read with sections 098 and 1158BE, of the Income-tax Act, 1961-Business Income Chargeable as (Excess stock) Assessment year 2018-19 Pursuant to survey conducted at assessee's premises under section 1334, assessee surrendered amount of Rs. 28.53 lakhs on account of excess stock over and above its normal business income Assessing Officer observed that surrendered income on account of excess stock was chargeable under section 698 and, accordingly, taxed same as per provisions of section 1158BE It was observed that revenue was not able to point out that excess stock had any nexus with any other receipts other than business being carried on by assessee-Nature and source of such unaccounted stock was nothing but arising out of assessee's business operations There was no physical distinction between accounted stock and unaccounted stock Difference in stock so found out by authorities had no independent identity and was in terms of value terms only and thus part and parcel of entire stock Whether, in view of aforesaid, income so surrendered on account of investment in excess stock was from business operations and, thus, should be treated as business income Held, yes-Whether, therefore, said income could not be brought to tax under deeming provisions of section 69B read with section 1158BE and normal tax rate should be applied Held, yes [Paras 8.2, 8.4, 8.10, 8.12 and 8.13] [In favour of assessee]

Further, the Ld. ITAT RAJKOT BENCH in the case of Sagar Jewellers vs. of Income-tax reported at [2025] 172 taxmann.com 201(Rajkot- Trib.) has held as under: Deputy Commissioner

I. Section 69, read with section 115BBE, of the Income-tax Act, 1961-Unexplained investments (Excess stock) - Assessment year 2019-20-During survey conducted at business premises of assessee, excess stock was found Partner of assessee firm admitted said excess stock as unaccounted income which was not recorded in books and agreed to offer same as current year's income over and above regular business income of current year Accordingly, assessee declared same in return filed for relevant assessment year Assessing Officer passed assessment order accepting returned income - Principal Commissioner invoked revisionary jurisdiction on ground that manner of earning said excess stock was not explained and thus, same was required to be taxed as per provisions of section 69 read with section 115BBE,

however, Assessing Officer had taxed such additional income as regular income of assessee Whether once assessee had explained causes of excess stock and causes of discrepancy in stock, assessee was not required to explain 'source' Held, yes Whether since excess stock and discrepancy in stock were related to assessee's business, such stock pertained to assessee's business Held, yes Whether, thus, no addition under section 115BBE, at higher rate of taxation was to be imposed on assessee Held, yes [Para 15] [In favour of assessee)

Further, the Ld. Raipur Tribunal Bench in the case of Uttam Kumar Agrawal vs. Asst. Commissioner of Income Tax reported at [2024] 163 taxmann.com 579 (Raipur-Trib.) has held as under:

Where AO on finding discrepancy between physical stock and recorded stock of assessee, made addition under sections 69A and 698 in respect of unaccounted stock since, excess stock was part of assessee's business, of unexplained through reconciliation with books of accounts, and supported by supplier bills, consequently, additions under sections 69A and 69B was to be deleted.

Further, the Ld. Tribunal Bench of Amritsar in the case of Bunty Kumar vs. ACIT, Central Circle, Jammu in ITA No. 215/Asr/2023 has held in para 7, 8 & 9 of its order as under:

7. Heard the rival contention, perused the material on record, the impugned order and case laws cited before us. Admittedly, the CIT appeal has restricted the addition made on account of excess stock found during survey of at Rs. 18,85,319/ as against Rs. 40 lacs, surrendered by the assessee but taxed u/s 698 r.w.s. 115BBE of the Act. The Id. counsel contended that the excess stock found during the survey was business income out of business carried out by the assessee but not declared in the books of account. Since, the excess stock found during the survey primarily pertains to the business carried out by the assessee, and secondly surrendered as business income during survey as accepted by the AO and hence, the excess stock would only be treated as income under the head business income and not as deemed income. In our view, the Id. CIT(A) was wrong in confirming the action of the AO regarding the applicability of the provisions of section 115BBE in case of the excess stock which was not separate or part of another lot of stock Accordingly, the value of article/stock of the impugned

investment was being fully disclosed in the books of account, being regularized by way of surrender of business income as accepted by the AO, would certainly not fall in the mischief of section 698 of the Act.

8. Respectfully following Hon'ble Apex Court judgment in the case of M/s D. N. Singh v. CIT, Central (Supra) we hold that in the given facts of the present case, the excess stock would not fall in the mischief of section 698 of the Act. Accordingly, the impugned order of Id. CIT(A) is held to be infirm and perverse and as such, the addition is deleted.

9. In the result, the appeal filed by the assessee is allowed.

Further, the Ld. Tribunal Bench in the case of Sharp Chucks & Machines Pvt. Ltd. vs. DCIT Central Circle-1, Jalandhar in ITA No. 169Asr/2023 has held in para 7, 8 & 9 of its order as under:

7. From the record, it is evident that the expenditure incurred for creating a business asset must have been generated through the business carried out by the assessee and that expenditure laid out for the purpose of business is to be allowed deduction either as expenditure or to be capitalized on which depreciation will be allowed. In the present case, to the extent of the expenditure incurred for construction of the building, out of unexplained source is concerned, it is to be construed as income earned from the business and it will take character of the business income. The case law relied upon by the Ld. CIT(A) is distinguishable on the facts as in that case the amount surrendered during survey was not reflected in the books of account and the source from where it was derived was not declared/explained whereas in the present case the amount surrendered during survey was duly reflected in the books of account and the source it was declared/explained as business activity with due payment of Tax liability and the authorities below failed to prove the contrary to disprove source of income other than Business income.

8. Respectfully following the order of the Co-ordinate Bench, Chandigarh in the e of M/S ARORA ALLOYS LTD VS DCIT (Supra), we direct the Assessing er to treat surrendered income to the extent of expenditure on building at Rs.9,50,000/-laks as business income.

9. *In the backdrop of the aforesaid discussion, the appeal of the assessed is disposed of in the terms as above.*

Therefore, in facts & circumstances of the case, the arguments of the AR are found to be acceptable that the income surrendered by the appellant on account of stock difference during the survey was 'business income' of the appellant and must be taxed at normal rate of taxes applicable in the case of the appellant. Firstly, it is a case where the surrender was made on the basis of business-related inventory only. Secondly, in the surrender letter, the appellant has offered the excess stock under the head 'business income'. Thirdly, the appellant in his return of income filed, maintained the same instance. Fourthly, neither the survey team nor the AO has brought any other material on record to show that there was some other business activity or the stock was unrelated to the business of the assessee. Thus, it would lead to a logical conclusion that investment in excess stock was on account of business of the assessee only. Hence the action of AO in charging tax at the rate prescribed u/s 115BBE in this case on the surrendered income of Rs. 3,89,00,000/-, in respect of stock, is not found sustainable. The tax shall be charged on the surrendered income at the normal rates. Accordingly, this ground of appeal is allowed."

14. Before us, Ld. CIT DR for the Revenue has failed to controvert the findings of Ld. CIT(A) which are based on the various judicial pronouncements of Hon'ble Madhya Pradesh High Court and the Coordinate Benches of Raipur, Chandigarh, Rajkot, Amritsar.

15. In the light of the above discussion, we find no error in the order of Ld. CIT(A) who after considering the facts and further observing that neither during the survey nor during the assessment proceedings, the AO has brought on record any other source of income from which stock so found excess was earned and not from the not regular business activity as declared by the assessee.

16. Under these circumstances, we uphold the order of Ld. CIT(A) in this regard. Accordingly, Grounds of appeal Nos. 3 & 4 raised by the Revenue are dismissed.

17. In the result, appeal of the Revenue is partly allowed.

Order pronounced in the open Court on 08.04.2026.

Sd/-

(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Date:-08.04.2026
Amit Kumar, Sr.P.S

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