

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER

आयकर अपीलसं./ITA No.: **1086/CHNY/2022**

निर्धारण वर्ष/Assessment Year: 2019-20

Ethiraj Hotel Mart,
25/22, Evening Bazaar,
Park Town,
Chennai – 600 003.

The DCIT,
vs. Central Circle 3(4),
Chennai.

PAN: AAEFE 3406A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Hema Murali Krishnan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 20.12.2023

घोषणा की तारीख/Date of Pronouncement

: 29.12.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-18, Chennai in ITA No.420/2021-22/CIT(A)-18 dated 29.11.2022. The assessment order was framed by the Deputy Commissioner of Income Tax, Central Circle-3(4), Chennai for the assessment year 2019-20 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 30.09.2021.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of unexplained investment in stock being difference in valuation of stock found during the course of survey conducted u/s.133A of the Act and added u/s.69B of the Act and also applied higher rate of tax by invoking the provisions of section 115BBE of the Act. For this, assessee has raised various grounds which are argumentative, exhaustive and hence, need not be reproduced.

3. Briefly stated facts are that the assessee is engaged in the business of wholesale trading of stainless steel items, crockery, aluminium and electric items. A survey u/s.133A of the Act was carried out on the business premises of the assessee on 06.02.2019. The AO completed assessment u/s.143(3) of the Act, vide order dated 30.09.2021 by noting that physical stock available at the business premises of the assessee was inventoried during the course of survey and when it was compared with the stock with the books of accounts, the survey party found excess stock valued at Rs.1,04,00,600/-. When this was pointed out to assessee, a sum of Rs.1,04,00,600/- was offered for taxation. The assessee submitted that excess stock has been offered as 'business income' and hence it does not warrant addition u/s.69B of the Act. The AO relying on the

decision of Hon'ble High Court of Madras in the case of M/s.SVS Oils Mills vs. ACIT in ITA No.765 of 2018, simpliciter without discussing any of the facts held that excess stock amounting to Rs.1,04,00,600/- is to be treated as unexplained investment u/s.69B of the Act and subjected to tax as per the provisions of section 115BBE of the Act. Accordingly, he charged the income offered during survey as unexplained investment u/s.69B of the Act and assessed to tax u/s.115BBE of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) after considering the submissions of the assessee upheld the action of the AO by noting that the investment in excess stock found to be assessed as 'unaccounted investment' and not as 'business income' by relying on the decision of Hon'ble High Court of Madras in the case of M/s.SVS Oils Mills, *supra*. The CIT(A) decided the issue vide para 7.7 & 7.9 as under:-

7.7 It is clear from the above that the excess stock is unaccounted and the assessee has not furnished any satisfactory explanation as to how the source for the investment in excess stock emerged from its business or other known sources. Thus, the twin conditions in section 69B are satisfied. Hence, the excess stock is assessable u/s 69B. Thus the claim of the assessee in the grounds that the AO had ulterior motive to assess it u/s 69B is fatally wrong

7.9 Similar issue had come up for consideration before the jurisdictional Madras High court in the case of Ms. SVS Oils Mills Vs. The Assistant

Commissioner of Income Tax in ITA No. 765 of 2018 wherein it was clearly held that the investment in excess stock found should be assessed as unaccounted investment and not as business income. Assessee tried to distinguish the facts in futile by stating that the case law is on deductions allowable from excess stock, whereas the AO has reproduced the operating part of the case law in her order, from which it could be seen that no such differentiation is possible. It is well settled principle of law that if there is conflicting views rendered by different High Courts, the view taken by the jurisdictional High Court is binding in the jurisdictional area of the respective High Court. The Honble Bombay High Court in the case of Subramaniam -vs.- Siemens India Ltd. (1985) 156 ITR 11 (Bom.) held that so far as the legal position is concerned, the ITO would be bound by a decision of the Supreme Court as also by a decision of the High Court of the State within whose jurisdiction he is functioning, irrespective of the pendency of any appeal or special leave application against the judgment, he would equally be bound by a decision of another High Court on the point, because not to follow that decision would be to cause grave prejudice to the assessee. However, in the case where there is conflict of views between different High Courts, ITO must follow the decision of the High Court within whose jurisdiction he is functioning. In view of the above settled law, I am bound to follow the jurisdictional Madras High Court in the case of SVS Oil Mills relied on by the AO and have no other alternative except to confirm the order of the AO assessing the unexplained excess stock as unexplained investment u/s 69B of the Act. Even during the appeal proceeding, the assessee except stating that the AO was wrong in treating the impugned amount as unexplained investment in excess stock, no corroborative evidence was furnished. I therefore sustain the assessment of excess stock found during survey u/s 69B and taxed under the rates u/s 115BBE and dismiss the grounds raised.

Aggrieved, now assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee is a dealer in stainless steel items, brass and plastic items and deals nearly in 2000 items. A survey was conducted in the business

premises of the assessee on 06.02.2019 and statement was recorded by the Department. The assessee contested the Department's stand that on the date of survey, the Department has taken inventory of physical stock and said inventory of stock is noted in Annexure - 2/EHM. The Department has not provided information either at the assessment stage or appellate stage or even under Right to Information Act. The Id.counsel explained the modues operandi of the business that small items like tea spoons, table spoons, kinnams or katoris are purchased in either units of dozens or weight, but sold in unit of pieces. The Id.counsel stated that the very basis of physical inventory of stock is absurd and how the Department has valued these items. The Id.counsel also stated that now assessee has been provided the stock inventory prepared by the Department i.e., the physical stock inventory vide Annexure-1/EHM/3, which contains a loose sheet titled 'stock-in-hand' and containing a figure of Rs.88,95,175/- is said to be the value of closing stock of the assessee as on 07.02.2019 and this fact is noted by Revenue while recording statement of one of the partner of the assessee vide question No.8. The assessee computed its value of closing stock as on the date of survey i.e., 06.02.2019 and the relevant valuation reads as under:-

Opening Stock	89,32,200.00
Purchases (01.04.2018 – 06.02.2019)	11,95,49,972.00
Direct Expenses (01.4.2018-06.02.2019)	6,91,885.00
GP 9%	1,07,33,678.28
Total	13,99,07,835.28
Sales (01.04.2018-06.02.2019)	11,92,63,092.00
Closing Stock as on 06.02.2019	2,06,44,743.28
Alleged stock at the time of survey	1,92,95,775.00
Excess Stock	(13,48,968.28)

The assessee has taken GP at 9% as the average GP of previous three assessment years and thereafter computed the excess stock at Rs.13,48,968/-. The Id.counsel now stated that as per books of accounts, stock as on 06.02.2019 is Rs.2,06,44,743/- and therefore, even assuming without conceding the physical stock inventory had been properly taken on 07.02.2019, still the stock difference is only a deficit stock and not excess stock as alleged by the Revenue. The Id.counsel stated that there is deficit stock and not excess stock. Even assuming without conceding, the Id.counsel stated that the allegation of excess stock at the time of survey is taken to be correct, still the treatment of the same cannot be taxed under unexplained investment u/s.69B of the Act and levy tax u/s.115BBE of the Act, for the reason that stock accumulated over the years and that too, it is also not clear that which item of stock is found by the Department. The Id.counsel for the assessee also relied on the decision of ITAT, Chennai in the case of Overseas

Leather vs. DCIT in ITA No.962/CHNY/2022, order dated 05.04.2023 wherein it is held that additional income admitted towards excess stock found during the course of survey has been explained as the same is emanating from the stock of earlier years and which has not been disproved by the Revenue. When the assessee has explained that the source was from the business and except stock difference, no other investment with any other asset was found and particularly, this unexplained investment is surrendered as 'business income', in the absence of any other finding, the same has to be assessed as 'business income' and not under the head 'unexplained investment' u/s.69B of the Act. The Tribunal in para 12 has recorded the finding as under:-

12. During the course of survey, excess stock of leather and allied products has been found and such excess stock was noticed when physical inventory of stock in trade of the assessee was taken up. Further, said stock is mixed with regular stock in trade of the assessee. The assessee has explained before the Assessing Officer that it could not immediately reconcile difference in stock and thus, to buy peace from Department, additional income has been offered under the head income from business, equivalent to the amount of excess stock found during the course of survey. The explanation offered by the assessee either during the course of survey or during the assessment proceedings is not negated with any other evidences to disprove the claim of the assessee that source for acquisition of stock in trade is other than business income of the assessee. Moreover, the assessee derives only one source of income from manufacturing and trading in leather and allied products, which is evident from income declared for the impugned assessment year and earlier assessment years. Further, when the assessee has explained source for excess stock found during the course of survey, is out of income earned from current year business, the AO did not go further to disprove the claim of the assessee that said source is not from

income from business. Moreover, it is a general practice in trade that income generated is either ploughed back into the business in the form of stock in trade or receivables or spent for other purpose like acquisition of asset outside the business. In this case, during the course of survey except stock difference, no other investment with any other asset was found. Therefore, from the above it is very clear that explanation offered by the assessee that source for excess stock is out of income generated from business activity of the current year appears to be plausible explanation. Therefore, we are of the considered view that when the assessee has explained the source for acquisition of stock out of business income, the AO ought to have accepted the explanation of the assessee and assessed the income under the head profits and gains of business or profession, but not under the head unexplained investment u/s. 69B of the Act. This is because, excess stock found during the course of survey does not have any independent identity as the asset is a mixed part of overall stock found in the business premises of the assessee, which in our considered view represents business income.

6. When these facts were confronted to Id.Senior DR, he only relied on the assessment order and that of the CIT(A).

7. In the given facts and circumstances of the case, we noted that the assessee has declared additional income towards excess stock found during the course of survey and assessee has explained the source for excess stock found during the course of survey i.e., that it was out of income earned from current year business or earlier years business and surrendered the amount, the AO has not done anything to dispute the claim of assessee that the source was not from the business income. Hence, the AO cannot apply the provisions of section 115BBE of the Act. The assessee also admitted

the difference of Rs.1,04,00,600/- as income, which is not disputed but has to be taxed as 'normal business income' and not as 'unexplained investment' u/s.69B of the Act. Accordingly, we allow the grounds of appeal of assessee and reverse the orders of CIT(A) and that of the AO on this. The appeal of the assessee is allowed.

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

Order pronounced in the open court on 29th December, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA.G)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 29th December, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. | |