

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
HEARING THROUGH: PHYSICAL MODE

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. SANJAY GARG, JM & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 732/Chd/ 2022
निर्धारण वर्ष / Assessment Year : 2018-19

M/s A P Knit Fab Bawa Colony, Bahadur Ke Road, Ludhiana	बनाम	The DCIT Central Circle-3 Ludhiana
स्थायी लेखा सं./PAN NO: AAUFA3235B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 19/12/2023
उद्घोषणा की तारीख/Date of Pronouncement : 15/02/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-5, Ludhiana dt. 02/12/2022 pertaining to Assessment Year 2018-19.

2. In the present appeal, the assessee has raised the following grounds:

1. "That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer in taxing the amount of Rs. 1,00,24,282/- u/s 69 read with section 115BBE of the Income Tax Act, 1961.
2. That the Ld. CIT (A) has failed to appreciate the various judgments of the Jurisdictional Bench of the ITAT, Chandigarh Bench in many cases, where the amount offered during survey under similar circumstances have been taxed at the normal rate of tax.
3. That the various submissions and arguments/case laws as quoted before the Ld. CIT(A) have not been appreciated.
4. That the Ld. CIT(A) has failed to appreciate that during the course of survey, no other income was noticed by the department and, as such, taxing the amount offered as deemed income, is against the facts and circumstances of the case.
5. That the Ld. CIT(A) has also failed to appreciate that at the time of survey, it was agreed that the applicant shall pay the taxes on the amount offered

during survey at the normal rate of taxes, for which, the payment of advance tax was made within the stipulated time.

6. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."

3. Briefly the facts of the case are that during the financial year relevant to impugned assessment year, the assessee was engaged in the business of manufacturing and selling of Knitted Cloths, hosiery garments and dyed yarn under the name and style of M/s A.P. Knit Fab, Ludhiana. A survey action under Section 133A was carried out at the business premises of the assessee on 26/10/2017 wherein the assessee had surrendered a sum of Rs. 1,00,24,282/- on account of excess stock. Subsequently, the assessee filed its return of income on 21/09/2018 declaring total income of Rs. 92,36,240/- which includes the surrendered income which was offered to tax under the head "business income".

3.1 During the course of assessment proceedings, the AO observed that during the course of survey, physical stock valued at Rs. 3,34,55,282/- was found and as per Trial Balance as on the date of survey, the assessee has shown stock in its books of account at Rs. 2,34,31,000/- and therefore there was excess stock of Rs. 1,00,24,282/- which the assessee has surrendered as business income in its P&L Account.

3.2 As per the AO, the unexplained investment in excess stock falls under the provisions of Section 69B and accordingly the assessee was issued a show cause as to why the unexplained investment in excess stock should not be taxed as per the provisions of Section 115BBE of the Act. In response, the assessee submitted that it is a partnership firm consisting of three partners who were doing manufacturing and resale of hosiery goods, readymade garments, knitted cloths, yarn etc under the name and style of M/s A P Knit Fab Ltd. Ludhiana and the business has been carried on since the time the partnership firm came into existence by virtue of partnership deed dt. 29/10/2011.

3.3 It was submitted that the partners have no other source of income except the above referred business. One of the partner, Shri Anil Kumar Jain who is also a proprietor of A P Hosiery also deals in the manufacturing and trading of hosiery garments for last more than two decades and there is no other source of income except above referred business. It was further submitted that the tax authorities have accepted the income as business income after a long discussion and accepted the surrender amount of Rs. 1,00,00,000/- which has been duly offered to tax.

3.4 The submissions so filed by the assessee were considered but not found acceptable to the AO. As per AO, excess stock was found not recorded in books of accounts of the assessee on the date of survey and the assessee had not explained the nature & source of investment in such stock either during the course of survey or post survey or during the assessment proceedings. The condition of proving the source of such investment in stock is the primary condition for applicability of provisions of Section 69B of the Income Tax Act which the assessee has not fulfilled and thus such income cannot be considered as income from business and profession as claimed by the assessee. Section 69B creates a fiction to deem certain unrecorded investments as income of the assessee for the financial year. Hence, even if the assessee offers the same as income in the return of income, it does not take away such income out of category of deemed incomes u/s 69B for the financial year in which it was found. The offer to surrender had been made by the assessee only after a Survey u/s 133A was conducted at the premises of the assessee and detailed physical verification of the stock in possession of the assessee was made.

3.5 It was held by the AO that even in the surrender letter, the assessee has specifically admitted that it was unable to explain the difference of Rs 1,00,24,282 on account of excess stock found which shows that the investment was out of unexplained sources. The surrender was made by the assessee

without any coercion or pressure and the assessee has not retracted from the findings of the survey and the surrender made in consequence to it. Further, the assessee was provided multiple opportunities to provide the sources of investment in stock and link the sources of investments with the receipts in his books of accounts. But the assessee has failed to do so. By not offering detailed explanation, the assessee has not disclosed his channel through which such unexplained stock had reached the assessee's business premises and the details of the persons who had made such sales to the assessee. The stock and the capital for investment in such stock cannot come from vacuum and there ought to be some source. But, the assessee had submitted in the reply that such income was business income as the partners of the firm have no other sources of income other than the business but it did not submit any material evidences that the investment in stock was out of the unaccounted sales made by the business or the capital was introduced from some hidden source of the partners or the firm which the assessee do not want to disclose. Thus the sources of such investment in excess stock remain unexplained. Moreover, the offering of such income without any supporting evidences to the nature and sources of the income which was not recorded in the books of accounts of the assessee, itself tantamount to having accepted that the sources are unexplained and thus such investment in excess stock of Rs 1,00,24,282/- was considered as unexplained investment of the assessee firm u/s 69B of the Income Tax Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the said findings of the AO.

5. Against the said findings and the direction of the Ld. CIT(A), the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that during the course of survey action at the business premises of the assessee on 26/11/2017, certain discrepancies were found on account of physical verification of stock vis-a-vis

regular books of account and there was a difference of Rs. 100,24,282/- and in order to buy peace of mind, the assessee surrendered an amount of Rs. 1,00,00,000/- on account of excess stock over and above its normal business income.

6.1 It was submitted that during the course of survey action as well as during the course of assessment proceedings, no other source of income has been identified and all the income which accrues to assessee is on account of its regular business of manufacturing and selling of Knitted cloths, hosiery garments and sale of dyed yarns which the assessee has been carrying on for last so many years. It was accordingly submitted that the excess stock of Rs. 1,00,24,282/- pertains only to the regular business of the assessee and be therefore be assessed under the head "business income".

6.2 It was further submitted that the excess stock so found was the only stock in which the assessee was regularly dealing and the department has itself compared the said stock with the stock as per books of account which ample makes it clear the department itself accepted that the stock pertains to the regular books of the assessee. It was submitted that after the surrender, the assessee has recorded the said stock in its books of account maintained for the regular business.

6.3 It was further submitted that at the relevant point in time when the survey action was carried on the assessee, similar survey action was carried out in case of partner of the assessee firm, Shri Anil Kumar Jain wherein he also surrendered excess sock and which has been accepted by the AO as business income while passing the assessment order for A.Y. 2018-19. It was accordingly submitted that where the stock itself pertains to the regular business of the assessee and has been acquired by the assessee out of its regular business income and there is no adverse findings with respect to any other source of income, the provision of Section 69 r.w.s 115BBE of the Act cannot be invoked in the instant case.

6.4. In support of his contentions, reliance was placed on the Coordinate Benches decision in case of M/s Sham Jewellers in ITA No. 375/Chd/2022, M/s Sham Fashion mall in ITA No. 315/Chd/2022, M/s Khurana Rolling Mills Pvt. Ltd. in ITA No. 745/Chd/2016, M/s DDK Spinning Mills in ITA No. 19/Chd/2023, Shri Ravinder Kumar Bansal in ITA No. 319/Chd/2023, M/s Montu Shallu Knitwears in ITA No. 21/Chd/2023, Durga Dass Surender Kumar in ITA No. 397/Chd/2022.

6.5 It was further submitted that in the order so passed by the Id CIT(A) dated 04.01.2023, the Id CIT(A) has placed reliance on the judgments in the cases of Fakir Mohamad Haji Hasan v CIT 247 IT 290 (Guj), Kim Pharma Pvt. Ltd. v CIT 216 Taxman 153 (P&H), Famina Knit Fab v ACIT 176 ITD 246 (Chandigarh Trib.), Pr. CIT v. Khushi Ram & Sons Foods (P) Ltd. In this regard, it was submitted that the said judgments are duly discussed in the judgment of the Hon'ble Chandigarh Bench of ITAT in the case of M/s Khurana Rolling Mills Pvt. Ltd. (ITA No. 745/CHD/2016) as well as in the case of judgment of the Hon'ble Chandigarh Bench of ITAT in the case of M/s. Bindas Foods Pvt. Ltd. in ITA No. 409/CHD/2021.

7. Per contra, the Ld. DR submitted that for the unaccounted stock found during the survey proceedings, there can be no presumption to treat the value representing such excess stock as application of business income in absence of any evidence of earning that income or details as to when, how and from whom such income was derived which has been invested in stock. It was submitted that the assessee has not been able to establish nexus between the excess stock and normal business income. Further no documentary evidence has been submitted to justify the additional income of Rs. 1,00,24,282/- as business income. It was accordingly submitted that the action of the AO in applying the rate as prescribed u/s 115BBE of the Act on the surrendered income included in the tax return and which has been treated by the AO as income under section 69B of the Act is justified and the Ld. CIT(A) has rightly affirmed the order of the AO in treating the surrender on account of

unaccounted stock found during the course of survey as deemed income under section 69B of the Act and which has been brought to tax as per the provisions of Section 115BBE of the Act. It was accordingly submitted that the order so passed by the Ld. CIT(A) be confirmed and the appeal so filed by the Assessee be dismissed.

8. We have heard the rival contentions and perused the material available on record. The AO has invoked the deeming provisions of section 69B and brought to tax excess stock found during the course of survey which is under challenge before us. It is a settled legal proposition that there is difference between the undisclosed income and unexplained income and the deeming provisions are attracted in respect of undisclosed income however, the condition before invoking the same is that the assessee has either failed to explain the nature and source of such income or the AO doesn't get satisfied with the explanation so offered by him.

8.1 In particular, for the deeming provisions of Section 69B to be attracted in the instant case, there has to be a finding that the assessee has made investments in the stock during the financial year and such investments are not fully recorded in the books of accounts so maintained by the assessee, and the assessee offers no explanation about the nature and source of the investments or the explanation so offered is not found satisfactory in the opinion of the AO, the latter can proceed and the value of the investment may be deemed as income of the assessee for such financial year. Therefore, the explanation so offered by the assessee explaining the nature and source of such undisclosed income and the reasonability of the explanation so offered by the assessee needs to be analysed and examined to draw necessary conclusions in this regard and discretion so vested in the AO for invocation of the deeming fiction so envisaged in the statute can be exercised.

8.2 For the purposes, we refer to the statement so recorded of the one of the partners of the assessee firm during the course of survey on 26/10/2017. In

Question no. 18, it was stated that during the course of survey proceedings u/s 133A, physical verification of stock lying in the business premises was done and after physical verification, it comes to Rs 3,34,55,282/- whereas as per profit/loss account, the stock is Rs 2,34,31,000/- so there is a difference of Rs 1,00,24,282/- in the stock and the assessee was asked about the difference in stock found and recorded in the books of accounts. In response, the assessee submitted that he was unable to explain the difference of Rs 1,00,24,282/- and to buy peace of mind, he surrendered a sum of Rs 1,00,00,000/- on account of excess stock found on physical verification. We find that the stock physically found has been valued and then, compared with the value of stock so recorded in the books of accounts and the difference in the value of the stock so found belonging to the assessee firm has been offered to tax. There is thus no dispute that there is a commonality in the stock so found and as recorded in the books and in absence of which, the comparison would not have been possible and difference would not have been worked out. The Revenue has not pointed out that the excess stock has any nexus with any other receipts other than the business being carried on by the assessee. There is thus a clear nexus of stock physically so found with the stock in which the assessee regularly deals in and recorded in the books of accounts and thus with the business of the assessee and the difference in value of the stock so found is clearly in nature of business income. The statement of the partner of the assessee firm is available on record and related documents so found during the course of survey are stated to be in possession of the Revenue authorities. Apparently, the AO has failed to appreciate the statement of the assessee recorded during the course of survey and other documents and findings of the survey team which are very much part of the records. Further, in the surrender letter dated 27/10/2017, the assessee through its partner has stated that during the course of survey operations, certain discrepancy out of excess stock of Rs 1,00,24,282 has been found and to purchase piece of mind and to avoid litigation, the additional income of Rs

1,00,00,000/- is voluntarily surrendered on account of excess stock found out of their normal business income for the current financial year 2018-19 over and above normal business income. We therefore find that the nature and source of such unaccounted stock is nothing but arising out of assessee's business operations. No doubt, these transactions were not recorded at the time of survey thus qualify as unrecorded transactions satisfying one of the essential conditions, at the same time, the assessee has provided the necessary explanation about the nature and source of such unrecorded transactions and the necessary nexus with assessee's business has been established, thus, it cannot be said that these are unexplained transactions thus, doesn't satisfy the second condition for invoking the deeming provisions of section 69B of the Act.

8.3 In case of **Chokshi Hiralal Maganlal vs. DCIT, 131 TTJ (Ahd.) 1**, briefly the facts of the case before the Coordinate Ahmedabad Benches were that during the course of survey under section 133A which was carried out at the premises of the assessee, excess stock of gold and silver ornaments were found and in the return of income subsequently filed by the assessee, he had included the value of excess stock as part of closing stock inventory. However the AO observed that the said disclosure was not consistent with the provisions of Section 69B of the Act and same was accordingly brought to tax under section 69B. The Ld. CIT(A) confirmed the order of the AO and thereafter on further appeal, the Coordinate Ahmedabad Bench held that the excess stock found during the survey is not separately and clearly identifiable but is part of mix lot of stock found at the premises which included declared stock as per books and also the excess stock as computed by the Survey Officers and therefore the provisions of Section 69B cannot be made applicable as primary condition for invoking the said provision is that the asset should be separately identifiable and it should have independent physical existence of its own and since excess stock as a result of suppression of profit from business over the years and has not kept identifiable separately but as part of overall physical stock found, the investment

in the excess stock has to be treated as business income and thereafter has referred to the decision of the Tribunal in case of **Fashion Fashion World Vs. ACIT** (IT Appeal No. 1634(Ahd.) of 2006, dt. 12/02/2010) wherein the Tribunal had observed as under:

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

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

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

first attempt of the assessing authority should be to find out link of 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."

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.

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

8.5 Following the said decision of the Coordinate Ahmedabad Bench, the Jaipur Bench in case of **DCIT Vs. Shri Ram Narayan Birla (ITA No. 482/JP/2015 dt. 30/09/2016)** has taken a similar view holding that the excess stock so found

during the course of survey was part of the stock and the Revenue has not pointed out the excess stock has any nexus with any other receipts other than the business being carried on by the assessee. The relevant findings are contained at para 4.3 which read as under:

"4.3. We have heard rival contentions and perused the material available on record. Undisputed facts emerged from the record that at the time of survey excess stock was found. It is also not disputed that the assessee is engaged in the business of jewellery. During the course of survey excess stock valuing Rs. 77,66,887/- was found in respect of gold and silver jewellery. The Coordinate Bench in the case of Chokshi Hiralal Maganlal 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. HajiHasan (supra) where investment in an asset or expenditure is not identifiable and no nexus was established then with any head of income and thus was not available for set off against any loss under any other head. Therefore, the Hon'ble Coordinate Bench held that where asset in which undeclared independent identity but is integral and inseparable (mixed) part of declared asset, falling under a particular head, then the difference should be treated as undeclared business income explaining the investment. In the present case the excess stock was part of the stock. The revenue has not pointed out that the excess stock has any nexus with any other receipts. Therefore, we do not find any fault with the decision of the Id. CIT (A) directing the AO to treat the surrendered amount as excess stock qua the excess stock found."

8.6 Thereafter, the Coordinate Jaipur Benches in case of **Bajargan Traders Vs. ACIT (in ITA No. 137/JP/2017 dt. 17/03/2017)** has similarly held as under:

"2.10. We have heard the rival contentions and perused the material available on record. During the course of survey, the assessee has surrendered an amount of Rs. 70,04,814/- towards investment in stock of rice which had not been recorded in the books of accounts. Subsequently, in the books of accounts, the assessee has incorporated

this transaction by debiting the purchase account and crediting the income from undisclosed sources. In the annual accounts, the purchases of Rs. 70,04,814/- were finally reflected as part of total purchases amounting to Rs. 33,47,19,658/- in the profit and loss account and the same also found included as part of the closing stock amount to Rs. 1,94,42,569/- in the profit/loss account since the said stock of rice was not sold out. In addition to the purchase and the closing stock, the amount of RS. 70,04,814/- also found credited in the profit and loss account as income from undisclosed sources. The net effect of this double entry accounting treatment is that firstly the unrecorded stock of rice has been brought on the books and now forms part of the recorded stock which can be subsequently sold out and the profit/loss therefrom would be subject to tax as any other normal business transaction. Secondly, the unrecorded investment which has gone in purchase of such unrecorded stock of rice has been recorded in the books of accounts and offered to tax by crediting the said amount in the profit and loss account. Had this investment been made out of known source, there was no necessity for assessee to credit the profit/loss account and offer the same to tax. Accordingly, we do not see any infirmity in assessee's bringing such transaction in its books of accounts and the accounting treatment thereof so as to regularise its books of accounts. In fact, the same provides a credible base for Revenue to bring to tax subsequent profit/loss on sale of such stock of rice in future.

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

8.7 The said decision of Coordinate Jaipur Benches has since been confirmed by the Hon'ble Rajasthan High Court in case of **PCIT vs Bajargan Traders (DB Appeal No. 258/2017 dt. 12/09/2017)**.

8.8 Similarly, the Coordinate Chandigarh Benches in case of **Gaurish Steels Pvt. Ltd. Vs ACIT 43 ITR (Trib) 414** has held as under:

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

(i)	Discrepancy on account of cash found	Rs. 9 lacs
(ii)	Discrepancy on cost of construction of building	Rs. 21 lacs
(iii)	Discrepancy in stock	Rs. 10 lacs
(iv)	Discrepancy in advances and receivable	Rs. 30 lacs

11. These facts have not been disputed by any one at any stage. The only issue to be considered by us is whether the income of Rs.70 lacs surrendered is to be taxable as business income or income from other sources or as deemed income under [sections 69A, 69B and 69C](#) of the Act as held by the Assessing Officer. A number of judicial pronouncements have been cited during the course of hearing, however, we have to bow down to the proposition laid down by the Jurisdictional Punjab & Haryana High Court in the case of M/s Kim Pharma Pvt. Ltd.(supra) since this is the only judgment of the Jurisdictional High Court which were brought to our notice.

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

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

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

8.9 Similarly, the Coordinate Chandigarh Bench in case of **Famina Knit Fabs Vs. ACIT reported in (2019) 176 ITD 246 (Chd-Trib)** has held as under:

"19. In the facts of the case in ITA No.408/Chd/2018, the income surrendered was on account of unaccounted receivables of the business of the assessee amounting to Rs.1.25 crores. The Ld.CIT(A) in para 9 of the order has outlined the facts relating to the surrender made by the assessee stating that during survey a pocket diary was found from the account section of the assessee company which contained entry of receivables amounting to Rs.1.25 crores on pages 27, 28, 31 and 33, which were not recorded in the regular books of the assessee and were subsequently surrendered stating that these entries were unaccounted sundry receivables being surrendered as income under the head business, to buy piece of mind and subjected to no penalty and further that the losses incurred by the assessee in the impugned year will be adjusted against this surrendered income. The relevant facts as stated by the CIT(A) in para 9 of his order and which are not disputed, are reproduced hereunder:

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

20. Clearly, it is evident from the above that the surrender was on account of debtors/receivables relating to the business of the assessee only. The Revenue has accepted the surrender as such, as being on account of receivables. It follows that the debtors were generated from the sales made by the assessee during the course of carrying on the business of the assessee, which was not recorded in the books of the assessee. Though the said income was not recorded in the books of the assessee but the source of the same stood duly explained by the assessee as being from the business of the assessee. Even otherwise no other source of income of the assessee is there on record either disclosed by the assessee or unearthed by the Revenue. The preponderance of probability therefore is that the debtors were sourced from the business of the assessee. Therefore, there is no question of treating it as deemed income from undisclosed sources u/s 69, 69A, 69B and 69C of the Act and the same is held to be in the nature of Business Income of the assessee. Having held so, the same was assessable under the head 'business and profession' and as stated above, the benefit of set off of losses both current and brought forward was allowable to the assessee in accordance with law.

21. The contention of the Revenue therefore that the income be treated as deemed income u/s 69,69A/B/C of the Act is accordingly rejected and

as a consequence thereto the plea that no set off of losses be allowed against the same u/s 115BBE of the Act also is rejected.

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

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

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

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

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

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

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

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

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

8.10 In the instant case as well, the surrender on account of excess stock, being the regular stock in which assessee deals in and thus related to the business being carried on by the assessee.

8.11 Similarly, the Coordinate Chandigarh Bench in case of **M/s Sham Jewellers Vs. The DCIT (Supra)** has held as under:

“10.17 Ground Nos. 8 & 9 challenge the action of the lower authorities in applying the provisions of section 115BBE and thereby charging tax at the rate of 60%. The main thrust of the arguments of the Ld. AR has been that all the additions made or sustained relate only to the business income of the assessee and that nowhere in the assessment order has it been alleged that some other source of income had been detected which gave rise to additional income. It is seen that during the course of assessment proceedings, the various explanations submitted by the assessee have duly mentioned that the surrendered income was derived from the business. A perusal of the assessment order would also show that nowhere in the body of the assessment order, the AO has even contradicted this explanation of the assessee. The AO has not brought on record any iota of evidence to demonstrate that the assessee had any other source of income except income from business and, therefore, it is our considered view that deeming such income under the provisions of sections 68 or 69 would not hold good. In our view, in such a situation, the AO could not have legally and validly resorted to taxing the income of the assessee at the rate of 60% in terms of provisions of section 115BBE of the Act.

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

10.19 The ITAT Chandigarh Bench in the case of Famina Knit Fabs Vs. ACIT reported in (2019) 176 ITD 246 (Chd-Trib) has held that, wherein during the course of survey, a surrender was made by the assessee on account of debtors / receivables which was based on a diary found during the course of survey and the Revenue had accepted that the surrender was on account of receivables, it followed that the debtors were generated from the sales made by the assessee during the course of carrying on the business of the assessee which was not recorded in the books of the assessee. The Coordinate Bench of the ITAT went on to further hold that though the said income was not recorded in the books of the assessee but the source of the same stood duly explained by the assessee as being from the business of the assessee and even otherwise no other source of income of the assessee was on record either disclosed by the assessee or unearthed by the Revenue. The Bench further held that the preponderance of probability, therefore, is that the debtors were sourced

from the business of the assessee. Therefore, there was no question of treating it as deemed income from undisclosed sources u/s 69, 69A, 69B, or 69C of the Act and the same was held to be in the nature of business income of the assessee.

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

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

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

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

8.12. In the instant case as well, there is no physical distinction between the accounted stock and unaccounted stock. No such physical distinction was found by the Revenue either. We therefore find that the difference in stock so found out by the authorities has no independent identity and is in terms of value terms only and thus part and parcel of entire stock, therefore, it cannot be said

that there is an undisclosed asset which existed independently and thus, what is not declared to the department is receipt from business and not any investment as it cannot be co-related with any specific asset and the difference should thus be treated as business income.

8.13. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the income so surrendered on account of investment in excess stock during the course of survey cannot be brought to tax under the deeming provisions of section 69B of the Act and the same has to be assessed to tax under the head "business income". In absence of deeming provisions, the question of application of section 115BBE doesn't arise and normal tax rate shall apply. The AO is thus directed to assess the income under the head "Income from Business/profession" and apply the normal rate of tax.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 15/02/2024

Sd/-

संजय गर्ग
(SANJAY GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 15/02/2024

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar