

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI ABY T. VARKEY, HON'BLE JUDICIAL MEMBER AND  
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **962/Chny/2022**  
निर्धारण वर्ष / Assessment Year: 2018-19

M/s. Overseas Leathers,  
No. 131, SIDCO Industrial  
Estates,  
SIPCOT, Ranipet, Ranipet  
District – 632 403  
**[PAN: AAAFO-0375-L]**

Deputy Commissioner of  
v. Income-tax,  
Central Circle -3(3),  
New No. 46, Old No. 108,  
Mahatma Gandhi Road,  
Chennai – 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Anand, Advocate  
: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 20.03.2023

घोषणा की तारीख/Date of Pronouncement

: 05.04.2023

**आदेश / O R D E R**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 22.09.2022 and pertains to assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:

1. *The order of the learned Commissioner Of Income (Appeals)-18, Chennai, is wrong, illegal and is opposed to law.*

2. *That the Ld. CIT (A) erred in law in confirming the action of the Assessing Officer in changing the head of income from business to other sources by invoking the provision of Section 115BBE of the Income Tax Act, in doingso, the learned CIT(A) erred in confirming the applicability of provision ofSection 115BBE of the Income Tax Act, 1961.*

3. *The learned CIT(A) ought to have seen that the only business of the appellant is manufacture and sale of finished leather and allied products which was found as a matter of fact at the time of survey and the excess physical stock found at the time of survey was explained and offered bythe appellant as generated out of business income of the current year and therefore the provisions of section 115BBE of the Act will have no application as the source for excess physical stock is attributable business.*

4. *The learned CIT(A) ought to have seen that during the entire survey proceedings and thereafter during the assessment proceedings the source for the excess stock was explained by the appellant as generated out of unaccounted business income which fact was never disputed by the survey teamn and therefore treating the entire stock as unexplained investment under section 69B is totally unwarranted.*

5. *The learned CIT(A) ought to have seen that the AO has not brought any contrary material on record to state that the source for excess physical stock was other than from business income and has formed the opinion based on conjectures and surmises. While CIT(A) while exercising the quasi-judicial functions have to reach satisfaction on the basis of material available and not on conjectures and surmises.*

6. *That the Ld. CIT (A) erred in confirming the action of the Assessing officer in changing the head of income from business to other sources by invoking the provision of Section 115BBE of the Income Tax Act, 1961 despite the fact that at all time the appellant submitted that only the unaccounted income earned in regular course of business activity is invested in exXcess stock and that there can be no physical distinction between the accounted and unaccounted stock.*

7. The learned CIT(A) ailed to see that primary condition for invoking section 69B in the instant case is not satisfied since the excess stock found at the time of survey is part of mixed lots of stocks found at the premises which included stocks found as per books and also excess stock found during survey and that the primary condition that the excess stock must be separately identifiable and should have independent existence is clearly missing.

8. The learned CIT(A) ought to have seen that the appellant firm was physically inspected by the Income Tax Authorities in the course of survey and books of account, documents, expenses and physical inventory was examined and no adverse findings other than the excess stock was detected which could lead to a conclusion that source for excess physical stock is other than the business income.

9. The Learned CIT(A) erred in relying in Jurisdictional High Court decision in the case of SVS Oil Mills which is clearly distinguishable on facts and law. The said decision was rendered under the circumstance whether leverage should be given to the appellant to claim certain deduction while making additions under section 69B/69C, however in the instant case no such claim is made and the source of the excess stock is identifiable from business income of the appellant.

10. The learned CIT(A) ought to have seen that the jurisdiction high court decision in SV S oil Mills is not applicable in so far as in the instant case the excess stock found during the survey is not separately and clearly identifiable but is a part of mixed lots of stocks found at the remises which included stocks found as per books and also excess stock found during survey.

11. The case law relied by the revenue authorities are clearly distinguishable on facts since in the instant case the computation of excess stock is based upon entries found in the books of account and that the entire sum has been brought to tax by crediting the same to P&L account.

For these and other grounds that may be rendered at the time of hearing it is most humbly prayed that the Hon'ble Tribunal may be pleased to allow the appellants appeal and thus render justice."

3. The brief facts of the case are that, the assessee is a partnership firm, which is engaged in the business of manufacturing and sale of finished leather and allied products. The assessee has filed its return of income for the assessment year 2018-19 on 14.02.2019, admitting total income of Rs. 6,39,80,090/-. A survey operation u/s. 133A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was conducted at the business premises of the assessee firm on 14.03.2018. During the course of survey proceedings, inventory of physical stock was taken which resulted in excess physical stock of Rs. 5.08 crores. The statement u/s. 131 of the Act was recorded from Shri. M.Srinivasa Reddy, managing partner of the firm on 14.03.2018, where he had admitted the excess stock found in the business premises and also offered an additional income of Rs. 5.08 crores for the financial year relevant to assessment year 2018-19. The assessee was also called upon to explain the source for excess stock found during the course of survey, for which the assessee explained that excess stock found during the course of survey was on account of non-reconciliation of stock in books of accounts and further, said

excess stock has been acquired out of current year business income of the firm.

4. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee firm has declared additional income of Rs. 5.08 crores towards excess stock found during the course of survey under the head 'profits and gains from business and profession'. Therefore, the AO called upon the assessee to explain as to why the additional income admitted towards excess stock found during the course of survey should not be treated as unexplained investment u/s. 69B of the Act. In response, the assessee submitted that excess stock found during the course of survey is part of regular stock of the assessee in their business and said stock was mixed with regular stock. Further, as on the date of survey, the book stock was pending for updation. Further, the assessee could not reconcile the stock found during the course of survey to book stock. However to buy peace from the Department, the same has been offered to tax as income generated from the business activity for the relevant assessment year. Therefore,

submitted that the question of assessment of additional income under the head unexplained investment does not arise.

5. The Assessing Officer, after considering relevant submissions of the assessee and also by following the decision of Hon'ble High Court of Madras in the case of M/s. SVS Oils Mills vs ACIT [2019] 418 ITR 0442, opined that the assessee has not furnished any documentary evidence to substantiate the claim that entire amount of additional income of Rs. 5.08 crores offered towards excess stock found during the course of survey is generated and earned from regular business activity from the current financial year. The AO, further observed that the assessee has failed to explain the source for purchase of excess stock and also not furnished any bills/invoices to substantiate the purchase of excess stock and the source for purchase of said excess stock. Therefore, the AO opined that additional income offered towards excess stock found during the course of survey is assessable under the head unexplained investment u/s. 69B of the Act and thus, additional income of Rs. 5.08 crores has been treated as unexplained investment

and levied tax as per section 115BBE of the Act. The relevant findings of the AO are as under:

6. *The arguments of the assessee have been carefully considered. However the arguments of the assessee are not acceptable because of the following reasons:*

i) *The assessee has not furnished any documentary evidence to substantiate the claim of the assessee that the entire amount of Rs. 5,08,00,000/- had been earned from regular business activity done during the current financial year only.*

ii) *The physical stock available at the premises was duly inventorised during the course of survey. The excess stock was quantified by comparing it with the books of account. The quantification was done during the course of survey itself and the same is clearly evident from the statement recorded from the assessee as reproduced in para 5 above.*

iii) *The assessee has failed to explain the source for purchase of excess stock. The assessee has not furnished any bills/invoices also to substantiate the purchase of excess stock and the source for purchase of such excess stock.*

iv) *The provisions of 115BBE are attracted irrespective of the fact that the same was subsequently recorded in books maintained for any business being carried on and declared suo moto by assessee as income in the ROI as part of business income.*

v) *The Honourable High Court of Madras in M/s. SVS Oils Mills, Vs. The Assistant Commissioner of Income Tax in ITA no 765 of 2018, while dismissing the appeal of the assessee decided the following question of law while confirming the order of ITAT:*

*"Whether the provisions of section 69B/69C of the Act would justify the separate addition for the value of the excess stock despite inclusion of such excess stock by posting necessary entries in the stock register and further despite the undisputed*

*reporting of the sales effected in relation thereto in its entirety by the Appellant?*

*The relevant findings of the Tribunal are quoted below for ready reference: -*

*"There is a clear admission by the assessee that the difference in stock as on date of survey was added in its stock register but no corresponding entry was passed in the books of accounts. Stock cannot come in from vacuum. When stock is introduced in the stock register, there has to be a corresponding entry in the financial books of accounts. Either it has to be a purchase or shown as paid out of explained or unexplained source. Once stock to the extent of the surplus found at the date of survey, is included in the Stock register, assessee has to give an explanation for the source from which it acquired such stock.*

*.....Assessee having not passed any entry in financial books, addition of stock made by it, in its stock register, can only be considered as made out of undisclosed source. The addition in our opinion was rightly done by the lower authorities. Coming to the decision of Ahmedabad Bench of the Tribunal in the case of Chokshi Hiralal Mangnlal (supra). there is a clear finding that excess stock found during the survey was not separated or clearly identified, but, was part of mixed stock which was included in the declared stock, as per books of accounts. Facts here are entirely different. There is no case for the assessee that surplus stock was clearly identified at the time of survey or entries passed in its cash book, journal or ledger for the value of such stock. In the circumstances, we do not find any reason to interfere with the order of the learned Commissioner of Income Tax (Appeals). appeal of the assessee stands dismissed."*

*The Hon'ble Madras High Court, after hearing the submissions of the counsel for assessee and above*

*findings of ITAT, observed as under in para 6 to 11 of its order dated 26/3/2019:*

*"6. Having heard the learned counsel appearing for the Assessee, we are satisfied that no substantial question of law arises in the present case and the finding of facts of all the three Authorities concurrently rendered against the Assessee in the present case cannot be held to be perverse or wrong in any manner. These orders, therefore, deserve to be upheld and we do not find any merit in the Appeal of the Assessee.*

*7. However, before parting with, we may observe that there is a series of five provisions -viz., Section 69-Unexplained investments, Section 69A-Unexplained money, etc., Section 69B-AmOunt of investments, etc., not fully disclosed in books of account 69C Unexplained expenditure, etc. and 69D-Amount borrowed or repaid on hundi which have been enacted in the Income Tax Act, 1961 from time to time to bring to tax the undisclosed income either as undisclosed income or the same found during the course of investigation either during the Survey under section 133A or the search operation under Section 132 of the Act or otherwise, investigation or scrutiny during the Assessment proceedings and thus, the unexplained investment or expenses are brought to tax in the form of undisclosed income by making the additions to the extent of such undisclosed income or expenditure straightaway. There is no justification or question of giving the corresponding deduction to the extent of any purchase or source of incurring such expenditure or unexplained investments.*

*8. In our opinion, Section 69B providing for amounts of investments in Bullion, Jewellery or other valuable articles (including excess Stocks as wel) would have been more appropriate Section to be indicated in the orders passed by the Authorities below rather than Section 69C-Unexplained Expenditure. Nonetheless, we are of*

*the clear opinion that mentioning of wrong section would not upset the Additions made by the Assessing Authorities below in the present case. All these 5 provisions enumerated above have been enacted with a view to bring to tax the unexplained debit balances in the Balance Sheet of the Assessee either in the form of Unexplained Investments, Expenses or Stocks, etc., or unexplained Assets, Money, Bulion, Jewellery, etc., and therefore, such unexplained investments and expenses intended to be brought to tax as Undisclosed Income, these provisions are not only clearly worded but also indicated to plug the loopholes and check the menace of black money. Likewise, unexplained credits in the Balance Sheet are also broOught to tax under Section 68 of the Act.*

*9. In the light of the above, the contention raised by the learned counsel for the Assessee has essentially emanated from a misconception that the Additions made under Section 69B/69C have to be reduced to some extent by giving leverage to the Assessee to claim Some deductions from these Additions as well. If the contention of the learned counsel for the Assessee was to be accepted viz., by allowing the purchases corresponding to the alleged excess stock, the Assessee will have to now record verifiable purchases in his Books of Accounts and for that he will have valid purchase Invoices from genuine and existing Sellers which is not possible. When the excess stocks were found during the Survey, there is no question of allowing the Assessee to record any additional purchases because such purchases had already been recorded in the books of accounts of the Assessee. Therefore, the excess stock, per se, has to be naturally brought to tax as 'undisclosed income' by itself and there is no question of any corresponding deduction from that in such cases.*

*10. In our opinion, the learned Tribunal as well as the Authorities below were justified in bringing to*

*tax the Undisclosed Income under Section 69B/69C of the Act and such findings of fact do not give rise to any substantial question of law. The order passed by the learned Income Tax Appellate Tribunal, Ahmedabad Bench does not ensure to the benefit of the arguments advanced by the learned Senior Counsel as there also the learned Tribunal has rightly held that the value of excess stock of Rs.58,02, 095/- should suffer tax and by inclusion of those Stocks in the value of Closing Stock the Assessee has recognised income over and above recorded in its Books of Accounts. Such Additions of the excess Stocks declared by the Assessee during the course of search in the closing stock does not amount to double taxation as contended. Mere remand of the case by the Ahmedabad Bench of Income Tax Appellate Tribunal to the Assessing Authority for verifying the figures, does not lay down any principle as contended by the learned Senior Counsel for the Assessee.*

*11. We do not find any merit in the present Appeal of the Assessee and the same is liable to be dismissed. Accordingly, it is dismissed. No order as to costs."*

6. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee submitted that stock found during the course of survey has been expended out of regular business income earned in the current financial year. Further, except one source of business, the assessee does not have any other source. The stock found during the course of survey was not

separately indentified, but the same was mixed with regular stock employed in the business of the assessee. Therefore, it cannot be said that excess stock found during the course of survey was acquired by undisclosed source and the same is assessable under the head unexplained investment u/s. 69B of the Act. In this regard, the assessee relied upon the decision of Hon'ble Rajasthan High Court in the case of Bajargan Traders vs PCIT in Income Tax No. 258/2017 dated 12.09.2017.

7. The Ld. CIT(A), after considering relevant submissions of the assessee and also taken note of various facts and also following the decision of jurisdictional Madras High Court in the case of SVS Oils Mills vs ACIT (supra), observed that the assessee could not provide any cognizant evidence as to how the amount of Rs. 5.08 crores was generated in its business, in terms of proof for purchases made, source for said unaccounted purchase, and unaccounted sales made out of such unaccounted purchases and further how the proceeds were ploughed back to business to generate unaccounted income. The relevant findings of the CIT(A) are as under:

*"7.2 I have considered the submissions of the appellant. The assessee has not proved with any cogent evidence as to how*

*the amount of Rs. 5,08,00,000/- was generated in its business, in terms of proof for purchases made, source for such unaccounted purchases, the unaccounted sales made out of such unaccounted purchases, how the proceeds were ploughed back to generate the unaccounted income of Rs. 5,08,00,000/- over the time to invest in unaccounted excess stock. Without tendering any evidence for it, it tries to force the department to assume that the unaccounted sum of Rs. 5,08,00,000/- was generated out of its business only. Such assumptions is not possible. In the lack of positive evidence for business income, the only possibility is to assess it as income from other sources. 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 20 18 wherein it was clearly held that the investment in excess stock found s, Mhould be assessed as undisclosed income and not as business income. 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 Hon'ble 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. I therefore sustain the addition of Rs. 5,08,00,000 made u/s. 69B and taxed under the rates u/s. 115BBE and dismiss the grounds raised."*

8. The Id. Counsel for the assessee submitted that, the Ld. CIT(A) erred in law in confirming the action of the Assessing Officer in changing the head of income from business to other sources and also invoking the provision of section 115BBE of the Act, without appreciating fact that the excess stock found during the course of survey was not separately identified but was mixed with regular business stock of the assessee. Further, the assessee has explained source for excess stock found during the course of survey and claimed that it is out of business income earned in the current financial year and also declared additional income under the head income from business. The Id. CIT(A), without appreciating relevant fact simply sustained additions made by the AO. In this regard, he relied upon the decision of Hon'ble Rajasthan High Court in the case of CIT vs Bajargan Traders (Supra).

9. The Id. DR, on the other hand supporting the order of the Ld. CIT(A) submitted that the assessee could not file any evidences to prove that it has earned business income outside the books of accounts and the same has been ploughed back into the business, which is in the form of stock in trade and

thus, the AO has rightly assessed additional income towards difference in stock as unexplained investment u/s. 69B of the Act. The Ld. DR, further submitted that, the assessee could not explained before the AO excess stock found during the course of survey was purchased and source for said purchases in out of business income with evidences like under invoicing of stock or purchases without any bills. In this case, the assessee has admitted excess stock found during the course of survey, but could not explain source of said stock. Therefore, the AO has rightly assessed difference as unexplained investment and levied tax u/s. 115BBE of the Act. In this regard, he relied upon the decision of Hon'ble High Court of Madras in the case of SVS Oils Mills vs ACIT (supra).

10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The fact with regard to the impugned dispute are that a survey operation u/s. 133A of the Act was conducted on 14.03.2018 and during the course of survey, inventory of physical stock was taken which resulted in detection of excess physical stock of Rs. 5.08 crores. A statement u/s. 131 of the

Act was recorded from the managing partner of the assessee Mr. M. Srinivasa Reddy, where he had, in response to a specific question admitted that excess stock found during the course of survey is acquired out of unaccounted income generated from the business for the current financial year. The assessee had admitted a sum of Rs. 5.08 crores towards excess stock found during the course of survey under the head profits and gains from business and profession and also paid taxes. These are undisputed facts. The only dispute is with regard to head of income under which additional income offered towards excess stock to be assessed, whether it is under the head profits and gains of business or profession or unexplained investment as per section 69B of the Act.

11. The provisions of section 69B of the Act deals with, where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article and the Assessing Officer finds that the amount expended on making such investments exceeds amount recorded in this behalf in the books of accounts maintained by the assessee for any source of income,

and the assessee offers no explanation or the explanation offered by the assessee is not in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee in such financial year. In order to assess any investment or other bullion, jewellery or any other valuable asset, two things must be satisfied. Firstly, the assessee must expended amount towards investment or in acquiring some asset and is not recorded in the books of accounts maintained for that financial year and further, the assessee offers no explanation or explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory. In this case, the assessee has offered explanation towards excess stock found during the course of survey, in response to a specific question and stated that such excess stock is generated out of the business income of the current financial year, which will be offered to tax as an additional income of the firm for the assessment year 2018-19. From the above, it is very clear that it is not a case of the AO that the assessee has not offered any explanation towards excess stock found during the course of survey, but it is a case of explanation offered by the assessee is not satisfactory with the

opinion of the Assessing Officer. Therefore, it is necessary to examine the issue in light of explanation offered by the assessee towards excess stock found during the course of survey to ascertain whether source for such excess stock is generated out of business income or income from undisclosed source.

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.

13. Coming back to the case laws relied upon by the AO and the Ld. Counsel for the assessee. The AO has relied upon the decision of Hon'ble High Court of Madras in the case of SVS SVS Oils Mills vs ACIT (Supra). We find that in the said case, although excess stock was found during the course of survey u/s. 133A of the Act, which the assessee did not account in his books of accounts and also not brought to tax in the relevant assessment years. The AO has made additions towards excess stock as unexplained investment u/s. 69B of the Act in absence of necessary explanation with regard to source for said excess stock. Under those facts, the Hon'ble Madras High Court came to the conclusion that excess stock

found during the course of survey should be assessed u/s. 69B of the Act. In this case, facts are entirely different. The excess stock found during the course of survey was mixed with regular stock in trade of the assessee in its business. The survey team was also not identified excess stock separately, but was valued because the assessee could not reconcile the difference in stock in trade when compared to book stock. Further, the assessee has explained the source for excess stock and argued that it is out of current year income generated from the business. The explanation of the assessee was not disproved. Therefore, we are of the considered view that the facts of the present case are not applicable to the case laws relied upon to the Assessing Officer.

14. At this stage, it is relevant to discuss the decision of Hon'ble Rajasthan High Court in the case of Bajargan Traders vs PCIT (supra). The Hon'ble High Court considered an identical issue and held that when excess stock found during the course of survey is related to stock in trade dealt by the assessee, then investment in procurement of such stock is clearly identifiable and related to regular business stock of the

assessee and thus, said investment in excess stock has to be brought to the tax under the head business income and not under the head unexplained investment. The relevant findings of the Hon'ble High Court are as under:

"3. The Tribunal while considering the matter has observed as under:-

*"2.7. It is further submitted that the real issue in this case is whether the excess stock surrendered should be made as a part of business income or not and if so, assessee can claim deduction on account of payment of remuneration to partners on account u/s 40b(v). In this regard, our reference was drawn to the decision of Co-ordinate Bench in case of Shri Ramnarayan Birla (in ITA No. 482/JP/15 dtd 30.09.2016). In that case, the question before the Coordinate Bench was "whether the CIT(A)-2, Udaipur has erred in directing the AO to assess the unexplained investment surrendered by the assessee under the head "income from Business" ignoring the decision of the Hon'ble Gujarat High Court in the case of Fakir Mohd. Hazi Hasan 247 ITR 290 that unaccounted income ought to be categorized under the residuary head of 'Income from other sources'. In respect to the said issue, the findings of the Coordinate Bench are as follows:*

*"We have heard the 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 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 jewellery. The Coordinate Bench in the case of Choksi Hiralal Mangnlal 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 u/s 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. Jajihasan (supra) where investment in an asset or expenditure is not identifiable and no nexus was established then with any head of income and thus was not available for set off against any loss under any other head. Therefore, the Hon'ble Coordinate Bench held that where asset in which undeclared investment is sought to be taxed is not clearly identifiable or does not have independent identity but is integral and inseparable (mixed) part of declared asset falling under a particular head, then the difference should be treated as undeclared business income explaining the investment. In the present case the excess stock was part of the stock. The revenue has not pointed out that the excess stock has any nexus with any other receipts. Therefore, we do not find any fault with the decision of the Id. CIT(A) directing the AO to treat the surrendered amount as excess stock qua the excess stock found."*

*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.*

*3.2. The Id. AR of the assessee submitted that at the outset, it may be noted that the AO has made addition on account of notional interest of Rs. 1,39,366/-. There cannot be any addition on account of notional income as held by the Hon'ble Supreme Court in case of E.D. Sassoon & Co. & Ors. vs. CIT (1954) 26 ITR 27 and Godhra Electricity Co. Ltd. vs. CIT (1997) 225 ITR 746 where it was held that only real income can be taxed, hypothetical income cannot be taxed nor income can be taxed in vacuum. Therefore, the addition made by the AO is not as per law and the same be deleted. The Id. CIT(A) has confirmed the addition by stating that it is the disallowance of interest. It is submitted that the lower authorities have not disputed about the commercial expediency about the advance given to Smt. Rita Gupta. In fact, the advance was given to Smt. Rita Gupta in earlier years for construction of godown and the same was given on rent by the assessee. Therefore once commercial expediency for giving the advance is established, no part of the interest expenditure can be disallowed in view of the decision of Hon'ble Supreme Court in case of S.A. Builders 288 ITR 1 and Hero Cycles Pvt. Ltd. vs. CIT 379 ITR 347 where it was held that the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. It is further held that no businessman can be compelled to maximize his profit and that the income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own viewpoint but that of a prudent businessman. Further, in past, no such*

*disallowance/addition was made. Therefore, neither the addition of notional interest made by the AO or disallowance of interest as held by the Id. CIT(A) is Rs. 1,96,73,637/-. Partners are paid interest @ 12% the balance in the partners account is much more than the amount advanced to Smt. Rita Gupta who is a wife of one of the partner. Therefore, even the disallowance made @ 4% is not justified and the same should be restricted @ 2% only. Reliance is also placed on the following cases. .CIT vs. Ram Kishan Verma (2016) 132 DTR 107/132 Taxman 107 (Raj.)(HC) . CIT vs. Vijay Solvex Ltd. (2015) 113 DTR 382 (Raj.) (HC)*

4. *We are in complete agreement with the view taken by the Tribunal. No substantial question of law arises."*

15. A similar view has been taken by the Coordinate bench of ITAT, Jaipur in the case of ACIT vs Sanjay Bairathi Gems Ltd in ITA No. 157/JPR/2017, dated 08.08.2017 and also the Ahmedabad Bench of ITAT in the case of Chokshi Hiralal Maganlal vs DCIT in ITA NO. 486/AHD/2008.

16. In this view of the matter and considering facts and circumstances of the case and also by following the case laws discussed herein above, we are of the considered view that when the assessee has explained source for excess stock found during the course of survey, is out of income generated from current year business and explanation offered by the assessee is plausible explanation, then income offered towards excess stock cannot be treated as unexplained investment u/s. 69B of the Act, and also provisions of section 115BBE of the

Act. The AO and the Ld. CIT(A) without appreciating relevant facts assessed additional income offered towards excess stock as unexplained investment u/s. 69B of the Act and levied tax u/s. 115BBE of the Act. Thus, we set aside the order passed by the Id. CIT(A) and direct the AO to assess additional income offered towards excess stock found during the course of survey under the head profits and gains of business and profession as considered by the assessee.

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

Order pronounced in the court on 05<sup>th</sup> April, 2023 at Chennai.

**Sd/-**  
**(एबी टी. वर्क,)**  
**(ABY T VARKEY)**  
**न्यायिकसदस्य/Judicial Member**

**Sd/-**  
**(मंजुनाथ. जी)**  
**(MANJUNATHA. G)**  
**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 05<sup>th</sup> April, 2023

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                          |                            |
|------------------------|--------------------------|----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/PCIT |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF           |