

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,

INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.16/Ind/2019

Assessment Year: 2015-16

Shri Rajesh Kumar Bajaj 13, Rajesh Industries, Industrial Estate Indore	Vs.	ACIT Khandwa
(Appellant)		(Revenue)
PAN No.AHNPB0036F		

Appellant by	Shri S.S. Sheetal, AR
Revenue by	Shri AshishPorwal, DR
Date of Hearing	08.01.2020
Date of Pronouncement	09.03.2020

ORDER

PER MANISH BORAD, AM.

The above captioned appeal filed at the instance of assessee pertaining to Assessment Year 2015-16 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-II (in short 'Ld.CIT(A)'], Indore dated 23.10.2018 which is arising out of the

order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 30.11.2017 framed by ACIT, Khandwa.

2. Assessee has raised following grounds of appeal;

“On the facts and in the circumstances of the case, and, in law, the Hon’ble Commissioner of Income Tax (Appeals)-2, Indore erred inconfirming the action of the Assessing Officer in computing the Income declared by the assessee in Survey proceedings by applying the provisions of section 115BBE(1) of the Income Tax Act 1961 and thus taxing the Income declared at the maximum rate.

2. The appellate order being not based on facts, and in law, is illegal & wrong.

3. The appellant craves leave to add/alter/amend the above grounds of appeal are and when, necessity or occasion arises.”

3. Brief facts of the case as culled out from the records are that the assessee is proprietor of two concerns namely M/s. Rajesh Industries and M/s. R.R. Textile Mills which are engaged in the business of textiles, hand loom and power loom. Return of income declaring income of Rs.1,02,17,110/- for the Assessment Year 2015-16 was filed on 30.09.2013. Case selected under scrutiny followed by serving valid notice u/s 143(2) of the Act. A survey u/s 133A was conducted on 12.12.2014 at the business premises of M/s. Rajesh Industries and M/s. R.R. Textile Mills. During the course of survey various anomalies were found which included

excess stock, excess cash and receivable from sundry parties not shown in the books. The assessee surrendered following income stating that he is unable to explain the source for the following :-

a) Excess stock	Rs.75,46,114/-
b) Excess Cash	Rs. 9,60,036/-
c) Receivable from sundry parties not shown in books	<u>Rs. 7,75,000/-</u>
Total	Rs.92,81,150/-

Subsequent to survey when the assessee filed return of income on 30.09.2015 the above said surrendered income during the survey proceedings were offered to tax as business income. The assessment was completed accepting the returned income but calculating the tax @60% on the surrendered income as per the provisions of Section 115BBE of the Act.

4. Aggrieved assessee preferred appeal before Ld. CIT(A) but failed to succeed who confirmed the action of the Ld. A.O observing as follows:-

Ground No. 2

5.0 This ground of appeal is with regard to computing the Income declared by the assessee in Survey proceedings by

applying the provisions of Section 115 BBE of the Income Tax Act 1961. I have carefully gone through the assessment order as well as submission of the appellant in this regard.

5.1 *The appellant has taken the plea that he did not have any other income except business income. The appellant has also submitted that section 115BBE did not apply in the appellant's case as the appellant didn't have any income except business income. Further, the appellant has stated that the material so found on the business premises of the appellant clearly had nexus with business. Further, the appellant has stated that excess stock, and the excess cash receivable from sundry parties not shown in books was business stock/investment which had arisen out of the unrecorded business. Activity of the assessee and therefore, the same need to be assessed the head profit and gain of business.*

5.2 *After careful analysis of the facts, it is clear that these amounts being unrecorded fall in the nature of income classified in section 115BBE and hence, in my considered opinion, the AO has rightly made the addition and is accordingly confirmed. This ground of appeal is dismissed.*

5. Now the assessee is in appeal before the Tribunal.
6. Ld. Counsel for the assessee referring to the written submissions made before Ld. CIT(A) submitted that the alleged surrendered income of Rs.92,81,150/- is in the nature of business income duly offered to tax and the assessee do not have any other source of income except business income. He also submitted that

if the Ld. A.O wanted to attract the provisions under Section 115BBE then he should have recomputed the computation of income by excluding the surrendered income from income under the head business/profession and including the same under “Income from other sources” since Section 115BBE of the Act is applicable only to income referred to in Section 68, Section 69, Section 69A, 69B, 69C & 69D of the Act. He also submitted that the revenue authorities has not pointed out that the excess stock has any nexus with any other receipts. The excess stock found during the survey operation is not separately and clearly identifiable but is part of mixed lots of stock found at the premises which included declared stock as per books and also the excess stock as computed by the authorised officers during the survey operation at the business premises. Since excess stock is a result of suppression of profit from business over the years and has not been kept identifiable separately but is the part of overall physical stock found, the investment in the excess stock should be treated as business income. 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 what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset. Ld. Counsel for the assessee has also relied on following case laws:-

- i) Hon'ble ITAT Jaipur Bench in the case of ACIT Jaipur Vs Sanjay Bairathi Gems Limited ITA No.157/JP/17 order dated 09.05.2017
- ii) Hon'ble ITAT Jaipur Bench in the case of DCIT Vs Ramnarayan Birla order dated 30.9.2016
- iii) Hon'ble ITAT Ahmedabad Bench in the case of Chokshi Hiralal Mangilal Vs DCIT TTJ(Ahd)1 order dated 21.01.2011
- iv) Hon'ble ITAT Mumbai Bench in the case of ACIT V/s Rahil Agencies ITA No.4413/Mum/2014 order dated 23.11.2016
- v) Hon'ble ITAT Jodhpur Bench in the case of Vasu Singhal V/s ITO & others ITA No.142/Jodh/2018 order dated 25.5.2018.

7. Per contra Ld. Departmental Representative vehemently argued supporting the orders of both the lower authorities.

8. We have heard rival contentions and perused the records placed before us and carefully gone through the judgments referred and relied by the assessee. The sole grievance of the assessee is

that income of Rs. 92,81,150/- surrendered during the course of survey u/s 133A of the Act was purely a business income liable to normal rate of tax and both the lower authorities have erred in charging it with the tax rate @60% applying the provisions of Section 115BBE of the Act by treating the alleged undisclosed income as income referred in Section 68, Section 69, Section 69A, 69B, 69C & 69D of the Act. So as far as the quantum of addition is concerned it is not in dispute.

9. The questions before us are that (i) whether the undisclosed business income can be taxed under Section 68, Section 69, Section 69A, 69B, 69C & 69D of the Act and (ii) whether such unexplained/undisclosed income referred in Section 68, Section 69, Section 69A, 69B, 69C & 69D can be taxed only under the head “income from other sources”.

10. To proceed we will first go through the provisions of Section 115BBE, Section 68, Section 69, Section 69A, 69B, 69C & 69D of the Act which are reproduced below:-

115BBE.

(1) Where the total income of an assessee, includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance [or set off of any loss] shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) 65[and clause (b)] of sub-section (1).

Section 68

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

Section 69

Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, **if any**, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments **or** the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments **may** be deemed to be the income of the assessee of **such financial year**.

Section 69A

Where in any financial year the assessee is found to be the owner of any money, bullion, jewelry or other valuable article and such money, bullion, jewelry or valuable article is not recorded in the books of account, **if any**, maintained by him for any source of income, **and** the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewelry or other valuable article, **or** the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewelry or other valuable article **may** be deemed to be the income of the assessee for **such financial year**.

Section 69B

Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewelry or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewelry or other valuable article exceeds the amount recorded in this behalf in the books of account **maintained** by the assessee for any source of income, **and** the assessee offers no explanation about such excess amount **or** the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount **may** be deemed to be the income of the assessee for **such financial year**.

Section 69C

Where in any financial year an assessee has incurred **any** expenditure **and** he offers no explanation about the source of such expenditure or part thereof, **or** the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, **may be** deemed to be the income of the assessee for **such financial year**. Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.

Section 69D

Where any amount is borrowed on a hundi from, or any amount due thereon is repaid to, any person otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the previous year in which the amount was borrowed or repaid, as the case may be :

Provided that, if in any case any amount borrowed on a hundi has been deemed under the provisions of this section to be the income of any person, such person shall not be liable to be assessed again in respect of such amount under the provisions of this section on repayment of such amount.

Explanation.—For the purposes of this section, the amount repaid shall include the amount of interest paid on the amount borrowed.]

11. Under the I.T. Act the computation of income comes under Chapter IV which comprises of various heads of income starting from Section 14 to Section 59 which inter-alia covers “income from salary”, “income from house property”, “profits and gains of business or profession”, “capital gains” and “income from other sources”. As far as Section appearing in Section 115BBE of the Act i.e. Section Section 68, Section 69, Section 69A, 69B, 69C & 69D of the Act they are mentioned in Chapter VI with the head “Aggregation of income and set off or carry forward of loss” and covers Section 68 to Section 80. In the instant case there is no issue relating to set off or carry forward of loss so we need to focus on the head “Aggregation of income” which covers Section 66 to 69D of the Act. The word aggregation of income nowhere makes a distinction about the head of income as to whether it is income from salary, income from house property, profits and gains of business or profession, capital gains or income from other sources. The word used is “income” and

the same is defined in Section 2(24) of the I.T Act which includes various income mentioned in the section including the “profit and gains of business”. The contention of the Ld. Counsel for the assessee that the Ld. A.O before invoking the Section 115BBE of the Act should have first assessed the surrendered income as “Income from other sources” seems to be on loose wicket. Looking to the layout of the Income Tax Act Chapters and Section it is predominantly clear that all types of income namely Salary, Income from House property, Profits and Gains of business or Profession, Capital Gains and Income from other sources which are not fully disclosed in books of accounts or assessee fails to offer any explanation or unexplained expenditure or amount borrowed or repaid on hundi can be subjected to tax as Income u/s 68, Section 69, Section 69A, 69B, 69C & 69D.

12. If we see the provisions of Section 68 to Section 69C the highlighting part which is common is that if “the assessee offers no explanation about the nature of source of” either cash credits, investment, money bullion, jewellery or other valuable article investment and expenditure.

13. Let us examine the statement given by the assessee during the course of survey in reply to questions raised about the source of Excess stock, Excess cash and undisclosed sundry debtors.

प्रश्न 3. आपके Concern M/s R.R.Textile Mills में सर्वेक्षण की कार्यवाही के दौरान आपके द्वारा प्रस्तुत cash book के अनुसार आज दिनांक को cash Balance रु. 17413.71 दिखाया गया है जबकि भौतिक सत्यापन पर नगदी रु. 9,77,450/- पाया गया है। इस प्रकार आपके Concern में रु. 9,60,036.29 अधिक पाया गया है। कृपया इस अंतर रु. 9,60,036/- के कारण को स्पष्ट करें।

उत्तर 3. मैं अंतर की राशि रु. 9,60,036/- को स्पष्ट करने में असमर्थ हूँ इसलिए मैं अंतर की राशि रु. 9,60,036/- को मेरी प्रोपराईटरशिप कन्सर्न M/s R.R.Textile Mills की नियमित आय के अलावा अतिरिक्त आय के रूप में वित्तीय वर्ष 2014-15 से संबंधित निर्धारण वर्ष 2015-16 के लिए अघोषित आय समर्पित (surrender) करता हूँ और उस पर देय आयकर का भुगतान करने का वचन देता हूँ।

प्रश्न 5. आपके Concern पर सर्वेक्षण कार्यवाही के दौरान 13-14 उद्योग नगर, बुरहानपुर पर M/s R.R.Textile Mills के प्रकरण में भौतिक सत्यापन के दौरान कुल स्टॉक रु. 1,03,95,983/- का पाया गया है जबकि आपकी नियमित लेखा-पुस्तकों के अनुसार M/s R.R.Textile Mills का स्टॉक राशि रु. 28,49,869/- दर्शाया गया है। इस प्रकार कुल रु. 75,46,114/- का स्टॉक अधिक पाया गया है। कृपया अधिक पाये गये स्टॉक की राशि रु. 75,46,114/- के स्रोत को स्पष्ट करें।

उत्तर 5. महोदय, मैं M/s R.R.Textile Mills के प्रकरण में अधिक पाये गये स्टॉक रु. 75,46,114/- का स्रोत स्पष्ट करने में असमर्थ हूँ। अतः अंतर की राशि रु. 75,46,114/- को मेरी प्रोपराईटरशिप कन्सर्न M/s R.R.Textile Mills की नियमित आय के अलावा अतिरिक्त आय के रूप में वित्तीय वर्ष 2014-15 से संबंधित निर्धारण वर्ष 2015-16 के लिए अघोषित आय समर्पित (surrender) करता हूँ और उस पर देय आयकर का भुगतान करने का वचन देता हूँ।

प्रश्न 6. मैं आपको BI-1 राजकमल ग्रुप की डायरी दिखा रहा हूँ जिसके कुल 1 से 25 पृष्ठ लिखित हैं जिसे Annexure-'B' में इंड्राज किया गया है जो आपके व्यवसायिक स्थल 13-14, उद्योग नगर, बुरहानपुर पर पायी गयी है। कृपया इस डायरी को देखकर बताये कि इसमें किस प्रकार के व्यवहार दर्ज है ? और क्या ये सभी व्यवहार आपकी नियमित लेखा-पुस्तकों में दर्ज है?

उत्तर 6. मैंने आपके द्वारा दी गई डायरी BI-1, राजकमल ग्रुप को अच्छी तरह से देख लिया है। इसमें अग्रिम की प्रविष्टियां दर्ज हैं, जिनका लेखा M/s R.R.Textile Mills की नियमित लेखा-पुस्तकों दर्ज नहीं है। मैं इन प्रविष्टियों के स्रोत को स्पष्ट करने में असमर्थ हूँ। अतः पृष्ठ क्रमांक 1 से 25 तक में दर्ज कुल अग्रिम की राशि रु. 7,75,000/- को मेरी प्रोपरायटरी कंसर्न M/s R.R.Textile Mills

की नियमित आय के अलावा अतिरिक्त अघोषित आय मानते हुए करारोपण हेतु समर्पित करता हूँ और उस पर नियमानुसार आयकर का भुगतान करने का वचन देता हूँ ।

14. Now in order to know that whether the assessee has offered any explanation to the excess stock, excess cash or receivable from sundry parties, from perusal of the statements in the reply given by the assessee in Question No.3, 5 and 6 we find that assessee has categorically accepted that “he is unable to explain the source of excess cash, excess stock and unaccounted receivables”. There is no other evidence brought on record by the assessee to show that some unaccounted purchases for the year or unaccounted sales or unrecorded sales happened during the year or details of the debtors which can show the nexus of the surrendered income as business income for the year under consideration.

15. The alleged surrendered income is the cumulative total of unrecorded and undisclosed income for preceding years which were not offered to tax during the year when they were earned. Before the insertion of Provision of Section 115BBE of the Act w.e.f. 1.4.2013 during the course of survey u/s 133A of the Act if any excess cash or excess stock was found and then the assessee was subjected to tax on the normal rate of tax applicable for the year in which the

survey proceedings were carried out. There was no mechanism to make the distinction between the genuine assessee who regularly offers his correct income to tax on year to year basis and the assessee who conceals the income in the preceding years and only in case if he is subjected to survey action then he offers undisclosed income of excess cash or excess stock during the year when the survey takes place and offers it to tax. This clearly creates a disparity because the persons who conceal the income in the preceding years since its commencement of business and pay tax on unrecorded/unaccounted income only if he is subjected to survey action and that too in the year the survey takes place thereby taking the benefit of paying the taxes without subject to levy of interest and penalty on such intentionally deferred tax liabilities and if he is not subjected to survey action u/s 133A of the Act he keeps on enjoying the benefits.

16. To cope up with this situation Section 115BBE of the Act was inserted w.e.f. 1.4.2013 indicating that only if the income falls u/s 68 to 69D as discussed above which does not necessarily be income of business but can be from any head of income i.e. the income

defined in Section 2(24) of the Act for which the assessee is unable to offer any explanation, then such higher rate of tax i.e. 60% is to be levied u/s 115BBE of the Act.

17. As far as the judgments referred and relied by the Ld. Counsel for the assessee is concerned in the case of *Sanjay Bairathi Gems Limited (supra)* the issue relates to set off of loss against surrendered income in view of the amendment by Finance Act came into existence w.e.f. 1.4.2017 considering the “set off of any loss”. This judgment is not applicable to the assessee because there is no dispute about the nature of income. Moreover the income surrendered by the assessee which certainly is a business income but since the assessee has not offered any explanation of its source it has been rightly covered u/s 115BBE of the Act. The decision of the Hon'ble Ahmedabad Bench Tribunal in the case of *Chokshi Hiralal Mangilal* dated 21.01.2011 is also not relevant since Section 115BBE was inserted from 1.4.2013. The decision of Hon'ble Jodhpur Bench in the case of *Vasu Singhal V/s ITO* is also not applicable since the decision is of the Single bench and is not binding on double bench of Tribunal.

18. We therefore in the given facts and circumstances of the case are of the considered view that though the alleged surrendered income of

Rs.92,81,150/- is a business income but since assessee being individual having no limitation of earning income from sources other than for the objects of the business and also the assessee having not offered any explanation in the statement given during the course of survey which stands un rebutted, therefore the alleged unexplained/undisclosed income of Rs.92,81,150/- is liable to be taxed as income falling under Section 68 to 69D of the Act as applicable to the type of income and has been rightly taxed by Ld. A.O applying the higher rate of tax provided in Section 115BBE of the Act. We therefore confirm the findings of Ld. CIT(A). The assessee fails to succeed and the sole ground raised in the instant appeal stands dismissed.

19. The other grounds are general in nature which needs no adjudication.

20. In the result appeal of the assessee is dismissed.

The order pronounced in the open Court on 09.03.2020.

Sd/-

(KUL BHARAT)

JUDICIAL MEMBER

Sd/-

(MANISH BORAD)

ACCOUNTANT MEMBER

नांक /Dated : 09 March, 2020

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore