

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “एकल” चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH  
BENCH “SMC” CHANDIGARH**

**श्री संजय गर्ग, न्यायिक सदस्य  
BEFORE: SH. SANJAY GARG, JUDICIAL MEMBER**

आयकर अपील सं./ ITA Nos.551/CHD/2022

निर्धारण वर्ष / Assessment Year : 2019-20

Shri Gurdeep Singh Ubhi, House No. 2580, Street No.1, Janta Nagar, Ludhiana.	बनाम	The DCIT, Central Circle-1, Ludhiana.
स्थायी लेखा सं./PAN NO: AJOPS4227Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ashwani Kumar, CA

राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr.DR

सुनवाई की तारीख/Date of Hearing : 31.05.2023

उद्घोषणा की तारीख/Date of Pronouncement : 01.06.2023

**आदेश/ORDER**

The present appeal has been preferred by the assessee against the order dated 11.06.2022 of the Commissioner of Income Tax (Appeals)-5, Ludhiana [in short ‘CIT(A)’] pertaining to assessment year 2019-20

2. The sole issue raised in this appeal is relating to the application of provisions of Section 115BBE of the Income Tax Act, 1961 (in short ‘the Act’) to the surrendered business income of the assessee. The Assessing Officer (in short ‘the AO’) in this case taxed the surrendered business income of the assessee @ 60% as against the normal tax rate applicable on business income.

3. The brief facts of the case are that a survey action was carried out at the premises of the assessee on 23.10.2018. During the course of survey, certain discrepancies were found such as there was excess stock found as compared to the books of account and there were loose slips showing receivables and even excess cash was found. The value of the items was quantified at Rs.40,05,000/-. The Survey Party confronted the assessee in this respect and recorded the statement of the assessee. The assessee surrendered the aforesaid amount of Rs.40,05,000/- as his business income over and above the normal business income. The assessee, accordingly, booked the said income in his books of account and paid the due taxes as applicable for business income. The AO, however, treated the said surrendered amount as unexplained income of the assessee and invoked the provisions of Section 115BBE and thereby taxed the income at a higher rate of 60%. The ld. CIT(A) confirmed the above action of the AO.

4. The ld. Counsel for the assessee has invited my attention to the surrender letter, copy of which is placed at Paper Book page 1 to show that the assessee had surrendered aforesaid amount of Rs.40,05,000/- on account of discrepancies confronted by the Survey Team. The assessee had submitted that at that point of time, he was unable to explain the discrepancies and accordingly, surrendered sum of Rs.40,05,000/- as additional business income .

The ld. counsel has submitted that the Survey Team did not doubt about the nature and source of the additional income surrendered by the assessee. He has further submitted that the assessee did not have any other income except the business income. The ld. counsel has invited my attention to the statement recorded of the assessee during the course of survey action, whereby, to the query of the Survey Party as to “what were the sources of income of the assessee”, the assessee answered that the assessee did not have any other source of income except from the business of M/s Ubhi Aluminum House, Ludhiana which was proprietorship concern of the assessee. The Survey Party further pointed out that he was not maintaining Stock Register and further asked the assessee to explain as to how the value of stocks was recorded in the books of account. The assessee in this query replied that the stock was physically verified at the end of the accounting year and the same was recorded in the books of account. Regarding the excess stock found, the assessee replied that it was accumulated over the few months. In respect of loose slips showing receivables, the assessee explained that those loose slips represented the receivables against unaccounted sales. In respect of excess cash found, the assessee further explained that it was on account of unaccounted sales. Further, the Survey Party asked the assessee as to what he has to say about the discrepancies found to which the assessee stated that he has surrendered the excess income as per the Surrender

Letter dated 23.10.2018. During the assessment proceedings, the assessee explained that the assessee was doing business at small scale level and also numerous items were dealt during business. That no day-today records were kept by the assessee and that the stock was valued at the end of the year, thus resulting into excess stock and cash out of unaccounted sales. The above factual position explained by the assessee has neither been doubted by the Survey Team during survey action nor could be rebutted by the AO during assessment proceedings.

5. Considering the overall facts and circumstances of the case, it reveals that the assessee was small time businessman and he did not properly maintain books of account. The stock was recorded at the end of the year which was taken as the opening stock of the next year. No day-to-day Stock Register was being maintained. During the year, assessee use to purchase and sell the goods, however, did not make day-to-day entry in that respect. There were unaccounted sales, the proceeds of which were invested for purchases and there were further sales from those purchases. Therefore, during the survey action, excess stock and receivables on account of unaccounted sales and cash generated on account of unaccounted sales was found. The assessee duly explained the source of the excess stock, receivables and cash which was duly accepted by the Survey Party.

6. Considering the overall facts and circumstances of the case, I am of the view that the aforesaid additional income surrendered by the assessee was not from any other unexplained source and same was out of business proceeds of the assessee. Therefore, I do not find justification on the part of the lower authorities in applying the provisions of Section 115BBE of the Act to the surrendered business income of the assessee. Accordingly, the AO is directed to tax the assessee on the surrendered income at normal rates as applicable to the business income. It is made clear that my above findings are given in view of the peculiar facts of this case and the same will not hold any binding precedent.

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

Order pronounced on 1<sup>st</sup> June,2023.

Sd/-

( संजय गर्ग )

(SANJAY GARG )

न्यायिक सदस्य/ Judicial Member

**“Poonam”**

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

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

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar