

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**
**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 148/Asr/2022
Assessment Year: 2019-20

Smt. Nandini Sharma,
172, Partap Nagar,
Amritsar 143001, Punjab
[PAN: BRTPS 8166A]
(Appellant)

Vs.

ACIT/DCIT
Central Circle,
Amritsar

(Respondent)

Appellant by : Sh. Rohit Kapoor, C.A. and
Sh. V.S. Aggarwal

Respondent by: Ms. Amanpreet Kaur, Sr. DR

Date of Hearing: 27.09.2022
Date of Pronouncement: 10.10.2022

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order dated 03.06.2022 passed by the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana, in respect of Assessment Year 2019-20.

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

- “1. That the order passed u/s 250(6) of the Income Tax Act, is bad in law 3hd against the facts of the case.
2. That the Ld. CIT(Appeals)-5 has erred in law and in facts in sustaining the order passed by the DCIT in which the Ld. AO has wrongly invoked provisions of section 69 by considering the difference as excess stock instead of short stock as noticed by the department without appreciating the fact that no excess stock was found. As such the provisions of section 115BBE r.w.s 69 cannot be invoked on income offered at Rs. 626500/-.
3. That the Ld. CIT(Appeals)-5 has erred in not appreciating the facts that the stock as per books of accounts was Rs, 4868459/- as against the correct physical stock found at Rs. 4107259/-. That the Ld. CIT has erred in appreciating the fact that the stock pertaining to sister concern Prabhat Traders has also been included to derive the excess stock of Rs. 626500/- . Therefore, it is not the case of excess stock, instead, there was shortage of stock to the tune of Rs. 761200/- [4868459-4107259],
4. That the Id. CIT (Appeals)-5 has erred in ignoring the submissions and evidence brought on record by the assessee to explain the genuineness of the business income surrendered by the assessee. That the Ld. CIT (Appeals)-5 has erred in not appreciating the fact that the statement of husband of the assessee was recorded u/s 133A on 27.02.2019 in which it was duly stated that the additional income was earned out of business income.
5. That without prejudice to ground no 4 above, the CIT(Appeals) has erred in confirming the action of the AO without appreciating the fact that the statement recorded u/s 133A has no evidentiary value.
6. That Ld. CIT (Appeals) has erred in confirming the action of the AO for application of section 115BBE on the surrender as made by the assessee without appreciating that no excess stock was found. That the CIT(A) has further failed to appreciate that the surrender as made by the assessee in books of accounts takes care of gross profit on actual shortage of stock of Rs. 761200/-.
7. That the appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.”

3. Briefly, the facts on record are that the appellant is an individual engaged in the business of trading of furniture and the appellant had filed return of income for the AY 2019-20 on 30.10.2019 at a total income of Rs. 1727530/- and that a survey operation u/s 133A was conducted on 26.02.2019 and stock of Rs.54,94,959/- was found as against stock of Rs. 48,68,459/- as per Books of Account. Thus, an excess stock of Rs.6,26,500/- was found. The assessment for the Ay 2019-20 was completed u/s 143(3) by invoking the provisions of section 115BBE on excess stock amounting to Rs. 6,26,500/- as alleged by the department. Further, the assessee has also offered Rs. 10,00,000/- on account of noting's in respect of repair to building for which is not under dispute.

4. The appellant has preferred an appeal before the CIT(Appeals) on the limited issue of whether provisions of section 115BBE can be invoked on the alleged excess stock. The CIT(Appeal) dismissed the appeal of the assessee vide order dated 13.10.2021 passed u/s 250(6) on the ground that the assessee has himself offered a sum of Rs. 626500/- in the balance sheet and as such, the stand of the department was correct. The CIT(A) confirmed the action of AO invoking provisions of section 115BBE by observing that once the assessee has voluntarily surrendered the income, and included the same in ITR and paid taxes. This act of the assessee

validates the action of department that the assessee was having undisclosed income offered for tax at Rs 6,26,500/-.

5. The Ld. AR explained before us that in reality, there was no excess stock and in fact, there was shortage of stock. The AR submitted that the Department prepared total stock inventoried at Rs.54,04,959/- including stock of sister concern Prabhat Traders to the tune of Rs.13,87,700/- and thus, the actual stock related the appellant was only to the tune of Rs.41,07,259/-. Therefore, this is a case of shortage of stock to the tune of Rs. 7,61,200/- [Stock as per books of accounts Rs.48,68,459/- Less stock found Rs.41,07,259/-].

6. The Ld. AR contended that the CIT(A) has erred in confirming the order of the AO as there was no excess stock and entries made in the books of accounts cannot be taken as conclusive to invoke the provisions of section 115BBE. It was also clarified by the AR that the appellant had offered a sum of Rs. 626500/- in the return of income as against the GP element worked out at 32% on shortage of stock of Rs. 761200/- which comes out to Rs. 243584/-. Therefore, it can be a case of shortage of stock and the balance amount of Rs. 382416/- i.e. Rs. 626500 (-) Rs. 243584 at the most can be said to be offered to cover any other

discrepancy and by no stretch of imagination the provisions of section 115BBE can be invoked.

7. The Ld. AR for the assessee has submitted on legal issue of applicability of provisions of section 115BBE and on factual material on record, in respect of excess/ shortage of stock found during the course of survey. The relevant part of the submissions made by the Ld. AR of the assessee are re-produced as under: -

11. *That before discussing the grounds of appeal, it is very much necessary to acquaint your honors with the facts of the present case. That the assessee is engaged in the business of trading in furniture and allied items from registered office at Mehta Road, Maqboolpura, Amritsar. **It is pertinent to mention here that the sister concern M/s Prabhat Traders Prop. Santosh Sharma is also carrying out the business of wholesale trading of various cloth items, carpets, curtains and other allied items from the same premises.** That during survey operation u/s 133A the inventory of stock of all the concerns were inventoried by the department and the summary for the same is as under:*

M/s PRABHAT CHAIRS				
Inventory	Stock as inventorized by the department	Stock as per books	Shortage	PB Page no.
1.	545400	4868459	761200	106
2.	113425			107
3.	775390			108
4.	786870			109
5.	75050			110
6.	1811124			111
	41,07,259/-	48,68,459/-	7,61,200/-	

M/s PRABHAT TRADERS		
Inventory	Stock as inventorized by the department	PB Page no.
1.	13,87,700	112

13. That during statement recorded u/s 131, it was duly clarified by the assessee that the stock related to cloth items pertains to M/s Prabhat Traders Prop. Santosh Sharma, and was also lying in the same premises. **The copy of statement is enclosed at page no. 114 to 123.(relevant page 117 The relevant answer is reproduced for ready reference:-**

Question 12: Please state whether someone else's stock is kept in your premises? If yes, please mention quantity and value.

*Answer: **Yes sir, the stock related cloth items pertains to M/s Prabhat Traders, Prop. Smt. Santosh Sharma.** The exact value of stock pertaining to M/s Prabhat Traders is not in my knowledge. The same will be told by my accountant.*

8. Per contra, the Ld. DR stands by the CIT(A)'s order.
9. We have heard the rival submissions, perused the material on record, written submission and impugned order. Admittedly, it is undisputed fact on record that the total stock as inventoried by the department at Rs.54,94,959/- includes the stock of sister concern 'M/s Prabhat Traders'. Therefore, the physical stock found during the survey, pertaining to the appellant was amounting to Rs.41,07,259/- and not Rs.54,94,959/-. Thus, it is a case of shortage of stock to the tune of Rs.7,61,200/- as contended by the AR and not objected by the department. It was also submitted by the AR that the assessee had offered Rs.6,26,500/- in the return of income

under the head 'profit and gains from business and profession' which is evident from copy of trading account (APB, Pg. 20).

10. The Ld. CIT(A) has confirmed the action of AO on the ground that once the assessee has voluntarily surrendered the income and also included the same in ITR and paid taxes and therefore, the AO has rightly made the addition by applying the provisions of section 115BBE on the alleged excess stock of 626500/-. In response to the same, the AR submitted that the provisions of section 69 is not applicable in the present case, as the three jurisdictional conditions required for the purpose of invoking the provisions of section 69 were not satisfied by the AO.

11. During the hearing, the AR drew the attention of the bench on the fact that the CIT(A) has nowhere contradicted the stand of the assessee that there was actual shortage of stock of Rs 7,61,200/- instead of excess stock of Rs 6,26,500/- as computed by the AO. The AR relied upon the circular issued by CBDT dated 11-4-1955, 14(XL-35) wherein the Board ordered that the officers of the Income-tax should not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist the taxpayers in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, the officer should take the initiative in guiding a taxpayer, where proceedings or other particulars before them

indicate that some refund or relief is due to him. The circular is enclosed at page no. 143-146 of paper book.

12. The Ld. AR further relied upon the circular and argued that department should freely advise the assessee, when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs. It may be true that the Circular is of the year 1955. Nevertheless, as per the recent notification issued by the Income-tax Department as to how the department has to approach the assessee, the Board has been consistent to state that the department should adopt an assessee friendly approach. The AR contended that the order passed by CIT(A) does not find any force as the same has been passed without taking into account the board circular.

13. The counsel relied upon the judgment of 'Pullangode Rubber produce Co. Vs. State of Kerela', [91 ITR 18] where the Hon'ble Supreme Court held that though the admission is an extremely important piece of evidence but it cannot be said that it is conclusive and it was open to a person who made the admission to show that it was incorrect. The AR further placed reliance upon a number of case laws for the proposition that addition cannot be made on the basis of statement recorded.

14. Again, the Ld. AR argued that no addition can be made in respect of entries made in the books of accounts even if under some mis-apprehensions or mistakes, the assessee made wrong entry. It was also argued that the assessee would not lose its right of claiming or would not be debarred from being allowed that deduction which otherwise is allowable as per the provisions of law. The AR relied upon the judgement of Kedar Nath Jute manufacturing company Ltd. Vs Commissioner of income tax 82 ITR 363 in which it has been held that entries in the books of accounts cannot decide whether the expenses are allowable or not. The AR further placed reliance upon a number of case laws for the proposition that due to lack of knowledge of accounts, entry made under the wrong head cannot be used for making addition.

15. The AR also referred to the audit report for AY 2022-23 where the wrong entry has been rectified by the auditor. The copy of the same is attached at page no 124-142 of the paper book. Even otherwise provisions of section 115BBE are not applicable in case of excess stock. That the amount surrendered has effect of increasing purchase account and correspondingly crediting the profit and loss account. Further, the AR drew the attention of the bench to the statement recorded u/s 131 where the assessee had stated that the income surrendered amounting to

Rs.6,26,500/- was earned out of sales made outside the books of accounts.

(APB, Pgs. 118-119) The relevant questions relied upon by the AR are as

under: -

Question 18: - *As per physical verification taken at your premise, it has been found that stock of Rs 54,94,959/- is found. Please explain the difference Rs 6,26,500/- with documentary evidence.*

Answer: - Sir, I am not able to explain the reasons of difference in stock. This may be unaccounted purchase which was not recorded in the books of accounts. The purchase may be also made from unaccounted sales. I have no documentary evidence in this regard.

Please refer page No 120-121

Question 23: - *I am again asking you, please explain the difference of excess stock found to the tune of Rs 6,26,500/- in M/s Prabhat Chairs?*

Answer: - I am unable to explain the differences in stock to the tune of Rs 6,26,500/-. However, in order to buy peace of mind and to avoid litigation with the department, I voluntarily offer additional income of Rs 6,26,500/- over and above normal business income for the FY 2018-19 relevant to AY 2019-20. This income will be shown in the return of income of M/s Prabhat Chairs for the AY 2019-20 and undertake to pay the due taxes as per the provisions of the Income Tax Act, 1961.

16. It is evident from the record that the excess stock found during the survey was nothing but the Business Stock carried on by assessee which was not declared in the books of accounts and since there is direct nexus of stock found during survey and business carried on by the assessee. Therefore, in our view, the excess stock is only to be treated as income under the head Business and not under deemed income. We further

observe that the excess stock found during the survey was not separately and clearly identifiable but was part of mixed lots of stock found at the premises which included the declared stock and stock of sister concern also. In these circumstances, the provisions of section 69 cannot be invoked and it should be taxable as business income.

17. In the cases of 'Arihant Foam (P.) Ltd. v. Assistant Commissioner of Income Tax', 88 Taxmann.com 674, Shri Lovish Singhal, Shri Vasu Singhal, Shri Pramod Kumar Singhal and Shri Vinod Kumar Singhal Versus Income Tax Officer, Ward-2 2018 (5) TMI 1646 and ACIT circle-Sriganganagar and also in case of Deccan Jewellers, High Court of Andhra Pradesh 132 Taxmann.com 73, it has been held that excess stock found during the course of survey was to be taxable under the head "profit and gains from business and profession.

18. It is apparently clear from the above that, this is the case of shortage of stock and not that of excess stock by considering the stock inventory placed on record. The limited issue before us is to adjudicate whether Provisions of Section 115BBE are Applicable on the basis of entries made in the books of accounts where no excess stock was actually found. It is noted that there was no evidence that the appellant had earned any other source of income. Further, there was no excess stock substantiated on the

basis of inventory of stock taken during the course of survey 9APB, Pgs.106-112). Thus, in our view of the matter the difference in stock was stand explained on account of business transactions, as such, the same cannot be added u/s 68 to 69D and therefore, the provisions of section 115BBE cannot be applied. Accordingly, the addition cannot be made merely on the basis of accounting entries particularly when no excess stock was actually found. This view gets support from the apex court in the case of 'Kedar Nath Jute manufacturing company Ltd. Vs Commissioner of income tax', 82 ITR 363. Furthermore, the same view has been followed by 'Delhi High Court in the case of CIT Central-III vs Hitashi Estates', 178 Taxmann 221. Therefore, the provisions of section 115BBE cannot be invoked in the present case as no excess stock was actually found.

19. Under the facts and circumstances of the case, the applicability of provisions of section 115BBE are not relevant in the present case as no excess stock was found. Even otherwise the provisions of section 115BBE cannot be made applicable particularly where the assessee has made a statement that the excess stock was a result of suppression of profit in respect of sales made outside the books of accounts. Therefore, in the present case, investment in excess stock computed by the department is

liable to be treated as business income and to be taxed under normal provisions and not under the chapter no XII.

20. In the case of 'M/S BAJAJ SONS LTD. VERSUS THE DCIT', CENTRAL CIRCLE-III LUDHIANA 2021 (5) TMI 956 it has been held that provisions of section 115BBE are not applicable where Surrender is made to cover any discrepancy.

21. Considering the factual matrix and judicial precedent cited, the action of the lower authorities in invoking provisions of Section 115BBE on the surrender income is perverse to the facts on record and held to be bad in law. Therefore, the AO is directed to compute the said surrendered income under normal provisions as applicable to the business income of the assessee.

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

Order pronounced in the open court on 10.10.2022

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr/PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned

(5) The Sr. DR, I.T.A.T

True Copy
By Order