Parshavnath Associates, Kota,Kota vs Acit/Dcit,Central Circle, Kota, Kota on 19 March, 2025

vk;dj vihyh; vf/kdj.k] t;iqj U;k;ihB] t;iqj
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

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BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

vk;dj vihy la-@ITA. No. 1357 /JPR/2024
fu/kZkj.k o"kZ@Assessment Years : 2018-19

Parshavnath Buildestate Private Limited, 1, Ballabh Bari Shopping Complex, Ballabh Bari, Kota-324007.	cuke Vs.	The ACIT/DCIT, Central Circle, Kota.
LFkk;h ys[kk la-@thvkbZvkj la-@PAN/GIR No.: AAFCP 8699C		
vihykFkhZ@Appellant		izR;FkhZ@Respondent

vk;dj vihy la-@ITA. No. 1358 /JPR/2024
fu/kZkj.k o"kZ@Assessment Years : 2018-19

Parshavnath Associates 1, Ballabh Bari Shopping Complex, Ballabh Bari, Kota-324007.	cuke Vs.	The ACIT/DCIT, Central Circle, Kota.
LFkk;h ys[kk la-@thvkbZvkj la-@PAN/GIR No.: AALFP8610Q		
vihykFkhZ@Appellant		izR;FkhZ@Respondent

fu/kZkfjrh dh vksj ls@ Assessee by : Shri Mahendra Gargieya, Adv.&
Shri Hemang Gargieya, Adv.
jktLo dh vksj ls@ Revenue by : Smt. Runi Pal, CIT
a
lquokbZ dh rkjh[k@ Date of Hearing : 20/02/2025
mn?kks"k.kk dh rkjh[k@Date of Pronouncement : 19/03/2025
vkns'k@ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM By way of separate two appeals filed by the above named assessee, challenges the separate orders of the Learned Commissioner of Income Tax (Appeal)- 2 Udaipur [for short CIT(A)] both dated 27.10.2024 and relates to the assessment year 2018- 19, which in turn arise from the two separate orders dated 27.04.2021 passed under section 143(3) of the Income Tax Act,1961 [for short "Act"] by the ACIT/DCIT, Central Circle, Kota.

[for short AO].

2. Since the issue involved in these two appeals of the assessee's are almost identical on grounds and on facts, therefore, were heard together with the agreement of the parties and are being disposed off by this common order.

3. At the outset of hearing the ld. AR of the assessee has submitted that the matter pertaining to A.Y. 2018-19 in ITA no.

1358/JPR/2024 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical. Therefore, for the purpose of the present discussions, the case of ITA No. 1358/JPR/2024 is taken as a lead case.

4.1 In ITA No. 1358/JPR/2024 the assessee has raised following grounds:-

> "1. The impugned order passed u/s 143(3) dated 27.04.2021 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.
>
> 2. Rs. 2,00,10,200/-: The CIT(A) erred in law as well as on the facts of the case in confirming the addition made by the Ld. AO in imposing tax, surcharge, cess etc. As per provision of S. 115BBE of the Act on the income surrendered during survey. The consideration of income as unexplained u/s 69C and invoking of S.115BBE is contrary to the provisions of law, on facts and without jurisdiction. The tax liability so created, kindly be deleted in full.
>
> 3. The CIT(A) erred in law as well as on the facts of the case in confirming the charging of interest u/s 234A, 234C, 234C and 234D of the Act and as also in withdrawing interest u/s 244A of the Act made by the AO. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.
>
> 4. The appellant prays your honour to add, amend or alter any of the grounds of the appeal on or before the date of hearing."

4.1 In ITA No. 1357/JPR/2024 the assessee has raised following grounds:-

> "1. The impugned order passed u/s 143(3) dated 27.04.2021 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.
>
> 2. Rs. 50,01,100/-: The CIT(A) erred in law as well as on the facts of the case in confirming the addition made by the Ld. AO in imposing tax, surcharge, cess etc. As per provision of S. 115BBE of the Act on the income surrendered during survey. The consideration of income as unexplained u/s 69C and invoking of S.115BBE is contrary

to the provisions of law, on facts and without jurisdiction. The tax liability so created, kindly be deleted in full.

3. The Ld. AO further erred in law as well as on the facts of the case in charging interest u/s 234A, 234C, 234C and 234D of the Act and as also in withdrawing interest u/s 244A of the Act. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.

4. The appellant prays your honour to add, amend or alter any of the grounds of the appeal on or before the date of hearing."

5. The brief facts of the lead case is that a survey action u/s 133A in the case of the assessee M/s Parshavnath Associates [now onward for short referred as assessee] was conducted on 08.11.2017. The assessee is a firm and engaged in the business of real estate. The assessee had filed return u/s 139 for the A.Y. 2018-19 on 13.08.2018 at total income of Rs. 4,77,29,130/-. The case of the assessee was manually selected for compulsory scrutiny as per guidelines issued by the CBDT, New Delhi's F.No. 225/169/2019/ITA-II dated 05/09/2019. Notice u/s 143(2) was issued to the assessee on 25.09.2019 and served to assessee through ITBA Portal by the jurisdictional Assessing Officer.

Thereafter, due to centralization of case u/s 127, the case was transferred to ACIT/DCIT, Central Circle, Kota. Further, notice under sub section (1) of Section 142 of the Act along with questionnaire was issued on 05.01.2021and served to the assessee through ITBA Portal.

5.1 In response to these notices, assessee filed submission time to time which were examined by ld. AO, he also noted that he has examined the survey record of the assessee during assessment proceeding. While examining that record he noted that in that survey proceeding, a note pad "Marbito" was found and impounded, which was annexed as annexure -A-1, Ex-1 (page no.

1 to 6). On perusal of that exhibit, he noticed that assessee firm had incurred undisclosed expenditure of Rs. 2,00,10,200/- in development of land and construction during the F.Y 2017-18. The partner of the assessee firm Shri Pradeep Dadhich had accepted in his statement recorded during survey proceedings, that these expenses were not recorded in regular books of accounts of the assessee and stated that the same has been incurred out of the unrecorded income of the assessee and thereby he disclosed income of Rs. 2,00,10,200/- for taxation.

5.2 The Ld. AO noted that the assessee had included this offered income of Rs. 2,00,10,200/- in its total income under the head "Business Income" in ITR filed for the relevant year and paid tax at normal rate there on. As the unaccounted / unexplained expenditures are covered u/s 69C of the I.T. Act, therefore tax should be charged as per the provision of section 115BBE of I.T. Act 1961.

5.3 So, ld. AO issued a show cause notice to the assessee on 03.02.2021 asking that why the tax on the income offered for taxation during survey proceedings should not be charged as per provision of section 115BBE of the Act. The assessee submitted its reply on 09.02.2021. The reply of the assessee was considered and place on record but not found satisfactory by the ld. AO. The assessee submitted

that unaccounted expenditure offered during survey proceedings belongs to current year and same cannot be treated as unexplained u/s 69C of the Act. The submission of the assessee is not acceptable because there is no such provision for non-applicability of section 69C for the current year. During the survey proceeding, the assessee admitted that the expenditure of Rs. 2,00,10,200/- incurred for development of land and construction was not recorded in regular books of accounts and offered for the same income for taxation. Further, during the assessment proceeding, the assessee has not submitted any details and documents regarding source of these unaccounted expenditure incurred during the year. Hence, the same is covered u/s 69C of the Act and tax should be charged as per provision of section 115BBE of the Act.

5.4 Considering the facts of the case, the undisclosed income of Rs. 2,00,10,200/- offered during the survey proceeding is considered as explained expenditure as per provision of section 69C of the I.T. Act and tax is charged as per provision of section 115BBE of the I.T. Act, 1961. Since, the assessed income includes income chargeable to tax as per provision of section 115BBE of the Act.

6. Aggrieved, from the said order of assessment, assessee preferred first appeal before the ld. CIT(A). The ld. CIT(A) after hearing the contention of the assessee has dismissed the appeal of the assessee by giving following findings on the issue:-

> "4.3 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-
>
> The AO in this case noted that during the survey proceeding, a note pad "Marbito" was found and impounded, which was annexed as annexure A-1, Ex-1 (page no. 1 to 6). On perusal of this exhibit, it was noticed that assessee firm had incurred undisclosed expenditure of Rs. 2,00,10,200/- in development of land and construction during the FY 2017-18. The partner of the assessee firm Shri Pradeep Dadhich had accepted in his statement recorded during survey proceedings, that these expenses were not recorded in regular books of accounts of the assessee and offered undisclosed income of Rs. 2,00,10,200/- for taxation.
>
> The assessee had included this offered income of Rs. 2,00,10,200/-in its total income under the head "Business Income" in ITR filed for the relevant year and paid tax at normal rate there on. As the unaccounted/unexplained expenditure are covered u/s 69C of the I.T. Act, therefore tax should be charged as per the provision of section 115BBE of L.T. Act 1961.
>
> The assessee submitted before the AO that unaccounted expenditure offered during survey proceedings belongs to current year and same cannot be treated as unexplained u/s 69C of the I.T. Act, 1961. The submission of the assessee is not found acceptable by the AO.

The AO recorded that during the survey proceeding, the assessee had admitted that the expenditure of Rs. 2,00,10,200/- incurred for development of land and construction was not recorded in regular books of accounts and offered for the same income for taxation. Further, during the assessment proceeding, assessee has not submitted any details and documents regarding source of these unaccounted expenditure incurred during the year. Hence, the same is covered u/s 69C of the I.T. Act and tax should be charged as per provision of section 115BBE of the I.T. Act 1961.

Considering the facts of the case, the undisclosed income of Rs.2,00,10,200/-offered during the survey proceeding is considered as explained expenditure as per provision of section 69C of the I.T. Act and tax is charged as per provision of section 115BBE of the I.T. Act, 1961.

The appellant stated that the assessee declared as income of the current year and offered for taxation, As it is evident from the statement recorded during survey proceedings that expenditure belongs to the current year, the same cannot be called as unexplained U/s 69C of the LT. Act, 1961 and to be taxed at higher rates Explanation offered by the assessee in the statement recorded was accepted by the department and tax at normal rate was paid showing Income surrender in Survey while filing return of income for the concerned year. Thus, Income offered in survey would not be taxed as per provisions of Section 11588E but would be taxed at normal rate The explanation of the assessee is considered but not found to be acceptable. Only because the expenditure belongs to the current year the same cannot be treated as unexplained expenditure is not found to be an acceptable explanation. The section 69C read as under-

[Unexplained expenditure, etc. 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:1 [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.) As per this section if an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or the explanation, if any. offered by him is not, in the opinion of the [Assessing) Officer, satisfactory, the amount covered by such expenditure may be deemed to be the income of the assessee for such financial year.

The language of the section is plain and simple. There is no exception with regard to expenditure belongs to the current year. In fact, the expenditure incurred in the financial year is to be considered for making addition. The assessee is required to explain the source of the expenditure so made. If the source is from the explained

sources, the section 69C is not applicable.

Now, coming to the facts of the case, it is to be examined whether, the assessee is able to explain the source of expenditure. It is noticed that the assessee has not explained the source of such unexplained expenditure which was admitted during the survey proceedings.

It is argued that if Department wants to tax surrender income w/s 115BBE then advance tax deposit would be more and the same should be demanded by the department, but that does not happen The argument of the appellant are not found to be relevant for the purpose of assessment. The payment of tax in the form of advance tax or self assessment tax is the choice of the assessee and final determination of income and income tax liability has nothing to do with the manner of payment of taxes.

It was argued that the assesse has not offered the income under section 63A of the Act Evert the Assessing Officer has not made any separate addition under Section 694 of the Act. He has merely re characterized the nature of income offered by the assessee same has been held by Hon'ble ITAT Delhi (DEL TRIBJ (2023) 122 TLC390 On perusal of the order relied upon by the appellant, it is noticed that Hon'ble ITAT recorded that at the time of search itself, assessee explained the source of the amount offered as income to be profit derived from Commodity trade which is in the nature of business income. It is not the case of the assessee. The assessee has not explained the source of unexplained expenditure. Therefore, the decision relied upon by the appellant is not found to be applicable on the facts of the present case.

The appellant has also relied upon the decision Gauwati Tribunal in the case of Abdul Hamid that notion 11588E does not apply to business receipts 183 170 711. (Copy Enclosed as Amenre-57 The decision was with respect to an appeal filed against the order passed by the Pr. CIT u/s 263 was challenged. In that order it was held that the order passed by the AO was not erroneous. In that case, the assessee stated that the source of cash deposited in bank was business income. In the present case, the source of unexplained expenditure is not known. It is not explained even during the assessment proceedings or during the appellate proceedings. Hence, the decision relied upon by the appellant is not found to be applicable on the facts of the present case.

The appellant has relied upon the decision in the case of Veer Enterprises Vs. DCIT (2024) 206 ITD 289 (Cha) (Tb). On perusal of the decision relied upon by the appellant it is noticed that Hole ITAT not as under "Therefore, it is found that the assessee has been confronted with not just the discrepancy so found during the course of survey but the nature and source thereof during the course of survey proceedings and it is clearly emerging that the source of such income is from its business operations. There is a clear statement of the partner of the assessee that the

> advances are related to its business, however since the same have not been recorded in the books of account, he has offered the same to taxation."

As held by the ITAT in above case, there is a clear statement of the partner of the assessee that the advances are related to its business. However, in the present case, there is no statement of the assessee that the source of unexplained expenditure was from business. In the present case, the representative of the assessee has clearly admitted this amount is surrendered as undisclosed income of the assessee. There is no claim made in the statement that the amount was earned by the assessee from the regular business. Therefore, the source of the amount remains unexplained. Considering the above facts, the decision relied upon by the assessee is not found to be applicable on the facts of the assessee.

It is stated that expenditure were Business expenditure related to day to day business activities and incurred mostly between April 2017 to June 2017 Le period pertaining to current year and since financial year has not closed & cannot be assumed that assessee well not record such expenditure in his regular books of account and also it was not specifically mentioned by the department in statement recorded that such income is unexplained income as speckled in section 68 69.694 698.69C & 690 of the 17 Act and should be taxed at higher rate The arguments of the appellant are considered. The diary shows that the assessee has incurred expenditure. As per section 69C of the Act, the purpose of expenditure is not relevant. What is relevant is the source of expenditure. However, the assessee failed to explain the source of expenditure made. Further, in the statement also it was not stated that the expenditure was made out of business income. In fact, in the statement the income is clearly accepted as undisclosed income. The facts of the case clearly establish that the unexplained expenditure was made out of sources which are undisclosed. There is no evidence brought on record that the expenditure was made out of business income. Therefore, the claim of the assessee is not found to be acceptable and rejected.

In essence, the assessee is arguing that if the assessee is engaged in business activity, all unaccounted assets or income found during search and survey should be considered as earned from business activity. If the argument of the assessee are accepted then there will be no addition u/s 68, 69, 694 or 69C in case the assessee is engaged in some business activity. This is not found to be acceptable as per the provisions of Income Tax Act. There was no such intention of the legislature. There is no provision in the Income Tax which says that the sections of deemed income family are not applicable on the assessee who is engaged in the business activity. Hence, the arguments of the assessee are not found to be acceptable.

The addition made by the AO u/s 69 C of Rs. 2,00,10,200/- is therefore found to be justified and confirmed.

Charging of Tax u/s 115BBE The appellant has also raised the issue of charging tax u/s 115BBE of the Income Tax act. The section 115BBE is charging section. The argument of the appellant are considered. The Income Tax Act is a self contained code consists of both charging and machinery sections. Charging sections are those sections by which liability is created or fixed. Machinery sections are those sections which ensure quantification, imposition and collection of tax created by

the charging sections". Thus "Machinery Provisions' are basically subordinates to the charging section. On applying the above principles section 115BBE is categorized as 'machinery provision' which is subordinate to the charging sections 68 and section 69 family. There is a very practical rule in the interpretation of taxing Statutes that 'charging provisions' are interpreted strictly while the 'machinery provisions are interpreted liberally.

The above criteria of Interpretation of the 'Statute' is supported by several judicial precedents.

Some land mark judicial precedents are as under, J.K. Synthetics Ltd. v. CTO 1994 taxmann.com 370 (SC).

(i) Gurshai Saigal v. CIT [1963] 48 ITR 1 (SC).

()India United Mills Ltd. v. CEPT [1955] 27 ITR 20 (SC).

(iv) CIT v. Mahaliram Ramjidas [1940] 8 ITR 442 (PC).

The Hon'ble Supreme Court in the case of J.K. Synthetics Ltd. (supra) held as under:

> "It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (Whitney v. Commissioners of Inland Revenue 1926 A C. 37, CIT v. Mahaliram Ramjidas [1940] 8 ITR 42 (PC), Indian United Mills Ltd. v. Commissioner of Excess Profits Tax, Bombay, [1995] 27 ITR 20 (SC) and Gursahai Saigal v. CIT, Punjab, [1963] 48 ITR 1 (SC)."

The Hon'ble Supreme Court in the case of Gursahal Saigal (supra) held as under:

> "Those sections which impose the charge or levy should be strictly construed, but those which deal merely with the machinery of assessment and collection should not be subjected to a rigorous construction but should be construed in a way that makes the machinery workable."

The Hon'ble Supreme Court in the case of 'India United Mills Ltd. (supra) applied the principles laid down by the Privy Council in the case of 'Mahaliram Ramjidas (supra)' held as under

> "Ordinarily, the charging section which fixes liability is strictly construed but the rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provision must, no doubt, be so construed as would effectuate the object and purpose of the Statute and not to defeat the same."

In view of above discussion, when the addition is made in sections 68 and section 69 family. If the addition is made under these sections, the tax has to be charged as per provisions of section 115BBE. The charging of tax as per provisions of section 115BBE is automatic. Hence, no separate show cause notice is required for charging tax u/s 115BBE. Therefore, the argument of the appellant are not found to be acceptable.

The arguments of the appellant are against the expressed provisions of the Income Tax Act. Sub-section (2) of section 115BBE of the Income- tax Act, 1961 (Act) provides that where total income of an assessee includes any income referred to in section(s) 68/69/69A/698/69C/69D of the Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provisions of the Act in computing the income referred to in section 115BBE(1) of the Act.

The issue raised by the appellant is therefore not found to be acceptable and rejected.

This ground of appeal is treated as dismissed.

5. In the result, the appeal filed by the appellant is treated as dismissed."

7. Feeling dissatisfied from the above order of the ld. CIT(A) dismissing the appeal of the assessee, the assessee preferred the second appeal before this tribunal. Apropos to the grounds so raised the assessee, ld. AR of the assessee relied upon the written submission which is reproduced here in below :-

> "Brief General Facts:
>
> 1. The admitted facts as stated by the AO are that the assessee is engaged in the real estate business under the tradename ofM/S Parshavnath Associates. A survey u/s 133A was carried out on dated

08.11.2017, during the course of which a note pad marbito, was found and impounded, marked as Annexures A-1, Ex-1 (Pg. 1 to 6) (PB 30-36). On perusal of this exhibit, it was noticed that assessee firm had incurred undisclosed expenditure of Rs. 2,00,10,200/- in development of land and construction during the FY 2017-18. Further, statement of the Partner Shri Pradeep Dadhich was recorded u/s133A, wherein the Partner voluntarily admitted business income of Rs. 2,00,10,200/-in addition to regular income, on account of purchase of construction material and land development expenses, relating to the period of April to June, 2017,which were yet to be accounted for. Thereafter, the assessee-firm filed its Return of income u/s 139 (PB 1-3) on dt. 13.08.2018 declaring

total income of Rs.4,77,29,130/- which also included such additional income of Rs. 2,00,10, 200/-.Thereafter, the case was selected for Complete Scrutiny assessment and the impugned assessment was completed vide order dated 27/04/2021 passed u/s 143(3).

2. The AO completed the assessmentu/s 143 (3) of the Act, by imposing tax at special rates u/s 115BBE of the Act on the income of Rs. 2,00,10,200/-holding as under:

> "Assessed u/s 143(3) of the Income Tax Act on total income of Rs. 4,77,29,130/- (Income of Rs. 2,00,10,200/- is charged as per provisions of section 115BBE). Interest is charged u/s 234B, 234C & 234D. Interest u/s 244A is also withdrawn, as per law. A copy of this order along with ITNS 150 which is part of this order is served upon assessee."

3. Aggrieved by the order of AO, the Assessee filed an appeal to CIT (A) on 31.05.2021. However, the CIT (A) passed the order dated 27.10.2024 without appreciating the arguments of the Assesseewhich is as follows: -

> "In essence, the assessee is arguing that if the assessee is engaged in business activity, all unaccounted assets or income found during search and survey should be considered as earned from business activity. If the argument of the assessee are accepted then there will be no addition u/s 68, 69, 69A or 69C in case the assessee is engaged in some business activity. This is not found to be acceptable as per the provisions of Income Tax Act. There was no such intention of the legislature. There is no provision in the Income Tax which says that the sections of deemed income family are not applicable on the assessee who is engaged in the business activity. Hence, the arguments of the assessee are not found to be acceptable. The addition made by the AO u/s 69 C of Rs. 2,00,10,200/- is therefore found to be justified and confirmed."

Submission:

> G.O.A 1, 2 & 3: Invalid Invocation of Sec 115BBE:
>
> 1. Section 115BBE wrongly invoked and applied even on assessed business income:
>
> 1.1 Legal Position: At the outset it is submitted that S.115BBE specifically refers to the income which are of the nature as referred in S.68, 69, 69A of the Act being the income from other sources. Therefore, subjected income has essentially to be classified u/s 14 of the Act as income from other sources and that is possible only when the income is not capable of being classified under any other head being income from salary, house property, capital gain, business or profession.
>
> 1.2 A combined reading of S. 14 with S. 56 of the Act makes is evidently clear that for the assessment of an income it must have to be classified under four heads of income as enumerated u/s 14 and if it doesn't fall under any specific head of income as per

item A to E of S. 14, such income has to be assessed under the residuary head of income i.e. item F of S. 14. Therefore, income added u/s 68 or 69 etc. has to be given a specific head in terms of S. 14.

1.3 The Hon'ble Supreme Court in case of Karanpura Development Co Ltd vs. CIT [1962] 44 ITR 362 (SC) held that these heads are in a sense exclusive to one another and income whichfalls within one head cannot be brought to tax under another head. Further, the Hon'ble SupremeCourt in case of Nalinikant Ambalal Mody v CIT [1966] 61 ITR 428, has held that whether anincome falls under one head or another is to be decided according to the common notions ofpractical man because the Act does not provide any guidance in the matter. Of course, lot ofjudicial precedents are available to a taxpayer to arrive at a conclusion about determination ofappropriate head of income.

1.4 The scheme of sections 68, 69, 69A, 69B and 69C provides that in cases where the nature and source of investments or acquisition of money, bullion or expenditure incurred are not explained at all, or not satisfactorily explained, then, the value of such investments and money, or value of articles not recorded in the books of accounts or the unexplained expenditure may be deemed to be the income. In view of the above, it can be said that for triggering section 115BBE what is relevant is whether income remains disclosed or undisclosed or explained or unexplained. If the income is disclosed or explained as mandated by the law, then same would be taxable in the ordinary manner. On the other hand, if the income is undisclosed or unexplained then the provisions of section 115BBE may be triggered depending upon the facts involved in each of the cases. The moment a satisfactory explanation is provided about nature and source then the source would stand explained and therefore, the income would be computed under the appropriate head of income as per the provisions of the Act.

1.5 On perusal of the Finance Minister's speech and Explanatory Memorandum (2), it is clear that the legislative intent behind introduction of section 115BBE was to curb the generation and use of unaccounted money and tax the same at the highest rate.

2. It is submitted that whatever, was disclosed was nothing but additional income only and it cannot be termed as excess/undisclosed/ unaccounted income/expenditure for the simple reason that survey was carried out on 08.11.2017 i.e. before ending of the relevant previous year ending. Since, the current period was running it was usual that some of the transactions remain pending and hence,the books of accounts were not complete on the day of survey. Therefore, such transactions, which could not be accounted for then for want of receipt of details, were accounted for thereafter, and hence, cannot be termed as excess-

shortage/undisclosed/unaccounted money, quantity etc. Even the Return of income was not filed by the assessee, on the date of survey dt. 08.11.2017. At the best it was only additional income stated

during survey.In any case,the assessee admittedly accounted for such income in regularly maintained books of account and declared the resultant income in its ROI, which were not rejected u/s 145 and hence were binding upon the AO u/s 28 of Bharatiya Sakshya Adhiniyam, 2023 (previously u/s 34 of Indian Evidence Act, 1872).

3. Pertinently, the AO accepted the income declared in the same manner, at the same figure and even under the same head of income. He made no separate addition u/s 69/69C etc.Once a comparison is made between the income shown in the accounts and those in ROI, there will be no difference. Consequently, it cannot be said that there was some excess shortage/undisclosed/ unaccounted income, etc.

4. Additional income- Business income only:

> 4.1 It is submitted that the only source of income of the appellant M/S Parshavnath Associatesis the income from Real Estate Business as stated by the Partner Shri Pradeep Dadhich in reply to answer to Q10 (PB 43) and as admitted by the Ld. AO himself at Pr. 1 on Pg. 1 that the appellant firm is engaged in construction business. Admittedly, there is no other known or unknown source of business hence there is no possibility of the said income being part of "Income from Other Sources."

Moreover, the said additional income of Rs. 2,00,10, 200/-.was only on account of purchase of building construction material and land development made during the year, which was pending accounted for at the time of survey and hence such income is directly related to the said Real Estate business only. In fact, a bare reading of the related questions & answers clearly shows that the partner of assessee firm has also admitted such income as a result of the real estate business activities only. Kindly refer the statement of Shri Pradeep Dadhich recorded u/s 133A on dated 08.11.2017 Q & A of Q10 (PB 43) where he was asked about the amount in the impounded document i.e. Marbito notepad, which was replied by Shri Pradeep Dadhich stating that the income is of the running year and is of the months starting from April to June 2017. Thus, undisputedly the entire amount of Rs. 2,00,10,200/- related to the purchases of construction material and land development pending accounting on the date of survey. For your ready reference the relevant extracts of Q & A from the statements recorded u/s 133A given by Pradeep Dadhich are reproduced herein below:

> 4.2There is no whisper in the entire statement of partnerShri Pradeep Dadhichnor any finding recorded in the impugned assessment order u/s 143(3) for A.Y. 2018-19 in case of the appellants that the additional income was something other than the Income from business or that there was some other source of income giving rise to such alleged undisclosed Income. In these circumstances, the only inescapable conclusion is that the such income was nothing but a business income from the purchase and sale of properties or material from the transactions in real estate. The very source of alleged undisclosed income emanated from, was well connected with and related to the real estate business transactions alone and not from any other activities or from any other source of income.Notably, the authorities below

completely failed to establish that such additional income/expenditure is clearly separately identifiable, in the existing real estate business and had its independent existence detached from the said business.

Consequently, S. 69C could not be invoked.

5. Accounting: It is submitted that income so admitted in shape of the unrecorded purchase of construction material and land development, was admittedly entered in the regular books of accounts. The appellant firm duly credited the additional income of Rs.2,00,10, 200/- in the P&L A/c (PB 27) and debited the Purchase Material Ledger A/c. Thus, material so purchased was included in the existing stock and accounting entries pending at the time of survey were completed at the end of the year. These accounting entries furnished a strong ground that it was a business income only and S. 115BBE was not applicable.

6.1 Treatment in Income Tax Return: Pertinently, in the computation of total income (PB 2-3) also, the assessee disclosed the net profit of Rs.4,77,29,130/- from the said real estate business and such N.P included aforesaid additional income of Rs.2,00,10,200/-. Notably, even the AO has not specifically computed and assessed the said income as income from other sources. There is no categorical assertion made by him in the computation part on the impugned Assessment Order. He simply states "considering the facts of the case, the undisclosed income of Rs. 2,00,10,200/- offered during the survey proceeding is considered as explained expenditure as per provision of section 69C of the I.T. Act...". However, there is no whisper of Sec. 56 or change of head of incomei.e. to income from other sources.The AO started the computation of income by taking the figure of income declared in ROI of Rs 4,77,29,131/- which was declared under the head business income only.Meaning thereby, the AO also assessed the additional income as income from business only, as offered by the assessee in its computation. The Ld. Tax Auditor in the tax audit report (PB 4-29) has not disturbed, the treatment so given by the appellant firm. Lastly, we also strongly rely upon the submissions and reproduced at pages 4 to 6 of the appellate order.

6.2 The bare reading of the impounded document provides that the expenditure incurred were towards sand, bajri, malwa, etc. itself goes to show that all the expenditures related to the construction and land development activity relating to the real estate business of the appellant. Thus, the totality of the above facts and circumstances, very clearly indicates and establishes that the alleged undisclosed income of Rs. 2,00,10, 200/-, was nothing but the additional income from real estate business utilized towards its expenditure and hence, not income from other sources or in any case not falling u/s 69C of the Act.

7. Judicial Guideline- Covered Issue: The Hon'ble Rajasthan High Court, ITAT Jaipur and various other courts have held that where the additional income/ undisclosed income declared during the course of survey is relatable to some business activity then it cannot be considered to be income from other sources and consequently S. 115BBE cannot be invoked.

7.1The Hon'ble Ahmedabad Tribunal in case of Chokshi Hiralal Maganlal vs DCIT (ITA No. 3281/Ahd/2009 dated 5 August 2011) held that for invoking deeming provisions under sections 69,

69A, 69B & 69C there should be clearly identifiable investment or asset or expenditure (i.e. in our understanding not connected with business so as to make convenient to invoke aforesaid sections). In case source of investment or asset or expenditure is clearly identifiable and has no independent existence of its own where a case arises to claim that it cannot be separated from business then first 'what is to be taxed is the undisclosed business receipt. Only on failure of such exercise, it would be regarded as taxable under section 69 on the premises that such excess investment or asset or expenditure is unexplained and unidentified, satisfying the mandate of the law.

7.2 The Hon'ble Rajasthan High Court in case of CIT vs Bajargan Traders [ITA No. 258/2017 dated 12/09/2017],(DC 40-44) has held that "...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.

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

7.3 In case of Shri Lovish Singhal vs ITO (ITA No 142 to 146/Jodh/2018), the Jodhpur Tribunal applying the proposition of law laid down by the Hon'ble Rajasthan High Court in the Bajargan Traders (supra), held that the lower authorities were not justified in taxing the surrender made on account of excess stock and excess cash found U/s 69 of the Act and accordingly held that there is no justification for taxing such income u/s 115BBE of the Act.

7.4 Useful reference can be made in the case of Smt. Rekha Shekhawat Vs. Principal Commissioner of Income Tax (2022) 219 TTJ (JP) 761, (DC 1-39) wherein it was held that "Revision--Erroneous and prejudicial order--Lack of proper enquiry vis-a-vis assessment of additional income as business income--During the course of survey under s. 133A assessee's husband admitted unrecorded income in the case of his wife i.e., assessee which was stated to be advances made for property in the course of her real estate business--Unrecorded trade advances and cash in hand were brought in the books of accounts and formed part of business assets and thereafter used in day-to-day business activities-- Questions which were raised and the answers given during the survey show that the additional income declared on account of advances and the cash found emanated from and related

to the real estate business only--Even the Principal CIT has admitted in the impugned order that this income pertains to recovery of cash amounts of advances made by the assessee to the other persons for purchase of land/plots-- Undisputedly the assessee is engaged in the real estate business and there is no undisclosed or unknown source of income and the source of additional income so admitted is clearly identifiable and is the regular business of real estate--Since the additional income is related to the real estate business it is certainly assessable as business income and cannot be considered as income falling under s. 68/69A--AO having applied his mind in accepting the said additional income as business income, there was no error in the assessment order--Thus, the Principal CIT was not justified in expecting the AO to apply s. 115BBE as also s. 271AAC by merely imposing and substituting his own opinion, which is not the legislative intent even behind Expln. 2(a) to s. 263--Further, merely because the assessee has taken a mistaken view of the correct legal position by wrongly showing such additional income under head income from other sources in her return, the same cannot be taken as an admission as there is no estoppel against statute--Therefore, Principal CIT was not justified in invoking the provisions of s. 263 by wrongly holding that the assessment order under s. 143(3) was passed without considering that the additional income fell under the purview of ss. 68 and 69 and that tax was chargeable under s. 115BBE as against normal rates--Hence, the proceedings initiated under s. 263 and the impugned order are quashed."

7.5 In the case of Nikhaar Fashions v. ACIT (ITA No. 1020/JPR/2024),(DC 45-58) it was held that "since revenue was not able to submit any evidence to effect that said income was not connected with business income of assessee or was accumulated from non- recognising source, entire addition was certainly without forming proper basis and thus impugned application of section 69Bof the Act upon income disclosed by assessee and taxing same at special rate as per section 115BBE of the Act was improper."

7.6 Other Decisions:

PCIT vs. Krishna Kumar Verma [2024] 161 taxmann.com 44 (Madhya Pradesh)
PCIT vs. Parshottambhai Maganlal Ramotia [2024] 169 taxmann.com 372 (Gujarat)
Parmod Singla vs. ACIT [2023] 154 taxmann.com 347 (Chandigarh -

Trib.) Kindly refer Nikhaar Fashions v. ACIT(DC 52)

8. Observation/Submission on the objections of the CIT (A): At the outset, it is pertinent to note that the crucial and jurisdictional facts have been admitted by the CIT(A) himself in pr. 4.3, pg. 6 onward to the effect that in this impounded diary, the expenses incurred on development of the land and construction were noted and, in the statement, also, the Director Pradeep Dadhich clearly admitted the same fact vide Q no.10 (PB 43). He also admitted that even in the ITR, the additional income was shown as business income and not income from other sources. These admitted jurisdictional facts are sufficient to reach to a conclusion that the additional income was nothing but business income and could not have been termed as income from other sources by any stretch of imagination.

8.1 The learned CIT(A) was fully unjustified in rejecting the contention that the additional income relating to the expenditure towards the construction expenditure related to the current year only

and the survey having taken place mid of the year i.e. that is prior to the close of the year. The same having been duly accounted for in audited accounts (based on which, the income of this year was declared), consequently such additional income remained no more unexplained or unrecorded so as to invoke section 69 C. 8.2The allegation of lack of source is irrelevant and rather misleading in the sense that once then there is an additional income to the extent of Rs. 2,00,10, 200/- in the current year which was utilized towards the construction expenses,it can't be said that such incurrence of expenditure was sourceless so as to invite section 69C and consequently S.115 BBE was also not applicable.

8.3Importantly, whatever additional income was shown and ROI was filed, was accepted and assessed at the same figure without any variation therein, meaning thereby the Ld. AO did not find anything over and above the additional income which, if made, would have given rise to some unexplained/unrecorded income/expenditure, which is not the case here. But the ld. CIT(A) will ignore this crucial aspect. 8.4 Further, at pg. 8, he distinguished the decision of the Pramod Kumar Rustagi v. Acit ITA No. 1608/Del/2023, on a purported misreading.Also, the case ofAbdul Hamid. v. ITO (2020) 183 ITD 711, was also misinterpreted by the CIT(A).In both cases, the admission of the additional income was made either during a search or a survey, with the source in both instances being their business activity. Also, inthe case of Veer Enterprises Vs. DCIT (2024) 206 ITD 289, the honourable bench observed that it is clearly emerging that the source of such income is business-related, which is also a case with thepresent case. The authorities below have utterly failed to demonstrate that the additional income admitted had no connection with the regular business of real estate, or that there was some other hidden source of income that could have led to undisclosed income.

8.5 Furthermore, at pg. 10, the ld. CIT(A) has stated that S. 115BBE is a machinery provision, whereas Sections 68 and 69 are the charging sections, and the later must be interpreted strictly. There can be no dispute on that proposition; however, making a strict interpretation of the provisions of Sections 68, 69, 69A, and 70, additional income does not at all fall within the scope of any of them. Thus, again the authorities below have utterly failed to establish that Section 69C was applicable in this case. Consequently, Section 115BBE, a machinery provision, could not have been involved.

8.6The observation at pg. 11 that no deduction can be allowed against unexplained income u/s 69C is, again, a height of imagination and an effort not to understand the contentions in the right perspective. Section 69C itself is not applicable, let alone the applicability of the proviso to such a provision.

8.7A bare reading of the appellate order shows that the ld. CIT(A) repeated the observations, rather made an attempt to stretch things to much.

8.8In the case of Nikhaar Fashions v. ACIT (supra pg. 8), such decisions have even distinguished.

In the light of above submissions and the legal position, Sec 115BBE cannot be invoked even remotely.Thus, additional income declared during survey of Rs.2,00,10, 200/- could not be

subjected to S. 115BBE of the Act. Hence, the levy of special tax is bad in law and thus, deserves to be deleted.

GOA-4 Charging of Interest u/s 234A & 234C: is consequential and kindly be decided accordingly.

The above submissions have been made based on the instructions and the information provided of/by the client."

7.1 To support the contentions raised in the written submission the ld. AR of the assessee has relied upon the following evidences:-

S.NO.	PARTICULARS
1.	Copy of Return of Income filed dated 13.08.2018
2.	Copy of audited Balance Sheet & P&L Account for the A.Y. 2018-
3.	Copies of the Impounded note pad Annexures A-1, Ex-1 (Pg. 1 to6)
4.	Copies of statement of the appellant recorded u/s 133A dated 08.11.2017

7.2 To drive home to the contention raised in the written

submission, ld. AR of the assessee serviced the following decision;

S.NO.	PARTICULARS	Pg. No.
1.	Smt. Rekha Shekhawat v. PCIT (2022) 219 TTJ (JP)	1-39
2.	CIT vs. Bajargan Traders (ITA No. 258/2017)	40-44
3.	Nikhaar Fashions v. ACIT (ITA No. 1020/JPR/2024)	45-58

8. Ld. AR of the assessee in addition to what has been submitted in the written submission and the paper book he vehemently argued that the assessee has disclosed business income and from that income the alleged expenditure were incurred and the same were of the current year and thereby the same were accounted in the year under consideration and therefore, same cannot be considered as unexplained expenditure as the source is already taxed by the revenue. The income so disclosed were taxed under the head income from profit and gains of business or profession and not under the head income from other sources so the stands of the revenue is not correct and the income being of the current year taxed as such the rate of tax for other income cannot be applied.

9. Per contra, ld. DR strongly supported the order of the Ld. CIT(A) and vehemently submitted that the assessee was found to have incurred the unaccounted expenditure and the same were sourced from the income which is not recorded. Even the assessee admitted in the statement and accordingly accounted the same in books, so the special rate be charged to that income.

10. We have heard both the parties and perused the materials available on record. Vide ground no. 1 the assessee challenges the order on general reason for which no separate arguments were raised and therefore, the same is not adjudicated. Ground no. 4 is general and it does not require any adjudication. Ground no. 3 raised for the charge of interest under various sections of the Act which are consequential and does not require specific finding.

Thus, now the left-over ground no. 2 raised by the assessee vide which the assessee challenges the finding of the lower authority in confirming the levy of tax and consequential surcharge and cess as per provision of section 115BBE of the Act as the assessee has admitted having been incurred the unexplained expenditure and the same are as per provision of section 69C of the Act. The assessee is a firm and engaged in the business of real estate. The brief facts related to the dispute are that there was a survey u/s 133A of the Act at the business premises of the assessee on 08.11.2017. The assessee after survey filed return u/s 139 for the A.Y. 2018-19 on 13.08.2018 at total income of Rs. 4,77,29,130/-.

The case of the assessee was manually selected for compulsory scrutiny as per guidelines issued by the CBDT and notices as required under law were issued to the assessee from time to time. In the assessment proceeding ld. AO noted that in the survey proceeding, a note pad "Marbito" was found and impounded, which was annexed as annexure -A-1, Ex-1 (page no.

1 to 6). On perusal of that exhibit, he noticed that assessee firm had incurred undisclosed expenditure of Rs. 2,00,10,200/- in development of land and construction during the F.Y 2017-18. The partner of the assessee firm Shri Pradeep Dadhich had accepted in his statement recorded during survey proceedings, that these expenses were not recorded in regular books of accounts of the assessee and stated that the same has been incurred out of the unrecorded income of the assessee and thereby he disclosed income of Rs. 2,01,00,000/- for taxation [page 27 being the audited profit & loss account] under the head "income surrender in survey". The assessee contended that the source of that expenditure which were found to be unrecorded as on the date of survey for an amount of Rs. 2,00,10,200/- were met from the income of Rs. 2,01,00,000/- disclosed. The assessee contended in a statement that source of that expenditure which was considered as out of book were met from the income earned out of the business activity for which the explanation of the assessee was considered for an amount of Rs. 2,01,00,000/- as business income and there is no separate discussion on that and from that income assessee has incurred such expenditure then that expenditure does not come under the purview of section 69C of the Act. The bench also considered it fit to reproduce the reply of the assessee at time of survey vide question no. 12;

iz'u 12 mijksDr ds vykok vkidks dqN dguk gS D;k\ mRrj eSa ;g dguk pkgrk gwWa fd eSa es ik'kZoukFk ,lksfl;sVl ,oa eS iz.kfr fcYMdkWu esa ikVZuj gwWa ,oa mDr nksuksa QeksZ dh rjQ ls

c;ku nsus ds fy;s vf/kd`r gwWaA eS ik'kZoukFk ,lksfl;V~l ls lEcfU/kr v?kksf"kr fuos'k :i;s 2]00]10]200@& ,oa eSa iz.kfr fcYMdkWu ls lEcfU/kr v?kksf"kr fuos'k :i;s 8]90]000@& bl izdkj dqy :i;s 2]09]00]200@& dks v?kksf"kr ekudj lEcfU/kr QeksZ dh pkyw foRrh; o"kZ dh v?kksf"kr vk; ekudj fu;ekuqlkj dj vnk dj nsaxsA mijksDr c;ku eSus i<+ o le> fy;s gS tks esjs Kku o tkudkjh esa iw.kZr;k lR; gS ,oa ;g c;ku eSusa i<+ o le>dj gLrk{kj fd;s gSA As is evident from the above statement that the assessee explained the source of expenditure for Rs. 2,00,10,200/- and unexplained investment of Rs. 8,90,000/- for which the ld. AO accepted the source of unexplained investment and did not considered it as amount chargeable to special rate but only Rs.

2,00,10,200/- were considered to be taxed as per provision of section 69C of the Act. Here we note that the assessee's contention of having earned business income was considered by the ld. AO based on the statement for an amount of Rs.

2,09,00,200 [for rounded disclosed income of Rs. 2,01,00,000/-] the said income when used for expenditure cannot be considered and added as unexplained expenditure. As regards the oral evidence submitted by the assessee in a statement cannot be ignored and in fact the same have been accepted by the revenue.

On this aspect of the oral evidence we get support from our own jurisdictional high court decision in the case of Satyaveer Singh Vs. CIT(A) [154 taxmann.com 619 (Rajasthan)] wherein the High Court held that that :

> "6. Be that as it may, we find that all the authorities have appreciated the oral and documentary evidence and recorded their findings of fact on the issue as to what actually was the sale consideration in the matter of transaction of sale of agricultural land. Even though the submission of learned counsel for the appellant would be that there was no proper appreciation of evidence, it is essentially a case of appreciation of evidence and not of substantial question of law. As the appeal does not involve any substantial question of law, we are not inclined to re-appreciate and interfere with the concurrent finding of facts recorded by the all the authorities including the Tribunal."

Considering the discussion so recorded and the facts which are not disputed that income of Rs. 2,01,00,000/- from business already been taxed the subsequent expenditure from that income cannot be considered as unexplained expenditure and therefore we see no reason to sustain the charge of tax as per provision of section 115BBE of the Act. Based on this observation ground no. 2 raised by the assessee is allowed.

11. The Bench has noticed that the issues raised by the assessee in ITA No. 1357/JPR/2024 are similar to the case of the assessee in ITA No. 1358 and therefore, it is not imperative to repeat the facts of the case and grounds of appeal so raised by the assessee in ITA no. 1357/JP/2024. Hence, the Bench feels that the decision taken by us in the case of the assessee for the A.Y. 2018-19 in ITA No. 1358/JPR/2024 shall apply mutatis mutandis in the case of the in ITA No. 1357/JP/2024.

In the result, both the appeal filed by separate assessee are allowed in terms of the above observations.

Order pronounced in the open Court on 19/03/2025.

Sd/-	Sd/-
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(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
U;kf;d lnL;@Judcial Member	ys[kk lnL;@Accountant Member

Tk;iqj@Jaipur
fnukad@Dated:- 19/03/2025
*Santosh

vkns'k dh izfrfyfi vxzsf'kr@Copy of the order forwarded to:

1. vihykFkhZ@The Appellant- Parshavnath Associates, Kota.

Parshwanath Buildestate Pvt. Ltd. Kota.

2. izR;FkhZ@ The Respondent- ACIT/DCIT, Central Circle, Kota.

3. vk;dj vk;qDr@ CIT

4. vk;dj vk;qDr@ CIT(A)

5. foHkkxh; izfrfuf/k] vk;dj vihyh; vf/kdj.k] t;iqj@DR, ITAT, Jaipur.

6. xkMZ QkbZy@ Guard File { ITA No. 1357 & 1358/JPR/2024} vkns'kkuqlkj@ By order lgk;d iathdkj@Asst. Registrar