

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. Nos.677/Ind/2019
(Assessment Years: 2017-18)

The DCIT, Central-2, Indore	Vs.	M/s. Punjab Retail Pvt. Ltd. 577, Gold Plaza, M. G. Road, Indore
PAN No.AACCP5782B		
(Appellant)	..	(Respondent)

Appellant by :	Shri S. N. Agrawal, CA & Shri Pankaj Mogra, CAs
Respondent by :	Shri Rajib Jain, CIT DR

Date of Hearing	17.08.2021
Date of Pronouncement	08 .10.2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against the order dated 26.03.2019 passed by the Ld. CIT(A)-3, Bhopal (M.P.) arising out of the order dated 31.12.2018 passed by the DCIT, Central-2, Indore under Section under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for A.Y. 2017-18 with the following grounds:-

“1. On the facts and in the circumstances of the case the Ld. CIT (Appeals) erred in deleting the addition of Rs. 14,07,74,148/- made by the Assessing Officer on account of excess stock found during the course of search and ignoring the factual findings recorded by the AO with regard to the addition made on this account.

2. On the facts and in the circumstances of the case the Ld. CIT (Appeals) was not justified in allowing the assessee's appeal on the chargeability of tax as per normal rates instead of amended provisions of section 115BBE of the act applicable

w.e.f. 01/04/2017 relevant to AY 2017-18 which are clearly attracted in the case of the assessee.”

2. The first ground relates to addition of Rs. 14,07,74,148/- on account of excess stock found during the course of search.

3. The brief facts leading to the case is this that the assessee is engaged in trading and manufacturing business of gold and diamond jewellery. A search operation under Section 132 of the Act was carried out on 28.09.2016 at the business as well as residential premises of Anand & Punjab Group of Indore including the assessee along with other concerns/business associates wherein certain discrepancies in the quantity of closing stock were found. The assessee offered additional income of Rs. 10,10,00,000/- on account of the aforesaid difference in the quantity of stock found in the said search proceeding. Subsequently, another survey proceeding under Section 133A was carried out on the business premises of the assessee on 15.11.2016 which was concluded on 19.11.2016. During the course of survey additional income to the tune of Rs. 1,20,02,793/- was declared by the assessee on account of excess stock. While filing the income tax return on 07.11.2017 the valuation of difference in quantity of stock was calculated at 10,14,95,122/- which was duly incorporated in the books of accounts and shown separately in the Profit and Loss for the year ended on 31.03.2017. In the said return income of Rs. 1,20,02,793/- was also offered by the assessee company. In fact, the assessee company on 07.11.2017 declared the total income at Rs. 28,56,20,940/- including additional income surrendered of Rs. 10,14,95,122/- and Rs. 1,20,02,793/- during the course of search and survey proceeding respectively. The AO calculated the difference in the valuation of stock to the tune of Rs. 24,17,74,248/- at the time of search and upon allowing the credit of additional income so offered at the time of search of Rs. 10,10,00,000/-, difference of the same was calculated of

- 3 -

Rs. 14,07,74,248/- and added the same to the total income of the assessee. Before the First Appellate Authority the said addition stood deleted. Hence, the instant appeal before us.

4. We have heard the respective parties and perused the relevant materials available on record.

5. The case of the assessee is this that as on the date of search on 28.09.2016 the Departmental Valuation Officer (DVO) calculated the market price of stock as lying in all the showrooms of the respondent assessee company to the tune of Rs. 106,03,64,733/-, whereas the valuation of stock as found at the time of search on the basis of books of accounts of the assessee was only of Rs. 81,85,90,485/-. The AO wrongly compared the valuation of stock as per books of accounts and as calculated by the DVO and the difference in the amount of stock was calculated at Rs. 24,17,74,248/-.

The Ld. AO while making the addition observed as follows:-

“6.5 *The assessee has reconciled the figures from details filed in earlier submissions. The examination of submission filed by the assessee revealed the following facts:-*

- *The Govt. approved valuer has given the technical report based on purity and rate of Gold/Gold Jewellery working out the quantitative difference of around 35389.524 gms. Which is not disputed by the assessee.*
- *The assessee has admitted the difference in quantity valued by the Authorised Govt. approved valuer during the search and there is no dispute again on this issue on part of assessee.*
- *After considering the quantitative difference in totality, the assessee itself has offered Rs. 10,10,00,000/- on account of excess stock found in jewellery business during the, course of search and valued by the Govt. approved Valuer on the basis of stock available at the premises on the date of search, which is not disputed,*

- 4 -

- *The fact remained undisputed till the date of issuance of show cause Notice dated 31.10.2018 & 05.12.2018 whereas no reply was filed till 11.12.2018*
- *The assessee has now come forward with a plea that the valuation made by Govt. approved Valuer; is not correct on adopting the value of gold/ornaments in the valuation report, although there is no dispute over the quantity of the said report and is partly acceptable to assessee.*
- *Now, the assessee pleaded that if the working is made on hypothetical figure taken in the valuation report on the quantity appearing in the books of account and there remains no difference and the surrender made by the assessee is excessive on the facts and is therefore not acceptable.*
- *Surprisingly, the assessee has claimed to have declared Rs. 10.14 Crore on account of excess investment in stock without authentic basis and disputing the quantitative difference whereas, the nature of business is dealing in the rates of gold, which fluctuate everyday and putting question mark on the valuation report of the valuer, who deals in technical matters with respect to valuation of gold and is accepted in all the cases referred by the department.*
- *Another interesting facts noticed is that the assessee has accepted the valuation report on the date of survey and accordingly made surrender of Rs. 1.20 Crore on the basis of difference in value as well as in quantity worked out in the valuation report.*

6.6. *In view of the above, the contention raised by the assessee is not acceptable and the difference of Rs. 25,37,77,041/- (difference of Rs. 24,17,74,248/- during the search and Rs. 1,20,02,793/- during the survey) is treated as investment in excess stock on the date of search & survey and added to the total income of the assessee. Since, the assessee has already declared excessive investment in stock amounting to Rs. 10.10 Crore during the search and Rs. 1.20 Crore during the survey, in the return income filed for the A.Y. 2017-18, therefore, amount of difference in stock found during the course of search of Rs. 14,07,74,248/- (Rs. 24,17,74,248 – Rs. 10,10,00,000) is further added to the total income of the assessee for A.Y. 2017-18 on account of excess stock found and treated as unexplained investment u/s 69B of I.T. Act, 1961. The total excess stock found of Rs. 25,37,77,041/- is taxed as per the amended provisions contained u/s 115BBE applicable w.e.f. 01.04.2017 of I.T. Act.*

(Addition : Rs. 14,07,74,248/-)”

6. The addition of Rs. 14,07,74,248/- was made by the Ld. AO on account of difference in the valuation of stock as physically found and as shown in the books of accounts. The difference in the quantity was duly accepted and offered by the assessee during search. The Ld. AO notionally made addition on the basis of market price, totally ignoring the case of the assessee. The addition represents the notional profit of stock in hand of the appellant and not the actual profit. We have further considered inter alia the following submission made by the assessee made in the written notes of submission submitted before us:

“1.9] That if the valuation of book stock converted at the market price by taking the rate as applied by the DVO in that case the overall difference was of Rs 2,78,25,512/- only whereas the respondent assessee had declared additional income of Rs 10,14,95,122/-. The same is calculated as under:-

Particulars	Stock as per DVO valuation	Book Stock as per DVO Rates
Cl. Stock as on 31.03.2016 (As per Annex. 1)	855514351	1048141462
Add: Purchases between 01.04.2016 & 28.09.2016	516053030	516053030
Add: Making Charges between 01.04.2016 & 28.09.2016	0	21321624
Less: Sales between 01. 04.2016 & 28.09.2016	61 1767 779	1 371567381
Less: GP as per Audit Report for AY 2016-17	5 87 90 9.61% 884	1 5855 16 116 55 29 76895
Cl. Stock as on 28.09.2016 as per Books of A/C	818590486	55 29 76 895
Physical Stock as per DVO Reports	1060364733	1032539221
Excess Stock	-24 1774247	1060364733
Less: Stock Surrendered	101495122	-27825512
Short/ Excess Surrendered	-140279125	101495122
		73669610

1.10] That if the books stock in term of quantity as on the date of search was calculated as per the rates as adopted by the DVO, in that case also the valuation of book stock would increase from Rs 81,85,90,485/- to Rs 99,75,79,091/- . The valuation as calculated by the Departmental valuation officer in his report was of Rs. 1,06,03,64,733/- and accordingly the difference in the valuation of stock calculated comes to Rs.6,27,85,642/- only as against additional income of Rs 10,14,95,122/- was offered for tax by the appellant. The same is calculated as under:-

<i>Description</i>	<i>Total Stock as per Books</i>	<i>@</i>	<i>Making Charges</i>	<i>Valuation of Book Stock</i>
<i>GOLD IN DIAMOND</i>	2549.937	1826	1200	7715684
<i>GOLD IN DIAMOND</i>	20853.130	2348	1200	73976479
<i>GOLD ORNAMENT 18KT</i>	12095.672	2348	313	32180535
<i>GOLD ORNAMENT 22KT</i>	185411.676	2869	313	590010855
<i>OLD GOLD ORNAMENTS</i>	2653.248	2869	313	8443077
<i>GOLD ORNAMENT 24KT</i>	1499.660	3130	313	5163329
<i>24 CT. GOLD</i>	160.519	3130	0	502424
<i>Total Gold</i>	225223.842			
<i>PLATINUM ORNAMENTS</i>	1599.934	3800	1500	8479650
<i>SILVER BAR</i>	16310.500	46		742780
<i>SILVER ARTICALS</i>	1212.900	46		55235
<i>SILVER ORNAMENTS</i>	9082.397	46		413612
<i>BRANDED JEWELLERY</i>	176.130	2348	313	468594
<i>STUDED DIAMOND</i>	3526.657	44122	DVOs	155602049
<i>LOOSE DIAMOND</i>	321.659	44122	DVOs	14192137
<i>LOOSE STONE</i>	187.832			
<i>STUDED STONE</i>	18978.668			
<i>STONE MALA</i>	6870.580			
<i>ALLOY</i>	3830.945			
<i>Watches+ Pen etc.</i>			DVOs	99632649
<i>Book Stock as per DVO Rates</i>	287322.044			997579091
<i>Physical Stock as per DVO</i>				1060364733
<i>Excess Stock Found in Search</i>				-62785642
<i>Less: Stock Surrendered</i>				101495122
<i>Excess Surrendered</i>				38709481

1.11] That it is un-disputed fact of the case that the difference as proposed is on account of valuation only and there was no difference in the quantity. The difference in the quantity was duly addressed by declaring additional income at the time of search. Hence there was no justification for adding the difference in the valuation of the Jewellery to the total income of the appellant. The Ld CIT(A) was rightly deleted the said addition.”

7. The Ld. CIT(A) while allowing the appeal preferred by the assessee observed as follows:-

“4.1.3 I have considered the factual matrix of the case, plea raised by the appellant and findings of the AO. Search u/s 132 of the IT Act was conducted at the business premises of the appellant on 25-09-2016. The appellant maintained day to day quantity records in GS-11 and GS-12. During the course of search, difference in the

quantity as per GS-11 and GS-12 with the quantity as actually found during the course of search as per DVO report was duly accepted by the appellant and additional income to the tune of Rs, 10,10,00,000/- as per the rate adopted by the DVO on the date of search was surrendered. It is an undisputed fact that the difference in the quantity was duly reconciled and additional income on account of difference in quantity was duly surrendered by the appellant. The assessing officer while passing the assessment order considered the valuation of jewellery of all the showrooms of the appellant as per report of the DVO which came to Rs. 106,03,64,733/- as provided on Page No. 3 of the assessment order. The assessing officer then compared the said valuation with the cost of jewellery as per books of accounts as on the date of search which came to Rs. 81,85,90,485/- as provided on Page No. 5 of the assessment order. Difference of these two figures i.e. market value of jewellery found as per the report of DVO of Rs. 106,03,64,733/- and cost of jewellery as per books of accounts of Rs. 81,85,90,485/- was calculated by the assessing officer which came to Rs. 24,17,74,248/- [as per Page No. 6 of the assessment order]. The assessing officer then allowed credit of additional income as already accepted by the appellant to the tune of Rs. 10,10,00,000/- [correct amount actually offered was of Rs.10,14,95,122/-] and balance amount of Rs. 14,07,74,248/- [Rs. 24,17,74,248/- minus Rs. 10,10,00,000] was added to the total income of the appellant. The appellant during the course of assessment proceedings as well as during the course of appellate proceedings has claimed that there was no difference in the quantity which supported the above I addition made by the assessing officer. The addition was made by the assessing officer merely on account of difference in valuation of jewellery as actually found and as shown in the books of accounts. The DVO adopted the market price of gold as on the date of .search i.e. 28.09.2016, whereas average cost of jewellery was considered by the appellant in its books of accounts. The addition made by the assessing officer represented the difference in the valuation of jewellery i.e. difference of cost and market price as on the date of search. If the version of the assessing officer is accepted, in that case, entire jewellery of the appellant shall be converted at market price as on the date of search and the appellant would have been liable to pay tax on the valuation of conversion of jewellery from cost to market price which in any case is not the correct approach of the assessing officer. In case of jewellery business where day to day quantity records were properly maintained and purchase and sale bills were duly accounted for; there was no reason to ignore the quantity as per books of accounts. The appellant during the course of search voluntarily accepted difference in the quantity of jewellery and offered additional income of Rs. 10,10,00,000/- [Correct amount of Rs. 10,14,95,122/-] for tax. After incorporating the quantity which was surrendered by the appellant, there was no difference in the quantity as per books of accounts and as actually found during the course of search. Thus, the appellant claimed that addition made by the assessing officer to the tune of Rs. 14,07,74,248/- was not justified. On perusal of the assessment order and after going through the submission of the appellant, I find strong force in the contention of the appellant that the amount added to the total income of the appellant was on account of difference in valuation of jewellery as per report of the DVO and cost of jewellery as shown in the books of the appellant. The said approach of the assessing officer was not correct more so when the appellant duly accepted additional income on account of difference in the quantity as per books of accounts and as actually found during the course of search

as per report of the DVO. The appellant further demonstrated before the assessing officer and also in the appellate proceedings that if the cost of stock is converted as per rate adopted by the DVO, in that case, there shall no scope for any addition. I am in full agreement with the arguments of appellant that what could have been added to the total income of the appellant was only the difference in the quantity which was duly admitted by the appellant and additional income of Rs. 10,14,95,122/- was also offered for tax. The difference in valuation of jewellery as per report of DVO and cost of jewellery as per books of account cannot be considered for the purpose of making addition to the total income since the DVO in his report adopted the market rate as on the date of search i.e. 28.09.2016, whereas jewellery was shown at cost in the books of accounts which was carried forward from year to year. Hon'ble Delhi Bench of ITAT in the case of Neha Jewellers P Limited [Appeal No ITA No 371/ Del/ 2010 dt 26-06-2015 had approved the order of the Ld CIT[A] and held that [Refer last four line of Para 24 on Page No. 18 of the order]:

"For the purpose of making addition on account of undisclosed stock, first the quantity I weight of such undisclosed stock has to be determined and then market value of this undisclosed stock is to be added as income. Accordingly, ground No 2 of the appeal of the Revenue is rejected"

In the case of appellant, difference in the quantity was duly offered by the appellant as its income and the addition made by the assessing officer on account of difference in valuation of jewellery comparing the market price as per the report of DVO with the cost as shown in the books of accounts was not justified. The AO has simply converted stock from cost to market price calculated at the rate adopted by the DVO which in any case is not justifiable. If the rates adopted by the DVO are applied-to opening balance the picture which emerges out is as under:-

Particulars	Stock as per DVO valuation	Book Stock as per DVO Rates
Cl. Stock as on 31.03.2016 (As per Annex. 1)	8555 14351	1 048141 462
Add: Purchases between 01.04.2016 & 28.09.2016	51 6053030	51 6053030
Add: Making Charges between 01.04.2016 & 28.09.2016	0	21321624
Less: Sales between 01.04.2016 & 28.09.2016 61 1767779	1 37 1567381 552976895	1 5855 16 116 55 29 76 895
Less: GP as per Audit Report for AY 2016-17 9.61% 5 87 90 884		
Cl. Stock as on 28.09.2016 as per Books of A/C	81 8590486	1 032539221
Physical Stock as per DVO Reports	1 06 03 64 733	1 060364733
Excess Stock	-241774247	-27825512

Less: Stock Surrendered Short/ Excess Surrendered	10 1495 122 - 140279125	101495122 73669610
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*Thus, in view of the above discussion, if the rates adopted by the DVO are applied to opening stock the only difference which comes out is at Rs. 2,78,25,512/-, however, appellant has already made voluntary disclosure of Rs. 10,14,95,122/- during the course of search and survey. Therefore, the AO was not justified in making addition of Rs. 14,07,74,248/- on account of excess stock found during the course of search. Thus, the addition made by the AO amounting to **Rs. 14,07,74,248/-** is **Deleted**. Therefore, appeal on these ground is **Allowed**.”*

8. We have considered the judgment relied upon by the Ld. AR passed by the Hon’ble Delhi Bench in the case of Neha Jewellers Pvt. Ltd. vs. ACIT in ITA No. 3711/Del/2010. On the identical situation the Hon’ble Bench was pleased to observe as follows:

“19. The Learned CIT(Appeals) after examining the facts of the case, held that the methodology adopted by the Assessing Officer in computing the unexplained stock is not correct. He agreed with the contention of the assessee that first weight of undisclosed stock has to be determined on the date of search. We also concurred with the contention of the assessee that the basis for making the addition will be difference in the weight of stock as per books of account as on the date of search and the weight of the stock found at the time of the search.

20. Thus, the issue raised in the appeal preferred by the Revenue is as to whether the Learned CIT(Appeals) was justified in computing the undisclosed stock in the manner stated in its order.

21. It is an admitted fact the computation of undisclosed stock has been done by the Assessing Officer on the basis of value only without determining the undisclosed weight of the gold and jewellery. Further the Assessing Officer has taken the opening stock as on 01.04.2005 as against the stock as on 09.12.2005. This approach of the Assessing Officer, in our view, in computing the excess stock as on the date of the search is not correct. The methodology adopted by the assessee, in our opinion, is the correct procedure to determine the unexplained stock on the date of search. In this regard, we note from the page No. 104 of the paper book filed on behalf of the assessee that the weight of the stock as per books of account has been computed by taking into account the quantity of the stock as on 01.04.2005 and then adding the weight of the purchases made from 01.04.2005 to 08.12.2005 and deducting the quantity of the sales from 01.04.2005 to 08.04.2005. The difference in the weight of the stock physically found and the weight of stock as per books of account worked out in the manner stated hereinabove has been taken as weight of undisclosed stock. This unexplained weight of stock has then been valued by applying market rate. The

Assessing Officer instead of following this methodology has straight away gone to the value of the stock physically found on the date of search and there from he has deducted the value of the stock that too as on 01.04.2005, not as on the date of search. Thus, the Assessing Officer has committed two mistakes. One in not ascertaining the unexplained quantity of stock and two in taking the stock as per books of account as on 01.04.2005 as against as on 09.12.2005.

22. During the course of assessment proceedings, the Learned CIT(Appeals) has also called for the remand report from the Assessing Officer. In his remand report, the Assessing Officer has also not pointed out any specific error or defect in the computation of the excess stock. As regards the stock to be taken as on the date of the search as against taken by the Assessing Officer as on 01.04.2005, the explanation of the Assessing Officer in the remand report was that in view of the unaccounted sales and purchases, he was justified in taking the stock as on 01.04.2005. We are of the view that this contention of the Assessing Officer is not sustainable and this cannot be the reasoning for taking into consideration the stock as on 01.04.2005 as per books of account as against the stock as on the date of the search as per books of account. What is to be found out on the date of search is the stock as per books of account. While finding out the stock on the date of search i.e. on 09.12.2005, the purchases and sales made and recorded in the books of account during the period 01.04.2005 to 09.12.2005 have to be taken into consideration.

23. On having gone through the paper book, we note that the assessee had submitted complete details of purchases and sales in quantity and value and no discrepancy or error has been pointed out by the Assessing Officer, either in the assessment order or in the remand report. The purchases recorded in the books of account are the disclosed/accounted purchases. Similarly, sales recorded in the books of account are the disclosed/recorded sales in the books of account. It is not the case of the Assessing Officer that assessee had manipulated the books of account after the search. On the contrary, we note that in the remand report, the fact that the reconciliation was supported by the regular books of account which were found at the time of search, has not been controverted. Further, the department was having the seized computer whereby data for the purchases and sales for the period of five years ending on 08.12.2005 was also there. In view of the above facts, the methodology adopted by the Assessing Officer in computing the undisclosed stock was not correct. As against this, the methodology adopted by the Learned CIT(Appeals) for computing the weight of undisclosed stock is the correct methodology.

24. The learned CIT(DR) during the course of hearing contended that the Assessing Officer's computation be upheld but could not point out any reason to differ with the methodology adopted by the Learned CIT(Appeals). Accordingly, so far as the Revenue's appeal is concerned, we are of the view that the methodology adopted by the Learned CIT(Appeals) is correct for determining the value of the undisclosed stock and the computation done by the Assessing Officer to determine the value of undisclosed stock is not correct one. For the purpose of making addition on account of undisclosed stock, first the quantity/weight of such undisclosed stock has to be

determined and then market value of this undisclosed stock is to be added as income. Accordingly, ground No.2 of the appeal of the Revenue is rejected.”

9. It appears from the reasons that the valuation of closing stock as taken by the DVO was at the prevailing market rate as on the date of search whereas the valuation of stock should have been calculated at cost as per books of accounts maintained by the assessee. In fact, the difference in the quantity was duly offered by the assessee and incorporated with the books of accounts. The case made out by the assessee that the difference as added to the total income of the appellant was on account of valuation of stock and not on the basis of difference in quantity of stock which is not the proper method and which rightly considered by the Ld. CIT(A) is also having substance.

We further find that this is an undisputed fact of the case that the difference as proposed is on account of valuation only and there is no difference in quantity. The difference in quantity has duly been addressed by declaring additional income at the time of search.

10. Thus, considering the entire aspect of the matter we find no justification for addition in the difference the valuation of the jewellery to the total income of the appellant. The addition made by the Ld. AO on account of excess stock found during the course of search those cannot be set to be justified in view of the observation made hereinabove and, thus, the deletion of addition made by the Ld. CIT(A) is according to us is just and proper so as to warrant interference. Hence, the grounds of appeal preferred by Revenue is found to be devoid of any merit and, thus, dismissed.

Ground No.2:-

11. Allowing the appeal on the chargeability of tax as per normal rates instead of amended provision of Section 115BBE of the Act is the subject matter before us. The appellant has challenged the chargeability of tax @ 77.25% by invoking the amended provision of Section 115BBE of the Act on account of additional income declared at the time of search, survey and also the addition made by the AO.

12. The case of the assessee is this that the amendment in Section 115BBE came into force only on 15.12.2016 whereas the search was conducted on 21.09.2016 and the assessee has paid tax @ 30%. The provision of Section 115BBE of the Act tax prior to the amendment reads as follows:

“115BBE. (1) Where the total income of an respondent 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—

(a) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D , at the rate of thirty per cent; and

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

13. The second amendment came into force w.e.f. 15.12.2016 whereas the Income Tax Act Search and Survey was conducted prior to that date and, thus, at the time of declaring the additional income the second amendment was not available under the Income Tax Act. The said amendment took place with the following manner:

“(1) Where the total income of an respondent assessee, —

(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

- 13 -

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a),

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 respondent 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 respondent assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).]

After the amendment total income includes additional income as voluntarily declared by the appellant in the return of total income whereas the amount of addition made by the AO included both the amount, and the provision of Section 115BBE of the Income Tax Act was applied. Therefore, the assessee made out the following case against the order passed by the Ld. AO:

“2.2.5] That provision of section 68, 69, 69A, 69B, 69C and 69D of the Income Tax Act is attracted when the additional income as offered or amount as added attract the provision of sections 68, 69, 69A, 69B, 69C and 69D of the Income Tax Act. The present case in hand, the assessing officer made addition to the total income of the respondent assessee by invoking the provision of section 69B of the Income Tax Act

"69B. Where in any financial year the respondent assessee has made investments or is found to be the owner of any bullion, Jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, Jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the respondent assessee for any source of income, and the respondent 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 respondent assessee for such financial year."

2.3] That provision of section 69B of the Act though invoked in the case of the above respondent assessee. However, the excess Jewellery as found was part of stock in

trade of the respondent assessee company and not found as Investment as envisage in the provision of section 69B of the Income Tax act. That provision of section 68 to 69D are residuary sections and the same is applied only where the amount was not taxed under any specific chapter. In the present case in hand, the respondent assessee company is engaged in the business of Jewellery. The difference in the quantity of stock was during the normal business activities of the respondent assessee company. The excess Jewellery as found was part of its stock in trade and found in the business, premises of the respondent assessee company. It was also explained by the respondent assessee that the same was out of its normal business income and therefore the same is taxable under the head of business income. That when income is taxable as business income of the respondent assessee. In that case, the assessing officer was not justified in adding the same by invoking the provision of section 69B of the Income Tax Act. Thus, the addition as made by invoking the provision of section 69B of the Act was not justified. That when the excess amount of stock was taxed as business income of the respondent assessee on account of closing stock valuation, in that case there was no justification for invoking of the provision of section 115BBE of the Act.

2.4] The respondent assessee company carrying manufacturing and trading business of Jewellery from last several years. During the course of Search and Survey Proceedings respondent assessee company had offered an amount of Rs. 10,14,95,122/-and Rs. 1,20,02,793/- on account of discrepancies in Stock. In addition to that the Ld. A.O. also added Rs. 14,07,74,248/- on account of excess valuation of closing stock in value terms only.

2.5.1] That while filing the return the respondent assessee company included the surrender amount of Rs. 11,34,97,915/- under the head "Business Income" and paid tax at applicable normal rate of 34.60%.

2.5.2] The Assessing Officer treating the difference in stock as "Unexplained Investment" and covered the same under deeming provisions of section 69B of the Income tax and after applying the provisions of section 115BBE tax @ 77.25% .

2.5.3] That the issue in this ground is that under which head excess stock found in the Search & Survey is to be taxed ,whether under the head income from business or treated as unexplained investment by applying deeming provisions of section 69B of the Act.

2.5.4] That during the course of Search Proceedings vis-a-vis assessment proceedings the respondent assessee has explained before the Ld. A.O. that surrender of Excess Stock was in relation to business activities and it had direct nexus with business activities, accordingly the respondent assessee company included the same under the head "Business Income".

14. It is also a fact that the Ld. AO has not brought on record any evidence or material to establish that the assessee was involved in any other activities or

having any other source of income. While deleting the addition made by the Ld. AO the Ld. CIT(A) observed as follows:

“First of all let me discuss whether the provisions of section 115BBE are applicable to this case or not. The provision of disallowance of any loss with the income as computed under clause (a) of sub section (1) of section 115BBE came into force w.e.f 01.04.2017. Hon'ble Supreme court in the case of CIT vs Vatika Township Pvt Ltd (2014) 24 ITJ 532 (SC); (2014) 271 CTR 1: (2014) 227 Taxmann 121 has held that "An amendment made to the taxing statute can be said to be intended to remove 'hardships' only of the assessee, not of the department-on the contrary, imposing a retrospective levy on the assessee would have caused undue hardship. Hon'ble ITAT Indore in the case of Priyadharshani Construction vs ITO (2012) 19 ITJ 276 (Trib-Indore) has held that "Substantive law shall be understood to be applicable prospectively unless made specifically retrospective. Thus, it is settled position of law that provision of section 115BBE of the Act is clearly not applicable in case of business income which is taxed under section 28 to 44 of the Income Tax Act. The assessing officer also failed to bring on records any other source of income of the appellant apart from the one that is show[^]i in return of income. The appellant in support has also relied on the following decision:-

- *Hon'ble Rajasthan High Court in the case of CIT vs Bajargan Traders [Appeal No 258/2017 dt 12-09-2017];*
- *Hon'ble Ahmedabad bench of ITAT in the case of Chokshi Hiralal Maganlal vs DCIT as reported in 141 TTJ 001;*
- *Hon'ble Jodhpur bench of ITAT in the case of Lovish Singhal & Others vs ITO [Appeal No 143/ Jodh/ 2018];*
- *Hon'ble Jaipur bench of ITAT in the case of DCIT vs Ramnarayan Borla [Appeal No 482/ JP/ 2015 dt 30-09-2016];*
- *Hon'ble Supreme Court in the case of Lakhmichand Baijnath Vs CIT as reported in 35 ITR 416;*
- *Hon'ble Apex Court in the case of Nalini Kant Ambalal Mody vs SAL Narayan Row as reported in 61 ITR 428.*

Considering the submission made and decisions referred, it is undisputed that the appellant is having only source of income from Trading and Manufacturing of jewellery. The additional income was offered on account of difference in the stock as per books of accounts and as actually found during the course of search. The difference in stock as fund was also related to the business of the appellant. I therefore hold that additional income offered and addition made was on account of business income of the appellant and is therefore liable to be taxed under the head of income from business and profession only. The provisions of section 115BBE of the Income Tax Act are applicable where addition is made under section 68, 69, 69A,

- 16 -

69B, 69C and 69D i.e. from residuary category w.e.f 01.04.2017. However, in the present case in hand, additional income was offered and even addition was made on account of difference in the stock which was liable to be taxed under the head of income from business and profession only and valuation of stock was done on the basis of various observations drawn during the course of search & survey which took place on 28.09.2016 & 15.11.2016 respectively. Since, the search in the case of appellant was carried out on 28.09.2016 and additions were made consequential to search, therefore, the assessing officer, was not justified in stating that provisions u/s 115BBE were invoked by the appellant which in fact was applicable from 01.04.2017 and not from 28.09.2016 (date of search). Thus, the assessing officer is hereby directed to calculate tax as per normal rate applicable in the case of the appellant Therefore, appeal on this ground is Allowed.”

Since the search in the case of the appellant was carried out before the amendment the addition ought to have been made in terms of the prevailing provision and therefore, the addition made by the AO invoking Section 115BBE provision of which came into force only on 01.04.2017 is not sustainable. Therefore, the order passed by the Ld. CIT(A) deleting the addition made on that premise is according to us just and proper so as to warrant interference. Hence, the appeal preferred by the Revenue found to be devoid of any merit and is dismissed.

15. In the result, the appeals filed by the Revenue is dismissed.

This Order pronounced in Open Court on	08 /10/2021
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Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER
Ahmedabad; Dated 08 /10/2021
TANMAY, Sr. PS

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

- 17 -

आदेश की प्रतिलिपि अद्योषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Indore

1. Date of dictation 16.09.2021 & 04.10.2021
2. Date on which the typed draft is placed before the Dictating Member 16.09.2021 & 05.10.2021
3. Other Member.....
4. Date on which the approved draft comes to the Sr.P.S./P.S 06 .10.2021
5. Date on which the fair order is placed before the Dictating Member for pronouncement .10.2021
6. Date on which the fair order comes back to the Sr.P.S./P.S .10.2021
7. Date on which the file goes to the Bench Clerk .10.2021
8. Date on which the file goes to the Head Clerk.....
9. The date on which the file goes to the Assistant Registrar for signature on the order.....
10. Date of Despatch of the Order.....