

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA Nos. 2561 & 2562/Bang/2024
Assessment Years : 2017-18 & 2020-21

The Deputy Commissioner of Income Tax, Central Circle – 1(3), Bengaluru.	Vs.	M/s. Mangaldeep Chains, 145/F15 & F16, Ranganatha Mansion, Avenue Road, Chikpet, Bengaluru – 560 002. PAN: AAVFM5316Q
APPELLANT		RESPONDENT

Assessee by	:	Shri T. Srinivasa, CA
Revenue by	:	Shri Muthu Shankar, CIT-DR

Date of Hearing	:	08-10-2025
Date of Pronouncement	:	31-10-2025

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

These two appeals filed by the revenue against the separate orders passed by the Ld.CIT vide order & DIN No. ITBA/APL/M/250/2024-25/1069234727(1) dated 27/09/2024 in respect of A.Y. 2017-18 and ITBA/APL/M/250/2024-25/1068721109(1) dated 17/09/2024 in respect of A.Y. 2020-21 on the following grounds of appeal.

Assessment Year 2017-18:

“In the facts and circumstances of the case, the Learned CIT(A) has erred in holding the excess stock found and admitted during the survey action u/s 133A, as income under the Profit and Gains from Business & profession instead of treating it as 'Unexplained income u/s 69A of the Act' and to tax at special rates given in section 115BBE of the Income-tax Act, 1961.”

Assessment Year 2020-21:

“In the facts and circumstances of the case, the Learned CIT(A) has erred in holding the excess stock found and admitted during the survey action u/s 133A, as income under the Profit and Gains from Business & profession instead of treating it as "Unexplained investments u/s 69B of the Act" and to tax at special rates given in section 115BBE of the Income-tax Act, 1961.”

2. At the outset of hearing, we noted that appeal filed for the A.Y. 2017-18 was delayed by 24 days. The Ld.DR explained the reason for the delay in filing the appeal stating that the concerned officer was busy for completing the works for time barred matters supported by a letter dated 24.12.2024. The reason for the delay is quantum of workload in this office and the time barring matter, which are to be completed in the time bound manner. Further, the undersigned was deputed for the search duty conducted by the Investigation wing of the department on a few occasions which also led to the delay in filing of the appeal.

3. The ld. Dr requested that the delay may be condoned. On the other hand, the Ld.AR had no objection.

4. Considering the submissions and relying on the judgment of Hon'ble Apex Court in the case of Collector, Land Acquisition vs. MST.Katiji and Others [1987] 167 ITR 471, we are condoning the delay. The Ld.DR has filed written submissions. Since in both the appeals, the revenue has filed appeal on the common grounds as mentioned above against the Order of the learned CIT(A), the learned CIT(A) has treated the income as business

income. However, during the course of survey for the Assessment Year 2017-18 it was accepted as undisclosed income and for the Assessment Year 2020-21, during the course of recording of statements under section 133A of the Act, it was accepted as regular income respectively.

ITA No.2561/Bang/20214 for Assessment Year 2017-18:

3. Briefly stated the facts of the case are that the survey u/s. 133A was conducted in the case of the assessee on 30/08/2016. Accordingly, the case was selected for scrutiny under CASS after filing of return and notice u/s. 143(2) and other statutory notices were issued to the assessee. The assessee filed return of income on 07/11/2017 u/s. 139(1) declaring income of Rs. 18,36,11,380/-. In response to the notices issued by the AO, the assessee replied for the notice and the AO noted that the amount declared during the course of survey as undisclosed income of Rs. 18,27,71,190/- was mentioned by the assessee under the head "Profit gains / business profession" under any other item or items of addition u/s. 28 to 44DA. However this should have been shown under Schedule in the Income Tax return 1d.sl.4 of other sources as unexplained money etc. u/s. 69A of the Income Tax Act and assessing officer completed the assessment and income was stated as unexplained money u/s. 69A of the Act and section 115BBE was applied.

4. Aggrieved from the above order, the assessee filed appeal before the Ld.CIT(A). The assessee submitted the detailed written submissions and relying on the judgments of the Hon'ble Jurisdictional High Court and Hon'ble Bench of the ITAT, the Ld.CIT(A) after considering the written submissions and judgment of Hon'ble Jurisdictional High Court in the case of CIT & Anr. vs. S.K. Srigiri And Bros. reported in [2008] 298 ITR 13 (KAR) and in the case of DCIT vs. Sri Krishna Diamonds And Jewellery in ITA No. 453/Bang/2023 dated 01/08/2023 and some other judgements, allowed appeal of the assessee observing that the income declared during the course

of survey will be treated as business income. The assessee relied on the following cases too.

- 1) M/s. Travancore Textiles (P) Ltd. in ITA Nos. 3193/Chny/2018 & 176/Chny/2019
- 2) M/s. Samarath Realities in ITA No. 1144/Ahd/2017

4. Aggrieved from the above order, the revenue filed appeal before the ITAT.

5. The Ld.DR relied on the order of the assessing officer and referred to the statements recorded during the course of survey u/s. 133A and confirmed during the statements recorded u/s 131 of the Act on 01/09/2013. The assessee itself (Partner) has declared as undisclosed income and referred to Q.Nos. 3 & 4 which are as under:

Q3. Please give the details of the admission made by you during the course of survey on 30.08.2016 at M/s Mangaldeep Chains.

Ans: During the survey at M/s Mangaldeep Chains on 30.08.2016, total 101157.760 grams of Gold was found in my business premises which was unexplainable and I have offered the same for tax. The total value for the stock found was Rs. 25,36,08,353/- which I am declaring for the Assessment Year-2017-18. I need to say here that out of the total stock of 101157.760 grams, a reduction of 10% of the undisclosed stock has to be made in respect of stones, impurities, tag weight and certain enamel & wax products and the total value for the undisclosed stock declared by me as income offered for tax is Rs. 19,04,81,604/-. This entire income I am declaring in the hands of the firm. Further, the cash book was not updated and was lying with my accountant, the cash found in the business premises may be treated as unexplained cash and I am offering the same for tax for the assessment year 2017-18.

Q4. Please give the details of the payment schedule of tax for the above mentioned undisclosed income.

Ans: I have declared a total amount of Rs. 19,04,81,604/- as my firm's income and the taxes would be paid accordingly as and when the installment are due. The first installment of advance tax due for 15th June 2016 would be 25% of which a part payment of Rs. 7,75,000/- has already been paid and the balance of 50% due upto 15th September would be paid on or before 15th September 2016. The remaining amount would be paid as and when due i.e. 25% by 15th December 2016 and last 25% by 15th March 2017.

6. However, the Ld.CIT(A) has treated as business income instead of income under other source under section 69A of the Act. The assessee has accepted it as undisclosed income during the survey u/s 133A of the Act. It is very surprising that the assessee is not maintaining updated books of accounts to explain the source/application of funds. However, while filing the return of income, it was offered as business income which is complete violation of the statements given by the assessee during the survey. The statements given were on the basis of material evidences which cannot be

denied / discarded later on. The case relied on by the Ld.CIT(A) are completely distinguishable on the facts of the case. In those cases, the assessee accepted in survey statements as a business income but here in the case on hand it is accepted as undisclosed income and assessee was unable to explain the source of stock found at the business premises at the time of survey.

7. On the other hand, the Ld. Counsel reiterated the submissions made before the lower authorities and he stated that the order of the Ld.CIT(A) is good and reasoned order and it should not be disturbed. The Ld.CIT(A) had rightly relied on the judgments of the Coordinate Bench and the Hon'ble Jurisdictional High Court. He further submitted that in assessee's own case, for the A.Y. 2020-21, the survey was also conducted u/s. 133A and the Ld. CIT (A) has accepted as business income. The Ld. Counsel further submitted that in the case of group cases, in the case of Mangal Deep Bangles, survey was happened and declared amount was accepted by the AO as business income and he has filed written submissions which is as under:

***"MAY IT PLEASE YOUR LORDSHIPS
THE RESPONDENT HEREIN MOST RESPECTFULLY SUBMIT
AS UNDER:***

1. The Appellant- Revenue has filed the subject appeal challenging the order dated 27.09.2024 passed by the learned Commissioner of Income Tax Appeals -11, Bengaluru order u/s 250 of the Income Tax Act 1961 allowing the Respondent assessee's Appeal and the solitary issue involved in the Appeal is the correctness of the order of the learned Commissioner of Income Tax Appeals -11 in allowing the claim of the respondent assessee treating the excess- stock found during the survey as "Profits and Gains from Business & Profession".

2. The Appellant- Revenue has urged the following ground in support of its Appeal

"In the facts and circumstances of the case, the Learned CIT(A) has erred in holding the excess stock found and admitted during the survey action u/s 133A, as income under the Profit and Gains from Business & profession instead of treating it as

"Unexplained income u/s 69A of the Act" and to tax at special rates given in section 115BBE of the Income -tax Act, 1961'.

3. FACTS IN BRIEF - ITA No 2561/ BNG/ 2024

3.1 The Appellant Department had carried out survey proceedings u/s 133A of the Income Tax Act, 1961 at the business premises of the Respondent on 30.08.2016, which was extended to Respondent's one more group entity namely M/ s. Mangal Deep Bangles and which resulted in the Survey party noticing certain excess inventory valued at Rs. 18,20,65,300/- as compared to the book stock and also an undisclosed sales amounting to Rs. 7,05,890/- in the case of the Respondent and Rs.4,61,47,672/- in the case of Mangal Deep Bangles.

3.2 The Respondent assessee had admitted those findings and offered the same to tax as "Income from Business" and also discharged its tax obligations, in its return of Income filed on 07.11.2017 in conformity with the "statement recorded u/s 131 of the Act at the time of survey on 30.08.2016.

3.3 The said return of income was taken up for scrutiny by the learned assessing officer which had culminated with the **AO framing the assessment order dated 09.09.2019 treating the additions as "unexplained Income u/s 69A" that too in a mechanical manner with a cryptic one-line/ non-speaking order as under:**

Quote

*"Submission made by you on 06.08.2019 and 16.08.2019 is considered. On a perusal of balance sheet and P&L account it is seen that the unaccounted stock of Rs. 18,27,71,196/- which was inventorised during the survey has been admitted by you as increase in capital. This sum has been shown by you in the return of income for the AY 2017-18 under Schedule 23 of business profits as **"Any other item or items of addition under section 28 to 44AD". However, this should have been shown under Schedule 1d s1.4 of "other sources" as unexplained money etc under section 69A of the income tax act. Hence it is proposed to complete the assessment accordingly".***

Unquote

3.4 The Respondent assessee had challenged the said assessment order before the learned Commissioner of Income Tax (Appeals) -11, Bengaluru, which was allowed in favour of the respondent assessee vide order dated 27.09.2024, impugned in the subject proceedings.

4. Respondent's submissions in support of the order dated 27.09.2024 passed by the Learned Commissioner of Income Tax Appeals -11, Bengaluru..

4.1. It is most respectfully submitted that the impugned order passed by the Learned Commissioner of Income Tax Appeals -11, Bengaluru is well reasoned and is duly supported by binding decisions of the Hon'ble Jurisdictional High Court/ ITAT apart from the decisions of Non jurisdictional High Courts/ ITATs. The Learned Commissioner had passed the impugned order after taking into consideration decisions of the Hon'ble Jurisdictional High Court & Hon'ble Tribunal in the following cases:

- i. CIT Vs S.K. Srigiri and Bros (HC-KAR);
- ii. DCIT Vs Sri. Krishna Diamonds and Jewellery - (ITAT - Bng)

4.2. It is further submitted that the issue is also covered in favour of the Respondent in the following decisions of this Tribunal which were rendered subsequent to the impugned order of the learned CIT(A);

- iii. ACIT Vs M/s. MRK Gold LLP - (ITAT -BNG)
- iv. DCIT Vs M/ s. Raj Diamonds - (ITAT- BNG)

Relevant extracts of the above two decisions are as under:

- **ACIT Vs M/s. MRK Gold LLP, - ITAT -Bengaluru**

“9. Considering the rival submissions and perusing the material available on records and Orders of the authorities below, there are surveys was conducted on 20.01.2020 at the assessee's business premises and difference was noted in the stocks found in the books of accounts and it was quantified in value at Rs.3,23,08,950/- and the AO made addition under section 69B of the Act and applied section 115BBE of the Act. However, the learned CIT(A) has allowed the appeal of the assessee and treated it as a business income after relying on various judgments. We also noted from the Order of the lower authorities regarding the difference in stock found in the business premises of the assessee. It was not found separately elsewhere, the stocks found are the integral part of business activity of the

assessee. The learned CIT(A) has relied on the judgment in the case DCIT Vs. Sri Krishna Diamond and Jewellery (supra) in which it has been observed as follows, and has allowed the appeal of the assessee.

"9. After hearing rival contentions, we note that the assessee is dealing in gold jewellery, silver articles, diamond, platinum, other precious stones, semi-precious stones and dealing in bullion etc. A survey was conducted on 04/01/2018 and the excess stocks were found of Rs. 2,50,51,072/- . During the assessment AO treated the same as Income from other source and applied sec. 69 of the Act. The CIT(A) has allowed the appeal of the assessee by observing that the AO has not pointed out that the excess stock has any nexus with any other receipts. After discussing in detail and considering on the some judgments, he found that the assessee is engaged in jewellery business as noted supra and no other business is carried out by the assessee. We note that the assessee has stated that excess stock is kept in the premises and it was not recorded in the books of accounts. As per the submission of the ld. AR, after the survey, the assessee has made necessary entries in its books of account and offered it as regular business income.

The answer to question No.26 in the statement recorded is very much clear that the assessee has offered it as excess stock of its business assets. The AO has not further established that the excess stock found was not in the nature of business assets/income and also not pointed out any adverse information that it is not regular business income. The CIT(A) has allowed the appeal of the assessee by observing as under:-

"9.0 The appellant during the course of appellate proceedings has filed written submissions in support of his claim and also relied on various judicial judgements. The relevant part of the same is reproduced as under.

14.1 As stated above, in the case of appellant, a survey u/s 133A was conducted on 04.01.2018 in the business premises of the appellant which is before the end of financial year 31.03.2018. In the course of survey, value of excess stock of Gold Jewellery and silver articles was declared. The stock declared under survey was credited to the capital account of the partners of appellant. Further, the stock was found in the business premises of the appellant for which the source is income from business only. The excess stock found during the course of survey

and surrender made thereof was correctly returned under the head "Business and Profession" only in the Return of Income. As stated above, the appellant is dealing in Gold jewellery, Silver articles, Diamond, Platinum and other precious / semi precious, etc., and the excess stock which has been found during the course of survey is stock of Gold jewellery and Silver articles only. Therefore, the investment in procurement of such stock of Gold jewellery and Silver articles is clearly identifiable and related to the profit of regular business of the appellant only. 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" and provisions of Section 69/115BBE would accordingly be not applicable.

14.2 Even in the statement recorded u/s 133A on 04.01.2018 from the appellant at the time of survey u/s 133A, the appellant had stated that the extra income offered is over and above the normal profits of the appellant firm and such income declared is to be assessed as business income only.

The relevant question no. 26 along with the answers are reproduced as follows;

The complete valuation of the gold articles and other articles was done during the course of the survey and the entire valuation report was enclosed herewith as an annexure. As per the valuation report there is excess in various categories of the stock.

Table The excess is appearing in the books on some of the categories as shown in the valuation report please comment- Ans: Sir, I agree that the valuation is done by government authorized valuers and also I agree that there is excess gold and silver in some of the categories. The total value of the excess gold present in the premises comes to Rs.1,00,11,072/-. Further as per the books the total silver articles present in the premises as per the books is 25,43,499.000 grams in addition, there is an excess of 376 kgs of other as kept in the premises as per the valuation report which is not accounted in.

14.3 Thus, it is clear from answer to question 26 from the statement recorded at the time of survey that the income declared is on account of excess stock found in the business premises of the appellant and accordingly appellant had declared extra income in the form of excess stock of gold jewellery and silver articles under the head Income from Business only.

15 In this regard the appellant would like to rely upon several Judicial precedents wherein it has been held that income declared under survey proceedings are to be assessed as Business income only and not as Income from other sources and consequently the provision of Section 115BBE will not apply.

- CIT v/s. S.K. Srigiri 298 ITR 13(kar).
- ACIT Cen Cir 13, Mumbai vs Rahil Agencies, Mumbai on 23 November, 2016
- Shri Ram Swaroop Singha^{78z}, others Vs. ACIT Circle (ITA No. 145/Jodh/2018)
- Pr.CIT Vs. BaJrang Traders, C/o. Kalani and Co., ITA No. 258/2017
- Lakshminath Baijnath Vs. CIT(1959) 35 ITR 46 (SC)
- DCIT vs. Ramnarayan Bir^{7a} ITA No. 482/JP/2015
- Chandigarh ITAT- Famina Knit Fabs vs ACIT (2019) 176 ITD 246 (2021) 123 taxmann.com 8 (Jaipur-Trib.) In the ITAT Jaipur Bench -A'
- Hari Narain Gattani vs. Deputy Commissioner of Income Tax, Circle-04, Jaipur
- Hon'ble ITAT, Indore Bench, Indore in the case of M/s Shahnai V/ s ITO 1(1), Ujjain, vide ITA No. 658/Ind/2014, dated 15-05-2015.
- ACIT, Circle -1(1), Ujjain V/s M/s. A one Enclave, 3687/1, Hariphatak Road, Ujjain ITA No. 828/Ind/2018
- Chokshi Hiralal Maganlal Vs. Dy. CIT (2011) 9 taxmann.com 300/45 SOT 349 (Ahd.- Trib)
- Principal Commissioner of Income Tax vs. Deccan jewellers (P.) Ltd. dated 02-08-2021 (2021) 132 taxmann.com 73 (Andhra Pradesh)/(2021) 438 ITR 13 (HC of Andhra Pradesh)

9.1 I have heard the AR of the appellant and duly considered the submissions made. The assessing officer has considered excess stock found during the course of survey proceedings amounting to Rs. 2,50,51,072/- as unexplained stock and the same is added back to the income under section 69 of the Income tax Act, 1961. The assessing officer has relied on the decisions of Hon'ble High Court of Rajasthan in the case of PCIT Alwar vs Bajargan Traders in ITA No. 258/2017 dated 12-09-2017 and also on the decision of Hon'ble High Court of Madras in the case of M/s. SVS Oils Mills vs. The Assistant Commissioner of Income Tax in ITA No. 765 of 2018. The Hon'ble High Court of Rajasthan in the case of PCIT Alwar

vs Bajargan Traders in ITA No. 258/2017 dated 12-09-2017 held as follows.

2.7. It is further submitted that the real issue in this case is whether the excess stock surrendered should be made as a part of business income or not and if so, assessee can claim deduction on account of payment of remuneration to partners on account u/s 40b(v). In this regard, our reference was drawn to the decision of Co-ordinate Bench in case of Shri Ramnarayan Birla (in ITA No. 482/JPI15dted 30.09.2016). In that case, the question before the Coordinate Bench. was "whether the CIT(A)-2, Udaipur has erred in directing the AO to assess the unexplained investment surrendered by the assessee under the head "income from Business" ignoring the decision of the Hon'ble Gujarat High Court in the case of Fakir Mohd. Hazi Hasan 247 ITR 290 that unaccounted income ought to be categorized under the residuary head of 'Income from other sources. In respect to the said issue, the findings of the Coordinate Bench are as follows:

"We have heard the rival contentions and perused the material available on record. Undisputed facts emerged from the record that at the time of survey excess stock was found. It is also not disputed that assessee is engaged in the business of jewellery. During the course of survey excess stock valuing Rs. 77,66,887/- was found in respect of gold and jewellery. The Coordinate Bench in the case of Choksi Hiralal Mangnlal vs. DCIT 131, TT) (Ahd.) 1 has held that in cases where source of investment/expenditure is clearly identifiable and alleged undisclosed asset has no independent existence of its own or there is no separate physical identity of such investment/expenditure then first what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset and only on failure it should be considered to be taxed u/s 69 on the premises that such excess investment is not recorded in the books of account and its nature and source is not identifiable. Once such excess investment is taxed as undeclared business receipt then taxing it further as deemed income under section 69 would not be necessary. Therefore, the first attempt of the assessing authority should be to find out link of undeclared investment/expenditure with the known head, give opportunity to the assessee to establish nexus and if it is satisfactorily established then first such investment should be considered as undeclared receipt under that particular head. It is observed that there is no conflict with the decision of Hon'b]e Gujarat

High Court in the case of Fakir Mohd. Jajihasan (supra) where investment in an asset or expenditure is not identifiable and no nexus was established then with any head of income and thus was not available for set off against any loss under any other head. Therefore, the Hon'ble Coordinate Bench held that where asset in which undeclared investment is sought to be taxed is not clearly identifiable or does not have independent identity but is integral and inseparable (mixed) part of declared asset falling under a particular head, then the difference should be treated as undeclared business income explaining the Investment. In the present case the excess stock was part of the stock. The revenue has not pointed out that the excess stock has any nexus with any other receipts. Therefore, we do not find any fault with the decision of the Id. CIT(A) directing the AO to treat the surrendered amount as excess stock qua the excess stock found."

2.10. We have heard the rival contentions and perused the material available on record. During the course of survey, the assessee has surrendered an amount of Rs. 70,04,814/- towards investment in stock of rice which had not been recorded in the books of accounts. Subsequently, in the books of accounts, the assessee has incorporated this transaction by debiting the purchase account and crediting the income from undisclosed sources. In the annual accounts, the purchases of Rs. 70,04,814/- were finally reflected as part of total purchases amounting to Rs. 33,47,19,658/- in the profit and loss account and the same also found included as part of the closing stock amount to Rs. 1,94,42,569/- in the profit/loss account since the said stock of rice was not sold out. In addition to the purchase and the closing stock, the amount of RS. 70,04,814/- also found credited in the profit and loss account as income from undisclosed sources. The net effect of this double entry accounting treatment is that firstly the unrecorded stock of rice has been brought on the books and now forms part of the recorded stock which can be subsequently sold out and the profit/loss therefrom would be subject to tax as any other normal business transaction. Secondly, the unrecorded investment which has gone in purchase of such unrecorded stock of rice has been recorded in the books of accounts and offered to tax by crediting the said amount in the profit and loss account. Had this investment been made out of known source, there was no necessity for assessee to credit the profit/loss account and offer the same to tax.

Accordingly, we do not see any infirmity in assessee's bringing such transaction in its books of accounts and the accounting treatment thereof so as to regularise its books of accounts. In fact, the same provides a credible base for Revenue to bring to tax subsequent profit/loss on sale of such stock of rice in future.

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.

9.2 The Hon'ble High Court of Rajasthan in the case of PCIT Alwar vs. Bajargan Traders in ITA No. 258/2017 (supra) has affirmed the decisions of ITAT which had held that in a case where source of investment/expenditure is clearly identifiable and related to the regular business stock of the appellant then the investment in excess stock found during the course of survey has to be brought under the head "Business Income" and not under the head "Income from other sources".

9.3 The appellant has relied on the decision of Hon'ble High Court of Rajasthan in the case of PCIT Alwar vs. Bajargan Traders in ITA No. 258/2017 dated 12-09-2017 and also on other various judicial decisions. It is seen that the facts of the case under consideration are similar to that of PCIT Alwar vs. Bajargan Traders in ITA No. 258/2017 dated 12-09-2017 (Supra). In the instant case, the appellant is engaged in the business of jewellery. During the course of survey excess stock amounting to Rs.2,50,51,072/- was found in respect of gold and jewellery. Further, the AO has not identified any source of income apart from the business income of the appellant, to which excess stock found during the course of survey can be attributed. In the given case, the excess stock found during the course of survey

proceedings is clearly identifiable and the same is related to regular business stock of the appellant therefore, the same is brought under the head "Business income" and not under the head "Income from other source". The AO was not justified in considering the excess stock found during the course of search as unexplained stock and assessed to tax as per the provisions of section 69 of the Income Tax Act since in the present case the excess stock was part of the stock and the AO has not pointed that the excess stock had any nexus with any other receipts. As such, ground nos. 2 to 4 as raised by the appellant is allowed"

10. On going through the above order of the CIT(A), we do not find any infirmity in the order of the CIT(A) and he has passed a reasoned order. We further note that the case laws relied by the CIT(A) as well as the Id.AR of the assessee noted supra, supports the case of the assessee and the excess stock found during the course of survey cannot be taxed u/s 69 of the Act because excess stock was part of the regular business of the assessee and the AO has not brought on record anything to show that the excess stock has nexus with any other business receipts or that it was not the part of the regular business of the assessee. Considering the entire facts, we uphold the order of the Id. CIT(A) and dismiss the appeal of the revenue."

11. In the result, the appeal of the revenue is dismissed.

10. We also noted that the facts are similar to the facts of the 'present case. We have also gone through the statements recorded under section 133A of the Act. No where it has been stated by the assessee during the course of survey that it is undisclosed income of the assessee. Assessee has stated that it is additional income of the assessee. Accordingly, we hold that the additional income offered by the assessee shall be treated as business income u/s 28 of the Act,

• DCIT Vs M/s. Raj Diamonds - ITAT- Bengaluru.

6. We have heard the rival submissions and perused the materials available on record. In this case, undisputed facts are that excess cash and excess stock were found in the course of search conducted by the department. This stock and cash were admitted to be business income of the assessee, it pertinent to note that incriminating material has been found in search. It is also relevant to note that

the assessee has not retracted from its statement recorded u/s 132(4) of the Act as well as u/s 131 of the Act. The Hon'ble Apex Court while dismissing the appeal of an assessee in the case of Roshan Lal Sanchiti 292 Taxman 549(SC) has held that statement recorded during the course of search u/s 132(4) has evidentiary value and if any of the party would like to deviate from such statement then such party has to rebut the disclosure with cogent material. Here in this case the revenue did not want to rely on the statement of the Managing partner. However, the lower authorities have failed to bring on record any material to prove that the cash and additional stock was not the business income of the assessee. Further the AO has also not disturbed the audited books of the assessee. Now the moot question which we have to decide is whether this cash and unexplained stock when offered by the assessee would have to be taxed as business income or as unexplained investment in terms of provisions of section 69A of the Act. Revenue has relied on the decision of Hon'ble Madras High Court in the case of SVS Oil Mills reported in 113 taxmann.com 388 (Mad.)

6.1 Facts before the Hon'ble Madras High Court were totally difference in as much as in that case the proceedings were emanating as a result of survey. There is a vast difference between the statement recorded under survey and search, in as much as the evidentiary value of statement recorded under survey carries less weightage as compare to the statements recorded under section 132(4), as in later provisions the authorities have power to record a statement on oath. Further it is also an admitted position of facts that in the case before Hon'ble Madras High Court the assessee therein has not passed corresponding entries in the regular books even after admissions the relevant observations of the ITAT, which in turn affirmed by the Hon'ble High Court as under: -

"There is a clear admission by the assessee that the difference in stock as on date of survey was added in its stock register but no corresponding entry was passed in the books of accounts. Stock cannot come in from vacuum. When stock is introduced in the stock register, there has to be a corresponding entry in the financial books of accounts. Either it has to be a purchase or shown as paid out of explained or unexplained source. Once stock to the extent of the surplus found at the date of survey, is included in the stock register, assessee has to give an explanation for the source from which it acquired such stock. Assessee having not passed any entry in financial

books, addition of stock made by it, in its stock register, can only be considered as made out of undisclosed source"

7. The above finding of fact as has been recorded by the ITAT is not there in the present case as evident from the fact that the AO himself has treated the additional amount as income from business while computing the final income. Further coordinate Bench of Chennai in the case of Overseas Leathers Vs DCIT reported in 152 Taxman. Corn 595 (Chennai) while distinguishing the decision of Hon'ble Madras High Court in SVS(Supra) has observed as under: -

"Coming back to the case laws relied upon by the AO and the Ld. Counsel for the assessee. The AO has relied upon the decision of Hon'ble High Court of Madras in the case of SVS Oils Mills (supra). We find that in the said case, although excess stock was found during the course of survey u/ s. 133A of the Act, which the assessee did not accounted in his books of accounts and also not brought to tax in the relevant assessment years. The AO has made additions towards excess stock as unexplained investment u/s. 69B of the Act in absence of necessary explanation with regard to source for said excess stock. Under those facts, the Hon'ble Madras High Court came to the conclusion that excess stock found during the course of survey should be assessed u/s. 69B of the Act. In this case, facts are entirely different. The excess stock found during the course of survey was mixed with regular stock in trade of the assessee in its business. The survey team was also not identified excess stock separately, but was valued because the assessee could not reconcile the difference in stock in trade when compared to book stock. Further, the assessee has explained the source for excess stock and argued that it is out of current year income generated from the business. The explanation of the assessee was not disproved. Therefore, we are of the considered view that the facts of the present case are not applicable to the case laws relied upon to the Assessing Officer"

8. The facts of the present case are perimetria with that of the Chennai Bench in the case of Overseas Leathers (Supra). Therefore, respectfully following the view of the coordinate bench we are of the view that additional income offered by the assessee on account of cash and excess stock is liable to be taxed as business income and not unexplained investment in terms of provisions of section 69A at special rates of 115BBE.

Unquote

4.4 PRAYER:

In the facts and circumstances of the Respondent's case and the binding decisions relied upon, it is most humbly submitted that the Hon'ble Tribunal may be kindly pleased to DISMISS the subject Appeal and thus uphold the decision of the Learned Commissioner of Income Tax -11, Bengaluru in the Interest of justice.

5. WITH OUT PREJUDICE TO THE ABOVE SUBMISSIONS, it's also submitted that the even on the principles of consistency impugned order deserves to be upheld, as submitted hereunder:

5.1. *It is also most respectfully submitted that the Appellant-Revenue has itself accepted the above principles of law in Respondent's own cases for the subject assessment year as well as subsequent assessment year and which were part of the subject survey as under:*

- (i) Respondent's assessment for the A.Y. 2019-20 (page Nos 91-94 of the paper book) wherein the stand of the respondent has been accepted by the very same AO.*
- (ii) Respondent's associate entity M/s. Mangal Deep Bangles assessment for the AYs. 2017-18 and 2020-21 (page nos 115-122 86 131-134 of the paper book) wherein the stand of the respondent has been accepted by the concerned AO and which has not been challenged by the Revenue*

5.2. *In this connection Respondent also beg to rely upon the decision of Hon'ble ITAT Pune in the case of DCIT, Central Circle- 1 Vs Shri Balaji Ramchandra Ande, wherein the Hon'ble Tribunal while dealing with an identical issue, was pleased to declare as under:*

Quote

"We have heard the rival arguments made by both the sides and perused the material on available record. It is an admitted fact that the assessee during the course of survey has admitted additional income on account of payments made to URD purchases, transportation charges for Asphalt transport, payments made towards repairs and maintenance and labour charges etc., which the assessee declared in the return of income for the

assessment year 2017-2018 as well as assessment year 2018-2019. We find the return of income for assessment year 2017-2018 was processed u/sec.143(1) and such additional income declared by the assessee on the basis of the same survey conducted on 09.08.2017 has been accepted and no proceedings u/sec.147 or 263 have been initiated.

We, therefore, find merit in the submissions of the Learned Counsel for the Assessee that once the Revenue has accepted during assessment year 2017-2018 that such additional income declared by the assessee has to be taxed at normal rate and not u/sec.115BBE, the Revenue cannot change its stand and tax the additional amount surrendered during the course of survey by applying provisions of sec.115BBE of the Act. Although the principles of res judicata do not apply to the income tax proceedings, however, once the income is taxed in a particular manner, unless there is change in facts and circumstances of the case, the Revenue should not take a different view for the immediately next assessment year when the income for both the years are declared on the basis of the same survey action and in one year the Revenue has accepted such additional income declared on the basis of survey at normal rate treating the same as business income. In view of the above discussion and in view of the detailed reasoning given by the Ld. CIT(A) on this issue, we do not find any infirmity in his order by deleting the tax calculated at special rate as per the provisions of sec.69B and 69C r.w.s.115BBE of the Income Tax Act on the declaration made for excess stock found and excess expenditure. The grounds raised by the Revenue are accordingly dismissed."

Unquote.

6. Conclusion:

In the above facts and circumstances, settled law on the issue involved as well as the principles of consistency, it is most respectfully submitted that the subject Appeal filed by the Revenue may kindly be dismissed and the impugned order be upheld in the interest of justice."

- 8.** For A.Y. 2017-18, during the course of hearing, the Ld. Counsel further submitted that the assessing officer has accepted the income offered by the assessee as business income in the case of group cases on the similar circumstances.

9. In the rejoinder the ld. DR submitted that the date of assessment orders are different. He further submitted that the statements given in the case of Mangaldeep bangles and assessee's are not matching. In the case of assessee it is 09/09/2019 while the assessment order referred by the Ld. Counsel is 17/12/2019 and the facts are also different. Therefore this argument of Ld. Counsel is not applicable.

9.1. He further submitted that while deciding the heads of income for computing of due tax, in respect of survey conducted u/s. 133A, the statements recorded, are very much relevant in the case of the assessee for the A.Y. 2017-18, the assessee itself (Partner) accepted as undisclosed income (unexplainable). Once it is undisclosed income accepted, it cannot be treated as business income and therefore he requested that the order of the assessing officer should be upheld.

10. Considering the rival submissions and perusing the materials available on record and the order of the authorities below, we noted that the case was selected for a scrutiny under CASS and during the survey proceedings, the assessee had declared undisclosed income of Rs. 18,27,71,190/- which has been assessed by the AO as unexplained money u/s. 69A of the IT Act however, the assessee had offered it as business income and paid normal rate of tax. The Ld. CIT(A) has accepted the income shown by the assessee as business income relying on the judgment of the Hon'ble Jurisdictional High Court and Coordinate Bench. We have gone through the assessment order passed by the assessing officer dated 09/09/2019 which is as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 5(2)(1), BANGALORE

To,
MANGALDEEP CHAINS
145/F15 & 145/F16 RANGANATHA
MANSION, AVENUE ROAD CHICKPET
BENGALURU 560002, Karnataka
India

PAN: AAVFM5316Q	AY: 2017-18	Order No: ITBA/AST/S/143(3)/2019-20/1017921389(1)	Dated: 09/09/2019
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Name of the assessee	MANGALDEEP CHAINS
Address of the assessee	145/F15 & 145/F16 RANGANATHA MANSION, AVENUE ROAD CHICKPET, BENGALURU 560002, Karnataka, India
Status	FIRMS
Range/Circle/Ward	CIRCLE 5(2)(1), BANGALORE
Resident/Resident but not Ordinary resident/ Non-resident	Resident
Date of Hearing	27/08/2018, 11/10/2018, 23/07/2019, 06/08/2019, 29/08/2019
Section/Sub-section under which assessment is made	143(3)
Date of Order	09/09/2019

ASSESSMENT ORDER

The assessee e-filed the return of income for A.Y. 2017-18 on 07/11/2017 declaring total income of **Rs. 18,36,11,380/-** and the same was processed u/s 143(1) of the Income Tax Act, 1961 (hereafter referred as "the Act").

The case was selected for limited scrutiny through CASS and the statutory notices u/s 143(2) and u/s 142(1) of the Act dated 14/09/2018 and 18/07/2019 respectively were issued and served on the assessee' email- 'mangaldeepchains@gmail.com' through e-proceedings portal. In response to the aforesaid notices, the assessee submitted its reply through e-proceedings on 16/08/2019.

A letter was issued to the assessee on 26.08.2019, the assessee was requested to show cause –

"Submission made by you on 06.08.2019 and 16.08.2019 is considered. On a

perusal of balance sheet and P&L account it is seen that the unaccounted stock of RS. 18,27,71,190/- which was inventorised during the survey has been admitted by you and shown as increase in capital. This sum has also been shown by you in the return of income for AY. 2017-18 under schedule 23 of business profits as "Any other item or items of addition under section 28 to 44DA". However this should have been shown under schedule 1d.sl.4 of "Other Sources" as unexplained money, etc., under section 69A of the income tax act. Hence it is proposed to complete the assessment accordingly."

Accordingly assessment is completed by treating this amount of unaccounted stock of Rs.18,21,71,190/- as unexplained money, etc under 69A of the Income Tax Act 1969.

Penalty proceedings are initiated separately u/s 271AAC.

CHAKRAVARTULA MADHAV
CIRCLE 5(2)(1), BANGALORE

Copy to:

Assessee

CHAKRAVARTULA MADHAV
CIRCLE 5(2)(1), BANGALORE

(In case the document is digitally signed please
refer Digital Signature at the bottom of the page)



This document is digitally signed

Signer: CHAKRAVARTULA MADHAV
Date: Thursday, Sep 12, 2019 10:35 AM
Location: BANGALORE

11. We noted that from the above assessment order, the assessing officer has made addition u/s. 69A of the IT Act. We also noted that from the financial statements that the closing stocks from assessee is Rs. 17,33,93,820/- and sales of Rs. 26.48 crores. The opening stock is Rs. 3.41 crores and purchases is only Rs. 38.26 crores. However, the undisclosed income was declared by the assessee during the course of survey of Rs. 18,27,71,190/- as unaccounted stock. The ld. CIT(A) should have considered the purpose/ findings/statements recorded during the course of survey-.The ld. CIT(A) has treated as business income only relying on the judgements as per his order without going into the facts/ findings at the time of survey for the impugned Assessment Year of the assessee and has ignored the statements recorded during the survey proceedings and post survey proceedings. The ld. CIT (A) is not justified for allowing the appeal of the assessee. Once the assessee itself (partner) admitted as undisclosed income because he was unable to explain the source of investments in excess stock found as the nature of business and source of investment is only known well by the assessee himself. If the assessee had invested from known source of income, he would not accept it as undisclosed source of income. During the course of hearing the bench asked a question about the offering of surrendered amount as business income and explain the source of investment in the excess stock found to the ld. Counsel for the assessee but he was also unable to explain. In spite of giving one more opportunity to the ld. Counsel he was unable to explain the source of investment in the excess stock found at the time of survey. ,Therefore, Considering the totality of facts of the case we found substance on the arguments of the ld. DR. And rejected the arguments of the ld. AR. The case law relied on by the learned Counsel does not support the case of the assessee since the facts are different. The ld. CIT(A) has wrongly applied the judgements and allowed the appeal of the assessee.

In the result the appeal of the revenue is allowed.

Assessment Year 2020-21:

12. Briefly stated the facts of the case are that the assessee filed return of income on 21/01/2021 declaring income of Rs. 4,50,91,170/- and the case was selected for complete scrutiny as survey u/s. 133A was conducted in the case of the assessee. Accordingly, notice u/s. 143(2) dated 28/06/2021 was issued to the assessee and other statutory notices were issued to the assessee. The assessee submitted reply. From the submissions of the assessee, it was noted that a survey u/s. 133A was conducted on 26/06/2019. During the course of survey, it was noted that the assessee had maintained cash book and other books of upto 25/06/2019 and there was cash, details called and physical stock found during the course of survey was Rs. 25,98,860/-. Further, the ornament stock weighing 79.199 Kgs and gold bullion weighing 3.005 kgs were physically found whereas the books ornament stock was of 66.903 kgs and bullion stock was Nil. Due to discrepancy in stock, an amount of Rs. 3,27,76,490/- was offered to tax as stock difference. Consequent to survey, the assessee has admitted an amount of Rs. 3,27,76,490/- on account of excess stock and Rs. 21,40,777/- on account of unaccounted cash sales. The assessee had declared income of Rs. 4,50,91,170/- as return of income. The assessing officer after considering the entire materials available before him, treated the assessee's stock of Rs. 3,27,76,490/- u/s. 69B of Income Tax Act. However, the assessee offered it as business income. The Ld.CIT(A) also treated the income declare during the survey u/s. 133A as business income. The Ld.CIT(A) relied on the judgment of Hon'ble Jurisdictional High Court and the Coordinate Bench and allowed the appeal of the assessee. Aggrieved from the order of the Ld.CIT(A), the revenue filed an appeal.

13. The Ld.DR relied on the order of the assessing officer and statements recorded u/s. 133A, 131 of Income Tax Act and submitted that three unaccounted stocks were discovered by the income tax department only because of the survey happened. It should have treated it as income u/s. 69B of the Act.

14. On the other hand, the Ld. Counsel relied on the order of the Ld.CIT(A) and submitted that the Ld.CIT(A) has given reasoned order and it should not be disturbed and submitted that in the case of group cases in Mangal Deep Bangles, the assessing officer had accepted as business income then why the assessing officer had treated the income u/s. 69B in the case of the assessee. The Ld. Counsel further submitted that there was a discrepancy noted in the stock were found. Purchases and sales were updated upto 25/06/2019. The stock register was not properly updated. Therefore whatever declared by the assessee are part of the business stock which is appearing on the statements recorded of the assessee u/s 133A of the Act. Therefore there is no infirmity in the order of the Ld.CIT(A) and the order passed by the Ld.CIT(A) is also covered by the judgement of the Hon'ble Jurisdictional High Court as well as the decision of the Coordinate Bench relied by him.

15. Considering the rival submissions and going through the statements recorded on this issue, the entire purchase and sales were recorded upto 25/06/2019 before the date of survey and during the course of survey u/s. 133A i.e. the difference in stock of ornaments, bullions were noted because of the discrepancies in the stock maintained. Therefore whatever the amounts declared by the assessee are part of the business activity. The bills for purchases were recorded but there was discrepancies in the stock maintain. On going through the entire statements recorded, we also noted that at paper book page no. 57, Qn. & Ans. No. 21, the assessee had declared as regular income but not as per the assessment year 2017-18 as undisclosed income. Therefore the assessing officer was not correct to complete it as income u/s. 69B of the IT Act. The case law relied on by the Ld. Counsel of the Coordinate Bench noted by the Ld.CIT(A) are very much applicable in the present case of the assessee. The Ld.DR could not bring any adverse materials. Therefore considering the entire facts of the case, we are dismissing the appeal of the revenue.

14. To sum up, the appeal for the A.Y. 2017-18 in ITA No. 2561/BANG/2024 is allowed in the above terms and the appeal for the A.Y. 2020-21 in ITA No. 2562/BANG/2024 is dismissed.

Order pronounced in the open court on 31st October, 2025.

Sd/-
(KESHAV DUBEY)
Judicial Member

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated, the 31st October, 2025.
/MS /

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore