IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

BEFORE SH. SUBHASH MALGURIA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER

ITA No.16/ALLD/2023
A.Y.2018-19

Rajesh Kumar Jaiswal 186/167, Old Katra Allahabad-211002	vs.	DC/ACIT(CNTRL) Income Tax Department, 3rd Floor, 38 MG Marg, Allahabad-211001.
PAN: ACUPJ7251L		
(Appellant)		(Respondent)

Assesseeby:	Sh. Nikhil Agarwal & Ms. Vidisha Srivastava, Advocates Sh. R.C. Agarwal & Sh. Atul Kesarwani, CAs
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	11.02.2025
Date of pronouncement:	02.05.2025

O R D E R

PER SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER:

This is an appeal filed against the order of the ld. CIT(A) dated 12.12.2022 under section 250 of the Income Tax Act, 1961 partly allowing the appeal of the assessee against the assessment done by the DCIT, Central Circle Allahabad on 25.06.2021. The grounds of appeal are as under:-

> *1. Because the learned CIT (A) was not legally justified in affirming the order of the assessing authority, regarding the invocation of section 69 of the Income Tax Act 1961, as all the necessary ingredients for invocation of section 69 were not present in the case of the assessee/ appellant.*
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> *2. Because learned AO as well as the learned CIT(A) have overlooked the vital documents and evidences which were on record, namely the statement of the assessee made on oath at the time of survey on 18.01.018 and subsequently recorded on 01.02.2018, and the letter dated 22.10.2019, the reply dated 15.06.2021, which having neither been considered nor discussed, and invocation of Section 69 has been done*

without assigning any cogent and valid reasons while rejecting the explanation of the appellant as not satisfactory.

3. Because, due to inadvertent mistake the sum of Rs. 1.85 crores, difference of amount towards purchase of immovable property situated at 141A / 33A / 3 M.G.Marg, Allahabad, was omitted to be recorded in the books of accounts and not included in the return of income for the AY 2018 - 19 had paid due tax even though declared at the time of survey.

4. Because the assessee/appellant had suo-moto paid due tax of Rs.57,16,500.00 vide challan number 00227 dated 22.10.2019, upon the sum of Rs.1.85 crores, much before the query raised by the assessing authority vide questionnaire issued under section 142 (1) dated 23.01.2021, in assessment proceedings for the AY 2018-19.

5. Because the learned AO as well as CIT(A) were not legally justified in making the addition of Rs.1.85 crores as unexplained investment for the purchase of property, under section 69 and charging the same to the penal rate of tax under section 115 BBE of the Act.

6. Because the appellant was not given any opportunity of hearing by the assessing authority before making addition under section 69 and levying tax as per provisions of section 115BBE, which is in gross violation of principles of natural justice.

7. Because learned CIT (A) erred in law as well as on facts, in confirming the denial of deduction claimed under section 24(a), under the income from house property as received by the appellant on account of rent from Hewett Road Property and property situated at Katra, Allahabad, treating the same as business income which is against the evidence on record filed by the appellant.

8. Because in case of treating the rental income as business income of the applicant the authority's below were bound to allow depreciation of the said property in accordance with the provisions of the act.

9. Because the learned AO as well as CIT(A) were not legally justified in taxing a sum of Rs. 3,96,606.00, amount of unsecured loan and sundry creditors which were under normal course of business, under the provisions of section 68 of the act as the income of the appellant for the AY 2018-19, and taxing the same at a higher rate of tax @ 60% plus 25 % surcharge, ignoring the evidences filed to prove the correctness of sundry creditors, as produced by the appellant during the course of assessment as well as during appellate proceedings.

10. Because the order appealed against is contrary to facts, law and principles of natural justice."

2. Subsequently the Assessee filed four additional grounds of appeal. It was submitted that the same had inadvertently been missed out but were relevant and went to the root of the matter therefore they may kindly be admitted. After due consideration of the additional grounds they are admitted. The additional grounds of appeal of the assessee are as under: -

1. Because the Ld. AO as well as Ld CIT (A) was not legally justified in not considering the statement made on oath at the time of survey dated 18.01.2018 and 01.02.2018 and the letter dated 22.10.2019 submitted before the AO regarding the deposition of tax

amount of Rs. 57,16,500/vide challan number 00227 on dated 22.10.2019, being the Tax on income of Rs.1.85 lacs (inadvertently left to be incorporated in the Income Tax return), as well as the reply dated 15.06.2021 in totality while rejecting the explanation of the appellant as not satisfactory.

2. Because the Ld. AO as well as Ld CIT (A) have overlook the vital documents which were on record, namely the statement made on oath at the time of survey dated 18.01.2018 and 01.02.2018 and the latter dated 22.10.2019 and the reply dated 15.06.2021 while making the addition of Rs. 1.85 lacs as unexplained investment for purchase of property, and charging it to the penal rate of tax u/s JI5BBE of the Act.

3. Because no reason much less any cogent reason have been assigned either by the Ld. AO or Ld. CIT (A) (while upholding the order of the Id AO) as to why the explanation of assessee found unsatisfactory, and as such, in absence of any reason, much less any cogent reason regarding the satisfaction which ought to have been based upon objective consideration for the purposes of the addition of Rs. 1.85 lacs as unexplained investment, and charging it to the penal rate of Tax as per Section 115BBE is highly arbitrary and unsustainable in the eyes of law.

4. Because the ingredients for invocation of sec 69 of IT Act, namely the assessee offer no explanation about the source of investment and the explanation offered by asseessee is not found satisfactory in the view of Ld. AO, cannot be said to be present in the instant case in absence of any reason, much less any cogent reason, especially when the documents giving the explanation were present in the records of Ld. AO, which he ought to have considered."

3. The facts of the case are that the assessee was engaged in the trading of liquor, Ayurvedic Medicine, Kirana and other items. A survey action under section 133A of the Act was carried out on 18.01.2018 at the various business premises of the assessee. During the course of survey, certain incriminating documents were found and impounded under section 133A(3)(ia) of the Act. A return of income was filed on 10.10.2013 disclosing total income of Rs.1,62,63,120/- of which business income of Rs.1,12,95,684/-, income from house property of Rs.25,86,697/- and income from other sources of Rs.25,11,693/- were disclosed. The case was subsequently taken up for scrutiny. During the course of assessment, the ld. AO observed that the assessee had disclosed rental receipts of Rs.37,48,000/- from three house properties and after deducting house tax and claiming deduction under 24(a), a net income of Rs. 25,86,697/- had been disclosed under the head, 'house property'. The ld. AO observed that in respect of two of the properties, the assessee had not let out the same on rent to any one person on a monthly or annual basis. Instead, he had employed one manager in each property to take care of it and given

the same to pilgrims / travelers on a daily basis or for short periods. The income from these properties was also disclosed on a net basis i.e. after deducting all the expenses including the salaries of the managers. In respect of one house property i.e. Shop at M.G. Marg, Civil Lines, Allahabad, the ld. AO observed that the assessee had let out the same to Kashi Ornament House, received a rent of Rs.13,50,000/- and this amount was also reflected in the Form 26AS. The assessee had offered such income after claiming deduction of Rs.4,05,000/- under section 24(a) and disclosed the net income at Rs. 9,45,000/-. The ld. AO accepted this declaration of income from house property in respect of the house property at M.G. Marg, Civil Lines, Allahabad. However, with regard to the other two houses held by the assessee i.e. at Badshahi Mandi, Hewett Road and 2B/3 Kripa Narayan Mathur Marg, Katra, Allahabad, the ld. AO observed that it was an established fact that the assessee earned only rentals for occupation of premises on a daily basis. Moreover, he had appointed managers and also incurred expenses on the property. The assessee had also maintained a register for Badshahi Mandi, Hewett Road and 2B/3 Kripa Narayan Mathur Marg, Katra, Allahabad, which was stated to be produced before the ld. AO for verification. However, the ld. AO disputes that such registers were actually produced. Since the assessee had let this property out on a day to day basis and not produced any rent agreement/rent receipt, he held that the assessee was in the business of letting out property and therefore, the rental income was to be treated as business income. Furthermore, since the income from these properties had been disclosed on net basis in the return, the ld. AO held that no further deductions were allowable to the assessee other than the income declared. Therefore, he disallowed the deduction under section 24(a) amounting to Rs. 7,03,585/- on these properties. He also disallowed the house tax of Rs. 52,718/- for the property at Hewett Road. He, thereafter, decided to treat the net income of Rs. 23,98,000/- from the two properties at Badshahi Mandi, Hewett Road and 2B/3 Kripa Narayan Mathur Marg, Katra, Allahabad as the assessee's income from business.

4. The assessee had also purchased an immovable property bearing no. 141A/33A/3 M.G. Marg, Civil Lines, Allahabad vide a registered sale deed during the course of the year, i.e. on 9.07.2017. The amount of consideration mentioned in the registered sale deed was Rs. 1,15,00,000/-. However, during the survey under section 133A, it came to light that the actual consideration paid for the immovable property was Rs.3 Crores. This was admitted by the assessee during his statement recorded on 18.01.2018 and furthermore the seller, namely Sh. Kashi Naresh Mehrotra had also confirmed the sale consideration as being Rs.3 Crores on which necessary capital gains tax had been paid. During the course of assessment proceedings, the assessee was asked to furnish the details of all immovable properties and sources of investments. On 5.04.2021, the assessee furnished details wherein the total investment in the aforesaid property was shown as Rs.1,25,73,180/-. This discrepancy in the consideration price that was admitted by him in his statement dated 18.01.2018 and in his return and submissions filed on 5.04.2021 was confronted to him. At that point of time, the assessee admitted that the sum of Rs.1,85,00,000/- was inadvertently left to be incorporated in the return of income in the assessment year 2018-19 and the same was now being offered for taxation. Since the investment of Rs. 1,85,00,000/- was not reflected in the balance sheet and not offered for tax in the return filed for the assessment year 2018-19 and since the source of this investment had not been explained, the ld. AO decided this to treat this as unexplained investment under section 69 and tax it at the special provisions as contained in section 115BBE of the Act. Finally, it was observed by the ld. AO that the assessee had shown a long list of sundry creditors in his balance-sheet as on 31.03.2018 amounting to Rs. 1,37,67,050/-. He asked the assessee to furnish the details in the form of ledger accounts and confirmations and the assessee unable to furnish the ledger accounts or confirmations in respect of credits owed to M/s A.B. Traders of Rs. 2 Lacs and M/s Narayan Marketing of Rs.1,96,606/-.

Accordingly, the ld. AO treated the credits from these two parties as unexplained and brought them to tax.

5. Aggrieved with these additions, the assessee went in appeal before the ld. CIT(A). With regard to the disallowance of deduction under section 24(a) from the house property and the disallowance of house tax of Rs. 52,718/-, the assessee submitted that the details regarding the deposit of house tax had been furnished before the ld. AO and ought to have been allowed. On the issue of deduction under section 24(a), it was submitted that the assessee used to purchase the house property as investment and not for renting the same for business purposes. However, being a prudent businessman, he had also availed the opportunity and given his properties on rental basis to get additional income and paid tax on the same to the government exchequer. He had given his properties at Badshahi Mandi, Hewett Road and 2B/3 Kripa Narayan Mathur Marg, Katra, Allahabad to travelers and pilgrims on rent because it fetched more rent. To take care of each of the properties, the assessee had deployed one manager and the income disclosed from the same was after deducting the salary of the Manager and other petty expenses. Since these were house properties, they had been disclosed under the head, "income from house property" and thereafter the assessee had claimed the statutory deduction under section 24(a) of the Act but the ld. AO had misinterpreted the same and taken it as business income, instead of income from house property. It was argued that since the main source of income was the house property, then it was income from house property. Furthermore, it was not the main source of income of the assessee and therefore, it could not be said that the assessee was carrying out a business. Merely, because the assessee had given his properties on rent to travelers and pilgrims, the nature of the income would not change and it would remain income from house property. It was further submitted that the Legislature had provided for flat deduction of 30% under section 24(a) so as to reduce litigation on issues of repair and maintenance of house properties. It was, therefore, prayed that

the matter may be looked into and the income offered from these two houses may be considered as income from house property. With regard to the issue of investment in purchase of a shop at Civil Lines, Allahabad, it was submitted that the assessee had admitted the undisclosed investment in his statement dated 11.01.2018 but inadvertently left the same to be incorporated in the return of income of the assessee in the assessment year 2018-19. However, the assessee had already paid the due tax on Rs.185 Lacs which was not recorded in the return of income. In support of its contention, the assessee furnished a challan no. 00227 dated 22.10.2019 for payment of tax of Rs.57,63,500/-. It was further submitted that no incriminating material or any unexplained expenditure had been found during the survey operation in respect of the above Rs. 1.85 Crores surrendered by the assessee. Since, the assessee had not concealed any income, the 1.85 Crores did not come within the ambit of section 69 of the Act and the provisions of section 115BBE could not be applied. It was submitted that the payment of tax demonstrated that the failure to incorporate this amount in the return of income was a technical error and therefore, section 69 could not be invoked in such cases. On the issue of unsecured cash credits under section 68 of the Income Tax Act, it was submitted that due to the Covid-19 pandemic, it was difficult to obtain confirmation from the sundry creditors. However, it enclosed the copies of ledger accounts of the sundry creditors and the bills and bank statement with a request that the ld. CIT(A) may not take an adverse view of the matter.

6. The ld. CIT(A) duly considered the arguments of the assessee and on the various issues raised before him, he ruled as under:-

> a. That house tax was allowable to the assessee whether the income was assessed to tax either as income from business or income from house property. Accordingly, the ld. AO was directed to allow the deduction of house tax.

b. In view of the fact that the assessee had given two of his premises for rent on a day to basis and appointed a manager for each property, he held that the assesseewas in the business of letting out properties and accordingly, he confirmed the decision of the ld. AO to treat the income from those two properties as business income and disallow the deduction under section 24(a).

c. With regard to the investment of Rs. 1.85 Crores, the ld. CIT(A) observed that where the assessee had made investment which was not recorded in the books of accounts, the value of such investments would be deemed to be the income of the assessee for such financial year by not including the amount of Rs.1.85 Lacs in its books, and in its return, the assessee had rendered himself liable to be proceeded against under section 69 and therefore, the ld. AO was justified in bringing the amount to tax under section 69 especially because the assessee had not disclosed the source of investment.

d. On the issue of section 115BBE, it was submitted that since section 69 had been applied, the tax would be levied under section 115BBE.

e. On the issue of sundry creditors, it was submitted that even in the confirmations produced before him, it was seen that the same was contradictory (showing a proprietor as a partner) and therefore, was not fit to be believed. He, therefore, confirmed the addition of Rs. 3,96,606/-.

7. The assessee is aggrieved by such additions/disallowances being sustained by the ld. CIT(A) and has accordingly come before us in appeal. Sh. Nikhil Agarwal and Smt. Vidisha, Srivastava, Advocates appearing on behalf of the assessee accompanied by Sh. R.C. Agarwal and Sh. Atul Kesarwani, CAs (hereinafter referred to as the ld. ARs) represented the issue before us. It was submitted that a sum of Rs. 1.85 Crores had been admitted by the assessee during the survey on 18.01.2018. However, it was inadvertently not recorded in the books or in the return filed on 10.10.2018. This return had been processed on 23.07.2019 under section 143(1)

and a scrutiny notice had been issued on 20.09.2019. The assessee deposited the tax on Rs. 1.85 Crores on 22.10.2019. The 142(1), was subsequently issued only on 23.01.2021 i.e. before the specific query could be raised by the ld. AO, the assessee had already paid the tax on Rs. 1.85 Crores. It was submitted that the assessee could not file the revised return because the return of the assessee had already been processed under section 143(1). However, it was submitted that the amount of Rs. 1.85 Crores would form a part of a declared income because it had been declared *suo moto* by the assessee and tax paid thereon, and therefore, the provisions of section 69 would not apply. A list of dates and events was also provided by the ld. AR. A written submission was also filed in which these points were reiterated. With regard to the decision of the ld. AO to bring it to tax under the provisions of section 115BBE, it was submitted that since there was no *mala fide* intention on the part of the assessee to escape or conceal any part of the due tax due to the government exchequer, which was evidenced by the payment of the said tax before the issue of notice under section 142(1), the provisions of section 69 and consequently section 115BBE would not apply. The Ld AR further argued that to apply the provisions of Section 69, the twin conditions that triggered the liability for assessment under section 69 had to be fulfilled i.e. that the investment was not recorded in the books of account and that the assessee did not provide an explanation of the nature and source of those investments or that the explanation provided was not satisfactory in the opinion of the Assessing officer, only then could the investment be deemed to be his income. The Learned AR submitted that in the present case the assessee had explained the nature and source of the investment and therefore he could not be burdened with the provisions of section 69 as the second ingredient was not met Furthermore the Ld AR submitted that if the AO was not satisfied with the explanation given by the Assessee, he was duty bound to give an opportunity to the assessee to be heard. Not doing so, violated the right of the assessee to explain the nature and source of the investment, violated the basis principles of natural justice

and vitiated the order of the Ld AO. For this proposition the Ld AR placed reliance on the judgments of the Hon Supreme Court in the cases of Punjab State Electricity Board and another vs Ashwani Kumar (1997) 5 SCC 120 and Oryx Fisheries Pvt Ltd vs UOI and Others(2010) 13 SCC 427.

8. On the issue of disallowance of deduction under section 24(a) from rental income receipt, the ld. AR submitted that the assessee was a licensee of a liquor and a trader. His business was not into the renting out of property. If it was held that he was into the business of renting out property, then depreciation under section 32(1) would have been claimed by the assessee on the said properties and the ld. AO would have been bound to allow the same. It was submitted that in identical circumstances, in the case of his wife, the ld.CIT(A) had taken a different stance and allowed the appeal of the assessee. A copy of the order passed by the ld. CIT(A) in the case of Smt.Roopa Rani Jaiswal for the assessment year 2018-19 was also submitted in which the ld. CIT(A) had taken the view that the deduction under section 24(a) was allowable. Accordingly, it was prayed that the principle of consistency ought to be followed and the assessee should be given the benefit of relief. With regard to the issue of addition under section 68 in respect of sundry creditors, it was submitted that the said amounts had since been paid back to the creditor and the purchases and sales had never been questioned. In the circumstances, the sundry creditor could not be doubted and the addition was deserving of being quashed.

9. Opposing these arguments of ld. AR, Sh. A.K. Singh, Sr. DR (hereinafter referred to as the 'ld. Sr. DR') pointed out with reference to the addition under section 69 in respect of purchase of Shop at MG Marg, Civil Lines, Allahabad, that in the sale deed only the apparent consideration had been recorded. The evidences of the real consideration paid for purchase of the house property at M.G. Marg, Civil Lines, Allahabad had been found from another party namely Sh. Kashi Nath

Mehrotra, who admitted to a sale transaction of Rs 3.00 crores and paid capital gains tax on it .It had then been submitted by the assessee that this consideration had partly been paid in cash and partly been paid in gold and silver. Ld Sr DR further submitted that but for this chance finding at the premises of the other party, the matter would never have been disclosed. It was further submitted that no books of accounts were found during the survey and only loose documents were found. Therefore, all the circumstances indicated that there was never any intention to disclose the said amount to tax. The ld. Sr. AR also filed a paper book and invited our attention to page 13 of the paper book in which he submitted that vide a letter dated 29.01.2018, there had been an attempt to partially retract from the earlier disclosure made by the assessee on 18.01.2018 and submit that there was no undisclosed investment in the purchase of any property other than a flat which was being purchased by him. Further, the earlier disclosure of Rs. 5.57 Crores had been reduced to Rs. 5 Crores by the assessee in this letter. The ld. Sr. DR further pointed out that only when the statement was re-recorded on 1.02.2018 that the assessee had confirmed the earlier disclosure made by him of Rs. 1.85 Crores as the undisclosed investment in the purchase of the shop at M.G. Marg, Civil Lines, Allahabad. Therefore, the Ld DR argued that the statement of 1.02.2018 showed that there was no doubt and confusion in the mind of assessee that he had unexplained investment of Rs. 1.85 crores in the purchase of immovable property in the year. The ld Sr DR also pointed out that the Assessee had received copies of all impounded documents on 7.07.2018 .That being the case, since the assessee had disclosed the same before the survey team and also received the copies of all the impounded documents, well before his due date for finalizing the audit or the filing of return, he should have incorporated the amount in his books of accounts and paid the tax upon it at the time. However, despite the fact that all these statements and actions which showed that he was well aware about the fact that he had unexplained investment to the extent of Rs. 1.85 Crores, the assessee did not pay

any advance tax prior to 31.03.2018 and also did not also pay self-assessment tax, prior to the filing of the return. It was submitted that the assessee had got his account audited prior to the filing of his return on 10.10.2018 and neither in the audited accounts nor in the return filed by him, had the amount of Rs. 1.85 Crores been included. Therefore, there was no bona fide disclosure made by the assessee in this regard. The ld. Sr. DR submitted that the assessee was wrong in stating that he was not able to file a revised return under section 139(5) because of the processing, because section 139(5) only restricts the filing of a revised return if an assessment has been completed and processing under section 143(1) was not an assessment. It was, therefore, submitted that the assessee could have paid the tax and revised the return if his bona fides on the matter was clear. Our attention was invited to page no. 52 paper book wherein vide his letter dated 22.10.2019, which was more than a month after the issue of notice under section 143(2)while the notice under section 143(2) was to be complied with on or before 26.09.2019. Ld DR submitted that it was then that the assessee actually paid the tax on the amount surrendered during the survey, ie nearly an year after filing of the return under section 139.The ld. Sr. DR submitted that all these facts showed that the impugned sum was not recorded in the books of accounts, vouchers were not found with the assessee and no primary documents were found from the assessee. It is only after the initiation of assessment proceedings when the apparent discrepancy had already been discovered by the Income Tax Department and was sought to be subjected to test during the scrutiny, that the assessee came forward and paid tax thereon. Therefore, the disclosure was not voluntary. The ld. Sr. DR invited our attention to the decision in the case of MAK Data Private Limited vs. CIT 2 (2013) 38 taxman.com 448 (SSC) wherein the Hon'ble Supreme Court had held that voluntary disclosure did not release the assessee from the mischief of penal proceedings under section 271(1)(c). He particularly invited our attention to para 7 and 9 of the said order, wherein the Hon'ble Supreme Court had held that the ld. AO should not be carried away by the plea of the assessee on

issues like voluntary disclosure, buying peace, avoiding litigation or amicable settlement to explain away its conduct. The question whether the assessee had offered any explanation for concealment of particulars arose as a presumption when a difference is noticed by the ld. AO between the reported and the assessed income. The burden was then on the assessee to show that it had not concealed income. Ld Sr DR pointed out that in that particular case, the Court had held that the surrender was not voluntary in that the offer of surrender was made in view of the detection by the ld. AO in the search conducted in the sister concern of the assessee. Had it been the intention of the assessee to make a full and true disclosures in its income, it would have filed a return declaring an income inclusive of the amount, which was surrendered later during the course of assessment proceedings. Consequently, the Court had held that it was clear that the assessee had no intention to declare its true income. The ld. Sr. DR submitted that the Revenue's case was covered exactly by this decision of the Hon'ble Supreme Court and the failure to deposit advance tax or even self-assessment Tax prior to the filing of the return, showed an attempt to conceal even after taking all the survey material. Furthermore, any disclosure could only be considered as valid if it was accompanied by evidence of tax payment and the assessee had not revised the computation of income or paid tax prior to the issue of the notice under section 143(2). The ld. Sr. DR further invited our attention to part 3 of his Page No. D of his paper book which contained the case laws that he filed in support of the case of Revenue namely;

i. Dhampur Sugar Mills Limited (1973) 90 ITR 236 for the proposition that a correction statement or an application for correction in the return originally filed cannot be construed to be a revised return within the meaning of section 139(5).

ii. Orissa Rural Housing Development Corporation Limited (2012) 343 ITR 316 (Orissa) that even for the proposition that even a revised return filed

after the time allowed under section 139(5) cannot be considered for making assessment.

iii. Shri Ram Investments (2024) 167 taxman.com 139 (SC) that the ld. AO had no consideration to consideration to consider the claim made by the assessee in the revised return filed after the time prescribed under section 139(5).

9.1 Ld Sr DR therefore, submitted that the case of the Revenue had all the ingredients of section 69 and section 69B, because the investment in this case had only been partly been recorded in the books of accounts. Section 115BBE prescribed special rates of tax for additions made under section69 and 69B and the same was also applicable to income being declared in the return itself which was apparent from a reading of section 115BBE 1(a). Therefore, he argued that the moment the Department had laid its hand upon incriminating material showing unrecorded income, even if he were to incorporate the same in his return of income, it would still be hit by the provisions of section 115BBE. The ld. Sr. DR further submitted that the assessee says that he had explained the sources from undisclosed business income / rental income. But the source did not mean the head of income. He submitted that the details of disclosure had to include the source from which the black money had been generated. Therefore, it was a fit case to be assessed under section 115BBE and no interference was called for in this regard. With regard to the denial of deduction under section 24(a), the ld. Sr. DR submitted that the assessee had not filed any rent agreement with respect to the property at Kripa Narayan Mathur Road or Hewett Road. Also with regard to the property of Hewett Road, no information had been filed. The assessee was engaging a manager and also paying him and renting out the property on a day to day basis. Therefore, it was clear that it was not an income from house property but he was also running a side business of renting of his properties to pilgrims / tourists and therefore, it was liable to be

assessed under income from business and deductions under section 24(a) were not allowable.

10. In response to the submissions made by the ld. Sr. DR, the ld. AR exercising his right to reply invited our attention to explanation 5 of section 32 of the Act and stated that his alternative argument was that even if the income from the two house properties had to be assessed as business income, the assessee was entitled for depreciation @ 10% and the same may be allowed to it in view of the provisions of the Act. Furthermore, he submitted that the ld. Sr. DR had attempted to make out a case that it was only after the selection for scrutiny that the assessee, in trying to cover up, paid the necessary tax. However, the assessee had paid Rs.63 Lacs in advance tax and since it was a case of a survey, he always known that his case would be taken up scrutiny. Therefore, the insinuation that he was trying to evade tax, did not wash and if that were the case then the assessee would have waited up till the query was raised under section 142(1), before responding to the ld. AO. The very fact that the assessee paid the tax before the specific query was raised, went to show his bona fides. Accordingly, section 69 was not applicable and therefore, that should not be levied under section 115BBE.

11. We have duly considered the facts and circumstances of the case. The first issue is with relation to whether the income from the two house properties i.e. Badshahi Mandi, Hewett Road and 2B/3 Kripa Narayan Mathur Marg, Katra, Allahabad should be treated as income from house property or income from business. We note that assessee's primary business is of running a liquor and Kirana. That however, does not mean that the assessee may not do a side business. The test of whether the renting of the property was a business or whether it was done with a view to exploiting an owned asset is revealed from an examination of whether it was the bare tenement which let out, or whether some other facilities were provided. It is fairly evident that the assessee has engaged a manager to

manage each of the properties, to let them out to various tourists and pilgrims, to collect the rents and to deposit the rents with the assessee, after accounting for necessary expenditures in this regard. It is also evident that unlike properties which are rented out on long term basis, individual rooms or tenements rented out for a day cannot be rented out as bare tenements, because the daily occupiers would not be persons who would be visiting with their entire complement of furniture and beddings etc. In the circumstances, whether it is stated or not, it is fairly evident that the assessee was not only renting out the property on a day-to-day basis but that the only way that he could do it, was also by providing certain facilities to those who would be taking the premises on rent or arranging for such facilities to be provided to them, by third parties. Therefore, it clearly seems to be an organized activity of a composite nature and the Courts have held that when the assessee runs an organized activity of a composite nature towards the earning of income, it is to be treated as income from business. We also note that the decision of the Ld CIT(A) to accept the income from House property in the case of the wife of the assessee does not in any way affect the treatment of income of this nature as income from business in the hands the assessee, firstly because of our findings on the nature of services that were necessarily to be offered and secondly because in that case the Ld CIT(A) did not consider this aspect of the matter .Therefore, we uphold the decision of the ld. AO to treat the income from the renting of properties at Katra and Hewett Road as income from business and to disallow the deductions under section 24(a). However, since the assessee is entitled to deduction on business assets, we accept the alternative argument of the ld. AR that the assessee must be allowed the depreciation on WDV on these buildings annually, in accordance with explanation 5 of section 32 of the Act. Ground No.7 is decided accordingly.

12. With regard to the levy of tax under section 115BBE with respect to the unrecorded investment of Rs. 1.85 Crores in the purchase of the immovable property at M.G. Marg, Civil Lines, Allahabad, we are inclined to agree with the ld. Sr.

DR that in view of the specific provisions of section 115BBE 1(a),once the incriminating material is unearthed during the course of survey and any investment is found, which is not found recorded in the regular books of accounts or found only partially recorded in the books of accounts , then even if the same is included in the return of income, it will still be liable to be assessed under section 69/69B and be brought to tax under the special provisions of section 115BBE. The only circumstance in which it may not be treated so is if the Assessee was to indicate exactly how the money for the unexplained investment was generated and when it was generated and thereafter makes the necessary adjustments in his account to account for that escaped income, so that it may thereafter be assessed to tax under the appropriate head and in the appropriate year. Merely stating that the investment arose out of undeclared business income or undeclared rental income without undertaking this exercise, would not take the investment out of the ambit of section 69, even if it were to be subsequently incorporated in the subsequent return of income. In the instant case, during the course of survey, an unexplained investment of Rs. 1.85 Crores was discovered which was subsequently admitted by the assessee. However, while the Assessee submitted that he had made this investment from his previously undisclosed business income and rental income, he did not undertake the exercise to bring those undisclosed incomes to tax. Therefore , to our mind, by choosing to offer the same to tax in that very previous year without stating how or when the income was generated , he subjected himself to the rigours of section 69/69B. It is further pertinent to note that the assessee reiterated the disclosure made during the survey, in a subsequent statement on 1.02.2018. The assessee was also given copies of all the impounded materials well before the filing of his return. However, the assessee did not include the said amount of Rs. 1.85 Crores in either his books of accounts, or in his audited accounts, or in his return. Consequently, the amount remained undisclosed at the time of filing of the return. It is further observed that even if the assessee could not revise his return after

31.12.2018, nothing prevented him from paying the tax on the undisclosed investment that had been owned up by him at the time of survey. In fact these taxes were not paid for nearly one year and 10 months after the date of survey. So all these factors would indicate that the assessee, though he made a disclosure of sorts at the time of survey, did not follow through with the same and pay his due taxes, in a manner that would indicate his bonafide. Thus, the case of the assessee is still weaker than that of someone who discloses the amount in the subsequent return, in whose case also we have pointed out that the liability for assessment under section 69 would still exist, unless the sources from which the disclosure was made was disclosed and offered for tax in the appropriate year. Going back to the case of the assessee we notice that it was only after the case of the assessee was picked up for scrutiny and the assessee was intimated about the same, that suddenly the assessee came forward to pay the tax. It is also relevant to note that as late as 5.04.2021 the assessee was still disclosing the investment at the rate recorded in the books of accounts. In the circumstances, since the investment was not recorded in the books of accounts, it was not recorded in the audit report and it was not disclosed in the return of income at the time of computation of income, it can only be taken as a partly undisclosed investment under section 69B. We must also address the contentions of the Learned AR that because the assessee had offered an explanation the provisions of section 69 would not apply and if the explanation was not satisfactory a further opportunity was to have been given to the assessee to explain the nature and the source, otherwise the actions of the AO were vitiated. In the first place, we are in agreement with the Ld DR that explaining the source does not mean explaining just the head of income but must also state how the undisclosed investment was earned and when it was earned. Merely stating the head of income from which the unexplained investment was generated without stating the actual source and when it was earned would not amount to an explanation within the meaning of section 69. Therefore, the assessee cannot escape the rigours of section

69 on this account. To address the issue of whether the assessee should have been offered an opportunity to explain the nature and source of the investment before making the addition under section 69, we observe that in the present case, where the assessee had not recorded the investment at all in the accounts or in the return, it was incumbent upon the assessee to first offer a proper explanation of the nature and source of the hitherto undisclosed investment and only when the same was offered could the question of whether it was satisfactory or not be addressed. But the letter dated 22.10.2019 we note that the assessee has not even admitted that the investment was made from undisclosed sources and has in fact only admitted that he inadvertently left it out while preparing his return of income. There is no explanation regarding the nature and source of such investments at all. We further observe that the Hon'ble Supreme Court in the case of MAK Data Pvt. Ltd. vs. CIT (supra) has held that the only valid disclosures are those which are made in accordance with the scheme laid down in the Act and that subsequent disclosures would not absolve the assessee from penal consequences, if the conduct of the assessee shows an intention to conceal and in the present case, we note that the conduct of the assessee over nearly two years shows the intention to conceal. Therefore, the ld. AO was right in bringing that portion which had not been disclosed to tax under the special provisions of section 69 and would be bound to thereafter levy the tax under the provisions of section 115BBE. It could be argued that section 69B ought to be applied and not section 69, but since the actions of the AO are quite clearly in accordance with the intent and purpose of the Act, we hold that section 292B will apply and the addition would not be hit on that count We, therefore, find no infirmity in the order of the ld. AO on this account and we confirm his actions. Accordingly, ground nos. 1 to 10 & 12, 13 & additional ground nos. 1 to 4 are dismissed.

13. The final issue is with regard to the charging of a sum of Rs. 3,96,606/- to tax under the provisions of section 68, we observe that the assessee has submitted

before the ld. CIT(A) that he has since repaid the amount. Accordingly, we restore this matter back to the file of the ld. AO with a direction to the assessee to provide evidence of such payment of the amounts to the sundry creditors, whereupon the ld. AO give the assessee necessary relief in this regard. Accordingly, ground no. 14 allowed for statistical purposes. Ground No. 15 and 16 are general grounds and do not require a decision at this stage.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 02.05.2025 under Rule 34(4) of the ITAT Rules, 1963.

Sd/-	Sd/-
[SUBHASH MALGURIA]	**[NIKHIL CHOUDHARY]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: 02/05/2025
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Copy forwarded to:
1. Appellant –
2. Respondent –
3. CITDR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.