

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH “B”,**  
**CHANDIGARH**

**श्री राजपाल यादव, उपाध्यक्ष एवं श्री कृणवन्त सहाय, लेखा सदस्य**  
**BEFORE: SHRI. RAJPAL YADAV, VP & SHRI. KRINWANT SAHAY, AM**

**आयकर अपील सं. / ITA No. 216/Chd/ 2024**  
**निर्धारण वर्ष / Assessment Year : 2019-20**

Swati Industries D-74, Phase-V, Focal Point, Ludhiana, Punjab-141010	बनाम	The DCIT Central Circle-3 Ludhiana, Punjab
स्थायी लेखा सं. / PAN NO: AADFS5870M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

**आयकर अपील सं. / ITA No. 547/Chd/ 2024**  
**निर्धारण वर्ष / Assessment Year : 2019-20**

The DCIT Central Circle-3 Ludhiana, Punjab	बनाम	Swati Industries D-74, Phase-V, Focal Point, Ludhiana, Punjab-141010
स्थायी लेखा सं. / PAN NO: AADFS5870M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

**( PHYSICAL HEARING )**

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate and  
Shri Rohit Kapoor, C.A

राजस्व की ओर से/ Revenue by : Dr. Ranjit Kaur, Addl. CIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 13/05/2025

उद्घोषणा की तारीख/Date of Pronouncement : 27/ 06/2025

**आदेश/Order**

**PER KRINWANT SAHAY, AM:**

This is an appeal filed the Assessee and Cross appeal by the Department against the order of the Ld. CIT(A)-5, Ludhiana dt. 19/02/2024 pertaining to Assessment Year 2019-20.

2. Since both the above appeals were heard together, therefore they are being disposed of by this consolidated order for the sake of convenience and brevity.

3. The Assessee in its appeal in ITA No. 216/Chd/2024 has raised following grounds:

1. a). *That the Ld. CIT(Appeals) has erred in confirming the addition of Rs., 25,89,500/- on account of payment of salary and wages outside the books of accounts as per para 5.3.3 (iii) at page 56 to 57 of the order of the Worthy CIT(A).*

b). *That the Ld. CIT(A) has erred in taxing this amount of Rs. 25,89,500/- as unexplained expenditure u/s 69C and confirmed the action of the Assessing in taxing the same as per the provisions of section 115BBE.*

2. a). *That the Ld. CIT(A) has erred in confirming the addition of Rs. 1,02,10,256 i.e. (Rs. 76,20,756/- + 28,89,500/-) as per page 66 of the order and taxing the same as per the provisions of section 115BBE.*

b). *That the Ld. CIT(A) has erred in not granting the relief of labour of transporters of outgoing and incoming Vehicles, as on the date of survey, which ought to have been considered, for which, the documentary evidence was filed and which was considered by the Assessing Officer in his remand report and, as such, the inclusion of such labourers of the transporters, while confirming the addition of wages of such labourers in the hands of the assessee is against the facts and circumstances of the case.*

c). *That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer in extrapolating the wages for the whole year, rather that restricting the addition upto the date of survey i.e. on upto 08.10.2018 and, as such, extrapolation of wages after the date of survey was not required to be made at all and for which, there was no such evidence at all.*

d). *That on such extrapolation of the wages for whole of the year and sustaining of addition of Rs. 1,02,10,256/- and taxing the*

above amount as per provisions of section 115BBE is not called for.

3. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

4. The Department in its Cross Appeal in ITA No. 547/Chd/2024 has raised following grounds:-

*"1. Whether upon facts and circumstances of the case, the Ld. CIT (A) was justified in treating the surrendered income as a normal business income instead of unexplained income under the deeming provisions of 69 of the I.T. Act, 1961 and to be taxed as per provision of section 115BBE of the IT, Act, 1961 by the AO, ignoring the facts involved in this case?*

*2. Whether upon the facts and circumstances of the case, the Ld. CIT(A) was justified in ignoring the decision of Hon'ble: Hon'ble Punjab & Haryana High Court in the case of Khushi Ram & Sons ITA No. 126 of 2015 wherein Hon'ble High Court has held that merely carries on certain business, it does not necessarily follow that amounts surrendered by him are on account of business transactions ?*

*3. Whether upon the facts and circumstances of the case, the Ld. CIT(A) was rightly justified in deleting addition of Rs. 34,51,288/- on account of unexplained cash receipts as unexplained money u/s.69A of the Income Tax Act.*

*4. Whether upon the facts and circumstances of the case, the Ld. CIT(A) was rightly justified in deleting addition of Rs. 4,65,765/ on account of disallowance of commission expenses u/s 40(a)(ia) for non-deduction of TDS.*

*5. Whether upon the facts and circumstances of the case, the Ld.CIT(A) was rightly justified in deleting addition of Rs. 15,00,000/- on account of unverified unsecured loan as unexplained cash credit u/s 68 of the Income Tax Act.*

*6. Whether upon the facts and circumstances of the case, the Ld. CIT(A) was rightly justified in deleting addition of Rs. 1,98,89,964/- on account of unexplained expenditure u/s 69C of the Income Tax Act,*

*7. The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal."*

5. Brief facts as explained by the Ld. Counsel for the assessee are that the assessee is engaged in the manufacturing of Scaffolding items and has three independent units. The basic raw material in respect of such manufacturing activity is Round, HR-Sheet, Pipe, Wire Road and Zinc etc. Both the raw material and finished goods are very heavy and finished goods are long in size being used for construction activity on large scale.

6. The assessee is maintaining common books of accounts for all the units and return is being filed on the basis of audited books of accounts. The facts leading to the addition made by the Assessing Officer (AO) are that there was survey on all the three premises of assessee on 08.10.2018, wherein, the assessee had surrendered Rs. 1,60,00,000/- on account of difference in sale price of scrap and as per actual sale amount and sales price as booked in the books of accounts and difference in wages and salary as per books of accounts and as found during survey.

7. The assessee filed a letter, which have been reproduced in the assessment order at page 3 of the Assessing Officer and, accordingly, this surrender of Rs. 1.60 crores was offered as business income, while filing the return of income for Asstt. Year 2019-20 in the profit and loss account and corresponding debit was made to the capital account of three partners as per their profit ratio. Thus, it was only a general entry passed in the books of

accounts of the assessee, without there being any increase in the cash in hand.

8. The Ld. Counsel of the assessee argued that during the course of survey, it was found that there was difference in the sale price of scrap as recorded in the loose documents and as per actual sale price as per regular books of accounts. The assessee offered an amount of Rs. 1.60 crore on account of such suppression of sale price of scrap and on account of difference in wages and salary as per books of account and as per actual verification during survey.

9. It was further argued that this source of amount is from the business income of the assessee and the AO in para 4.4 has also mentioned about such suppression of sale price. Thus, it has to be considered and taxed as business income of the assessee as per the normal tax rates. The Ld. Counsel argued that the provisions of section 115BBE on the said surrendered amount of Rs. 1.60 crore are not applicable. It was further argued that during the course of survey in all the three business premises, the assessee was found to be carrying on the same activity of manufacturing of scaffolding. Thus, it was vehemently argued that the AO has wrongly taxed the same under the provisions of section 115BBE and the CIT(A) in para 5.3.3 page 50 of his order has rightly held, that the surrendered amount of Rs. 1.60 crore cannot be taxed as per the provisions of section 115BBE. Since the fact is that the said amount has been generated out of the same business and the Counsel relied on the finding of CIT(A) in para 5.3.3. It was further argued

that the decisions as relied upon by the department in the case of M/s Khushi Ram & Sons have been distinguished in the case of 'Famina Knitfab', reported in 176 ITD 246.

**Department's appeal (ITA 547/Chd/2024):**

10. First two grounds in Revenue's appeal are the same as discussed above regarding applicability of section 115BBE.

11. The ground No. 3 in appeal of the department consists of Rs. 25,55,946/- on account of one seized document at page 7 of the assessment order of the AO and it was submitted before the CIT(A) that complete reconciliation was submitted and such notings was only on account of routine fund planning for the purposes of payment to be received and payment to be made to different parties. All such notings were out of the regular books of accounts, for which, ledger copies have been furnished and the Ld. CIT(A) has reproduced that page of the seized document alongwith the chart submitted by the assessee. The confirmed copies of accounts of the parties are at page 53 to 55 of his order. He deleted the addition. The Ld. Counsel relied upon such finding of CIT(A). It was also argued that such evidences were submitted before the CIT(A) and they were forwarded to the AO who could not rebut such evidences as furnished by the assessee.

12. With regard to addition of Rs. 8,95,342/-, this addition was made on the basis of one piece of paper, which have been reproduced in the order of AO at page 8 and at page 56 of the order of CIT(A). The Ld. CIT(A) has deleted the addition of Rs.

8,95,342/- since the same are through banking channel in respect of payment of salary and wages and the same has been mentioned under the column 'bank' in the seized document. The Ld. Counsel relied upon the finding of CIT(A) at pages 56 and 57 of his order.

13. The next ground of appeal is on account of deletion of addition of Rs. 4,65,765/- on account of disallowance of commission u/s 40 (a) (ia) for non- deduction of TDS on commission. It was argued that no TDS was liable to be deducted being, foreign commission and the agreement with the Foreign agent alongwith British passport and VAT certificate of Agent of United Kingdom has been submitted. On such evidences, the AO could not rebut in his remand report, accordingly, it was argued that the CIT(A) has rightly deleted the addition as per finding given at page 60 and 61 of the order of the CIT(A) and relied upon on such finding of CIT(A).

14. The 5<sup>th</sup> ground of appeal is with regard to deletion of addition of Rs. 15 lacs on account of unsecured loan taken from one Sh. Ashutosh Gupta. It was argued that all the transactions are through banking channels and the said amount of Rs.15 lacs belonging to Sh. Ashutosh Gupta was earlier lying with "Shree Durga Enterprises". The amount was taken back from "Shree Durga Enterprises" through banking channels and advanced to assessee concerned through banking channel. The bank statement and copy of account with "Shree Durga Enterprises", ITR copy of Sh. Ashutosh Gupta and all other evidences had been

submitted and the Ld. CIT(A) after considering all the submissions and evidences, has given finding in his order after considering confirmation from Sh. Ashutosh Gupta as well. Even the interest was paid and TDS was deducted therefrom, and the Ld. Counsel relied on the findings of CIT(A).

15. By way of ground No. 6, the addition of Rs. 1,89,89,964/- (wrongly mentioned at Rs. 1,98,89,964/-) in department appeal, have been challenged by the department. The AO has discussed this fact starting from page 20 onward and it was brought to our notice that during the course of survey, the list of the employees was drawn working in three units. It was found that salary of certain employees had not been recorded by the assessee in the regular books of accounts, accordingly, AO made the addition of Rs. 2,66,10,720/-. The assessee made submissions before the AO also, which have been reproduced in the order of the Assessing Officer. It was contended that the assessee had Zinc Plant installed in the business premises and since no skilled labour was available with the assessee and he is getting the job of 'Zinc Plating' with the help of skilled labour of certain other parties, names of such parties have been in the order AO and all such payments for such outside labourers, working in assessee's 'Zinc Plant' are being made through banking channels by deducting TDS. The CIT(A) looking into all the submissions has given his finding in the order. He has given a relief of such labourers to the tune of Rs. 29,89,964/- (as per page 65 & 66 of the order) and also gave a benefit of Rs. 1.60 crores as offered during survey. Since that amount has not been utilized anywhere else. Thus, he has



confirmed the addition of Rs. 76,20,756/-, besides that he also confirmed the addition of Rs. 25,89,500/- as per seized document and applied the provisions of section 115BBE. The assessee is in cross appeal on these issues.

16. It was argued by the Ld. Counsel that due to heavy material, which keeps on coming in and going out in all the three units, in heavy vehicles (gave a list of the Vehicles along with documentary evidences of each and every vehicle on the dates of survey) and further argued that with each truck, four to five persons accompany for loading and unloading because of heavy material. All the invoices were also furnished, which were of the dates of survey only and copies of the bills, e-bills have been placed in the paper book. It was also argued that the finished goods are also being transported in trucks and for that transporters bring their own labourers and such outgoing finished material had been dispatched during the survey. All such evidences alongwith copies of sale bills, photographs and other evidences were furnished to CIT(A). Such evidences, were forwarded to the AO also during assessment proceedings. Not much has been said by the AO. It was further argued that all the bills of inward or outward have been duly accounted for in the books of accounts and the observation of the AO that such labourers are of the assessee, is against the documentary evidences furnished.

17. It was further argued that certain wages were being paid outside the books of accounts upto 08.10.2018. The AO has made

the extrapolation of the same for the complete year, which is not permissible in view of the judgment of Jurisdictional High Court in the case of V.M.Spinning Mills, reported in [2011] 16 taxmann.com 199, in which, there was evidence of 191 days of outside book sales and the same was extrapolated. The Hon'ble Punjab & Haryana High Court has held that the addition could be made only on the basis evidence of 191 days. Thus, it was argued that the extrapolation of wages for 12 months is without any evidence and, thus, the CIT (A) has erred in confirming the addition of Rs. 76,20,756/- and 25,89,500/- .

18. The Ld. Departmental Representative relied upon the order of the AO and argued for confirmation of addition as made by the AO. It was argued that since the surrendered income has not been recorded in the books of accounts till the time of survey, thus, the AO has rightly applied the provisions of section 115BBE. It was further argued by the Id. DR that the extrapolation for 12 months in respect of wages/salary paid to labourers have rightly been confirmed by the CIT(A). As regards, the deletion of addition on account of loose document and the cash credit in the name of Sh. Ashutosh Gupta, addition on account of commission etc has wrongly been deleted by the CIT(A).

19. In rejoinder, the Id. Counsel of the assessee argued that all such evidences which were placed before the AO on account of labour charges, were paid to the parties through banking channel. Other evidences as filed during the course of proceedings before the CIT(A) were forwarded to the AO and in

the remand proceedings. The AO has not been able to rebut such submissions/evidences. It was further argued that no evidence is there with the AO for estimation of salary and wages payment for complete year instead of date of survey on 08.10.2018.

20 We have considered the rival submissions alongwith 'paper books' filed by the assessee, alongwith brief synopsis. Facts are not disputed that the assessee is engaged in the manufacturing of scaffolding and there was a survey on 08.10.2018. During survey, the evidence of suppression of sale price of scrap was found, which have been mentioned in the surrender letter in the assessment order and since the source of the amount surrendered during survey to the tune of Rs. 1.60 crores were out of the business income and also during survey, no such other activity has been noticed, other than normal business activity, in which, the assessee is engaged in manufacturing of scaffolding. Even during survey, the statement of one partner, namely, Sh. Vaneet Garg was recorded, in which, he has offered such difference in the sale price of scrap as additional business income. Further, in respect of wages and salary, the partner also stated that the same is being considered for the purposes of surrender. Thus, under such circumstances, we are of the considered view that the finding of CIT(A) needs no interference. The Ld. CIT(A) has rightly given his finding as under:

*"5:3.3. I have considered the reasoning given by the AQ in assessment order, submissions & documents submitted by the appellants, facts of the case and legal position.*

*(i) It is a fact that during the assessment proceedings, no satisfactory explanation was submitted by the assessee and during the remand proceedings only, the assessee filed additional evidences in the shape of regular bank account of the assessee' along with the copies of the sale bill to the regular parties of the assessee namely Paul Steel Pvt. Ltd. and Sharu Special Alloys Limited. The same were admitted by my predecessor and forwarded to the AO concerned. In remand report the AO has reiterated that addition may be confirmed as no explanation was filed during the assessment proceedings. On the merits of the addition, he had only stated that the confirmed copies of accounts of Paul Steel Pvt. Ltd. and Sharu, Special Alloys Limited have not been submitted. The appellant has submitted these confirmations along with the reply to the remand report of the Assessing Officer."*

21. We also find that the judgment of Khushi Ram & Sons have been considered by the Chandigarh Bench of the ITAT in the case of 'Famina Knitfab' as cited supra and, thus, the income as offered during survey at Rs. 1.60 crores is to be taxed as normal business income.

22. As regards, the deletion of addition of Rs. 25,55,956/-, the assessee adequately explained by way of detailed chart, which have been analyzed and discussed by the CIT(A) in the order. The Assessing Officer could not rebut anything during remand proceedings. Thus, we find that the CIT(A) has rightly deleted the addition of Rs. 25,55,946/- . Further, the addition of Rs. 8,95,342/- as per seized document reproduced at page 8 and 56 of the order of CIT(A), there is clear mention in the seized document itself, that the payment has been made through banking channels. Thus, the CIT(A) has rightly deleted the addition.

23. With regard to deletion of addition of Rs. 15 lacs on account of unsecured loan from Sh. Ashutosh Gupta, the source of source has been provided by the assessee and interest have been paid after deducting TDS. Further, the confirmation from Ashutosh Gupta alongwith ITR and Bank statement has been filed. Thus, the identity, genuineness of transaction and capacity of creditors stands proved. So, under such circumstances, the CIT(A) has rightly deleted the addition on this ground.

24. Ground No. 6 of the department appeal is with regard to unexplained expenditure. The correct figure should be read at Rs. 1,89,89,964/- as against the figures of Rs. 1,98,89, 964/- as per grounds of appeal of department. The DR argued that it is an admitted fact that certain payment of salary and wages were being paid by the assessee outside the books of accounts and which were sourced from the amount of Rs. 1.60 crores offered during survey as additional business income out of the suppression in the sale prices of scrap. The contention of the assessee, which have apparently been accepted by the CIT (A) with regard to the payment to the labourers of other parties for Zinc Plating. It was paid through banking channels, after deduction of TDS, the CIT(A) had rightly given the benefit of the amount to the tune of Rs. 29,89,964/- and also since the amount of Rs. 1.60 was available with the assessee, the same benefit has rightly been given by the CIT(A).

25. The CIT(A) has confirmed the extrapolation of the wages/salary for complete year, though, the evidence of the

same was found only upto 08.10.2018. The contention of the assessee is based on the documentary evidence of the invoices of the parties from whom, the material has been purchased on the date of survey i.e. 08/09 October 2018. Similarly, labourers of transporters for the outgoing material, which belongs to the transporter and the evidence of the same was also furnished during the period of survey. The contention of the assessee are as under:-

i). *All the copies of the bills of inward and outward material are of the dates of survey.*

ii). *The said material has duly been accounted for in the books of accounts of the assessee and outgoing material have also been recorded in the books of accounts.*

iii). *Because of heavy material, 4 to 5 laborers accompany each truck and which is evident from the photographs and, thus, the Assessing Officer had wrongly included such laborers as of the assessee, which is against the documentary evidences as the laborers are of the third party and wrongly counted by the department during survey of the assessee.*

iv). *No enquiry at the time of survey has been made from the labourers.*

v). *No evidence of extrapolation of wages and salary for 12 months.*

26. The assessee's reliance on the judgment of Jurisdictional High Court in the case of V.M. Spinning Mills is quite apt and in that case also, the extrapolation was made on the basis of sales outside the books for 190 days and it was held that no extrapolation could be made beyond 191 days as per following observation: -

*"The Ld. Tribunal in further appeal by the Revenue as well as by the Assessee rejected the contention of the assessee in respect of addition of sales through 17 sale bills amounting to Rs. 1,11,99,427/- and affirm the finding that such sales were made outside the books of accounts. However, it held that there is no justification to infer that the assessee would have undertaken sales outside the books of accounts during this rest of financial year also, therefore, the assessment of unrecorded sales were limited to Rs. 1,11,99,427/- representing 17 unrecorded sale bills alone. The Tribunal partly granted relief, when it made addition of Rs. 20 lacs on account of unexplained investment made towards the working capital as against Rs.71,07,100/- added by the Assessing Officer and upheld by the Commissioner of Income Tax. The same view has upheld by the High Court."*

27. The assessee's reliance on the judgment of Gurdip Cycle Industries in ITA No. 705/Chd/2025 of Chandigarh Bench of the ITAT is applicable to the facts and circumstances of the case, wherein, the extrapolation was made on the basis of evidence of few days and it was held that such extrapolation could not be made. As such, we are in agreement with the findings on the basis of above said jurisdictional High Court and Coordinate Bench of the ITAT, Chandigarh Bench and hold that the extrapolation could not be made for 12 months. It is to be restricted to the evidence found during the course of search / survey i.e. upto 08.10.2018. The CIT(A) has also given the benefit of persons employed of other parties on the Zinc Plant. Thus, after considering the arguments of both the sides and by relying upon the judgment of Jurisdictional High Court and Chandigarh Bench, it is held that the payment of Salary and wages outside the books of accounts have to be considered only upto 08.10.2018 i.e. till the time of survey. There is availability of funds on account of surrendered amount of Rs. 1.60 crores, accordingly, addition as

confirmed by the CIT(A) to the tune of Rs. 1,02,10,256/- is deleted.  
Thus, Assessee's appeal on this ground / issue is allowed.

28. Accordingly, in the result, the grounds of appeal of the department are dismissed and that of assessee are allowed.

Order pronounced in the open Court on 27.06.2025

Sd/-

**राजपाल यादव**  
**(RAJPAL YADAV)**  
**उपाध्यक्ष / VICE PRESIDENT**

Sd/-

**कृणवन्त सहाय**  
**(KRINWANT SAHAY)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

**AG / RKK**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar