

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.79/Ind/2015
Assessment Year: 2006-07**

Rajendra Kumar soni, Prop. of M/s. Rajhans Jewellers, Berchha Dist- Shajapur (M.P.) (Appellant)	<u>बनाम/</u> Vs.	ACIT , Circle 2(1), Ujjain (Revenue)
P.A. No.ANBPS7404E		

Appellant by	Shri AshishGoyal& N. D. Patva, (ARs)
Revenue by	Shri K. G. Goyal Sr. DR
Date of Hearing:	13.12.2017
Date of Pronouncement:	14.12.2017

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the Assessee is directed against the order of Ld. Commissioner of Income Tax(Appeals), Ujjain, Madhya Pradesh (in short 'CIT(A)'), dated 18.11.2014 for the A.Y. 2006-07. The assessee has raised following grounds of appeal:

"1.That the Learned first appellate authority has grossly erred in confirming additions of Rs.15,77,694/- made by A.O. on account of difference between the amount declared under

survey proceeding u/s 133A and income offered in the return of income which is completely wrong and unwarranted as per facts of the case and therefore all the additions made by the AO may kindly be deleted.

1.1 That out of total additions of Rs.15,77,695/-, an addition of Rs.11,92,190/- made by A.O. and confirmed by Hon'ble' CIT(A) on account of investment in pawned articles is prima facie wrong and unwarranted as per facts of the case and therefore this addition may kindly be deleted.

1.2 That out of total additions of Rs.15,77,694/-, an addition of Rs.18,988/- made by AO and confirmed by Hon'ble' CIT() on account of excess cash in prima facie wrong and unwarranted as per facts of the case and therefore this addition may kindly be deleted.

1.3 That out of total additions of Rs.15,77,694/- an addition of Rs.3,66,516/- made by AO and confirmed by Hon'ble' CIT(A) on account of excess stock in Silver and Gold Ornaments found as on the date of Survey is wrong and unwarranted as per facts of the case and therefore this addition may kindly be deleted.

2. that the appellant prays leave to add, amend, withdraw or go in any other grounds of appeal before the appeal is heard.”

2. The only effective ground is against confirming the addition of Rs.15,77,694/-.

3. Briefly stated facts are that the survey action was carried out u/s 133A at the business premises of the assessee. During the course of survey, the assessee had surrendered income of Rs.25,50,731/-. The surrendered income included unaccounted investment in silver and gold amounting to Rs.4,18,657/- apart from unaccounted investment in pawning business amounting to Rs.15,27,065/- and excess cash at Rs.6,05,009/-. However, in the return of income so filed the assessee had disclosed income at Rs.9,73,037/- in place of Rs.25,50,731/-. The case was picked up for scrutiny assessment

while framing the assessment u/s 143(3), the assessing Officer made addition of entire income disclosed during the course of survey.

4. Aggrieved by this, the assessee filed an appeal before the Ld. CIT(A) who after considering the submissions dismissed the appeal and confirmed the addition.

5. Now, the assessee is in further appeal the Ld. Counsel for the assessee vehemently argued that the authorities below were not justified in confirming the addition. He submitted that the statement recorded during the course of survey was duly retracted and it was stated that the part of the income which was not disclosed in the income related to pawning business of the wife of the assessee which had been duly disclosed in the books of account. In support of this, the assessee has taken through various pages of the paper book. The Ld. Counsel submitted that these evidences were duly produced before the authorities below. Both the authorities have without verifying the veracity of such claim proceeded to making the addition and confirming which is contrary to the settled law.

6. Per contra the Ld. DR opposed the submissions and stated that it is not the case where the addition is made merely on the basis of the statement recorded during the course of survey but such addition is based on the evidences gathered during the course of survey.

7. In rejoinder the Ld. counsel for the assessee opposed the submissions of the Ld. DR and stated that the assessee after reconciling the entries and verifying the accounts of the assessee and found that the income belonging to wife of the assessee has been duly disclosed in the accounts maintained by her. Thus, he urged that additions so made may be deleted.

8. We have heard the rival contentions perused the material available on record. We find that the Assessing Officer made addition observing as under:

“In response to this office questionnaire dated 28.08.2008 and the assessment proceedings on 14.10.2008 wherein the assessee was made to understand that the retraction of the surrendered amount is nothing but after thought to avoid payment of taxes. The assessee while retracting the surrendered income, has stated that the pawning business belongs to his wife Smt. Hansaben, and as such the amount of income of Rs.15,27,065/- surrendered during the course of survey, does not reflect his income entirely. In the working submitted by the assessee on 14.10.2008 has further stated that only Rs.3,34,875/- pertains to him which has offered for taxation in the return of income and remaining difference amount of Rs.12,00,190/- pertains to his other family members. Here it is pertinent to mention that the assessee in his statement dated 8.11.2005, in reply to question 18 & 19 has categorically stated that this amount of Rs.15,27,065/- is invested by him and belongs to him and the same is not reflected in his books of accounts. Further he has offered to surrender this investment as his undisclosed income over and above his regular income of the current year and had agreed to pay taxes thereon. Also his wife Smt. Hansaben in her statement, in reply to question 11, has categorically stated and confirmed that whatever, money has been invested in pawning business and income thereupon belongs to her husband and only her name is being used as owner of this business on the

paper. Thus it is crystal clear that the assessee is putting forward all the theories and stories to avoid payment of taxes on his undisclosed income surrendered during the course of survey on 8.11.2005. Accordingly the amount of Rs.15,77,694/- is added back to the income of the assessee.”

9. However, the Ld. CIT(A) confirmed this by observing as under:

*“i. The retracted return was filed after a period of one year and five months;
ii. It was never communicated to the Departmental authorities, merely enclosed with the return of income;
iii. From record it is impossible to hold that any threat or coercion has been exerted during the confession statement of the Assessee.
iv. Irrespective of the form or validity of the voluntary disclosure statement or of the deposition taken from the assessee on 08th November 2005, the evidences of testimony cannot be wiped out and does not become non-existent and this evidence can well be utilized to frame the assessment on that basis.
In view of the above position, the appellant’s unsuccessful attempt to retract from the disclosure is untenable being an afterthought and is rejected. Therefore, the addition made by the AO amounting to Rs.15,77,694/- is confirmed. This ground of appeal is dismissed.”*

10. We have given our thoughtful consideration to the material placed on record and after considering the totality of the facts, we are of the view that the Assessing Officer ought to have verified the veracity of the claim of the assessee, therefore, we hereby set aside the impugned order and restore the issue to the file of AO for decision afresh. The Assessing Officer would verify from the material placed before him by making further inquiry if he deems fit

and proper. The assessee would furnish the information or any other evidence as and when called by the AO.

11. In the result, the appeal of the Assessee is allowed for statistical purposes.

Order was pronounced in the open court on 14 .12.2017.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; Dated : 14 / 12/2017

Patel, P.S.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Private Secretary/DDO, Indore