

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “B” KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.459/Kol/2014**  
Assessment Year :1994-95

ITO Ward-12(3), P-7, Chowringhee Square, 7 <sup>th</sup> Floor, Kolkata-69	<b>V/s.</b>	Safe Structures (P) Ltd., 11, Old Post Office Street, Kolkata-700 001 [ <b>PAN No.AAECS 4342 N</b> ]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S. Dasgupta, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Mrs Sudha Adak, Advocate
सुनवाई की तारीख/Date of Hearing	23-01-2018
घोषणा की तारीख/Date of Pronouncement	14-02-2018

**आदेश /ORDER**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-XII, Kolkata dated 23.12.2013. Assessment was framed by ITO Ward-12(3), Kolkata u/s 143(3)/254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 30.03.2005 for assessment year 1994-95.

Shri S. Dasgupta, Ld. Departmental Representative appeared on behalf of Revenue and Sudha Adak, Ld. Advocate appeared on behalf of assessee.

2. Solitary issue raised by Revenue is as regards that Ld. CIT(A) erred in deleting the addition made by the Assessing Officer for ₹25 lakh on account of income disclosed in the statement furnished u/s. 132(4) of the Act.

3. Briefly, the facts are that a search and seizure operation was conducted in the case of "Basak Group" on 24.06.1993. The assessee was part of said group. Accordingly the assessee made a disclosure of income for ₹25 lakh u/s 132(4) of the Act. However, assessee filed its ITR declaring the income of ₹23,39,379/- and income disclosed u/s. 132(4) of the Act for just ₹1,60,627/-. However, the AO made the assessment at ₹48,79,813/- after making addition of ₹ 25 lakh as disclosed u/s 132(4) of the Act. Subsequently, the dispute for the addition of ₹25 lakh travelled to Tribunal 'B' Bench Kolkata wherein the impugned issue was restored back to the file of AO for fresh adjudication vide order dated 30.10.2003 with the direction to adjudicate the same in the light of material found during the course of search proceedings. Accordingly, matter was fixed by the AO for hearing on 29.10.2004 and assessee was confronted that the statement furnished u/s. 132(4) of the Act. The assessee accordingly submitted that the income was disclosed u/s. 132(4) of the Act under coercion. As such, there was no income which has escaped assessment. However, the AO disregarded the contention of assessee and made the addition of ₹ 25 lakh to the total income of assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who deleted the addition made by AO by observing as under:-

*"... .. The AO, therefore, while find the fresh assessment as per directions of the ITAT contained in the order dated October, 2003, against made the addition of Rs.25,00,000/-. It is also seen that the CIT(A) has confirmed the addition made by the AO mainly relying on the assessment order dated 30<sup>th</sup> March, 2005 and remand report of AO dated 25-07-2006 which received by the CIT(Appeal) on 19-08-2006 without affording opportunity of it heard to the appellant. However, after going through the remand report of the AO furnished on 1 2013, it is noted that the set aside assessment completed afresh by the AO 143(3)/254 on 30.03.2005 as per the direction of the ITAT determining the Total income of Rs.48,45,050/- without referring to the seized/impounded books of account & documents as evident from the confidential note of the AO. The present AO has expressed his inability to offer any comments on the matter of arriving / determination of concealed income of the appellant on the basis of seized made as per the direction of the Hon'ble ITAT due to the non-availability of impounded/seized materials at his end. On the other hand, the A/R of the appellant contended that the appellant has not concealed any*

*material assets/particulars income and stated that the returned income is inclusive of surrendered income, argued that the appellant has disclosed the actual income/assets and as such income shown by the appellant should be accepted and the assessment should finalized accordingly on the basis of the income disclosed by the appellant.*

*In the light of the above discussion, after considering the submissions of the appellant and perusing the entire fact and circumstances of the case including the reports and observation of the AO, I am of the view that the AO was not justified in making addition of Rs.25,00,000/- as concealed income to the total income of the appellant solely on the basis of the statement given under section 132(4) of the Act without bringing on record any material evidence to substantiate or corroborate such concealed income or pointing out any specific incriminating documents or entries in the seized/impounded materials representing such concealed income / assets. Therefore, the impugned addition of Rs.25,00,000/- made by the AO is hereby directed to be deleted being unsustainable and the grounds of appeal of the appellant are allowed.”*

The Revenue, being aggrieved, is in appeal before us.

5. Ld. DR before us submitted that the addition was made by AO on the basis of disclosure statement furnished u/s 132(4) of the Act. While making the disclosure of income u/s. 132(4) of the Act, reference was made by the AO to the several properties as mentioned on page 2 of the assessment order. Therefore the addition has not been merely made on the basis of statement furnished u/s 132(4) of the Act. But it was made after referring properties of assessee. He vehemently relied on the order of AO.

On the other hand, Ld. AR for the assessee submitted that a clear-cut direction was issued by the Hon'ble Tribunal to make the addition on the basis of seized documents but the addition was made merely on the basis of statement furnished u/s. 132(4) of the Act which was subsequently retracted by assessee. Thus, the addition based on mere statement furnished u/s. 132(4) of the Act is not sustainable. He relied on the order of Ld. CIT(A).

6. We have heard the rival contentions of both the parties and perused the material available on record. In the instant case, we find that addition has been made on the basis of statement furnished by assessee u/s 132(4) of the

Act. However we note that on the earlier occasion, the Hon'ble Tribunal has restored the issue back to the file of AO for fresh adjudication with the direction to make the addition on the basis of seized materials. But we note that such direction has not been complied with by AO. No seized material has been brought on record as directed by the Hon'ble ITAT. Therefore, we conclude that the addition has been made merely on the basis of statement furnished u/s. 132(4) of the Act. Thus, we hold that no interference is called for in the order of Ld. CIT(A). We uphold the same. This ground of Revenue is dismissed.

**7. In the result, Revenue's appeal stands dismissed.**

Order pronounced in the open court 14/02/2018

Sd/-  
(न्यायिक सदस्य)  
(N.V.Vasudevan)  
(Judicial Member)  
Kolkata,

Sd/-  
(लेखा सदस्य)  
(Waseem Ahmed)  
(Accountant Member)

\*Dkp, Sr.P.S

दिनांक:- 14/02/2018 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-ITO Ward-12(3), P-7 Chowringhee Square, 7<sup>th</sup> Floor, Kolkata-69
2. प्रत्यर्थी /Respondent-Safe Structures (P) Ltd, 11, Old Post Office Street, Kolkata-01
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of  
Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता ।