

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD 'B' BENCH, AHMEDABAD**

**[Coram: Pramod Kumar AM and Mahavir Prasad JM]**

I.T.A. No.118/Ahd/2015  
Assessment Year : 2011-12

**Subhash Virchand Patel**  
*Prop. Visnagar Gold Refinery,  
22, M.B. Chambers,  
Govind Chakla,  
VISNAGAR (NG) – 384 315  
[PAN : AIAPP 0398 Q]*

.....**Appellant**

Vs.

**Income Tax Officer**  
*Patan Ward-3, Mehsana*

.....**Respondent**

**Appearances by:**

**SN Divatia** *for the appellant*  
**James Kurian** *for the respondent*

Date of concluding the hearing: 24.01.2018  
Date of pronouncing the order: 21.03.2018

**ORDER**

**Per Pramod Kumar, AM:**

1. By way of this appeal, the assessee-appellant has challenged correctness of the order dated 22<sup>nd</sup> October 2014 passed by the CIT(A), Gandhinagar, Ahmedabad, in the matter of assessment under section 143(3) of the Income-tax Act, 1961, for the assessment year 2011-12.

2. Grievances raised by the appellant are as follows:-

***“1.1 The order passed u/s.250 on 22/10/2014 for A.Y.2011-12 by CIT(A)-GNR upholding the addition of Rs.5,72,762/- made by AO is wholly illegal, unlawful and against the principles of natural justice.***

***1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned addition.***

***2.1 The Ld.CIT(A) has grievously erred in law and on facts in confirming the addition of Rs.5,72,762/- as expenses claimed to reduce the disclosed income during the course of survey.***

**2.2 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the addition of Rs.5,72,762/- as expenses claimed to reduce the disclosed income during the course of survey**

**3.1 The Ld.CIT(A) has erred in upholding that the appellant had reduced the income disclosed during the survey of Rs.10,38,711/- by claiming expenses totalling to Rs.5,72,762/-.**

**It is, therefore, prayed that the addition of Rs.5,72,762/- upheld by the CIT(A) may kindly be deleted.”**

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee was subjected to a survey under section 133A on 22.03.2011 and apart from indicating a provisional profits of Rs.10,38,711/-, the assessee had surrendered Rs.6,00,000/- on account of excess stock. The actual profit as per final profit and loss account was however disclosed at Rs.6,61,858/-. The Assessing Officer did not accept these book results. While comparing the figures of profit as per provisional profit and loss account and the final profit and loss account, the Assessing Officer observed as follows:-

*“3.6 During the assessment proceedings, the assessee was asked to furnish two separate Profit & Loss Accounts for FY 2010-11 i.e. for the period 01.04.2010 to 22.03.2011 (DOS) and 01.04.2010 to 31.03.2011 and the same was filed. On comparing the two profit and loss accounts, it is seen that the assessee has debited following expenses in the post survey period in addition to the expenses debited as on the date of survey i.e. 22.03.2011:-*

Labour Kating Exp. A/c.	Rs. 26,500/-
Interest on deposits	Rs.5,33,762/-
Salary expenses	<u>Rs. 12,500/-</u>
Total :	Rs.5,72,762/-

*The above mentioned expenses is claimed against the additional income disclosed. In this view of the matter, in effect, the assesses has shown only Rs.4,65,949/- out of the declared unaccounted income of Rs. 10,38,711/- in the return of income filed. Therefore, the difference amount of Rs.5,72,762/- (Rs.1038711 - 465949) is added to the total income of the assesses. Since the assessee has furnished inaccurate particulars of income, penalty proceedings u/s.271(1)(c) of the IT Act, 1961 is initiated separately.*

*3.7 It is pertinent to note that the assessee had agreed to pay tax on the income offered in the statement and had also paid the due taxes within the time as has been agreed in the statement. This goes on to show that the assessee was in agreement with the disclosure made at the time of survey. Further, till date the assessee has not retracted his statement, However, in the return of income filed for the relevant assessment year, assessee reduced his income by debiting*

*expenses and shown total income which is less than the disclosed income and taken away the refund of the excess amount of tax payment made as per assessee's statement recorded during the course of survey."*

4. Aggrieved by the addition of Rs.5,72,762/- so made, assessee carried the matter in appeal before the CIT(A) but without success. Learned CIT(A) confirmed the action of Assessing Officer by observing as follows:-

*"4.3 I have considered the assessment order and submission made by the appellant. A survey proceeding u/s 133A was carried out in the case of appellant wherein in reply to question no. 30 to 34, appellant had made disclosure of additional income to P&L transactions of Rs.10,32,711/-. During the survey, P&L account for the period 1/4/2010 to 21/3/2011 was found which reflects Profit of Rs.10,38,711/- and appellant had agreed to pay taxes on such income. However, appellant has prepared entire year P&L account disclosing net profit of Rs.6,61,858/- which was lower than additional income admitted during the survey proceedings. Appellant has submitted two P&L accounts i.e. from 1/4/2010 to 21/3/2011 and for the balance period. The AO compared the two P&L accounts and came to the conclusion that appellant has claimed interest expenses of Rs.5,33,762/-. Salary of Rs.12,500/- and Labor-Carting Expenses of Rs.26,500/- during the post survey period to reduce additional income offered during survey. The appellant has claimed that such expenditure was incurred only after survey period and interest is mainly claimed during the year end. In this case, appellant during the survey proceedings admitted additional income of Rs.10,38,711/- and nowhere claimed that this disclosure would be reduced by interest expenditure or other expenses. The appellant has not retracted any statement recorded u/s 133A and suo moto agreed to pay tax on income offered in the statement whereas in the return of income, he has paid short tax by claiming additional expenditure when appellant in his statement was in agreement with disclosure and not retracted the statement, addition made by the AO of Rs.5,72,762/- is hereby confirmed."*

5. The assessee is not satisfied and is in further appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

7. We find that there is nothing on record to establish, or even indicate, falsity in the claim of expenses. Yet the deduction has been declined on the basis of statement given by the assessee during the survey proceedings. The declaration given by the assessee was on the basis of provisional profit and loss account and the authorities below have not even doubted correctness of the books of accounts. The statement given by the assessee under section 133A does not even bind the assessee. In the case of Paul Mathews & Sons Vs. CIT [(2003) 263 ITR 101 (Kerala)], it was clearly held that statement recorded under section 133A has no evidentiary value, and no judicial precedent to the contrary has been cited before us. In any case, the factual statement about the provisional profit figure cannot be reason enough to disregard a different profit figure as per final accounts – particularly in the light of explanation and materials

brought on record. The explanations of the assessee have not even been doubted on merits, and rightly so in the light of correctness of the same. In view of these discussions, as also bearing in mind entirety of the case, we delete the impugned addition of Rs.5,72,762/-. The assessee gets the relief accordingly.

7. In the result, the appeal is allowed. Order pronounced in the open Court on this 21<sup>st</sup> day of March, 2018.

Sd/-

**Mahavir Prasad**  
(Judicial Member)

**Ahmedabad, the 21<sup>st</sup> day of March, 2018**

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Copies to: (1) The appellant  
(2) The respondent  
(3) Commissioner  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

TRUE COPY

Sd/-

**Pramod Kumar**  
(Accountant Member)

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad