

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I.T.A. No. 157/(Asr)/2016

Assessment Year: 2011-12

Jatinder Kumar,
Prop. Sulekh Chand Sham Lal,
Grain Market, Mansa
[PAN: ABHPG 6210C]
(Appellant)

Vs. ITO, Ward 1 (4),
Mansa

(Respondent)

Appellant by : Sh. J. K. Gupta, Adv. (A.R.)

Respondent by: Sh. S. S. Negi, Addl. CIT (D.R.)

Date of Hearing: 25.04.2018

Date of Pronouncement: 24.05.2018

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the Order by the Commissioner of Income Tax (Appeals), Bathinda ('CIT(A)' for short) dated 15.01.2016, partly allowing the assessee's appeal contesting its assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 28.03.2013 for the Assessment Year (AY) 2011-12.

2. At the very outset, the ld. Authorized Representative (AR), the assessee's counsel, would submit that while the ld. CIT(A) has passed a very reasonable order, allowing the assessee substantial relief, he has not accepted the assessee's claim that the kagzi register impounded from the assessee's business premises (on 12.09.2012) during survey proceedings u/s. 133A, does not belong to the business

of the assessee. The same has been planted, even as submitted before the Id. CIT(A). In fact, that is the only book/register, among several, similarly impounded, entries in which did not agree with the assessee's books of account, and on the basis of which therefore addition has been made in the instant case. As such, accepting the assessee's this contention would remove the very basis of addition effected in assessment. In fact, the tribunal had for earlier years, accepting similar contention, allowed relief to the assessee. On being asked to state the basis on which the assessee claims that the kagzi register impounded from his business premises did not belong to him and, on the contrary, is a plant of a fabricated register by the Revenue - a claim which the Id. CIT(A) states to be an allegation without any basis, he produced the copy of the order u/s. 133A(3)(ia) of the Act prepared at the conclusion of the survey (copy on record). The same, listing the several documents impounded during survey, contains the entry in respect of the kagzi register as serial no. 6, which reads as under:

‘6. One Register marked ‘Kagzi’ (written pages 1 to 19)’

The same clearly notes the said register to bear 19 pages, while the kagzi register supplied by the Revenue to the assessee subsequently, on being requested for, contains as many as 39 pages. The said register is placed as part of the paper-book.

3. We have heard the parties, and given our careful consideration to the matter.

3.1 Section 292C of the Act, reading as under, raises a presumption, of course rebuttable, as to the ownership of the document found during survey or search, as well as the truth of its contents:

‘Presumption as to assets, books of account, etc.

292C. (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the

course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed —

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
- (ii) that the contents of such books of account and other documents are true; and
- (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.'

3.2 The basis of the assessee's rebuttal is the difference in the number of pages in the register impounded and that supplied subsequently to him by the Revenue. The same contains the assessee's signature at pages 1 and 37 (at PB pgs. 11 & 45), affixed at the time of its receipt from the Revenue. In this regard, firstly, the charge of 'planting' a register is a very serious charge, which, to be admitted, is to be in the least supported by an affidavit. Two, if indeed it was, as alleged, why would the Revenue, even as queried during the course of hearing, defeat its own cause by supplying a register containing a different number of pages? It could easily fabricate - as alleged, a register containing 19 pages only. Further, why did not the assessee disclaim the register at the time of its receipt? This, rather, would be the

first thing that a person would state, i.e., that the document being supplied is not the one that was recovered and impounded from its premises. Not only the assessee accepted the same without demur, he - the register containing details of purchases and sales not recorded in his regular books of account, on being confronted therewith in the assessment proceedings, pleaded for an addition being made on peak basis in-as-much as it is the same capital that circulates - the funds invested in purchase being recouped on sale of the goods. This (argument) is, in fact, itself a tacit admission of the register belonging to the assessee. It is only in the appellate proceedings that the assessee raised this issue for the first time. The same, in our view, has thus been rightly rejected by the Id. CIT(A); the assessee having failed to rebut the statutory presumption u/s. 292C, with his conduct in fact pointing to the contrary. As it appears, there has occurred an error in recording the number of pages of the kagzi register, i.e., at '39' instead of '19' in the order u/s.133A(3)(ia). The decision by the tribunal for the earlier years is not applicable in-as-much as the material impounded for those years was not recovered from the assessee's business premises, but from that of another. In fact, for those years, as discussed by the Id. CIT(A) (at para 2/pages 3-4 of his order), the assessments were reopened on the basis of the information in the possession of the Revenue through complaints by one of the assessee's ex-employees. The matter, it may be noted, is purely factual.

3.3 On the merits of the addition made, as admitted by the Id. AR (and prayed for per Ground No. 4), there is no scope for being allowed telescoping benefit *qua* the said addition against income assessed for the earlier year/s in-as-much as the same stands since deleted. We, also, for the same reasons as found favour with the Id. CIT(A), find no reason for any interference with the impugned order; the Id. CIT(A) having been extremely fair in his assessment, i.e., both of the profit rate as

well as of the undisclosed capital employed in unaccounted purchases. We decide accordingly.

4. In the result, the assessee's appeal is dismissed.

Order pronounced in the open court on May 24, 2018

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Date: 24.05.2018

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Jatinder Kumar, Prop. Sulekh Chand Sham Lal,
Grain Market, Mansa
- (2) The Respondent: ITO, Ward 1 (4), Mansa
- (3) The CIT(Appeals), Bathinda
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy

By Order