

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1309/Hyd/2016
Assessment Year: 2011-12**

ITO,
Ward-2,
Warangal.

vs. Dr. Akula Sanjeevaiah,
Warangal.

PAN – ACNPA5446P

(Applicant)

(Respondent)

Revenue by : Smt. N. Swapna
Assessee by : Shri K.V. Chalamaiah

Date of hearing : 13-06-2018

Date of pronouncement : 22-06-2018

ORDER

PER P. MADHAVI DEVI, J.M.:

This is Revenue's appeal for the A.Y 2007-08, against the order of the CIT(A)-3, Hyderabad, dated 22.07.2016.

2. Brief facts of the case are that the assessee, a medical professional, filed his return of income for the A.Y 2011-12 on 19.04.2012, declaring total income of Rs. 24,57,830/- which includes professional income, income from other sources and capital gains. The return was processed u/s 143(1) of the IT Act. Since there was survey operation u/s 133A of the Act on 08.10.2010, the assessment for the A.Y

2011-12 was converted into compulsory scrutiny as per CBDT guidelines and during the assessment proceedings u/s 143(3) of the IT Act, the A.O asked the assessee to show cause as to why the entire additional income of Rs. 45 lakhs declared during the course of survey has not been returned by the assessee. In show cause notice, it was stated that in spite of admission of Rs. 45 lakhs as additional income during the course of survey, in the return of income, the assessee has admitted only a sum of Rs. 24,57,830/- whereas the assessee has paid taxes of Rs. 15 lakhs on the entire additional income, but claimed refund of Rs. 10,09,140. The assessee submitted his explanation stating that he had offered additional income of Rs. 45 lakhs from his profession and other sources during the course of survey, but after considering fact that due to increase in the number of doctors for the past two years who have started their practice in Parkala town, and the assessee is being in Government Services, could not spare much time on the practice, the income offered by him in the return of income was correct.

3. The A.O however did not accept the assessee's contentions. He perused the copies of the bank

statements, inpatient and outpatient records and x-ray collection registers for the month of January 2011 and observed that the assessee has not filed any documentary evidence and books of accounts in support of his contentions with reference to letter dated 30.12.2013. Holding that the assessee has failed to substantiate his claim, he brought the additional income of Rs. 33,44,000/- to tax. Aggrieved, the assessee preferred an appeal before the CIT(A), who allowed the same by observing that the addition made by the A.O is without any corroborative evidence. Aggrieved by the order of the CIT(A) the Revenue is in appeal before us.

4. The Ld. DR supported the order of the A.O and submitted that the assessee during the course of survey had admitted the additional income of Rs. 45 lakhs and has also paid the taxes on said amount while filing the return of income but has claimed the refund of the taxes on the income of Rs. 33,44,000/-. Therefore, according to her, the assessee has not retracted his statement even at the time of filing of the return of the income, but has only retracted it subsequently, which is not permissible. He placed reliance upon the decision of the Hon'ble Punjab

and Haryana High Court in the case of Navdeep Dhingra Vs. CIT (2015) 56 taxmann.com 75 (P&H), wherein, under the similar circumstances, it was held that the retraction after two years of survey is not acceptable.

5. The Ld. Counsel for the assessee, on the other hand, submitted that the assessee had erroneously offered and admitted additional income of Rs. 45 lakhs at the time survey, but later, on verification of his books of accounts, he found that the entire amount cannot be treated as his income. He therefore, filed the return of income and admitted the actual admissible income, which has been brought to tax. He, therefore, supported the order of the CIT(A).

6. Having regard to the rival contentions and the material on record, we find that the assessee has been surveyed but there was no material or evidence found and impounded to show that the assessee had undisclosed income. The only basis for addition of undisclosed income is the admission of the assessee. However, at the time of filing of the return of income, though the assessee has paid the taxes on the income of Rs. 45 lakhs, the assessee has offered only a sum of Rs. 24,57,830/-, we find that there is

no material, whatsoever, before the A.O to support the addition made of undisclosed income. As held by various courts in catena of cases, an admission during the course of survey, has to be corroborated by documentary evidence. In the absence of the same, such an addition is not sustainable. In the result, the revenue's appeal is dismissed.

7. In the result the appeal filed by the Revenue is dismissed.

Pronounced in the open court on 22nd June, 2018.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 22nd June, 2018

KRK

- 1) Dr.A. Sanjeevaiah C/o H. No. 20-99, Jaya Talkies Road, Parkal, Warangal.*
- 2) ITO, Ward-2, Warangal.*
- 3) CIT(A)-3, Hyderabad*
- 4) Addl.CIT, Warangal Range, Warangal.*
- 5) The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) Guard File.*