

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A', NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. L.P. SAHU, ACCOUNTANT MEMBER**

ITA No.6318/Del/2015
Assessment Year: 2012-13

ACIT, CENTRAL CIRCLE-17, ROOM NO. 103, HALL NO. 1, 1 ST FLOOR, ARA CENTRE, JHANDEWALAN EXTN., NEW DELHI	Vs.	BRAHM DATT, M-16, GREATER KAILASH, PART-I, NEW DELHI - 110 048 (PAN: ADNPD9666R)
(Appellant)		(Respondent)

ITA No.6320/Del/2015
Assessment Year: 2012-13

ACIT, CENTRAL CIRCLE-17, ROOM NO. 103, HALL NO. 1, 1 ST FLOOR, ARA CENTRE, JHANDEWALAN EXTN., NEW DELHI	Vs.	USHA BHATT, A-18, GEETANJALI ENCLAVE, MALVIYA NAGAR, NEW DELHI (PAN: ADNPD9688F)
(Appellant)		(Respondent)

ITA No.6321/Del/2015
Assessment Year: 2012-13

ACIT, CENTRAL CIRCLE-17, ROOM NO. 103, HALL NO. 1, 1 ST FLOOR, ARA CENTRE, JHANDEWALAN EXTN., NEW DELHI	Vs.	ANURADHA DUTT MUNJAL, D-4, SAKET, NEW DELHI (PAN: AFSPM1955P)
(Appellant)		(Respondent)

Department by	Shri Sridhar Dora, Sr. DR.
Assessee by	Shri P.C. Yadav, Advocate

ORDER

PER H.S. SIDHU, JM

These appeals are filed by the Department against the separate orders passed by the Ld. CIT(A)-27, New Delhi in respect of the aforesaid separate Assessee relating to assessment year 2012-13. Since the grounds raised in these appeals are common, except the difference in figure, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 6318/Del/2015 (AY 2012-13) – ACIT vs. Brahm Datt.

2. The grounds raised by the Revenue in ITA No. 6318/Del/2015 (AY 2012-13) in the case of ACIT vs. Brahm Datt read as under:-

1. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 1,11,64,700/- made by the AO on account of unexplained money u/s. 69A of the I.T. Act, by ignoring the fact that the assessee himself declared additional income of Rs. 1,20,00,000/- during the course of post search proceedings and offered income of Rs. 8,35,300/- only in his return of income out of declaration made.
2. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 1,11,64,700/- made by AO, without appreciating the facts that the assessee never retracted in her statement made under oath u/s. 132(4)

and 131(1A) of the I.T. Act during the assessment proceedings.

3(a) The order of the CIT(A) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.

3. The grounds raised by the Revenue in ITA No. 6320/Del/2015 (AY 2012-13) in the case of ACIT vs. Usha Bhatt read as under:-

1. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 1,25,00,000/- made by the AO on account of unexplained money u/s. 69A of the I.T. Act, by ignoring the fact that the assessee himself declared additional income of Rs. 1,25,00,000/- on account of miscellaneous receipts and gifts for the AY 2012-13 during the course of post search proceedings in the form of declaration and subsequently reconfirmed on oath in response to summons u/s. 131(1A) of the I.T. Act, 1961.

2. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 1,25,00,000/- made by AO, without appreciating the facts that the assessee never

retracted in her statement made under oath u/s. 132(4) and 131(1A) of the I.T. Act during the assessment proceedings.

3(a) The order of the CIT(A) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.

4. The grounds raised by the Revenue in ITA No. 6321/Del/2015 (AY 2012-13) in the case of ACIT vs. Anuradha Dutt Munjal read as under:-

1. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 1,00,00,000/- made by the AO on account of unexplained money u/s. 69A of the I.T. Act, by ignoring the fact that the assessee himself declared additional income of Rs. 1,00,00,000/- on account of miscellaneous receipts and gifts for the AY 2012-13 during the course of post search proceedings in the form of declaration and subsequently reconfirmed on oath in response to summons u/s. 131(1A) of the I.T. Act, 1961.

2. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 1,00,00,000/- made by AO,

without appreciating the facts that the assessee never retracted in her statement made under oath u/s. 131(1A) of the I.T. Act during the assessment proceedings.

3(a) The order of the CIT(A) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.

5. Briefly stated facts of the case are that the search and seizure operation u/s. 132 of the Income Tax Act, 1961 (in short "Act) was conducted at the business / residential premises of the assessee on 27.9.2011. The authorization for the search was made and Panchnama was duly executed in this case. Assessee belongs to M/s Som Datt Group of Cases. The assessee filed the return of income declaring income at Rs. 8,47,07,391/- on 6.5.2013. Notice u/s. 143(2) of the Act was issued on 6.5.2013 and notice u/s. 142(1) of the Act alongwith detailed questionnaire was issued on 9.4.2013. In response to the notices, the AR for the assessee attended the proceedings from time to time and filed the required details. During the year assessee has declared income under the head income from 'salary', income from 'house property' and income from 'other sources'. AO observed that assessee is a owner of a Flat at GF-8, Narain Manzil, 23, Barakhamba Road, New Delhi measuring 498 sq.feet. This flat remain vacant throughout the previous year and no income has been declared from this property. It was observed by the AO that a similar flat at GF-9, in the same building also owned by the assessee was let out and the assessee has declared an income of Rs. 4,09,351/- from

this flat. Therefore, the deemed income from the let out property is also computed as Rs. 4,09,351/- was considered as his unaccounted income which is included in the undisclosed income as declared by the assessee during the course of post search proceedings amounting to Rs. 1,20,00,000/- as his undisclosed income u/s. 132(4) of the Act for the AY 2012-13 and surrendered the same for the AY 2012-13. However in the return filed u/s. 153A of the Act, the assessee has declared only sum of Rs. 8,35,300/- on account of the cash found at the time of search and presented it for taxation in the income return. Hence, the unaccounted income of Rs. 1,11,64,700/- (Rs. 1,20,00,000- 8,35,300) was added back to the total income of the assessee for the year under consideration u/s. 69A of the Act being unexplained money and assessment was completed at Rs. 10,58,72,090/- u/s. 143(3) of the Act vide order dated 31.3.2014. Against the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 22.9.2015 has allowed the appeal of the assessee by deleting the addition in dispute. Aggrieved with the impugned order, the Revenue is in appeal before the tribunal.

6. Ld. DR has relied upon the order of the Assessing Officer and relied upon some cases in support of AO's order in his Written Submissions.

7. On the contrary, Ld. Counsel for the assessee has relied upon the order of the Ld. CIT(A). He also filed the copy ITAT, 'G' Bench decision dated 16.8.2016 in the case of ACIT vs. Sh. Subhash Chander Sudha and stated that the issue in dispute is squarely covered by the aforesaid decision dated 16.8.2016. Therefore, he requested to follow aforesaid precedent and dismiss the appeal of the Revenue by upholding the order of the Ld. CIT(A).

8. We have heard both the parties and perused the records especially Ld. CIT(A)'s order as well as the Tribunal's order dated 16.8.2016 passed

in the case of ACIT vs. Sh. Subhash Chander Sudha and the case laws cited by the Ld. DR. We find that Ld. CIT(A) has elaborately adjudicated the issue vide its order dated 22.09.2015 vide para no. 7. The relevant portion of the Ld. CIT(A)'s order are reproduced as under:-

"7. Finding

- 1. I have considered the written submission of the appellant, gone through the case laws relied upon and also gone through the assessment order.*
- 2. It is seen that assessee has furnished complete particulars of his actual income.*
- 3. It is also evident that during the course of search, no evidence of any undisclosed income was found.*
- 4. This fact was also confirmed by the AO at page 5-6, of the assessment and has observed as under:-*

"Here it is pertinent to mention that during the course of search, no documents pertaining to the details of the undisclosed income earned by the assessee as has been disclosed by him or was found and neither the same has been submitted by the assessee during the assessment proceedings also."

- 5. The above observation clearly shows that no incriminating material was found during the course of search or post search investigations.*

6. *Further the facts of the case are identical to the case before Hon'ble Andhra Pradesh High Court in the case of Commissioner of Income Tax-II, Hyderabad vs. Naresh Kumar Agarwal (2015) 53 taxmann.com 306 (Andhra Pradesh.).*

7. *Thus the addition of Rs. 1,11,64,700/- is hereby deleted. Appellant will get relief to this extent."*

8.1 We further note that the case laws cited by the Ld. DR are not directly applicable on the present case. However, ITAT, 'G' Bench decision dated 16.8.2016 in the case of ACIT vs. Sh. Subhash Chander Sudha is directly applicable in the present case wherein the Tribunal has adjudicated the similar and identical issue as under:-

"2. Ground No. 1 and 2 of the appeal are related to additions of Rs. 30 lakhs and Rs. 23.20 lakhs made by the Assessing Officer relying on the statement of the assessee under section 132(4) of the Act, which have been deleted by the learned Commissioner of Income-tax (Appeals).

2.1 The learned CIT(DR), relying on the order of the Assessing Officer, submitted that statement made by the assessee under section 132(4) of the Act is one of the admissible evidence and, therefore, cannot be rejected for making addition in the case of the assessee.

2.2 On the other hand, learned Authorized Representative of the assessee, relying on the order of the learned Commissioner of Income-tax (Appeals), submitted that at the time of search proceedings,

consolidated stock of various firms was found physically, which could not be reconciled with the stock appearing in books of account of those firms and, therefore, the assessee during the statement recorded under section 132(4) of the Act, offered Rs. 30 lakh as unexplained investment against discrepancy in the stock, if any. He further submitted that during the verification process in assessment proceeding, no discrepancy in the stock was found and, hence, no addition could have been made on the basis of the offer of Rs. 30 lakhs made against any possible discrepancy in stock, in statement under section 132(4) of the Act. He also relied on the decision of the Delhi Bench of Tribunal in the case of M/s. Best Infrastructure (India) Private Limited Vs. ACIT in ITA No. 1698/Del/2014 pronounced on 31st of may 2016 wherein it is held that statement recorded during the course of search cannot on a standalone basis give power to the Assessing Officer to make the addition.

2.3 We have heard the rival submissions and perused the material on record including the decision of the Tribunal in the case of M/s. Best Infrastructure (India) Private Limited (supra) cited by the learned Authorized Representative of the assessee. The Tribunal in para 23 of the order has held as under:

"23. We have discussed in detail the legal position as laid down by Hon'ble Jurisdictional High Court and Hon'ble Apex Court in various cases. We have also discussed the facts of the assessee's case. Now, applying the law as laid down by Hon'ble Jurisdictional High Court and Hon'ble Apex Court to the facts of the assessee's case, the following position emerges.

- (i)
- (ii) Any statement recorded during the course of search cannot on a standalone basis without reference to any other material discovered during search and seizure operation would empower the Assessing Officer to make the addition. The words "evidence found as a result of search" would not take within its sweep statement recorded during search and seizure operations. Therefore, the Revenue's stand that the addition u/s 153A can be made in respect of share capital on account of statement of Shri Tarun Goyal and Shri Anu Aggarwal cannot be accepted.
- (iii).....
- (iv)....."

2.4 The Tribunal, while concluding above, has relied on the judgment of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Harjeet Aggarwal vide ITA No. 8/2004. The relevant paragraphs of the order of the Tribunal are as under:

"11. In the case of Harjeev Aggarwal (supra), Hon'ble Jurisdictional High Court considered the evidentiary value of the statement recorded during the course of search. The relevant portion is paragraph 19, 20 & 24, which are reproduced below for ready reference:-

"19. In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded under Section 132(4) of the Act would by itself be sufficient to assess the income, as disclosed by the assessee in its statement, under the Provisions of Chapter XIV-B of the Act.

20. *In our view, a plain reading of Section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to Section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the assessee during search operation.*

24. *If the Revenue's contention that the block assessment can be framed only on the basis of a statement recorded under Section 132(4) is accepted, it would result in ignoring an important check on the power of the AO and would expose assesseees to arbitrary assessments based only on the statements, which we are conscious are sometimes extracted by exerting undue influence or by coercion. Sometimes statements are recorded by officers in circumstances which can most charitably be described as oppressive and in most such cases, are subsequently retracted. Therefore, it is necessary to ensure that such statements, which are retracted subsequently, do not form the sole basis for computing undisclosed income of an assessee."*

12. *Thus, Hon'ble Jurisdictional High Court has held "The words "evidence found as a result of search"*

would not take within its sweep statements recorded during search and seizure operations". Their Lordships further observed "However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the assessee during search operation". In paragraph 24, their Lordships have mentioned about the prevailing practice of extracting statement by exerting undue influence or coercion by the search party. Though the above decision in the case of Harjeev Aggarwal is with reference to the meaning of undisclosed income u/s 158BB of the Income-tax Act, however, in our opinion, the above observation of Hon'ble Jurisdictional High Court would be squarely applicable while considering the evidentiary value of the statement while making the assessment u/s 153A."

2.4 Thus, we find that the Hon'ble Jurisdictional High Court as well as the Tribunal has held that no addition can be made merely on the basis of statement recorded during the search and seizure operations on standalone basis without reference to any other material discovered during search and seizure operation. The Tribunal has particularly held that no such additions could have been made in proceedings under section 153A of the Act.

2.5 When we advert to the facts of the case in hand, we find that in the course of search proceedings inventory of the consolidated stock of the five firms was prepared. The list of the five firms has been mentioned by the Assessing Officer in the assessment order. In the questionnaire issued to the assessee in the course of assessment proceeding, the Assessing Officer has

mentioned that in the statement recorded under section 132(4) of the Act, it was explained by the assessee that the stock inventory prepared at the time of search was a consolidated inventory for the different business concerns on the date and the same had to be bifurcated as per the items of the different concern, which was a quiet time taking exercise, and it was not possible to reconcile the difference, therefore, to cover discrepancy, if any, the assessee offered unexplained income of Rs. 30 Lacs. In the course of assessment proceeding, the assessee submitted bifurcated stock inventory of different firms alongwith trading accounts, according to which there was no difference in the inventory of stock found physically and the stock appearing in books of accounts of the different business concerns. This fact has been recorded by the Assessing Officer in para 5.3 of the assessment order, which is reproduced as under:

"5.3 A copy of bifurcated stock inventory of different firms alongwith trading account upto 21.08.2007 was filed by the assessee, the summary of which is as under:-

Stock inventory taken on the date of search at Kurukshetra Rs. 1,66,74,282/-

The above stock relates to the following firms:-

- i) M/s. Subhash & Co. KKR. = Rs. 9,39,788/-
- ii) M/s. Sahil Fertilizers, KKR.= Rs. 1,57,35,594/-
(Including stock of C&F Agency)
- iii) M/s. Sudha Traders, Ladwa

Value of stock inventory taken on the date of search Rs. 5,39,932/-

Value of inventory as per books = Rs. 5,39,932/-

iv) M/s. Subhash & Co. Ladhva

Value of stock inventory taken on the date of search Rs. 2,03,584/-

Value of inventory as per books =Rs. 2,03,584/-

"

2.6 *The Assessing Officer has placed reliance on the statement of the assessee under section 132(4) of the Act, irrespective of the fact that there was no discrepancy in the stock. The learned Commissioner of Income-tax (Appeals) after considering the submission of the assessee deleted the addition with observations as under:*

"6.2 *I have carefully considered the rival submissions. It is an undisputed fact that the stock was reconciled during the assessment proceeding in reply to the questionnaire issued by the AO. No difference was found in the inventory valuation of stock on the search in between physical stock and stock as per stock registers of the business concerns. It is also undisputed that the surrender of additional income was made to cover difference in stock if any in respect of the different business concerns. No doubt the offer of surrender was made u/s 132(4). The legality and validity of a statement taken on oath has great evidentiary value but it is trite law that the same is not conclusive. The admission has to be necessarily corroborated with material evidence to stand the test of appeal. In this case as there was no stock difference found on reconciling, which has also been admitted by the AO in the impugned*

order, I am afraid the surrender of additional income on this account has no basis. The assessee deserves to succeed on this ground of appeal.”

2.7 Similarly, in respect of another addition of Rs. 23.20 Lacs, the Assessing Officer has mentioned that certain loose documents containing expenses on education of children, purchase of personal items, investment in construction of residential Bungalow and details of movable and immovable properties were seized. The assessee explained that total financial figure mentioned in these documents was of the tune of Rs. 2.5 lakhs and which was incurred out of disclosed sources of the assessee. However, the Assessing Officer rejected the explanation and proceeded to make the addition on the basis of surrender of Rs. 23.20 made in the statement under section 132(4) of the Act to cover discrepancy, if any, found in the seized documents. The learned Commissioner of Income-tax (Appeals) has specifically mentioned that even in remand report there was no specific finding by the Assessing Officer as to which of the seized document was found to be unexplained so as to treat as either undisclosed income or expenditure. The learned Commissioner of Income-tax (Appeals) deleted the addition with observations as under:

“7.2 I have considered the rival submissions. It is quite evident from the impugned order and the remand report that there is no specific findings as to which of the seized documents was found

unexplained so as to be treated as either undisclosed income or expenditure. It is apparent that the addition has been made solely on the surrender of additional income u/s 132 (4). What is germane to the issue is that the surrender was to cover discrepancy if any found in the seized documents marked A-1 and A-2. Consequently, as no discrepancy has been pointed out by the AO, the surrender of additional income has no basis. There is no dispute that statement recorded on oath is to be regarded with sanctity and having great evidentiary value but as the same is not conclusive as held by the courts, the addition based totally on such statement without any corroboration does not hold strength. Therefore, I am constrained to delete the addition and allow the appeal of the assessee. As for the letter referred by the assessee, the same being an internal confidential correspondence between AO and Investigation Wing, which has also not been commented in the remand report, I have no reason to take it into cognizance. Assessee succeeds on this ground."

2.8 These factual findings have not been denied by the Revenue. In the grounds also, the Revenue has agitated the only issue that the additions have been deleted by the learned Commissioner of Income-tax (Appeals) despite the assessee had admitted the undisclosed income in the statement recorded under section 132(4) of the Act. It is clear that there is no material or corroborative evidence to support the statement made under section 132(4) of the Act in respect of the addition of Rs. 30 lakh against unexplained investment in stock and Rs. 23.20 Lacs

against the unexplained expenditure. The assessee did not admit the addition, which means, he retracted the said surrender in the return of income filed. We find that the Tribunal in the case of best infrastructure (India) Private Limited (supra) and the Hon'ble Jurisdictional High Court in the case of Harjeev Aggarwal (supra) have in the similar facts and circumstances, held that no addition can be made merely on the statement recorded under search and seizure proceedings on a standalone basis without any supporting or corroborative material. Thus, respectfully following the findings of the Tribunal in the case of Best Infrastructure (India) Private Limited (supra) and Hon'ble Jurisdictional High Court in the case of Harjeev Aggarwal (supra), we hold that order passed by the learned Commissioner of Income-tax (Appeals) on the issue in dispute is well reasoned and no interference on our part is required, accordingly, we uphold the finding of the learned Commissioner of Income-tax (Appeals) on the issue in dispute. Thus, ground No. 1 and 2 of the appeal are dismissed.

8.2 After perusing the order of the Ld. CIT(A) as reproduced under para no. 8, of this order as well as the ITAT, 'G' Bench decision dated 16.8.2016 in the case of ACIT vs. Sh. Subhash Chander Sudha on identical facts and circumstances of the case, as reproduced in para no. 8.1 of this order, we do not find any infirmity in the order of the Ld. CIT(A). Hence, by respectfully following the Tribunal's order dated 16.8.2016, as aforesaid, we uphold the order of the Ld. CIT(A) and reject the grounds raised by the Revenue. As a result, the Revenue's Appeal No.

6318/Del/2015 (AY 2012-13) in the case of ACIT vs. Brahm Datt stands dismissed.

9. Since in other 02 appeals, i.e., in the case of ACIT vs. Usha Bhatt in ITA 6320/Del/2015 (AY 2012-13) and ACIT vs. Anuradha Dutt Munjal in ITA No. 6321/Del/2015 (AY 2012-13), similar facts are permeating, therefore, our finding given above in ITA No. 6318/Del/2015 (AY 2012-13) in the case of ACIT vs. Brahm Dutt will apply mutatis mutandis in these two appeals also, because the facts and circumstances of the case are exactly the same.

10. In the result, all the 03 appeals filed by the Revenue stand dismissed.

Order pronounced on 10-12-2018.

Sd/-

**(L.P. SAHU)
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:10/12/2018

SRBhatnagar

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4.CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches