

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH- SURAT**  
**श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष**  
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A.No.591/Ahd/2016/SRT**  
**निर्धारण वर्ष/Assessment Year: 2013-14**

Deputy Commissioner of Income-Tax, Central Circle-3, Surat	Vs	A.N. Lubricants, 45, GIDC, Ichhapore, Bhatpore, Choryasi, Surat. [PAN: AANFA 7286 P]
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से /Assessee by	Shri Rasesh Shah - CA
राजस्व की ओर से /Revenue by	Shri Dilip Kumar - Sr.D.R.
सुनवाई की तारीख/ Date of hearing:	05.07.2018
उद्घोषणा की तारीख/Pronouncement on	13.07.2018

**आदेश / O R D E R**

**PER O. P. MEENA, ACCOUNTANT MEMBER:**

1. This appeal by the Revenue is directed against the order of learned Commissioner of Income tax (Appeals)-4, Surat, dated 29.01.2016 for the Assessment Year 2013-14.

2. By way of Ground No. 1 to 3, the Revenue has challenged the deletion of addition of Rs.94,00,000/- made on account of unaccounted business income, while the partner of the assessee voluntary during the course of search, with duly concern with other partners after verifying the seized document and without any fear undue force and coercion and while the assessee-firm has not submitted any rebuttal evidences in support of retraction inspite of sufficient opportunity provided to the assessee.

3. Succinctly, facts as culled out from the orders of lower authorities are that a search and seizure operation was carried out on 05.03.2013 in Milestone Group of which the assessee is sub group. During search, while recording statement under section 132(4), Shri Arpit Desai, was specifically asked to explain the contains of seized Page No. 90 to 92 of Anx BF-1. In reply to question 8, Shri Arpit Desai stated that these papers are related to the assessee firm and made disclosure of Rs. 94

lakhs on account of business income. However, the assessee has not shown the said disclosure in the return of income filed. In response to show-cause notice issued, it was explained that Page No. 90 contains entries of date wise order of oil to be given to oil company and it is covered by disclosure of cash found and seized at the time of search. Page No. 91 contains entries of an amount of Rs.6,62,180/- is duly accounted in the books of accounts of the assessee and remaining entries of Rs.7,34,249/- were declared by Shri Suresh Desai in his individual return for the assessment year 2010-11 to A.Y. 2012-13. Whereas Page No. 92 gives list of document required for loan. It was submitted that the assessee has retracted after 3 months from his statement after obtaining the seized material from Investigation Wing. However, the AO did not satisfy with submissions hence, made addition of Rs. 94 lakhs on account of disclosure made during search by the partners of the assessee firm.

4. Aggrieved by order, the assessee carried the matter in appeal before the CIT (A). After hearing the assessee, the CIT (A) observed that the Authorized Officer during search did not care to ask a single question. At the outset, the nature of transaction, even whether these were loans, income expenditure etc. The Authorized Officer did not take care as to how figure of Rs. 94 lakhs was reached. The retraction was made immediately after getting copies of document and within three months of date of search. The Investigation Wing and the AO has two years but has not found any defects and omission of the entries made in the books of accounts. The AO has not brought on record anything any material to rebut the explanation of the assessee filed during the course of assessment proceedings regarding entries of seized papers at Page No. 90, 91 and 92. The appellant contention that the total of all these entries is less than Rs. 94 lakhs is also very strong one and cannot be brush aside without even hypothesis

on the part of Department as to how the undisclosed income was earned or where it was applied. Therefore, the CIT (A) has concluded by placing reliance in the case of Kailashben Manharlal Chokshi of Hon'ble Gujarat High Court wherein it was held that statement recorded at midnight during the course of search, which is retracted after two months cannot be the basis for making addition. Therefore, CIT (A) observed that the assessee explained the seized papers on the basis of which declaration was made immediately after three months. The Department made no further inquiry after the assessee has explained the seized material. The search continued until next day and the statement of the assessee was recorded on next day. Further, no explanation of the assessee was sought on various entries noted in the alleged seized papers while recording statement. So considering the various judicial pronouncements cited by the assessee and Instruction of CBDT, the addition made by the AO was deleted.

5. Being, aggrieved the Revenue filed this appeal before the Tribunal. The Id. DR submitted that once the assessee has made a statement under oath and made disclosure under section 132(4) and the other partners also confirmed said statement then he could not withdraw it after three months. Hence, the AO was justified in making addition based on statement recorded under section 132(4) of the assessee. There is no contention of the assessee that disclosure was made under pressure, fear or due coercion. Therefore, the Id. DR strongly supported the order of the AO.

6. *Per contra*, the learned counsel for the assessee submitted that when the assessee obtained Xerox copies of seized material after three months and after going through the seized papers retracted from the disclosure so made during the course of search.

7. It was contended that search was conducted on 05.03.2013 and it continued until 9.30 Pm and statement of partner was recorded on next day on 06.03.2013 to make disclosure on three chits at Rs. 95 lakhs. The learned counsel for the assessee submitted that the seized papers. The learned counsel for the assessee placing reliance in the case of *Kailashben Manharlal Chokshi v. CIT* [2010] 328 ITR 411 (Guj.) where CBDT Instruction F. No. 286/2/2003-IT(Inv) dtd. 10.03.2003 has been followed. It was submitted that there is no basis of Rs. 94 lakhs. The learned counsel for the assessee claimed that CBDT Instruction has clarified that where confessional statement cannot be where there is no material on record. It submitted that the additional income of Rs.7,34,249/- as appearing on seized material has been disclosed and there was partial retraction. It was submitted that decision in the case of *ACIT v. Sushila Devi S Agarwal* 50

ITD 524 (Trib- Ahmedabad) and other decisions have cover the assessee case and supported the order of Ld. CIT (A).

8. We have heard the rival submissions and perused the relevant material on record. We find that the assessee has explained the page wise entries. It was explained that Page No. 91 contains entries of Rs.7,34,249/- that has been duly declared in the case of Shri Sureshbhai Desai. The explanation of Page No. 92 has been duly filed and explained as it contends some document required from the purpose of loan. The Page No. 90 is dump papers on which dump figures are written and even total of the same and all three pages is less than Rs. 94 lakhs. We also note that after getting the copies of seized papers the assessee has immediately made retraction within 3 months of search. Therefore, such disclosure which has been retracted within reasonable time and disclosure is not based on any cogent seized material cannot be considered for making addition as held by Hon'ble Gujarat High Court in the case of

Kailashben Manharlal Chokshi v. CIT [2010] 328 ITR 411 (Guj.) where CBDT Instruction F. No. 286/2/2003-IT(Inv) dtd. 10.03.2003 has been followed. The Hon`ble Supreme Court in Pullangode Rubber Produce Co. Ltd. v State of Kerala [1973] 91 ITR 18 (SC) held that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect. In the instant case, the assessee had shown that admission based on seized material B-90 to 92 is not correct as no such amount can be worked out from these seized material and even total of entries amount is less than Rs.94 lakhs.

9. Be that as it may be , we are inclined to accept the finding of Ld. CIT (A) that there was no material has been brought on record by the AO to make such huge addition without any basis and on retracted statement by the assessee. The CBDT Instruction F.No.286/2/2003-IT (Inv) dtd. 10.03.2003 says that the conditional statement taken without any material

on record, then no addition on that account should be made. In the light of above facts and circumstances, we do not find any error or infirmity in the order of CIT(A), hence, it is upheld. Ex-consequenti, the grounds of appeal of Revenue are dismissed.

10. In the result, the appeal of the Revenue is dismissed.

11. Order pronounced in the open court on 13-07-2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER

सुरत/ Surat, दिनांक Dated: 13<sup>th</sup> July, 2018

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

Sd/-

(ओ.पी.मीना/O.P.MEENA)

लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

By order

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Assistant Registrar, Surat