

3. The first issue raised in this appeal is against the confirmation of addition of Rs.10.00 lakh.

4. Briefly stated, the facts of the case are that the assessee is engaged in the business of plywood and furniture goods on retail basis. A survey action u/s.133A of the Income-tax Act, 1961 (hereinafter also called 'the Act') was carried out on 21-11-2012. During the course of such survey, the assessee surrendered an additional income of Rs.10.00 lakh on account of unexplained expenditure on foreign trip to Iraq, Deposits in Recurring deposit accounts, Investment in purchase of two plots, Investment in purchase of Tavera and Tata Sumo vehicles and certain amount spent on renovation of business premises etc. However, at the time of filing of the return, the assessee did not offer this income for taxation. The Assessing Officer (AO) made the addition of Rs.10.00 lakh, which came to be echoed in the first appeal. The assessee is aggrieved by the confirmation of the addition.

5. I have heard both the sides and gone through the relevant material on record. The assessee was subjected to survey action u/s 133A of the Act on 21.11.2012. His statement was recorded

during the course of survey, whose copy has been placed at pages 1 to 11 of the paper book. The assessee in response to question no.13 stated that no cash book etc. was maintained by him. From question nos. 16 to 23, the assessee admitted that he made trip to Mecca Madina and his wife and daughter also made trip to Iraq in June, 2012. Expenditure was stated to be Rs.25,000/- each totaling Rs.50,000/-. He further admitted to have opened R.D. account in the name of his minor daughter, Ms. Nafisa. Inventory of stock was prepared by the Officers of the Department. The assessee admitted the value of inventory at Rs.15,34,777/-. He also admitted that he purchased two vehicles, namely, Tavera and Tata Sumo and 1/4th of the price was contributed by him.

6. It is pertinent to note that the Hon'ble Supreme Court in *CIT Vs. S. Khader Khan Son (2013) 352 ITR 480 (SC)* has held that statement u/s.133A has no evidentiary value because the Authorised officer cannot administer oath but only record a statement. The Hon'ble Supreme Court further held that no admission made during such statement, by itself, be made the basis for addition. On a pertinent query, the ld. AR candidly

admitted that the plots referred to in the statement were, in fact, purchased by him. He further admitted that two vehicles and deposits in RD account etc. referred to in the statement were assessee's own transactions. Thus, it is manifest that the surrender made by the assessee during the course of survey action cannot be construed as *de hors* any cogent material or based on a mere confession by the assessee unsupported by any clinching material. The ld. AR fairly submitted that his grievance was confined only to the extent of the addition and not to the non-jurisdiction of the AO to make any addition based on the surrender made by the assessee during the course of survey. He put forth that the items of investments/expenses leading to surrender of Rs.10.00 lakh made by the assessee were not fully out of undisclosed sources and a part of the same was out of disclosed sources, which should be examined by the AO before making any addition. It is thus evident that the surrender made by the assessee during the course of survey is not based on mere statement, but also certain relevant evidence. However, the explanation of the assessee in respect of such items needs to be taken into consideration before making any addition. Considering the totality of the facts and circumstances of the

case, I am of the considered opinion that the ends of justice would meet adequately if the impugned order is set-aside and the matter is restored to the file of AO. I order accordingly and direct him to decide the amount includible in the assessee's total income, if any, pursuant to survey action after taking into consideration the explanation to be offered by the assessee in respect of foreign travels, investment in two plots, investment in two vehicles, deposits made in RD account and stock inventory etc. To the extent, the assessee satisfies the AO about the availability of sources of such amounts, the addition should be deleted. Needless to say, the assessee will be allowed an opportunity of hearing in this regard before reaching any conclusion.

7. The only other issue in this appeal is against the confirmation of addition of Rs.1,20,000/- made by estimating the household expenses.

8. The facts apropos this issue are that the AO observed that the assessee did not file capital account and family details. Considering the social status and standard of living etc., the AO

estimated household expenses at Rs.1,20,000/- and made addition for the same. The Id. CIT(A) sustained the addition.

9. Having heard both the sides and gone through the relevant material on record, it is seen that the estimation of household expenses made by the AO is premised on the foundation that the assessee did not furnish his capital account which could demonstrate the amount of drawings. Per contra, we find that the assessee's capital account has been placed at page 41 of the paper book. From such Capital account, it can be seen that the assessee has shown Household expenses at Rs.84,000/-; Education Fee (Nafisa) – Rs.20,000/- and Light bill at Rs.11,920/-. In this backdrop, it becomes apparent that the view point of the AO that the assessee did not withdraw any amount or, at least, the information in this regard was not available, is not correct. The amount of such withdrawals actually effected by the assessee during year towards household expenses stands at Rs.1,15,920/-, which is in close proximity to the amount of estimation made by the AO at Rs.1,20,000/-. Under these circumstances, I am satisfied that no addition on this score could

have been made. I, therefore, order to delete the addition of Rs.1,20,000/-.

10. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 30th April, 2019.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 30th April, 2019
सतीश

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-1, Nashik
4. The Pr. CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" /
DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	30-04-2019	Sr.PS
2.	Draft placed before author	30-04-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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