

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

**Before Sh. N. S. Saini, Accountant Member  
And**

**Sh. N. K. Choudhry, Judicial Member**

**ITA No. 643/Asr./2016 : Asstt. Year : 2010-11**

Income Tax Officer, Ward-2(5), Katra	Vs	Smt. Madhu Gupta, L/H of Late Shri. Subash Chander Gupta (deceased), Prop. M/s Neeraj Shawl Emporium & New Tridev Hotel, Shive Khori, Reasi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AHJPG2341N</b>		

**Assessee by : Shri. P. N. Arora, Adv.  
Revenue by : Sh. Charan Dass, DR**

**Date of Hearing :15.05.2019**

**Date of Pronouncement : 14.06.2019**

**ORDER**

**Per N. S. Saini, Accountant Member:**

This is an appeal filed by the Revenue against the order of Commissioner of Income Tax(Appeals), Jammu dated 23.06.2016.

2. The sole issue involved is that the Commissioner of Income Tax(Appeals) erred in deleting addition of Rs.85,98,690/- on account of undisclosed income surrendered during survey.

3. The brief facts of the case are that a survey u/s 133A of the Act took place on the business premises of the assessee on 23.06.2009. During the course of survey, the assessee

surrendered an income of Rs.1.25 crores over and above the normal income of the current year as under:

"1. Cash difference in New Tridev Hotel	Rs.8,56,000/-
2. Cash difference in Neeraj Shawl Emporium	Rs.7,43,000/-
3. Addition to building of hotel New Tridev	Rs.52,00,000/-
4. Excess stock of Neeraj Shawl Emporium	Rs.8,00,000/-
5. Sundry debtors	Rs.10,00,000/-
Total	Rs.85,98,690/-"

4. The letter of surrender was filed by Late Shri. Subash Chander Gupta proprietor of these concerns. Subsequently, Shri. Subash Chander Gupta and Smt. Madhu Gupta w/o Late Shri. Subash Chander Gupta and now the legal heir retracted from the surrender made at the time of survey vide letter dated 02.07.2009 that her husband had surrendered the amount under coercion and pressure made at the time of survey. The Assessing Officer considered the retraction made by them but rejected the retraction and completed the assessment on the basis of cash and other documents found during the course of survey. The Assessing Officer made addition of Rs.85,98,690/- to the income of the assessee.

5. On appeal, the Commissioner of Income Tax(Appeals) deleted the addition. The Commissioner of Income Tax(Appeals) held as under:

*"I have considered the assessment order. It is found from the assessment order that the AO has made the addition of Rs.85,99,000/- as under:-*

**Cash difference**

M/s New Tridev Hotel, Sheekhori	Rs.8,56,000/-
M/s Neeraj Shawl Emporium	Rs.7,43,000/-
Addition to building of Hotel New Tridev-	Rs.52,00,000/-
Excess stock of Neeraj Shawl Emporium-	Rs.8,00,000/-
Sundry debtors-Neeraj Shawl Emporium	Rs.10,00,000/-
Total	Rs.85,99,000/-

*The above additions were made on the basis of offer of surrender made by the assessee during the*

*course of survey. However, the assessee retracted from the surrender during the course of assessment proceedings and claimed that during the survey neither any incriminating documents were found nor any cash or difference in stock was found. There was no addition of Rs.52,00,000 in the hotel building and if there was some addition to building it was fully supported by vouchers.*

*The AO, on the other hand, could not find any discrepancy in the books of account of the assessee nor could he find any evidence or document to conclude that there was excess stock or undisclosed investment in the hotel building. He framed the assessment order only on the basis of the surrender made by the assessee and the AO has not given any separate findings for arriving out the undisclosed income of Rs.85,99,000/-.*

*In his Remand Report, the AO reiterated the same thing as has been stated in the assessment order.*

*The appellant, on the other hand, has submitted during the appellate proceedings that the Hon'ble ITAT, Amritsar Bench, Amritsar in ITA No. 470 (Asr)/2011 dated 07.10.2013 in the case of Benarasi di Hatti vs. ITO, ward -1, Pathankot has held as under:-*

*We have heard the rival contentions and perused the facts of the case. There is no dispute to the fact that the assessee had made a surrender initially amounting to Rs.53 lakh i.e. on account of investment in construction of shop building at Rs.35 lakhs, (Rs.20 lakhs in the impugned year and Rs.15 lakhs in the following year) and Rs. 15 lakhs & Rs.3 lakhs in cash and shortage in stock in hand in the following year. It is also not under dispute that the assessee had made the submissions before the AO which are available at pages 2 & 3 of AO's order and also reproduced hereinabove. The assessee has made a grievance petition, as stated, on realizing the import of the surrender and on realizing that he does not have adequate knowledge of books of account and there is no*

*discrepancy in the books of account vis-à-vis investment made. Personal hearing was given by the then JCIT on 22.11.2006 to Sh. Rishi Arora, partner of the firm. On 27.11.2006. The assessee has revised surrender in total at Rs. 8 lakhs as against Rs.53 lakhs mentioned hereinabove. On realizing that there is no further communication received from the Department, it was adduced by the assessee that surrender made has validly been accepted by the department. There is no dispute that the assessee has paid taxes on the said amount. The only dispute before us is that the department is relying upon the original surrender made on the date of survey, which has been retracted by the assessee. The assessee is relying upon the revised surrender which has been discussed with the JCIT on 22.11.2006 and revised surrender letter has been filed on 27.11.2006 is a matter of record. In this regard, C.B.D.T. vide Circular dated March 10,2003, which has been reproduced hereinabove, has clearly mentioned that "instances have come to the notice of the Board where the assessee has claimed that they have been forced to confess the undisclosed income during the course of the search and seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessee while filing returns of income. In these circumstances, on confessions during the course of search and seizure and survey operations do not serve any useful purpose. It was, therefore, advised by the C.B.D.T. that there should be focus to information on what has not been disclosed or is not likely to be disclosed before the Income-tax Department. It was also mentioned in the said Circular dated March 10, 2003 that the A.O. should rely upon the evidences/materials gathered during the course of search/survey operations. In this regard, in the present case, the assessee has submitted that the assessee was under mental tension and trauma and the surrender was made on the date of survey was without the knowledge of the relevant facts. There is no incriminating documents found during the course of survey or during the assessment*

*proceedings. Nothing has been brought adverse on record which may lead to information and which could prove that the assessee is having or has made undisclosed investment.*

*In the facts and circumstances of the case, the Department itself cannot go against its own Circular of CBDT dated March 10, 2003 (supra). Therefore, only on the basis of this Circular, the explanation of the assessee should have been accepted by the A.O. and the revised surrender of Rs.8 lakhs has to be accepted in such circumstances and facts of the case.*

*Though retraction has been made by the assessee within his own right and on the basis of facts on record and in the absence of any incriminating document found and therefore, even if the admission has been made on the date of survey that cannot be conclusive and the assessee has the right to prove that such admission made was incorrect. This proposition has been fortified by the decision of Hon'ble Supreme Court in the case of Pullangode Rubber Produce Co. Ltd. vs. State of Kerala And Another reported in (1973) 91 ITR 18, where it has been held that admission is an extremely important piece of evidence but it cannot be said that it is conclusive and it is open to the assessee who made the admission to show that it is incorrect and the assessee should be given a proper opportunity to show that the books of account do not disclose the correct state of facts. Also in view of the decision of Hon'ble Kerala High Court in the case of Paul Mathews And Sons vs. C.I.T. reported in (2003) 263 ITR 101, where it has been held that whatever statement is recorded under section 133A of the Act, it is not given any evidentiary value obviously for the reason that the officer is not authorized to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law. Also no books of account has been rejected by the A.O. and on one hand, the AO is accepting investment made in the building and on the other hand in the absence of any incriminating document is alleging*

*that the assessee has made undisclosed investment. The AO cannot blow hot and cold in the same breath in this regard. The decisions relied upon by the Ld. DR has been perused and taken into consideration and are on different facts and circumstances of the case. In such facts and circumstances of the case, the Id. CIT(A) is not justified in confirming the action of the Assessing Officer and accordingly, we direct the A.O. to delete the addition so made. Accordingly, all the grounds of the assessee are allowed."*

*I have gone through the above decision and found that the facts of the present case is similar to that of Benarasi di Hatti, where also the surrender was made during the course of survey conducted u/s 133A of the Income Tax Act but was retracted subsequently, it was held that surrender itself is not sufficient to hold the assessee guilty unless it is corroborated by other evidence collected by the Assessing Officer. In the present case also, the Assessing Officer has failed to bring out any evidence to corroborate the surrender made by the appellant. Thus, the addition made by the Assessing Officer cannot be upheld. The additions made are thus, deleted. In effect, the appeal is allowed."*

6. Being aggrieved by this order of the Commissioner of Income Tax(Appeals) the assessee is in appeal before us.
7. The Departmental Representative fully justified the order of the Assessing Officer.
8. On the other hand, the Authorized Representative of the assessee relied on the order of the Commissioner of Income Tax(Appeals).
9. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case, the Assessing Officer made addition

of Rs.85,98,690/- on the basis of surrender made by the assessee in statement recorded during the course of survey u/s 133A of the Act.

10. On appeal, the Commissioner of Income Tax(Appeals) deleted the above addition. The Commissioner of Income Tax(Appeals) recorded a categorical finding that no incriminating material relating to the above amount was found during the course of survey and the addition was made merely on the basis of statement recorded during the course of survey without any corroborative material.

11. The Ld. Departmental Representative could not point out any material before us to show that any actual discrepancy was found during the course of survey. Thus, it is observed that the addition was made by the Assessing Officer only on the basis of a statement of the assessee recorded during the course of survey which was not corroborated with the material found during the course of survey.

12. The Hon'ble Supreme Court in the case of CIT Vs S. Khader Khan Son (2013) 352 ITR 480 (SC) held that the statement recorded during the course of survey has non-evidentiary value.

13. Further, we find that the order of the Commissioner of Income Tax(Appeals) is also supported by the opinion of the CBDT expressed vide F.No. 286/2/2003-IT(Inv.) dated 10.03.2003. We, therefore, do not find any good reason to interfere with the order of the Commissioner of Income

Tax(Appeals). Accordingly, the appeal of the Revenue is dismissed.

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

(Order Pronounced in the Court on 14th day of June 2019 at Amritsar)

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

Sd/-  
**(N. S. Saini)**  
**Accountant Member**

**Dated: 14/06/2019**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**