

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.3434(Bang)/2018  
(Assessment Year : 2013-14)**

Shri A.S.Chinmai,  
Prop: Sri Kanaka Jewellers,  
B.M.Road,  
Hassan  
PAN No.AFTPC1672C

Appellant

**Vs**

The Deputy Commissioner of Income tax,  
Circle-1, Aayakar Bhavan,  
Vijayanagar, Belur Road,  
Hassan

Respondent

**Appellant by : Shri B. Sharath Kumar, Advocate**

**Respondent by : Shri Siddappajji, Addl.CIT**

**Date of hearing : 18-06-2019**

**Date of pronouncement : 05-07-2019**

**ORDER**

**PER SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

The assessee has filed this appeal challenging the order dated 01-03-2016 passed by the ld. CIT(A), Mysore and it relates to assessment year 2013-14.

2. The assessee has challenged the addition of Rs.83.33 lakhs made on the basis of statements given during the course of survey operations.

2.1 The facts relating to the issue are stated in brief. The assessee is carrying on business of dealing in Gold and Silver ornaments under the trade name M/s Kanaka Jewellers. The revenue carried out survey operations u/s 133A of the IT Act, 1961 in the premises of the assessee on 14<sup>th</sup> & 15<sup>th</sup> of February, 2013. During the course of survey operations, the assessee surrendered a sum of Rs.83.33 lakhs as his income in the statement taken at that point of time on account of excess stock, difference in methodology (sic. Valuation) of closing stock & pawn broking. After completion of Survey operations, the assessee filed a letter dated 18-02-2013, wherein it was mentioned that the stock difference was meager, viz., 230 gms in Gold articles and 32 Kgs in Silver articles. It was further submitted that there is no basis for arriving surrendered income of Rs.83.33 lakhs and the said figure was obtained from the assessee under coercion. It was also stated that the assessee did not state the amount of Rs.83.33 lakhs. Thereafter, the assessee furnished another

letter dated 26-04-2013, wherein he apologized for the letter written on 18-02-2013 and agreed to surrender additional income of Rs.50.00 lakhs over and above the returned income towards the difference in stock and difference in method of valuation. Even though, the assessee agreed for surrender of additional income of Rs.50.00 lakhs in its letter dated 26-04-2013, he did not offer the same in the return of income filed by him. However, the AO, accepting the submissions of the assessee mentioned in the letter dated 26-04-2013, restricted the addition to Rs.50.00 lakhs as against the offer of Rs.83.33 lakhs made at the time of survey.

3. The assessee challenged the addition of Rs.50.00 lakhs made by the AO by filing appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee contended that the addition cannot be made on the basis of statement taken during the course of survey operations, since the said statement does not have any evidentiary value. Reliance was placed on the following case law:-

- (i) *CIT Vs, S. Khader Khan Son* 352 ITR 480 [SC]
- (ii) *Paul Mathews & Sons Vs. CIT* [2003] 263 ITR 101 [Ker]
- (iii) *CIT Vs. M/s. Hotel Samrat* [2010] 323 ITR 353 [Kerala]
- (iv) *CIT Vs. Dhingra Metl Works*, [2010] 328 ITR 384 [del]

The Id. CIT(A) rejected the contentions of the assessee and enhanced the addition to R.83.33 lakhs with the following observations;

*“The aforesaid submission was carefully considered on the admitted facts. The evidence on record shows that the statement given by the appellant u/s.133A (3) of the Act on 14.02.2013 was not a mere statement, but a truthful statement recorded on the basis of supporting evidence gathered during the course of the survey conducted u/s 133A of the Act. The Assessing Officer and his team of personnel of the Income-tax Department obtained due authorization and meticulously went through the process of survey u/s.133A of the Act during which, the physical stock-in-trade of the appellant was inventoried. Thereafter, the inventory was compared with the quantity / value of the stock-in-trade reflected in the regular books of account maintained by the appellant. As a result of such comparison, it was found that the value of stock recoded in the appellant’s books of account was lower than the actual value. Since the unit cost of the undisclosed quantum of investment represented by the inventoried stock-in-trade that was found in excess of the stock-in-trade recoded in the appellant's books of account was a matter of the appellant's special knowledge, the appellant was confronted with the evidence found during the survey by the authorized officer of the Survey Team. After duly evaluating the evidence found and gathered during the survey, using his own specialized knowledge of the trade realities, the appellant concluded that his undisclosed investment represented by the stock which was found in excess of the stock recorded in the appellant's books of account was of the value of Rs.83,33,000/-. Therefore, the appellant admitted the aforesaid undisclosed investments at a value of Rs.83,33,000/- and also estimated the taxes payable thereon at Rs.25,00,000/- while answering Question No.11 of the statement recorded u/s.133A (3) (iii) of the Act, on 14/02/2013. Later, on afterthought, the appellant frequently changed his mind, obviously for the purpose of suppressing his taxable income and finally suppressed the entire quantum of his undisclosed investment while filing the return of income. Therefore, the judicial decisions cited by the appellant at (i), (ii), (iii) and (iv) in this paragraph do not come to his rescue. The appellant also made a statement in writing*

during the survey that the information given by him in the statement dated 14.02.2013 / 15.02.26 was true and correct to the best of his knowledge and belief and that he made that statement in a good state of mind without any coercion or undue influence. Therefore, the following judicial decisions are relied upon in support of the proposal for enhancement of the assessed income:

- When a statement was made voluntary and was not alleged to have been obtained under threat or coercion, onus was on the assessee to prove that the said declaration was made under any misconception of facts - Since the assessee had not taken any steps to rectify its declaration before authorities before whom such declaration was made, there was no valid reason for retraction of same after a gap of about two and a half months:

*Carpenters Classics (Exim) (P) Ltd. Vs. DOT (ITA 7; Bang) 108 TTD 142*

- For retraction to be valid, threat or coercion has to be proved.

*(i) Manharla/ Kasturchand Chokshi Vs. ACIT (ITA 7; A/id) 61 ITD 55*

*(ii) Param Anand Builders Vs. ITO (ITA T, Mum) 59 LTD 29*

*(iii) Works of Art (P) Ltd., Vs. A CIT (ITA 7; Jp) 65 LTD 40*

*(iv) Amritla/ Bhagwandas Son! Vs. DCIT (ITA 7; Ahd) 59 Tij] 418*

*(v) I-/ira/al Magan/al & Co., Vs. DCIT(ITA 7; Mum) 96 IT!) 113*

*(vi) Airport Authority of India Vs. CBEC (Del) 207 CTR 196 (v/i) Ravindra D.*

*Tr/ved/ Vs. UT(Raj) 215 CTR 313*

- An admission is the best evidence that an opposing party can rely upon and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous.

*(i) Narayan Bhagwantrao Gosavi Batajiwale Vs. Gopal ALT 1960 Sc 100*

*(ii) Prana v Construction Co. Vs. A CIT (ITA T, Mum) 61 Tij] 145*

15. Thus, the position of law with regard to the validity of the admission of undisclosed investment made by the appellant in a statement recorded from him which was based on evidence gathered during the survey u/s 133A of the Act is well settled and therefore, the written submission, dt.15/03/2018 of the appellant challenging the proposal for enhancement of the assessed income of the appellant is rejected after due

*consideration of the facts on record and the position of law applicable to those facts.*

16. *Thus, having established that the quantum of undisclosed investment represented by the amount expended by the appellant on making such investment in stock-in-trade exceeded the amount recorded in this regard in the books of account maintained by the appellant and since the appellant offered no satisfactory explanation about such excess amount, it is held that the assessed income of the appellant shall be enhanced by an amount of Rs. 33,33,000/- under Sec.69B of the Income-tax Act, 1961, thereby determining the assessed income of the appellant for the A.Y.2013-14 at Rs. 1,12,07,680/-, by exercising the powers vested in the undersigned authority under the provisions of clause (a) of sub-section (1) of section 251 of the Income-tax Act, 1961.*

4. Aggrieved by the order passed by Ld CIT(A), the assessee has filed this appeal before us.

5. We heard the parties and perused the record. The Ld A.R reiterated his contentions that the addition has been made only on the basis of statement taken during the course of Survey operations, which is held to have no evidentiary value by Hon'ble Supreme Court in the case of S.Khader Khan Sons (supra). On the contrary, the Ld D.R submitted that the surrender of Rs.83.33 lakhs made by the assessee has been arrived at on account of difference in the quantity, difference in valuation and considering income of the assessee in pawn broking business. Hence the Ld CIT(A) has held that the surrender is based upon the evidences and hence the decisions relied upon by the assessee is not applicable to the facts of the present case.

6. We have earlier noticed that the assessee has surrendered a sum of Rs.83.33 lakhs in the statement taken during the course of survey operations. As submitted by Ld D.R, the above said amount represented income relating to the difference in the quantity, difference in valuation and considering income of the assessee in pawn broking business. It is pertinent to note that though the assessee has disputed the quantum of surrender in his letter dated 18-02-2013, yet he filed another letter dated 26.04.2013, wherein the assessee has agreed to offer a sum of Rs.50.00 lakhs on account of difference in stock and difference in method of valuation.

7. The chronological event would show that the assessee has agreed to offer a sum of Rs.83.33 lakhs at the time of survey operations. As submitted by Ld D.R, the said amount is determined on the basis of difference in the quantity, difference in valuation and considering income of the assessee in pawn broking business. Hence, it cannot be said that the amount so surrendered does not have any basis. Though the exact break-up details of difference in the quantity, the variation in the method of valuation and suppressed income under Pawn broking business is not given, yet the fact remains that the odd amount of Rs.83.33 lakhs should have been arrived on some basis. Hence it cannot be said that the surrender of Rs.83.33 lakhs is without any basis. This is further fortified by the fact that the assessee himself has agreed to offer a sum of Rs.50.00

lakhs in his letter filed subsequently, which would mean, the assessee itself has arrived at the figure of Rs.50.00 lakhs by duly examining the surrounding facts. When there is basis for ascertaining the undisclosed income, then, we are of the view that the Ld CIT(A) was justified in holding that the various decisions relied upon by the assessee are not applicable to the facts of present case.

8. The next issue that requires consideration is the quantum of addition. As noticed earlier, the assessee had originally surrendered a sum of Rs.83.33 lakhs in the statement taken at the time of survey on account of difference in the quantity, the variation in the method of valuation and suppressed income under Pawn broking business. We notice that the assessee has asked for the basis of arriving at the undisclosed income of Rs.83.33 lakhs in his letter dated 18-02-2013, but it appears to have not been given. Despite that fact, we notice that the assessee himself has filed another letter dated 26.04.2013 subsequently, wherein he has agreed to offer a sum of Rs.50.00 lakhs towards difference in quantity and difference in valuation. We have noticed that the survey operations took place on 14<sup>th</sup> and 15<sup>th</sup> of February, 2018, meaning thereby, the assessee was having sufficient time between the dates of survey and the date of filing letter dated 26.04.2013, wherein the additional income of Rs.50.00 lakhs was surrendered.

9. We have noticed that the assessee was ignorant of the basis under which the additional income of Rs.83.33 lakhs was arrived. Hence the assessee has asked for the basis of arriving at the figure of Rs.83.33 lakhs in his letter dated 18.02.2013 (within three days of survey operations). It appears that the assessee was not given the basis. Even at the time of hearing before us, the Ld D.R could not furnish the basis for the amount of Rs.83.33 lakhs. Thus, it can be noticed that the revenue is unable to furnish the basis for determining the additional income of Rs.83.33 lakhs and hence the assessee is also not aware of it.

10. However, the assessee could arrive at the additional income at Rs.50.00 lakhs and agreed to offer the same, even though the assessee also did not furnish the details thereof. In any case, the fact remains that the basis of determining additional income of Rs.50.00 lakhs is within the personal knowledge of the assessee. We notice that the said offer has been accepted by the AO, even though the assessee did not offer the said amount also in the return of income. Accordingly, the AO has made the addition of Rs.50.00 lakhs.

11. In view of the above, we are of the opinion that the Ld CIT(A) was not justified in enhancing the addition to Rs.83.33 lakhs without furnishing the break-up details and basis thereof. Since the basis of determining the additional income of Rs.50.00 lakhs offered by the assessee in his letter dated 26.04.2013 is within the knowledge of the assessee, we are of the view that the same should be added as additional

income of the assessee. We notice that the AO has added the sum of Rs.50.00 lakhs as per the letter dated 26.04.2013 and in our view, the AO was justified for the same.

12. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and sustain the addition of Rs.50.00 lakhs made by the AO.

13. In the result, the appeal of the assessee is partly allowed.

Pronounced on 05-07-2019

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 05-07-2019

**\*am**

**(B.R.BASKARAN)**  
**ACCOUNTANT MEMBER**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

By Order

Asst.Registrar