

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI G. MANJUNATHA, AM  
&  
SHRI RAM LAL NEGI, JM

ITA No.766/Mum/2018  
(Assessment Year :2014-15)

M/s. Arham Neejdeep Realtors Shop No.8, Milan Apartment Near Post Office Vasai (W)-401 202	Vs.	ACIT, Circle-4 Thane, Room No.02 'A'Wing, Ashar IT Park Wagle Indl.Estate Thane-400 064
<b>PAN/GIR No.AASFA6761C</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Stany Saldhana
Revenue by	Somnath Wajale
<b>Date of Hearing</b>	<b>17/07/2019</b>
<b>Date of Pronouncement</b>	<b>17/07/2019</b>

**आदेश / ORDER**

**PER G.MANJUNATHA (A.M):**

This is an appeal filed by the assessee is directed against the order of the Commissioner of Income Tax Appeals-23, Thane dated 27/11/2017 and it pertains to the Assessment Year 2014-15. The assessee has raised the following grounds of appeal:-

- 1. Under the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) , {Ld. CIT (A) } erred in upholding the addition of Rs. 26,98,750/- to the returned income of the assessee allegedly on account of difference between the estimated profit as on date of survey and actual profit as per audited profit and loss account as on 31.03.2014 relying on the statement recorded without any appropriate reason and only on the basis of assumption and conjectures.*
- 2. Under the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals), (Ld. CIT (A)) erred ignoring the submissions made before him.*

3. *The Appellant crave leave to add, amend or delete the above ground.*
2. The brief facts of the case are that the assessee is a firm engaged in the business of real estate development and construction of residential and commercial buildings filed its return of income for AY 2014-15 on 30/03/2015 declaring total income at Rs. 1,15,01,250/-. In this case, survey u/s 133A was carried out on 09/12/2013. During the course of survey certain incriminating evidence in the form of Dairy was found. A statement of partner Shri. Paresh J.Ajmera was recorded on oath u/s 131, during which he was confronted with incriminating evidences. In response, as per question No.11, in the statement, he has admitted undisclosed income towards On-money receipts to the extent of Rs. 82 Lacs. Further, he had also admitted estimated profit for the Financial Year (FY) 2013-14 will be around Rs. 60 Lacs.
3. During the course of assessment proceedings, the AO noticed that although assessee had admitted estimated profit of Rs. 60 Lacs for FY 2013-14, but in return of income filed for the year, has admitted net profit of Rs. 33,01,250/- only therefore, called upon the assessee to explain as to why addition shall not be made towards profit admitted during the course of survey. In response, the assessee vide its letter dated 21/12/2016 explained reasons for reduction in profit for the year when, compared to estimated profit declared during the course of survey on 09/12/2013. The AO after considering relevant submissions of the

assessee and also taken note of statement of the partner given during the course of survey held that the assessee has failed to offer any explanation with evidences for reduction in profit, he therefore made additions of Rs. 26,98,750/-, being difference between estimated profit of Rs. 60 Lacs admitted during course of survey and net profit declared for the year under consideration.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated its submissions made before the AO to argue that when survey took place the partner of the firm was stated that estimated profit for the FY 2013-14, will be around Rs. 60 Lacs therefore, it is clearly indicates that the figure derived during the course of survey is only estimated but not actual. Further, when financial accounts have been prepared for the end of financial year, the profit has been determined at Rs. 33,01,250/- which is based on facts and figures and also the same has been audited and certified by the Auditors. The AO neither rejected of books of accounts, nor pointed out any discrepancy in books of accounts. In absence of contrary finding in respect of books of accounts, no additions could be made towards profit on the basis of estimated profit declared during course of survey. The Ld. CIT(A), after considering relevant submissions of the assessee and also taken note of the statement of partner given during the course of survey held that although the assessee has derived net profit of Rs. 60 Lacs as on the date of survey, i.e on 09/12/2013 but

declared lower profit without any explanation to justify declaring profit, therefore, he opined that there is no error in the findings of the AO and accordingly, sustained additions made by the AO and dismissed the appeal filed by the assessee. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The Ld. AR for the assessee submitted that the Ld. CIT(A) erred in not considering facts in right perspective while confirming additions towards difference in net profit declared for the year, because the profit for the year has been determined on the basis of books of accounts, which have been audited by Chartered Accountant without any adverse comments. Further, when survey took place the assessee has categorically stated that the profit for the year would be around Rs. 60 Lacs, this clearly indicates that profit was not quantified at the time of survey, therefore merely on the basis of admission during survey no additions could be made. In this regard, he relied upon the decision of ITAT, Mumbai in the case of Shri. Amod Shivlal Shah Vs ACIT in ITA No. 795/Mum/2015.

6. Ld. DR, on the other hand, strongly supported the order of the Ld. CIT(A)

7. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. It is an admitted fact that during survey on 09/12/2013, the partner of the firm, in his statement recorded u/s 131, stated that profit for the year will be around

Rs. 60 Lacs. It is also an admitted fact that such profit has been admitted without finalisation of books of accounts and also on estimated basis. Further, when books of accounts are finalised, the profit has been reduced to Rs. 33,01,250/-, which is based on regular books of accounts and such books of accounts have been audited by a Chartered Accountant. The AO neither rejected books of accounts nor pointed out any discrepancies in books of accounts. The AO made additions only on the basis of admission of the partner during the survey proceedings without any further evidences to prove that, in fact assessee has earned Rs. 60 Lacs profit for the year. On the other hand the assessee has explained the difference between profit with plausible reasons as per which estimation of profit was on the basis of many factors such as sales take place up to date of survey, expected sales thereafter, and corresponding expenses. When the books of accounts are finalised, it was noticed that sales expected after the date of survey not got materialized. Due to this, the profit for the year has been reduced, otherwise the profit declared by the assessee for the year under consideration is more than the profit declared for immediately preceding years and also subsequent two years. Under these circumstances, it is incorrect on part of the AO to make additions only on the basis of survey statement recorded u/s 131 of the I.T.Act, 1961. No doubt, statement recorded in the course of survey is a good piece of evidence but not conclusive. Unless further corroborative evidence supports the

statements, no adverse interference could be drawn only on the basis of survey statements. This legal proposition has been upheld by the Hon'ble Supreme Court in the case of CIT Vs. S. Khader Khan Son 352 ITR 480 (SC). Further, the Hon'ble Supreme Court in the case of Pullangode Rubber Produce Co.Ltd. Vs State of Kerala and other 91 ITR 18 (SC) has reiterated similar position of law. The ITAT, Mumbai in the case of Shri Amod Shivlal Shah VS ACIT in ITA.No.795/Mum/2015 has considered identical issue and held that unless further corroborative evidences supports admission of income during the course of survey u/s 133A, no additions could be made only on the basis of statement recorded during the course of survey.

8. In this view of the matter and following the ratios of case laws discussed hereinabove, we are of the considered view that the AO as well as CIT(A) were erred in making additions towards difference in profit declared for the year. Hence, we direct the AO to delete the additions made towards difference in net profit.

9. **In the result, appeal filed by the assesee is allowed.**

Order pronounced in the open court on this 17 /07/2019

**Sd/-**  
**(RAM LAL NEGI)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 17 /07/2019  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**