

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.474/Ind/2018
Assessment Year: 2013-14**

Narendra Kumar Simhal (HUF) Prop:- M/s Alankar Jewellers, 30, Roshanpura, T.T. Nagar, Bhopal (Appellant)	<u>बनाम/</u> Vs.	ITO-1(2) Bhopal (Revenue)
PAN: AACHN2629G		
Appellant by	Shri Ashish Goyal & Shri N.D. Patwa, Advs	
Revenue by	Shri K.G. Goyal, Sr. DR	
Date of Hearing:	25.11.2019	
Date of Pronouncement:	29.11.2019	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal at the instance of Assessee pertaining to A.Y. 2013-14 is directed against the order of Commissioner of Income Tax(Appeals), Bhopal, (in short 'CIT'), dated 27.03.2018 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 25.02.2016 by ITO-1(2), Bhopal.

2. The assessee has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in not accepting the bill for Rs.12,23,675/- towards purchase of diamond jewellery and in confirming the difference amount of Rs.12,23,675/- as was stated by assessing officer.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the difference amount of Rs.12,23,675/- towards purchases of diamond jewellery while accepting the gross profit on the diamond sale.

3. The appellant craves leave to add, to alter and/or to modify the grounds of appeal on or before the date of hearing. ”

3. From perusal of the above grounds we find that sole issue relates to addition of Rs.12,23,675/- towards purchase of diamond jewellery.

4. Briefly stated facts as culled out from the records and confined to the impugned addition of Rs. 12,23,675/- are that the assessee is a Hindu Undivided Family(HUF) running sole partnership concern to M/s Alankar Jewellers engaged in jewellery business. Survey u/s 133A was conducted on 23.01.2013. During the course of survey assessee surrendered Rs.6 crores towards undisclosed income and agreed to offer in the Income Tax Return. Subsequently, the assessee filed e-return of income on 27.09.2013 declaring income of Rs.8,01,66,140/-. Notices u/s 143(2) & 142(1) of the Act duly served upon the assessee. Ld. AO while examining the records viz-a-viz surrender offered in the return of income observed that during the course of survey assessee surrendered Rs.1,70,28,253/- on account of undisclosed diamond jewellery whereas in the profit and

loss account surrender has been made only for Rs.1,18,92,894/-. Assessee was asked to explain about the alleged difference of Rs.51,35,359/-. In reply assessee submitted that Rs.38,14,359/- is the gross profit element which was part of the goods valued at market price and therefore, the same needs to be deducted to arrive at the correct cost of investment in undisclosed stock. Remaining amount of Rs.12,23,675/- is on account of purchase bill issued by Laxmi Dia Jewels P. Ltd. which was not accounted for in the books. However, Ld. AO was not convinced and he made an addition of Rs.51,35,359/- and assessed income at Rs.8,53,01,499/-.

5. Aggrieved assessee preferred an appeal before Ld. CIT(A) and partly succeeded as the plea of the assessee for gross profit element of Rs.38,14,359/- in the undisclosed stock was accepted and the addition was deleted but additions towards unaccounted purchase of Rs.12,23,675/- was confirmed.

6. Now the assessee is in appeal before the Tribunal against the impugned addition of Rs.12,23,675/-.

7. Ld. counsel for the assessee made following written submissions:

1. The Purchases can be verified from following Documentary evidences:-

- *The Retail Invoice dated 05.11.2012 amounting to Rs. 12/23/675/- (PB 67-68)*
- *The Ledger account of Laxmi Dia Jewel Pvt ltd from*

whom the Diamond setted Jewellery (Imputed) was purchased amounting to Rs. 12/23/675/- is on PB 70.

- *The Ledger confirmation in books of Laxmi Dia Jewel pvt ltd is also on PB 72 showing the genuine purchases. The Id Lower authorities choose not to verify the fact from 'Laxmi Dia jewel Pvt Ltd.*

2. The working of Jawahart Account as per assessee is on PB 47.

3. Addition based on Surrender during Survey is unjustified:-

The Hon'ble Kerala High Court in Paul Mathews & Sons v. CIT [2003J 181 CTR (Ker.) 207 : [2003J 263 ITR 101 (Ker.) has held that the statement recorded under s. 133A has no evidentiary value.

The same view has been reiterated recently by the Hon'ble Madras High Court in the case of CIT v. S. Khader Khan Son [2008J 214 CTR (Mad.) 5~9 : [2008J 300 ITR 157 (Mad.) holding that s. 133A does not empower any IT authority to examine any person on oath and hence such statement has no evidentiary value and any admission made in such statement cannot, by itself, be made he basis for addition.

It is pertinent to note that the SLP against the S. Kader Khan's case was dismissed by Supreme Court vide order [2013] 352 ITR 480 (SC)/[2012] 254 CTR 228 (SC)

8. Per Contra Ld. Departmental Representative (DR) vehemently argued supporting the orders of the lower authorities and also submitted that the alleged purchase of Rs.12,23,675/- was duly entered in the books of Laxmi Dia Jewels P. Ltd. on 05.11.2012 whereas in the assessee's books it was entered after the date of survey i.e. 24.1.2013. The Ld. DR contended that both these entries

ought to have been entered on the same day, therefore, the finding of both lower authorities are correct that the assessee as an afterthought increased the purchase amount.

9. We have heard rival contentions and perused the record placed before us and carefully gone through the judgment referred and relied by the Ld. counsel for the assessee. The issue is confined to the addition of Rs.12,23,675/- made by the Ld. AO and confirmed by the Ld. CIT(A) for the very reason that the purchase bill amounting to Rs.12,23,675/- was not found at the business premises of the assessee during the course of survey. The assessee has did not gave any information during survey proceedings about any such purchase not entered in the regular books of accounts. The revenue has also alleged that it was only during the course of assessment proceedings that the assessee came up with story about the purchase bill of Rs.12,23,675/- which seems to be an afterthought and such claim to be denied.

10. It is settled position of law, as held by Hon'ble Apex Court confirming the view taken by Hon'ble Madras High Court in the case of *CIT vs. S. Khader Khan Son* (supra) that the statement on recorded u/s 133A of the Act have no evidentiary value and the same cannot be made as a basis for addition. It is also settled a law that surrendered amount made by an assessee during the course of survey should be correlated with the material evidence found

during the course of survey and not just the statement record during the course of survey.

11. In the instant case the issue relates to purchase of Rs.12,23,675/-. This purchase amount was not included in the purchase book at the time of survey. The purchase bill was also not found by the survey team and assessee also did not give any information relating thereto. These were the reasons for which the additions have been confirmed by both the lower authorities but the question remains that when the assessee has filed the copy of purchase bill before the lower authorities which in this case is bill issued by the Laxmi Dia Jewels P. Ltd., Mumbai, invoice No.1377/12-13 dated 05.11.2012 having complete details about gross weight and the items being part of the total gross weight of 155.930 gms, whether both the lower authorities were justified in ignoring such evidence without verifying its genuineness.

12. We find that the assessee has given details of invoices, debit notes, ledger account of assessee in the books of Laxmi Dia Jewels P. Ltd. The alleged entries of Rs.12,23,675/- duly appears in the ledger account of Laxmi Dia Jewels P. Ltd. entered on 05.11.2012. However, assessee made the entry in its books of accounts on 24.01.2013 i.e. the day after the survey date. It is not so that the assessee made the story of the alleged purchase amount of Rs.12,23,765/- only during the course of assessment proceedings. The fact is that in the audited financial statements this entry has

been duly incorporated since there is no balance of Laxmi Dia Jewels P. Ltd. at the end of the year and the amount has been squared off. The payments for the purchase from Laxmi Dia Jewels P. Ltd. are always through account payee cheque and the last payment is on 24.03.2013 i.e. before the end of the financial year 2012-13 which is much before the commencement of assessment proceedings from 12.02.2014. The assessee has also filed reconciliation statement to explain the details of total difference of Rs.1,70,30,928/- which is placed at page 47 of the paper book. Both the lower authorities ought to have also considered the issue in the entirety of the case which in our view is that the assessee made a surrender of Rs.6 crores during the course of survey and except for the alleged difference of purchase bill of Rs.12,23,765/- and the gross profit element of Rs.39,14,359/-, the remaining amount has been duly offered to tax. Addition for gross profit at Rs.39,14,359/- already stands deleted by Ld. CIT(A). There seems no *mens rea* on the part of the assessee to evade the tax by the alleged purchase amount of Rs.12,23,675/- which is too small in comparison to the total surrender amount accepted during the course of survey and subsequently major amount offered to tax.

13. We, therefore, in the given facts and circumstances of the case and after examining the purchase bill, ledger account of the supplier, entries of the alleged purchase in the books of accounts which finally comes into shape forming part of audited financial statements, are of the considered view that both lower authorities

should have accepted the assessee's contention for the purchase of Rs.12,23,675/- which inadvertently remained to be entered in the books of accounts for *bona fide* reason. The said purchase seems to be genuine purchase and the claim should be allowed by the authorities below. Thus, finding of both the lower authorities needs to be set aside and the addition of Rs.12,23,675/- is directed to be deleted. Ground No.1 & 2 of the assessee's appeal are allowed. Ground No.3 is general in nature which needs to adjudication.

14. In the result, the appeal of the assessee stands allowed.

Order was pronounced in the open court on 29.11.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 29/11/2019

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Assistant Registrar