IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member

ITA No	Assessee & PAN	Respondent	A.Y
431/Hyd/2020	Smt. Rontala Tirumala, Karimnagar AFJPR7315F	ACIT, Circle 1(1) Karimnagar	2014-15
432/Hyd/2020	Sri Rontala Rajireddy Karimnagar AFOPR5625R	- Do -	2014-15
433/Hyd/2020	Sri Kotagiri Bhooma Goud, Karimnagar AJBPK7713Q	- Do -	2014-15
434/Hyd/2020	Sri Sampath Suddala Karimnagar BACPS3467C	- Do -	2014-15

Assessee by:	Smt. V. Sreelatha Reddy
Revenue by:	Sri A. Venkata Rao, DR
Date of hearing:	21/04/2021
Date of pronouncement:	28/05/2021

ORDER

All are the appeals of the respective assessees for the A.Y 2014-15 against the individual orders of the CIT (A)-12, Hyderabad, dated 7.2.2020.

2. Brief facts of the case are that the assessees before this Tribunal are the Directors of the Private Limited Chit Fund Company under the name of M/s. Sannihita Chit Funds Pvt. Ltd. There was a survey operation u/s 133A of the act in the case of the company on 16.10.2014. During the course of survey, certain material such as small notebooks were found and impounded. On going through these diaries, the Revenue Authorities observed

that these diaries were containing certain entries, such as amounts and names and the names of the directors of the company, are written in short forms. One of the Director, Shri Rontala Raji Reddy was present at the time of survey and when he was confronted, he explained the contents of the note books, as the details of the loans/advances of the individual directors to different persons in the financial year 2013-14 and that the sub-title on the note books denotes the directors' name in short. He expressed his inability to furnish the details such as the address and PAN of the parties to whom the Directors have allegedly advanced the loans and it was explained that these small note books were kept in the office of the company for convenience. He further offered to admit additional income (apart from the regular income) i.e. Rs.15.00 lakhs each in the hands of Sri Suddala Sampath, Sri Rontala Raji Reddy and Smt. Rontala Tirumala and Rs.16.00 lakhs in the case of Sri Kotagiri Bhooma Goud. Thus, the statement of Sri Rontala Raji Reddy was recorded u/s 131 on 17.10.2014 and Shri Raji Reddy assured that since the returns of the directors in their individual capacity for the A.Y 2014-15 were not yet filed and were under process, the additional income would be offered. However, while filing the returns of income, the respective assessees did not offer the additional income in their hands.

3. The Assessing Officer therefore, proposed to add the said additional income by issuing a show-cause notice to all the assessees. The assessees explained that the small books/diaries which were found during the course of the survey did not belong to the Directors and that the statement given by Sri Rontala Raji Reddy during the survey proceedings were under duress and that

they have complained to the CBI immediately thereafter and the CBI had impounded the books from the Department and hence the statement cannot be relied upon to make any additions. The Assessing Officer did not accept this contention and by taking into consideration the notings in the small diaries, and also the statement of Sri Raji Reddy, he made the addition of Rs.15.00 lakhs to the returned income of the assessees, i.e Sri Suddala Sampath, Sri Rontala Raji Reddy and Smt. Rontala Tirumala and Rs.16.00 lakhs in the case of Sri Kotagiri Bhooma Goud.

4. Aggrieved, the respective assessees preferred appeals before the CIT (A), who confirmed the orders of the Assessing Officer and the assessees are in second appeal before the Tribunal. For the purpose of convenience and ready reference, the grounds of appeal raised by Shri Rontala Raji Reddy are reproduced hereunder:

> "*1. On the facts and circumstances of the case and in law the AO erred in making an addition of _Rs.15,00,000/- to the total income of the assessee.*
>
> *2. The CIT(A) is not justified for not considering that there were no compelling circumstances as specified U/s 133A(6) for obtaining a sworn statement U/s 131(1).*
>
> *3. The CIT (A) is not justified in considering the sworn statement of the assessee U/s 131 (1) which is obtained unlawfully, as evidentiary statement.*
>
> *4. The CIT (A) ought to have appreciated the fact that undated documents shall be presumed to be belonging to the period in which Survey U/s. 133A was conducted i.e.,F.Y 2014-15.*
>
> *5. The CIT (A) is not justified in sustaining the addition made based on sworn statement of the assessee U/s 131(1), which is obtained unlawfully and by coercion and intimidation. And the assessee discharged the burden of proving coercion and intimidation by way of giving CBI complaint.*
>
> *6. The CIT (A) ought to have appreciated the fact that delay in retraction of the assessee from the admission made was for*

the bonafide reason of pending case before CBI to find the facts. Denial of retraction is not justified.

7. The CIT (A) is not justified in sustaining the addition based on the admission made by the assessee without any corroborative evidence. The evidence which is relied by the department cannot be constituted as a "Document" U/s 3(18) of the General Clauses Act, Where in the evidence do not indicate whether the figures refers to quantitatives of money or quantitatives of goods and if so which side represents receipts and which side represents outgoing where there is no narration the chit can be called as dumb documents, without indicating any meaning cannot be treated as documents.

8. Without prejudice to the above grounds, the CIT (A) ought to have appreciated the fact that the assessee is being assessed for the past 15 years. The addition made in the hands of the assessee may be telescoped with the previously taxed income.

9.The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal".

5. The learned Counsel for the assessee Smt. V. Sreelatha Reddy submitted that during the course of survey, the statement of Shri Rontala Raji Reddy was recorded/obtained by coercion and under duress and the Income Tax Officers had demanded huge amounts from the assessees and therefore, assessees have made complaints to the CBI and the CBI had impounded all the documents from the Department. She submitted that the documents taken by the CBI contained two original cheques and cash book of M/s. Sannihita Chit Funds Pvt. Ltd which were not part of the impounded material by the Department. Thus, it can be seen that the Department had not acted in good faith while conducting the survey and while impounding the documents found during survey. She also drew my attention to the copies of the diaries which are part of the paper book to demonstrate that these diaries are dumb

documents and the details therein cannot be relied upon to make any additions. Further she also argued that the statement given by the Managing Director of the company at the time of survey (to offer additional income) was retracted immediately by issuance of a complaint to the CBI and such statements cannot be relied upon to make any additions in the hands of the respective assessees. She, therefore, prayed that the additions made by the Assessing Officer and confirmed by the CIT (A), be deleted.

6. The learned DR, on the other hand, supported the orders of the authorities below and argued that the additions were on the basis of the entries in the books found at the time of survey which were corroborated and confirmed by the statement of the Managing Partner. Thus, he prayed for confirmation of the additions.

7. Having regard to the rival contentions and the material on record, I find that the statement of the M.D Shri Rontala Raji Reddy was recorded on 17.10.2014 i.e. a day after the survey on 16.10.2014 and the diaries impounded during the course of survey allegedly corroborated the statement. It is a settled position that no addition can be made solely on the basis of a statement given during the course of search or survey. In this case I find that though the assessees did not retract the statement of Sri Raji Reddy by filing any letter before the Revenue Authorities, I find that they have complained to the CBI and the CBI has impounded the material from the Department, which contained not only the small diaries but also some other documents, such as the original copies of the cheques allegedly issued by the directors under duress. Though the CBI proceedings

are still pending, a doubt about the survey proceeding arises. Further, diaries on which the Assessing Officer has relied upon, do not contain any details other than the names of the loanees to whom the advances are allegedly given by the individual directors of the company. Further, the names of the assessees are allegedly written in short form. Therefore, it is not possible to identify the loanees or verify the transactions. Further, the complaint given by the individual directors to the CBI also throws a doubt about the voluntariness of the statement given by the Managing director.

8. In view of the same, I am inclined to accept the contention of the learned Counsel for the assessees that the documents on the basis of which, the additions are made by the Assessing Officer are nothing but dumb documents and the additions made on the basis of such documents cannot be sustained. In view of the same, the additions made by the Assessing Officer in the hands of all the assessees are deleted. The assessees appeals are accordingly allowed.

9. In the result, appeals of all the assessees are allowed.

Order pronounced in the Open Court on 28th May, 2021.

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, dated May, 2021.

Vinodan/sps

Copy to:

S.No	Addresses
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2	Sri Rontala Rajireddy, H.No.2-10-1644, Flat No.203, Chaitanyapuri Karimnagar 505001
3	Sri Kotagiri Bhooma Goud, H.No.3-7-520 Vavilapalli, Karimnagar
4	Sri Sampath Suddala H.No.6-45/1 Mulakanoor Village, Bheemadevarapalli Mandal, Karimnagar 505001
5	ACIT, Circle-1 Karimnagar
6	CIT (A)-12, Hyderabad
7	Pr. CIT – 12, Hyderabad
8	DR, ITAT Hyderabad Benches
9	Guard File

By Order