IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.9556/Del/2019
Assessment Year: 2017-18

Kohinoor Crafts, Turki Estate, Kohinoor Tiraha, Sambhal Road, Moradabad.	Vs.	ACIT, Central Circle, Moradabad.

PAN: AADFK7275N

(Appellant)		(Respondent)
Assessee by	:	Shri Mayank Patawari, CA
Revenue by	:	Shri R.K. Gupta, Sr. DR
Date of Hearing	:	01.09.2021
Date of Pronouncement	:	22.09.2021

ORDER

This appeal filed by the assessee is directed against the order dated 21st August, 2019 of the CIT(A)-3, Lucknow, relating to Assessment Year 2017-18.

2. Facts of the case, in brief, are that a search and seizure operation u/s 132 of the IT Act, 1961 was carried out on 15th December, 2016 in M/s Kohinoor Craft & M/s Vision Exports Group of cases. During the course of post search investigations various amounts were surrendered by the group companies. So far as the assessee is concerned, an amount of Rs.25 lakh was surrendered by the

assessee through its partner Shri Iftikhar Ali wherein the partner had mentioned as under:-

> ñ7. On the basis of state of accounts as on 15/16.12.2016 the following disclosure of income is made:
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> -Any income, expenditure or investment of the assessee firm and its partners not found recorded in the books of account for the period 01.04.2010 to 14.12.2016 Rs.25.00 lacs.ò

3. However, the AO, during the course of assessment proceedings, noted that the assessee firm had not shown the aforesaid amount of Rs.25 lakhs in the return filed u/s 139(1) and has not offered to tax. Since the assessee had *suo motu* offered the above amount and has not retracted specifically, but, had retracted by not offering the above amount as its income, the AO held that the above amount is liable to be added back to the returned income of the assessee firm. He, therefore, issued the notice u/s 142(1) asking the assessee firm to explain as to why the amount of Rs.25 lakh should not be added to the total income of the assessee.

4. It was explained that the assessee firm is engaged in the business of manufacturing and export of Indian handicrafts. During the search on 15th December, 2016, the statement of the partner was recorded and no additional income was disclosed. It was submitted that search was conducted at the premises of the partnership firm M/s Vision Exports where both the sons of the deponent Mr. Danish Ali and Mr. Tariq Ali are partners. Mr. Tariq Ali in his statement recorded u/s 132(4) of the Act had in apprehension of any possible act

of error and omission and under mistaken belief of law and fact, had offered income of Rs.11 crores pertaining to his partnership firm M/s Vision Exports, his brother Mr. Danish Ali and M/s Kohinoor Crafts. However, the said disclosure was not supported by any cogent evidence, but, an act of surmise and conjectures. It was submitted that Mr. Tariq Ali was not in any manner connected with the affairs of M/s Kohinoor Crafts and was neither competent nor authorized to make any disclosure on behalf of M/s Kohinoor Craft. It was argued that subsequent to search on 15th/16th December, 2016, in response to the summons issued u/s 131(1A) of the Act, the deponent in apprehension of any possible act of error and omission and under mistaken belief of law and fact had made the disclosure of Rs.25 lakh as any income, expenditure or investment of the assessee firm and its partners not found recorded in the books of account for the period from 01.04.2010 to 14th December, 2016. It was accordingly argued that no amount was offered to tax in absence of any incriminating material found during the course of search for the above amount.

5. However, the AO was not satisfied with the arguments advanced by the assessee. Relying on various decisions, the AO made the addition of Rs.25 lakhs on the ground that the assessee had admitted an income of Rs.25 lakhs in his statement recorded u/s 131(1A) and that admission was not retracted at all. The AO, accordingly, made an addition of Rs.25 lakhs to the total income of the assessee u/s 69C of the IT Act as unexplained expenditure. While making the addition, the AO relied on the following decisions:-

(i) Surjeet Singh Chhabra vs. Union of India & Ors., SLP (Civil) No.14028 of 1996, judgement dated 25.10.1996;

(ii) Narayan Bhagwantrao Gosavi Balajiwale vs. Gopal Vinayak Gosavi, AIR 1960 SC 100;

(iii) Satinder Kumar (HUF) vs. CIT, (1977) 106 ITR 64 (SC);

(iv) Avadh Kishore Das vs. Ram Gopal, AIR 1979 SC 861;

(v) B. Kishore Kumar vs. CIT, 62 taxmann.com 215;

(vi) Bhagirath Aggarwal vs. CIT, 31 taxmann.com 274, 351 ITR 143 (Del);

(vii) Raj Hans Towers (P) Ltd. vs. CIT, 373 ITR 9;

(viii) Smt. Dayawanti vs. CIT, 75 Taxmann.com 308;

(ix) Rakesh Mahajan vs. CIT, 214 CTR 218;

(x) CIT v. Ashok Kumar Soni (2007) 291 ITR 172;

(xi) Ravi Mathur & Others (DB Appeal No.67/2002 & Others ï Rajasthan High Court);

(xii) Pr. CIT vs. Avinash Kumar Setai (ITA 935/2016 dated 01.05.2017);

(xiii) Kanti Lal Parbhu Das Patel vs. DCIT (2005) 93 ITD 117 (Indore);

(xiv) Dr. SC Gupta vs. CIT (2001) ITR 782 (All);

(xv) Kantilal C. Shah vs. ACIT (2011) 133 ITD 57 (Ahd); &

(xvi) ACIT vs. Hukumchand Jain (2011) 337 ITR 238 (Chattisgarh).

6. In appeal, the ld.CIT(A) upheld the action of the AO. While doing so, he relied on the decision of the Hon'ble Allahabad High Court in the case of Ravi

Kumar Verma vs. CIT reported in 214 Taxmann 117, wherein it has been held that retraction made after four years is an afterthought and the decision of the Hon'ble Allahabad High Court in the case of Dr. S.C. Gupta vs. CIT, reported in 248 ITR 782 wherein it is held that retraction of statement made voluntarily is not sufficient and the burden is on the assessee to establish that earlier admission is wrong.

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

> ñ1. That the Ld. CIT(A) has erred on facts and under the law in confirming the addition of Rs. 2500000/- Under section 69C of the Income tax Act, 1961 inter alia because;
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> (i) The appellant firm had not offered any undisclosed income in statements u/s 132(4) of the Income-tax Act, 1961 during the course of search.
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> (ii) Any ambiguous, undefined admission of income of Rs. 25,00,000/- in response to summons u/s 131(1A), retracted later on, on account of any possible income/ expenditure or investment of the appellant firm not found recorded in its books of account for the period 01.04.2010 to 14.12.2016 cannot be added to the total income of the appellant firm for A.Y 2017-18 without any evidence in possession of the department.
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> (iii) Provisions of section 69C of the IT Act in terms had no application to the facts of Appellantôs case.
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> 2. The appellant craves leave to add one or more grounds of appeal or to alter/modify the existing grounds before or at the time of hearing the appeal.ò

8. The ld. Counsel for the assessee strongly challenged the order of the CIT(A) in upholding the order of the AO making the addition of Rs.25 lakhs. He

submitted that it is evident from the copy of ópanchnamaô that no material pertaining to the assessee was found during the search that took place on 15th December, 2016 showing the existence of any unexplained investment. He submitted that in the statement recorded u/s 132(4), there was no admission made by the assessee himself. He submitted that when no undisclosed income or undisclosed investment was found from the premises of the assessee during the course of search and the addition was made based on the statement of the partner of the assessee company offering additional income, then, no addition should be made in absence of any corroborative material. He submitted that admission made in a statement u/s 131 (1A) has no evidentiary value and the burden is on the Revenue to bring corroborative material/evidence either during the search or post search proceedings to prove the existence of any undisclosed income. He submitted that the assessee has filed an affidavit dated 15th October, 2018 retracting the disclosure made, however, the same was rejected by the AO on the ground that such retraction letter was filed at the fag end of the assessment proceedings. Referring to the statement made by the assessee in the 131(1A) proceedings, he submitted that the reply of the assessee mentions that income pertains to the period from 01.04.2010 to 14th December, 2016. However, the AO, in the instant case, has added the whole income in the impugned assessment year without making any further inquiry for the impugned assessment year and has not made any addition during A.Y. 2011-12 to 2016-17.

9. Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. Mantri Share Brokers Pvt. Ltd., 96 taxmann.com 280, he submitted that the Hon'ble Supreme Court has held that no addition u/s 69B can be made in the hands of the assessee where except the statement of Director of the assessee company offering additional income, there was no other material found in the form of cash, bullion or jewellery or document in any other form to justify the said additional income. Referring to the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Dilbagh Rai Arora, reported in 263 Taxman 30, he submitted that the Hon'ble High Court in the said decision has held that merely because during the search the assessee surrendered an amount in stipulation that details of same would be given in due course of time, but, no such assets were ever found/identified by authorities, no addition could be made to assessee's income.

10. So far as the various decisions relied on by the AO and CIT(A) are concerned, he submitted that all those decisions are distinguishable and not applicable to the facts of the present case. In all those cases, the admissions were corroborated with incriminating documents found or impounded whereas in the instant case, nothing was found except the statement of the assessee. Referring to the decision of the Hon'ble Supreme Court in the case of Satinder Kumar (HUF) vs. CIT, reported in 106 ITR 64, he submitted that the Hon'ble Court has held that admission made by an assessee constitutes a relevant piece of evidence, but,

if the assessee contends that in making the admission he had proceeded on a mistaken understanding or on misconception of facts or on untrue facts, such an admission cannot be relied upon without first considering the aforesaid contention. He accordingly submitted that the facts of the case are contrary to the view taken by the AO. Referring to the decision in the case of CIT vs. Ashok Kumar Soni, reported in 291 ITR 172 relied on by the AO is concerned, he submitted that the Hon'ble Court in the said case has clearly mentioned that admissions are relevant and strong piece of evidence that may be used against the person making such admission but, they are not conclusive proof of the statement contained in the admission and can always be explained which is contrary to the view taken by the AO. He accordingly submitted that the addition made by the AO and sustained by the CIT(A) should be deleted.

10.1 The ld. DR, on the other hand, heavily relied on the order of the AO and CIT(A).

11. I have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find, the AO, in the instant case, made addition of Rs.25 lakhs to the total income of the assessee u/s 69C of the IT Act on the ground that Shri Iftikhar Ali, partner of the assessee firm in his statement made u/s 131(1A) dated 22nd February, 2017, had surrendered an amount of Rs.25 lakhs ñon account of any other income/expenditure or

investment of the firm and its partners not found recorded in the books of account for the period 01.04.2010 to 14th December, 2016.ò I find, the AO, while making the addition has also observed that the assessee had not disclosed the above amount in his return of income, the retraction letter filed vide affidavit dated 15th October, 2018 was at the fag end of the assessment proceedings and the assessee did not file any evidence to prove the bona fide on its part. I find, the ld.CIT(A) upheld the action of the AO on the ground that the assessee had voluntarily disclosed Rs.25 lakhs during post search investigation proceedings which was not disclosed in the return of income filed u/s 139(1) of the Act and this act of the assessee tantamount to retraction from disclosure of Rs.25 lakhs made by the assessee. According to the ld.CIT(A), the retraction from the disclosure of income of Rs.25 lakhs made by the assessee is clearly an afterthought and, therefore, is not acceptable. It is the submission of the ld. Counsel that no material pertaining to the assessee was found during the search on 15th December, 2016 showing the existence of any unexplained investment which is evident from ópanchnama.ô Further, no admission was made in the statement recorded u/s 132(4) and the admission made in the statement recorded u/s 131(1A) has no evidentiary value and the onus is upon the Revenue to bring corroborative material/evidence on record either during the search or post search proceeding to prove the existence of any undisclosed income. It is also his submission that the statement mentions that the income pertains to the period 01.04.2010 to 14th December, 2016 and, therefore, the entire addition should not have been made in

this year without bringing any material on record to prove that this income pertains to the impugned assessment year. Further, nothing has been brought on record to prove the contents of the affidavit retracting the erstwhile statement.

11.1 I find some force in the above argument of the ld. Counsel. It is an admitted fact that apart from the statement recorded u/s 131(1A) of the IT Act surrendering an amount of Rs.25 lakhs for the period from 01.04.2010 to 14th December, 2016 on account of any other income/expenditure or investment in the firm and its partners not found recorded in the books of account no other investments, cash or any other material was found which is unexplained. A perusal of the assessment order as well as the order of the CIT(A) shows that no material pertaining to the assessee was found during the search on 15th December, 2016 showing the existence of any unexplained investment or income or expenditure pertaining to the period from 01.04.2010 to 14th December, 2016.

11.2 I find, the Hon'ble Supreme Court in the case of CIT vs. Mantri Share Brokers (P) Ltd. (supra) has held that no addition u/s 69B can be made in the hands of an assessee where except statement of the Director of the assessee company offering additional income, there was no other material either in the form of cash, bullion, jewellery or document or in any other form to justify such additional income. Accordingly, the SLP filed by the Revenue against the decision of Hon'ble Rajasthan High Court was dismissed.

11.3 I find, the Hon'ble Rajasthan High Court in the case of CIT vs. Mantri Share Brokers (P) Ltd., 96 taxmann.com 279 while dismissing the appeal filed by the Revenue has held as under:-

> ñ9. We have heard learned counsel for the parties.
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> 10. Before proceeding with the matter, it will not be out of place to mention that except the statement in the letter, the AO has no other material on record to assess the income of Rs. 1,82,00,000/-.
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> 11. It is settled proposition of law that merely on the statement that too also was taken in view of threat given in question No.36 as narrated by Mr. Gupta and the same sought to have been relied upon, there is no other material either in the form of cash, bullion, jewellery or document in any other form which can come to the conclusion that the statement made was supported by some documentary evidence. We have gone through the record and find that the CIT (A) has rightly observed as stated hereinabove, which was confirmed by the Tribunal.
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> 12. That in view of the matter the issue is required to be answered in favour of the assessee against the Department.
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> 13. The appeal stands dismissed.ò

12. Similarly, the Hon'ble Allahabad High Court in the case of CIT vs. Dilbagh Rai Arora, reported in 263 Taxman 30, has held that merely because during search the assessee surrendered an amount in stipulation that details of the same would be given in due course of time, but, no such assets were ever found/identified by the authorities, no addition could be made to assessee's income. The relevant observation of the Hon'ble High Court reads as under:-

> ñ14. We have perused the record of the case. The respondent-assessee has filed his return on 30.10.2006 and offered Rs. 24 crores for taxation. Assessee has filed the return and disclosed income from house property, income from other sources and loss on Long Term Capital Gain on the sale of immovable property. The assessee has further disclosed profit from

trading in commodity exchange and has also filed evidence in support of his claim. The assessing authority has added back Rs. 7 crores only on the ground that at the time of survey dated 1.9.2005 the assessee had made a disclosure of sum of Rs. 31 crores for taxation in the year under consideration. But, no incriminating materials and documents had been brought on record for addition of such amount. The CIT(Appeals) while allowing the appeal of the assessee has deleted the said amount, which was being confirmed by the impugned order. The assessee-respondent in the statement given on 6.10.2005, has surrendered Rs. 18 crores on account of investment made in purchase of jewellery/precious stones and Rs 6 crores were surrendered as cash in hand duly shown in the books of account, balance Rs. 7 crores were surrendered with stipulation that details of the same would be given in due course of time.

15. The assets to the magnitude of Rs. 7 crores were neither found by the authorities below nor such assets were identified or declared by the appellant. In such a situation, it could be inferred that no such assets actually exists. In other words, there is no clinching evidence or material to justify such addition of Rs. 7 crores.

16. The addition can only be made, if there is incriminating material or the surrounding circumstances reveal that there is any material to justify the addition.

17. The person making an admission is not always mindful of it and some time can get out of its binding purview. If the person can explain exclusive with supportive evidence/material or otherwise that the admission by him earlier is not correct or contain a wrong statement or that a true state of affairs is different from that represented therein and so the same should not be accepted upon forecasting tax liability which should rather be fixed on the basis of correct and true affairs as ascertained from the material on record.

18. The case law cited by the department in the case of Ravinder Kumar Verma (supra) wherein the search was conducted on 14.5.1998 at the business premises in Lucknow and various papers, books of account and cash were seized and later on by letter dated 5.4.2002 the assessee retracted the confessional statement and on that basis the Hon'ble Court came to the conclusion that after almost 4 years the retraction was made and further there was no allegation of coercion or any threat whereupon addition was made, which is afterthought.

19. Paragraph 29 of the judgment in M/S Vertex Chemical Industries (Supra) is quoted herein below:-

> ñ29. In our case, the aforesaid judgment has no application. The reason is that here is not a case of retraction by Assessee but

> during the course of assessment, documents produced by him have been examined threadbare and thereafter, reasons for addition have been given. This approach is evident from the fact that Assessing Officer has not mechanically made addition of Rs. 9 lacs which was disclosed in the statement under Section 132(4) of Act, 1961 but actual addition is only Rs. 8,12,360/- which shows due application of mind on the part of Assessing Officer, which has been affirmed by Tribunal.ò
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> 20. In the above judgment the Hon'ble Court has come to the. conclusion that the addition was not made merely on the statement made but after looking into the explanation, books of account and other material placed before him and then made the certain addition. The case in hand, the addition have only been made on the basis of statement given on 6.10.2005.
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> 21. Therefore, the case law relied upon by the Appellant is of no help. The case in hand the assessee-respondent has given documents, material and explained threadbare with regard to amount of Rs. 24 crores but the assessing authority has mechanically made the addition of Rs. 7 crores and added back the same amount only on the basis of statement having been made by the assessee which is not permitted.
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> 22. There is no legal infirmity in the order passed by the Tribunal.ò

13. Since, in the instant case, admittedly, other than the statement of the partner recorded u/s 131(1A) of the Act offering additional income of Rs.25 lakhs, there was no other material found in the form of cash, bullion, jewellery or document in any other form or asset or unexplained expenditure to justify the said additional income, no addition u/s 69C could have been made by the AO. I, therefore, set aside the order of the CIT(A) and direct the AO to delete the addition. Accordingly, the grounds raised by the assessee are allowed.

14. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 22.09.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 22nd September, 2021.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi