

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.445/Hyd/2021		
Assessment Year: 2017-18		
Asstt. C. I. T. Central Circle 2(4) Hyderabad	Vs.	DCS Limited Hyderabad PAN:AAACD7127J
(Appellant)		(Respondent)
Assessee by:	Advocate Mohd Afzal	
Revenue by:	Shri KPRR Murthy,DR	
Date of hearing:	06/03/2023	
Date of pronouncement:	14/03/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 22.07.2021 of the learned CIT (A)-12, Hyderabad, relating to A.Y.2017-18.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of civil and mining contract. It filed its return of income u/s 139(1) of the Income Tax Act on 27.10.2017 declaring total income of Rs.3,92,02,560/-. The case was selected for scrutiny under CASS and statutory notices u/s 143(2) and 142(1) were issued and served on the assessee to which the A.R of the assessee appeared before the Assessing Officer from time to time and filed the requisite details.

3. During the course of assessment proceedings, the Assessing Officer noted that in connection with the search & seizure operation in the case of M/s. P.L. Raju Constructions (P) Ltd, a survey operation u/s 133A of the Act was conducted on 26.02.2019 in the case of the assessee. The Assessing Officer noted that during the course of survey, the Director of the assessee company Shri P. Satya Prasad has admitted additional income of Rs.5.00 crores for various years, the details of which are as under:

A.Ys	Original income offered (Rs.)	Addl. Income (Rs.)	Revised total income (Rs.)
2016-17	4,09,71,690	2,00,00,000	6,09,71,690
2017-18	3,92,02,560	2,00,00,000	5,92,02,560
2018-19	3,76,23,810	1,00,00,000	4,76,23,810
TOTAL		5,00,00,000	

4. He noted that although the Director of the company Shri P. Satya Prasad has admitted additional income of Rs.2,00,00,000/- for the impugned A.Y, however, no such additional income has been admitted by way of filing a revised return. He, therefore, confronted the same to the assessee . The assessee in response to the same submitted that subsequent to the survey and search operation, they came to know that due to the discrepancy in the subcontracts of M/s. PL Raju Constructions (P) Ltd, they have offered income in respect of the sub-contract given to the assessee company. The assessee also submitted that there was no evidence or document in respect of suppression of income or discrepancy found at the time of survey operation and subsequently before the Investigation Wing. The assessee also submitted that he has filed an affidavit confirming that he has not suppressed any income and bills in the sub-contract work from M/s PL Raju Constructions (P) Ltd.

5. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He noted that the assessee has not filed any affidavit as claimed. Further, the additional income of Rs.2.00 crores was admitted by Shri P. Satya Prasad, Director of the assessee company during the course of survey. He, therefore, made addition of Rs.2.00 crores to the total income of the assessee.

6. Before the CIT (A) it was submitted that during the course of search u/s 132 in the case of M/s. PL Raju Constructions (P) Ltd the Income Tax Authorities had noticed that the said concern is resorting to issue of bogus subcontract work orders, bogus R.A Bills and release payment to the assessee company and the same amount was paid back in cash to M/s. PL Raju Constructions (P) Ltd by the assessee company to the extent of Rs.4,51,71,428/-. Basing on the above information, the Income Tax Authorities questioned the assessee company during the course of survey operation u/s 133A. Because of lack of proper information on hand at the time of survey and because of non-availability of proper Accountant at the time of survey and because of the fact the authorised officer of the survey team insisted for a declaration, the Director of the assessee company in his statement, admitted the additional income in the hands of the assessee. However, subsequent to the survey and search operations, the assessee company came to know that due to the discrepancy in the sub-contract work given by M/s. PL Raju Constructions (P) Ltd, M/s. PL Raju Constructions (P) Ltd has offered additional income, particularly in respect of sub-contract works given to the assessee company. Therefore, the assessee company requested the Income Tax authorities to supply copies of

the statement given by the Director of M/s. PL Raju Constructions (P) Ltd in relation to the assessee company. It was argued that as a matter of fact, the assessee company has taken sub-contract from M/s. PL Raju Constructions (P) Ltd during the financial year 2015-16 for Karwar, Guwahati, Hasimara and Rambili sites for work order of Rs.27,06,45,100/-. However, the assessee company has executed the work to the extent of Rs.22,37,74,0831 only.

7. It was submitted that before the Assessing Officer, the assessee company has stated that it had executed work to the extent of Rs.22,37,74,0831 only and the balance work has not been done. This fact was also confirmed by M/s. PL Raju Constructions (P) Ltd. It was further submitted that there was no evidence either documentary or otherwise in respect of suppression of any income by the assessee company. No discrepancy was also found at the time of survey operation. Even subsequently before the Investigation Wing also no documentary evidence in respect of suppression of income by the assessee company was found. Relying on various decisions, it was argued that the addition made by the Assessing Officer is not warranted.

8. Based on the arguments advanced by the assessee, the learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report of the Assessing Officer and the rejoinder of the assessee to such remand report, the learned CIT (A) deleted the addition by observing as under:

"5.5 T have carefully considered the submissions of the appellant, the order of the Assessing Officer as well as the evidence filed by the appellant's AR. Briefly the facts are, search and seizure operations were conducted in M/s. PL Raju Constructions Pvt. Ltd. and a survey operation u/s. 133A was conducted in the case of the assessee on 26.02.2019. The appellant is a sub-contractor of M/s. PL Raju Constructions Pvt. Ltd. and the appellant has undertaken sub-contract works for M/s. PL Raju

Constructions Pvt.Ltd. It was found during survey that the company has issued bogus RA bills and no work was undertaken by the appellant. On account of the discrepancies found during the survey, the Director of the appellant company Sri P. Satya Prasad has admitted additional income of Rs. 2 crores in the current year. During assessment proceedings, the appellant claimed that subsequent to survey, it was found that there was no evidence in respect of suppression of income or discrepancy in vouchers found at the time of survey operations and that they have filed affidavit confirming that the assessee has not suppressed any income and does not have any discrepancy of vouchers and bills in the sub-contract work with M/s. PL Raju Constructions Pvt. Ltd. The assessee's contentions did not find favour with the AO and has made an addition of Rs. 2 crores in line with the declaration given by the appellant during survey. 5.5.1 During the appellate proceedings, the appellant filed written submissions along with vouchers and bills of M/s. PL Raju Constructions Pvt. Ltd. and the ledger extract. As per the appellant, it had taken work for Rs. 27,06,45,100/- but has executed the work to the extent of Rs. 22,37,74,083/- only. This has matched with the books of M/s. PL Raju Constructions Pvt. Ltd. and there was no understatement of income. It was also submitted that the work orders and RA bills were audited and there was neither discrepancy nor any suppression of the income by the appellant company. The appellant has also relied on the ratio of the ITAT, Mumbai judgement in the case of Concept Communication Ltd. Vs. DCIT wherein it was held that addition cannot be made merely on the basis of the statement without supporting documentary evidence. It was also claimed by the appellant company that the Director of M/s. PL Raju Constructions Pvt. Ltd. has admitted the entire sub-contract works as it has undisclosed income to the extent of Rs. 35 crores and therefore making an addition of the same in the appellant's hands which would result in double taxation of the same income. The submissions were forwarded to the AO for remand report and the report was received vide letter dated 14.09.2020 which is reproduced in para 5.3 above. The counter comments of the appellant of the remand report is reproduced at para 5.4 above. In the remand report, the AO mentioned that the assessee neither produced the affidavit retracting its earlier statement. It was also mentioned that the ratio in the case of Concept Communication Ltd. Vs. DCIT is not applicable for want of retraction and no In plea of cross examination was raised during the course of assessment proceedings. its counter comments, the appellant stated that the sworn statement of the Director of M/s. PL Raju Constructions Pvt. Ltd., was not provided to him earlier and therefore he could not ask for any cross examination. Further, he has stated that for the current year, M/s. PL Raju Constructions Pvt. Ltd. has offered sum of Rs. 5,57,65,000/- as additional income over and above the regular income in the current year which pertains to the transaction with the appellant company. Since the transactions were offered to tax by M/s. PL Raju Constructions Pvt. Ltd., there is no case for any addition in its hands besides it has already retracted its earlier statement. 5.5.2 I have perused the submissions of the appellant and the report of the AO. It is seen that during the current year, the appellant has entered into transactions with M/s. PL Raju Constructions Pvt. Lt. to the extent of Rs. 5,57,60,934/, The Director of

M/s. PL Raju Constructions Pvt. Ltd., Sri P. Venkatapathi Raju in his statement recorded u/s. 132(4) of the IT Act, during the course of search on 22.04.2019, in reply to question No.6, has specifically stated that to cover up any deficiencies in the matter of DCS Limited and any other deficiencies that may arise and to give quietus to the litigation, that may emerge in the matter of DCS Limited, the company has admitted an additional income of Rs. 35 crores. This additional income was summarized below:

A.Ys	Addl. Income admitted over and above regular income
2016-17	16,80,15,000
2017-18	5,57,65,000
2018-19	12,62,20,000

5.5.3 The AO was specifically asked whether M/s. PL Raju Constructions Pvt. Ltd. has offered additional income over and above the regular income in its returns filed u/s. 153A as per the declaration made during search action. It was confirmed by the AO vide letter dated 05.07.2021 that M/s. PL Raju Constructions Pvt. Ltd. has offered the additional income over and above regular income in the ITR filed u/s. 153A as per the declaration during search. Therefore, it is evident from the above that the transactions of the appellant company with M/s. PL Raju Constructions Pvt. Ltd. amounting to Rs. 5,57,60,934/- was offered to tax by M/s. PL Raju Constructions Pvt. Ltd. during the current year. Bringing the same to tax again in the hands of the appellant company on the basis of self-admission would amount to double taxation of income from the same transaction. Therefore, addition made of Rs. 2 crores in the hands of the appellant company is directed to be deleted. Accordingly, the appeal of the appellant is ALLOWED.”

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

“1. The Ld. CIT(A) erred on facts and in law in allowing relief to the assessee.

2. The Ld. CIT(A) ought to have upheld the addition of Rs.2,00,00,000/- based on discrepancies in execution of sub-contract works found during the course of survey.

3. The Ld. CIT(A) ought to have appreciated the fact that the amount admitted during the Course of survey covers the discrepancies in all sub-contract works and is not limited to the sub-contract works executed for M/s. P L Raju Constructions Pvt. Ltd.

4. The Ld. CT(A) erred in granting relief on the ground of double taxation while stating that M/s. PL Raju Constructions Pvt. Ltd. had offered additional income towards discrepancies in transactions with the

assessee for the A.Y. 2017-18 without appreciating the fact that the additional income admitted by M/s. P L Raju Constructions Pvt. Ltd. was for income chargeable to tax in the hands of M/s. P L Raju Constructions Pvt. Ltd. and not the assessee-company.

5. The Ld. CIT(A) ought to have appreciated the fact that both M/s. P L Raju Constructions Pvt. Ltd. and the assessee are separate and unrelated entities, therefore the additional income admitted by the assessee cannot be telescoped into the additional income admitted by M/s. PL Raju Constructions Pvt. Ltd.

5. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.”

10. The learned DR strongly challenged the order of the CIT (A) in deleting the addition made by the Assessing Officer. He submitted that when the assessee has admitted during the course of survey regarding the additional income, the learned CIT (A) should not have deleted the same merely on the ground that the additional income towards discrepancies was offered by M/s. PL Raju Constructions (P) Ltd and therefore, it amounts to double taxation of the same amount. He submitted that M/s. PL Raju Constructions (P) Ltd and the assessee are separate and unrelated entities and therefore, the additional income admitted by the assessee during the course of survey should not have been telescoped into additional income admitted by M/s. PL Raju Constructions (P) Ltd. He accordingly submitted that the order of the CIT(A) be reversed and that of the Assessing Officer be restored.

11. The learned Counsel for the assessee, on the other hand, strongly supported the order of the CIT (A). Referring to page 16 to 18 of the Paper Book, he drew the attention of the Bench to the affidavit filed by the assessee before the DDIT(Inv.) Unit-I Hyderabad wherein the assessee has retracted from the earlier statement given before the Investigation Wing. Referring to

page 12 to 15 of the Paper Book, he drew the attention of the Bench to the statement recorded u/s 132(4) of the I.T. Act on 22.4.2019 of Shri Venkata Pati Raju wherein he, in response to question No.6, had admitted additional income of Rs.35.00 crores over and above the regular income which includes to cover up any deficiency in the matter of DCS Ltd and to cover up any other deficiency that may arise and to give quietus to the litigation, that may emerge in the matter of DCS Ltd.

12. Referring to the CBDT Instruction F.No.286/2/2003-IT (Inv.) dated 10.03.2003 he submitted that the additions cannot be made on the basis of statement made during the course of survey admitting additional income unless the same is backed by credible evidence. Referring to the decision of the Hon'ble Madras High Court in the case of CIT vs. S. Khadar Khan Son (2008) 300 ITR 157 (Mad), which has been upheld by the Hon'ble Supreme Court as reported in CIT vs. S. Khadan Khan Son (2012) 25 Taxmann.com 413 (S.C) he submitted that the statement recorded u/s 133A of the Act on oath has no evidentiary value and therefore, any addition made solely on the basis of the statement recorded u/s 133A cannot be sustained. Relying on various other decisions, he submitted that addition cannot be made merely on the basis of statement recorded during the course of survey. He further submitted that no discrepancy of any other nature, any incriminating evidence/bills/vouchers were found during the course of survey other than the statement made by the Director which was subsequently retracted. Therefore, the learned CIT (A) is fully justified in deleting the additions and the grounds raised by the Revenue are liable to be dismissed.

13. We have heard the rival arguments made by both the sides, perused the orders of the AO and CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.2.00 crores in the hands of the assessee being the additional income admitted by the Director of the company Shri P. Satya Prasad during the course of survey on 26/02/2019 which was not declared in the return of income. We find the learned CIT (A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraphs.

14. We do not find any infirmity in the order of the CIT (A) deleting the addition made by the Assessing Officer. Admittedly Shri P. Satya Prasad, Director of the assessee company has admitted additional income of Rs.2.00 crores for the impugned A.Y during the course of survey in the premises of the assessee company on 26.02.2019. The above offer was given before the Add. Director of Income Tax on 26.2.2019. It is also an undisputed fact that the assessee vide affidavit dated 1.6.2019 filed before the DDIT (Inv.) Unit-I Hyderabad, copy of which is placed at page 16 to 18 of the Paper Book, had retracted from the statement.

15. We find the CBDT vide instruction F.No.286/2/2003-IT (Inv.) dated 10.03.2003 has directed the Field Officers not to make any addition on the basis of investigation made during the course of search & survey unless such confession is backed by credible evidence. The contents of the instructions by the CBDT read as under:

F. No. 286/2/2003-IT (Inv)

GOVERNMENT OF INDIA
MINISTRY OF FINANCE & COMPANY AFFAIRS
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES
Room No. 254/North Block, New Delhi,

10th March, 2003

To All Chief Commissioners of Income Tax, (Cadre Contra) & All Directors General of Income Tax Inv. Sir Subject : Confession of additional Income during the course of search & seizure and survey operation -regarding Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assesseees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders.

Yours faithfully, Sd/- (S. R. Mahapatra) Under Secretary (Inv. II)

16. We find the Hon'ble Madras High Court in the case of CIT vs. S Khadar Khan Son (2008) 300 ITR 157 (Mad), while holding that the statement elicited during the survey operation has no evidentiary value has observed as under:

"An admission is extremely an important piece of evidence but it cannot be said that it is conclusive; and it is open to the person who made the admission to show that it is incorrect.

The word 'may' used in section 133A(3)(ii) ... viz 'record the statement of any person which may be useful for or relevant to any proceeding under this Act' makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by themselves. The statement obtained under section 133A would not automatically bind upon the assessee.

Section 133A does not empower any ITO to examine any person on oath., In contradistinction to the power under section 133A. section 132(4) enables the authorized officer to examine a person on oath and any statement made by such person during such examination Can also be used in evidence under the Income-tax Act. On the other hand. whatever statement is recorded under section 133A is not given an evidentiary value. The statement obtained under section 133A would not automatically bind upon the assessee.

Therefore. admission made during such statement cannot be made the basis of any addition."

The scope of section 132(4) and section 133A [with regard to recording of statement of any person on oath/ has been considered at length by Hon'ble High Court of Kerala in the case of Paul Mathews and Sons v. CIT [2003 263 ITR 101 Kerala). Relevant findings of Hon'ble Court are reproduced hereunder:

.....we find that such a power to examine a person on oath is specifically conferred on the authorized officer only under section 132(4) of the Income-tax Act in the course of any search or seizure. Thus. the Income-tax Act. whenever it thought fit and necessary to confer such power to examine a person on oath. the same has been expressly provided whereas section 133A does not empower any Income-tax Officer to examine any person on oath. Thu_, in contradistinction to the power under section 133A. section 132(4) of the Income-Tax Act enables the authorized officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence. under the income tax Act. On the other hand. whatever statement is recorded under section 133A of the Income-tax. Act it is not given any evidentiary value obviously for the reason that the officer is not authorized to administer oath and to take any sworn statement which alone ha evidentiary value as contemplated under law Therefore, the statement elicited during the survey operation has no evidentiary value and the Income-tax Officer was well aware of this. (emphasis supplied)".

17. The above decision of the Hon'ble Madras High Court has been upheld by the Hon'ble Supreme Court reported in CIT vs. S. Khadar Khan Son (2012) 25 taxmann.com 413 (S.C).

18. The Hon'ble Rajasthan High Court in the case of CIT vs. Shri Ashok Dharendra, reported in 369 ITR 145 has held that addition is not justified merely on the statement recorded during the course of survey. The Hon'ble Gujarat High Court in the case of CIT vs. M.P. Scrap Traders reported in (2015) 372 ITR 507 has held

that the addition cannot be made on the basis of statement during the course of survey. Various other decisions relied on by the learned Counsel also support the proposition that no addition can be made merely on the basis of statement made during the course of survey unless the same is backed by credible evidence at the disposal of the Revenue.

19. Since in the instant case, the Assessing Officer has made the addition merely on the basis of a statement recorded during the course of survey of Shri P. Satya Prasad, Director of the assessee company who had admitted additional income of Rs.2.00 crores for the year under consideration and since such statement has been retracted by the Director before the Dy. Director of Income Tax (Inv.) Unit-I Hyderabad through an affidavit which has not been controverted and since the Revenue has no other material before them except the statement which has subsequently been retracted therefore, in the light of the CBDT Circular/Instruction (Supra) and the various other decisions relied on by the learned Counsel for the assessee to the proposition that the statement recorded during the course of survey has no evidentiary value unless the same is backed by credible evidence, the addition made by the Assessing Officer was rightly deleted by the CIT (A).

20. It is also pertinent to mention here that the Director of PL Raju Constructions (P) Ltd Shri P. Venkatapati Raju in his statement u/s 132(4) during the course of search on 22.4.2019 in his reply to question No.6 has specifically stated to cover up any deficiencies in the matter of DCS Ltd and any other deficiencies that may arise to give quietus to the litigation that may emerge in the matter of DCS Ltd, the company has admitted the additional

income of Rs.32.00 crores out of which Rs.5,57,65,000/-relates to the impugned A.Y. In view of the above and in view of the detailed reasoning given by the CIT (A) we do not find any infirmity in the order of the CIT (A) deleting the addition. Accordingly, the same is upheld and the grounds raised by the Revenue are dismissed.

21. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 14th March, 2023.

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 14th March, 2023.

Vinodan/sps

Copy to:

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2	M/s. DCS Ltd, 3-6-213 Street No.16, Himayat Nagar, Hyderabad
3	CIT-12 Hyderabad
4	Pr. CIT- Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order