

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DEHRADUN CIRCUIT BENCH: DEHRADUN**

**BEFORE, SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.3375/Del/2019
(Assessment Year: 2010-11)**

Sh. Kamal Batra, Ram Lal Batra & Sons, 66/2, Jamuna Bhawan, B. T. Ganj, Roorkee.	Vs.	Dy. CIT, Circle, Haridwar
PAN – AAOPB5539M		
(Appellant)		(Respondent)

Appellant By	Sh. Hemant Arora, CA Sh. Pavitra Arora, CA
Respondent by	Sh. A.S. Rana, Sr. DR
Date of Hearing	22.06.2023
Date of Pronouncement	23.06.2023

ORDER

This is an appeal by the assessee against order dated 19.12.2017 passed by the learned Commissioner of Income Tax (Appeals), Dehradun, for assessment year 2010-11.

2. The only effective issue to be decided in this appeal is as to whether the learned CIT(A) was justified in confirming the addition made by the learned Assessing Officer in the sum of Rs.5,53,535/-

representing business income of the wife of the assessee by clubbing it with the assessee's income.

2. We have heard the rival submissions and perused the materials on record. The assessee is engaged in trading of bidis under the name and style of 'Ram Lal Batra & Sons' having his shop at 66/2, Jamuna Bhawan, B T Ganj, Roorkee. The return of income for the assessment year 2010-11 was filed by the assessee on 18.09.2010 for the assessment year 2010-11 filed by the assessee on 18.09.2010 declaring total income of Rs.8,93,880/-. A survey operation was carried out under section 133A of the Act in the business premises of the assessee. During the course of survey, the survey team observed found that Smt. Sonia Batra, wife of the assessee was also carrying on trading business of bidis under the name and style of 'Sonia Batra' at 660, Ram Nagar, Roorkee, but in reality, she was not doing any such business and thus, the entire business was carried on only by her husband. A statement on oath was recorded by the survey team from her, wherein, she stated that she is not aware of any such business being done in her name and its her husband, Sh. Kamal Batra (assessee herein), who is aware of

the business of trading of bidis. Accordingly, a notice under section 148 of the Act was issued to the assessee on 31.03.2017. In the reassessment proceedings, based on the survey statement, the learned Assessing Officer proceeded to club the business profit disclosed by Sh. Sonia Batra in her individual Income Tax Return filed on 18.09.2010 for assessment year 2010-11 in the sum of Rs.5,53,535/-, with the income of the assessee. This action of learned AO was upheld by learned CIT(A).

3. We find that both the assessee as well as his wife Smt. Sonia Batra were carrying on business of trading of bidis in their individual capacity at different addresses. Both the assessee as well as his wife are independently assessed to income tax having separate PAN and have been regularly filing their respective Income Tax Returns with the Income Tax Department.

4. The learned AR before us, argued that bidis brand traded by the assessee are as under:

“Deluxe Tarzan 25 by 20, Tarzan Small 13 by 20, Tarzan 14 by 20, Super Tarzan 16 by 20, 13 by 20 Bidi Telephone Sp. 25 by 20, Bidi Telephone Small 20 by 20, Match Boxes.”

5. The learned AR also submitted that bidis brand traded by assessee's wife are as under:

“Telephone 25 by 20, Tarzan Big 11 by 20 and 22 by 20”

6. Learned AR also submitted that sales tax registration (TIN) no. of assessee is 05004109042 and TIN of Sonia Batra is 05004165011. He pointed out that the assessee was only assisting his wife in the business of trading of bidis. The learned AR also placed on record the independent Income Tax Returns filed by the assessee's wife offering business income in respect of trading in bidis from assessment year 2010-11 to assessment year 2022-23 as under:

SONIA BATRA						
Assessment_Year	Filing_Type	ITR	Acknowledgment_No	Filed_By	Filing_Date	Filing_Section
2022-23	Original	ITR-3	480867681090922	SELF	09-09-2022	139(1)
2021-22	Original	ITR-3	897625170090122	SELF	09-01-2022	139(1)
2020-21	Original	ITR-3	233513251300121	SELF	30-01-2021	139(1)
2019-20	Original	ITR-3	189007931031019	SELF	03-10-2019	139(1)
2018-19	Original	ITR-3	309360011270918	SELF	27-09-2018	139(1)
2017-18	Original	ITR-3	250769561221017	SELF	22-10-2017	139(1)
2016-17	Original	ITR-4	438777001070916	SELF	07-09-2016	139(1)
2015-16	Original	ITR-4	809662721220915	SELF	22-09-2015	139(1)
2014-15	Original	ITR-4	356438561170914	SELF	17-09-2014	139(1)
2013-14	Original	ITR-4	778432681190913	SELF	19-09-2013	139(1)
2012-13	Original	ITR-4	456535521020812	SELF	02-08-2012	139(1)
2011-12	Original	ITR-4	284210981140911	SELF	14-09-2011	139(1)
2010-11	Original	ITR-4	155502060180910	SELF	18-09-2010	139(1)

7. We find that accounts of the assessee have been duly subjected to tax audit in terms of section 44AB of the Act, which is

evident from page 5 to 20 of the paper-book. When the assessee's wife is independently assessed to income tax, having separate sales tax registration number and conducting the trading of bidis business at totally different addresses with that of the assessee and more especially when she had offered the business income from trading of bidis in her individual capacity in her income tax returns, it would be unfair to club her income with that of the business income of the assessee. In any case, we find that the assessee is already in high tax bracket and there is no need for him to split the profits between him and his wife. Hence, there is absolutely *mala fide* on the part of assessee. No contrary evidence to this fact has been brought on record by the Revenue, except relying on statement recorded during survey proceedings. It is trite law that the statement recorded during survey proceedings does not have any evidentiary value. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in case of CIT Vs. S. Khader Khan Sons, reported in 352 ITR 480 and decision of Hon'ble Kerala High Court in the case of Paul Mathew and Sons Vs. CIT, 263 ITR 101.

8. In view of the above observations and respectfully following the judicial precedents relied upon hereinabove, the action of the lower authorities in clubbing the business income of assessee's wife with that of the assessee in the facts and circumstances of the instant case, is dismissed. Accordingly, the grounds raised by the assessee are allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in Open Court on 23rd June, 2023

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 23/06/2023

RK/Sr.PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI
(Dehradun Circuit Bench, Dehradun)