

**IN THE INCOME TAX APPELLATE TRIBUNAL, GUWAHATI BENCH, GUWAHATI  
VIRTUAL HEARING AT KOLKATA**

**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No. 114/GTY/2019  
Assessment Year: 2015-16**

R.C. Agencies  Thakurbari Road, North Lakhimpur, Lakhimpur, Assam- 787001.  <b>PAN: AARFR 9836 Q</b>  (Appellant)	Vs.	ITO, Ward - North Lakhimpur       (Respondent)
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**Present for:**

Appellant by : Shri S.P. Bhati, FCA  
Respondent by : Shri Arun Bhowmick, JCIT

Date of Hearing : 21.09.2023

Date of Pronouncement : 21.09.2023

**ORDER**

**PER SONJOY SARMA, JM:**

This appeal of the assessee for the assessment year 2015-16 is directed against the order dated 28.02.2019 passed by the ld. Commissioner of Income-tax Appeals, Guwahati-1 [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

1. *For that the learned Assessing Officer is not justified in making the addition of Rs. 25,93,801/- on account of difference in stock.*
2. *For that the learned Assessing Officer is not justified in making addition of Rs. 18,00,000/- on account of undisclosed sales.*
3. *For that the learned Assessing Officer is not justified in making addition of Rs. 43,93,801/- on the basis of invalid and illegal statement recorded u/s 131 of 1T Act, 1961 on 08.04.2015 when survey has come to end on 13.03.2015 and that also when same has been retracted during the course of assessment proceedings.*
4. *For that the learned C.I.T.(A) is not justified in confirming the addition without noticing the difference between statement recorded at the time of survey and statement recorded at the time of search in as much in my case no statement has been recorded at the time of survey.*
5. *The Appellant craves the leave to take Additional Grounds at the time of hearing of Appeal."*

2. Brief facts of the case are that the assessee filed its return of income by declaring income of Rs. 8,17,610/-. The case of the assessee was selected for scrutiny under section 143(3) of the Act followed by notices issued u/s 143(2) and 142(1) of the Act. In compliance to such notices, the ld. AR of the assessee from time to time before the AO and submitted necessary documents along with books of account as asked for verification by the AO. While framing the assessment, the ld. AO noticed that a survey action u/s 133A of the Act was carried out in the case of assessee on 13.03.2015 and statement of the managing partner recorded on the same date and in furtherance of the search proceeding subsequent statement of the managing partner was also recorded u/s 131 of the Act on 13.03.2015 and 08.04.2015 respectively by which he voluntarily agreed and offered the disclose sum of Rs. 48,04,217/- as made on 13.03.2015 u/s 133A of the Act during the survey proceeding carried out in the premise of the assessee.

*"i. As per accounts, the cash in hand as on survey date should have been Rs. 4,80,416/- but on physical verification cash in hand was found Rs. 70,000/- only. There was a difference of Rs. 4,10,416/- was found.*

*ii. As per current stock value was found at Rs. 1,55,50,868/- but on physical verification it was found at Rs. 1,81,44,670/- thus there was a difference of Rs. 25,93,801/-.*

*iii. Discrepancy in daily collection of Rs. 18,00,000/-"*

3. However on 01.11.2017 before framing the final assessment order by the AO, the assessee retracted from the earlier statement made on 13.03.2015 by citing various reasons stating in the following manner:

*"A. UNDISCLOSED INCOME ON ACCOUNT OF DISCREPANCY IN CASH.*

*Q.No. 19 on 13/03/2015 was answered by partner that difference in cash was due to the fact that salesman takes the items and payment is delayed by 1- 2 days. Our practice of business is to first take order from customers and after that we prepare a cash memo and send the goods for delivery and salesman collects the cash. Till the salesman comes back with the cash, difference of cash in hand and as per accounts is natural and cash difference of Rs.4,10,416/- was there in actual cash and cash in hand as per accounts. But answer given by partner has been ignored while getting declaration from*

him and it has been drafted on page 5 of declaration dated 08/04/2015. "In view of our inability to explain difference in cash"....

B. DISCREPANCY IN STOCK:

Discrepancy in stock was explained by the partner while answering Question No.24 as the employees may have given incorrect rates and some items in stock may have been wrongly counted. Stock was not valued as per our regular method of valuation i.e. Cost or Market Price whichever is lower. In fact valuation of stock was done on the basis of MRP minus our profit margins which are not correct method of valuation. Our staffs were not in a position to tell correct profit margins on each item. Stock of HUL as well as all its activities i.e. Sales, Purchase is constantly watched by HUL through UNIFY Software on daily basis and there is no chance of such a huge difference. But to buy peace of mind we had to declare as dictated by surveying authorities. Moreover, we are able to take our correct physical stock after a tough exercise of 7-10 days and it is impossible for survey party to take correct stock in 12 - 18 hours.

C. ADDITIONAL PROFIT ON ACCOUNT OF UNDISCLOSED SALES:

Declaration on this account has been obtained without any basis and just to fulfill the target in authorities mind. There is no undisclosed sale and difference in sales in Tally & Unify Software has been explained by survey party themselves in the Question No.23 itself that figures of Anmol & Nirma items has not been taken into account while calculating the difference in sales as per Tally and Unify Software. There is not a difference of a single rupee as per our accounts in Sales Figure as we are dealing in Agency business of three companies and everything is on record. No chance to explain the matter was given to assessee and to fulfill their targets a prepared statement had to be signed to buy peace of mind for the time being."

4. Further, the ld. AO did not consider such retraction submission made by the assessee firm and whole disclosure made during the survey operation u/s 133A of the Act was added to the income of the assessee.

5. Aggrieved by the order of assessing officer, assessee went into appeal before ld. CIT(A) where ld. CIT(A) allowed the claim of the assessee on the issue of difference in cash balance of Rs. 4,10,416/. However, doing so, the ld. CIT(A) in respect of two other issues upheld the order of ld. AO in view of the statement made by the assessee during the survey proceeding.

6. Dissatisfied with the above order, assessee is in appeal before this Tribunal raising multiple grounds of appeal. At the time of hearing before the bench, the ld. AR submitted that the entire addition was made on the basis of statement of Kailash Chand Rathi who was managing partner of the assessee-firm recorded during the survey proceeding u/s 133A of the Act on 13.03.2015. Besides that the statements were recorded u/s 131 of the Act on 17.03.2015 and 08.04.2015 respectively as and when the survey proceeding was over. He also submitted that there are catenas of judgement where Hon'ble High Courts has held that section 133A does not empower any ITO to examine any person on oath and so statement recorded u/s 133A does not have any evidencing of value and any admission made during such a statement cannot be made basis for addition.

7. He further contended that on mere statement of assessee, no addition can be made by the AO in the proceedings under survey initiated against the assessee, even when the assessee has clearly rebutted all the queries made by the AO by filing a detailed reply while framing the assessment order. However, in the present case, the ld. AO did not accept the claims of the assessee and made the addition. Even the ld. CIT(A) did not consider the prayer made by the assessee and sustained the addition in respect of two issues i.e. difference of stock of Rs. 25,93,801/- and discrepancy of daily collection of Rs. 18,00,000/- in the hands of assessee as there is no other evidence to prove the fact except on the statement made by the managing partner during the course of survey. The ld. counsel, therefore prayed that the addition made in the hands of assessee needs to be deleted by the Tribunal. We also find considerable cogency in the Ld. Counsel of the assessee's submissions that addition cannot be made on the basis of the statement recorded during the survey under section 133A of the Act, in view of the

various judicial decisions wherein, it has been held that such statement does not have any evidentiary value, especially the catena of judgement rendered by various High Courts wherein it has been held that addition on the basis of statement recorded during survey u/s 133A does not empower any I.T. Authority to examine any person on oath, hence in such cases statement recorded has no evidentiary value and any admission made during such statement cannot by itself be made the basis for addition.

8. In the background of the aforesaid discussion and going through the facts of the case, we are of the considered opinion that the addition made on the basis of statement in the present case recorded u/s 133A is not sustainable in the eye of law. Accordingly, we direct the AO to delete the addition made in the case of assessee and allow the appeal of the assessee accordingly.

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

**Order pronounced in the open court on 21.09.2023**

**Sd/-**

**(MANISH BORAD)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SONJOY SARMA)  
JUDICIAL MEMBER**

Kolkata, Dated: 21.09.2023  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: R.C. Agencies.
2. The Respondent: ITO, Ward – North Lakhimpur.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata