

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH 'DB', JABALPUR**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 02/JAB/2021 : Asstt. Year: 2016-17

The DCIT, Central Circle, Jabalpur	Vs	Saurabh Baderia, 1752, Saraswati Colony, Near Parijat Colony, Baldeobagh, Jabalpur, MP
(APPELLANT)		(RESPONDENT)
PAN No. AHIPB 3208 Q		

Assessee by : Sh. Rahul Bardia, CA

Revenue by : Smt. Garima Chaudhary, CIT-DR

Date of Hearing: 22.11.2023

Date of Pronouncement: 23.11.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by Revenue against the orders of Id. CIT(A)-1, Jabalpur dated 15.09.2020.

2. The Revenue has raised the following ground of appeal is as under:-

1. Deleting the addition of Rs. 1,66,00,000/- made by the Assessing Officer on account of non honoring of surrender made during the course of search and in the statement u/s 132(4) of the Income Tax Act, 1961 without appreciating the facts of the case and the evidentiary value of the statement recorded on oath u/s 132(4) of the Act.

3. The brief facts of the case are that the appellant is an individual and earning income from salary income from Satya Sai Hospital and Institutes of Medical Sciences Pvt Ltd, income from partnership firm and income from other sources. In this case, search & seizure operations u/s 132(1) of the Income Tax Act, 1961 was carried out on 17.11.2015. Consequently, notice

u/s 153A of the IT Act, 1961 was issued on 28.07.2017. Regular return of income for AY 2016-17 was filed on 16.10.2016 declaring total income of Rs. 18,54,42,110/- The AO made addition of Rs. 1,66,00,000/- on account of difference of the surrender made of Rs. 20,16,00,000/- during the search and the return filed of Rs. 18,54,42,110/-voluntary disclosure made during the course of search.

4. During the course of search/post search enquiry bifurcation of surrendered amount was submitted as under;

Financial Year	Undisclosed Income	Remark
2015-16	2,73,00,000/-	Undisclosed investment in Global Institute hospital building
2015-16	9,93,00,000/-	WIP in M/s Golden Buildcon (BS-12)
2015-16	2,50,00,000/-	Construction of Hospital building
2015-16	5,00,00,000/-	Assessee mentioned that he surrender Rs. 5, crore keeping in view loose papers, books cash, jewellery, loans & advances and LTCG.
	20,16,00,000/-	

5. In the return of income filed for AY 2016-17, the assessee surrendered Rs. 18,50,00,000 and paid taxes due thereon. It was submitted by the assessee that surrender of Rs 1,66,00,000/-was not offered as it was made excessive during the search on adhoc basis. Against the addition made by the Assessing Officer the assessee appeal before the Id. CIT(A) who allowed the appeal of the assessee. Aggrieved the Revenue filed before the Tribunal.

6. Heard the arguments of both the parties and perused the material available on record.

7. During the course of assessment assessee explained each and every loose papers and it was accepted by the AO to the tune of return income of Rs. 18,50,00,000 and made addition only on the grounds that there is a difference of Rs 1,66,00,000 between the surrendered income and the returned income. We have gone through the ratio and reasoning of the Id. CIT(A) while dealing the issue. The same are as under:-

- Addition is against the circular issued by the CBDT Circular 286/2/2003 March 23, 2003 which prohibits addition solely on the basis of confession. The circular is re-produced hereunder:-

"Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess undisclosed income during the course of the search and seizure and survey operation. Such confession, if not based on credible evidence, are taken/retracted by the concerned assessee while filing return of mcome. In these circumstances, confession during the search and seizure and survey operation 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 department. Similarly, while recording statement during the course of search and seizure operation, no attempt should be made to obtain confession as to the undisclosed income."

- Hon ble SC in Pullangode Rubber Produce Co Lid Vs State of Karela[1973] 91 ITR 18 an admission is an extremely important piece of evidence though it is no conclusive.
- COMMISSIONER OF INCOME TAX VS. DILBAGH RAI ARORA HIGH COURI OF ALLAHABAD 308 CTR (All) 502

Addition on the basis of statement under s. 132(4)-Addition can only be made, if there is incriminating material or the surrounding circumstances reveal that there is any material to justify the addition—If the person can explain 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, addition cannot be made solely relying on statement under s. 132(4).

➤ **GAJJAM CHINA YELLAPPA & ORS. Vs. ITO HIGH COURT OF ANDHRA PRADESH 370 ITR 671 (AP)**

Income-Addition On the basis only it retracted statement under s. 132(4)-Is invalid—A retracted statement cannot constitute the sole basis for fastening liability upon the assessee—Once the statement is retracted the effect of retraction has to be decided by a superior forum and not by the very officer who is alleged to have exerted force—In case the statement recorded during survey is withdrawn, the AO can support his findings on the basis of other material—CBDT Circular dt. 10th March, 2003 also takes an exception from relying upon retracted statements—Appeals allowed and assessments set aside.

➤ **The Hon'ble Gujarat High Court rendered in the case of CIT Vs. Chandrakumar Jethmal Kochar (2015) 55 Taxmann.com 292 (Gujarat)**

.....merely on the basis of admission that few benami concerns were being run by assessee, assessee could not be basis for making the assessee liable for tax and the assessee retracted from such admission and revenue could not furnish any corroborative evidence in support of such evidence. It was further urged by the assessee that admission should be based upon certain corroborative evidences. In the absence of corroborative evidences, the admission is merely a hollow statement. We have given our thoughtful consideration to the rival contentions of the parties. It is undisputed fact that the statement recorded u/s 132(4) of the Act has a better evidentiary value but it is also a settled position of law that the addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the contents of the statement. In the case in hand, revenue could not point out as what was the material before the A.O., which supported the contents of the statement. In the absence of such material, coupled with the fact that it is recorded by the Ld. CIT(A) that the assessee himself had surrendered a sum of Rs.69,59,000/- and Rs. 75,00,000/- in A.Y. 2008-09 and 2009-10 respectively. The A.O. failed to co-relate the disclosures made in the statement with the incriminating material gathered during the search. Therefore, no inference is called for in the finding of the Ld. CIT(A) and is hereby affirmed.

➤ **The Hon'ble Gujarat High Court in the case of Kailashben Mangarlal Chokshi VS. CIT - (2008) 14 DTR 257 (Guj.)**

..... that merely on the basis of admission, the assessee could not have been subject to additions, unless and until some corroborative evidence is found in support of such admission.

8. In the instant case the Id. CIT(A) held that he has come to an unescapable conclusion that the AO was not justified in making addition of Rs. 1,66,00,000/- as voluntary surrender made during the course of search because no specific reference has been made by the AO to any incriminating material found during the course of search suggesting earning of such unaccounted income.

9. Hence keeping in view the facts of the case, judicial pronouncements quoted above, we decline to interfere with the order of the Id. CIT(A) allowed.

10. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 23/11/2023.

Sd/-
(Yogesh Kumar U.S)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Jabalpur Dated: /11/2023

NV, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT JABALPUR