

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

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No.08/JAB/2018

Assessment Year:2015-16

M/s Shivangi Oils Pvt. Ltd., Opp. Railway Station, Burhar, Distt. Shahdol. PAN:AAHCS1774M	Vs.	Dy. C.I.T., Jabalpur.
(Appellant)		(Respondent)

I.T.A. No.21/JAB/2018

Assessment Year:2015-16

A.C.I.T., Central, Jabalpur.	Vs.	M/s Shivangi Oil Pvt. Ltd., Plot No.18,19,32 & 33, Sector- B, Industrial Area, Sirgitti, Bilaspur (C.G.) PAN:AACHCS1774M
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Assessee by	Shri P. K. Dewani, A.R. Shri B. K. Nema, Advocate
Revenue by	ShriShravan Kumar Gotru, CIT (D.R.)
Date of hearing	28/11/2023
Date of pronouncement	22/12/2023

ORDER

PER YOGESH KUMAR U.S.; J.M.

The present appeal filed by the Assessee and the Revenue against the common order of Commissioner of Income Tax (Appeals)-I, ('CIT' for short) Jabalpur dated 27/11/2017 pertaining to the assessment year 2015-16.

2. The grounds of appeal of the Assessee and the grounds raised in the Revenue are as under:

Grounds of I.T.A.No.08/JAB/2018

- “1. *The Hon'ble CIT(A) erred in confirming addition at Rs.43,51,897/- out of Rs.1,56,76,583/- made by A.O. on account of unexplained stock.*
2. *The addition confirmed by CIT(A) at Rs.43,51,897/- on account of unexplained stock is unjustified, unwarranted and bad in law.*
3. *The assessee denies liability to be assessed to interest u/s234B and 234D of income Tax Act 1961. Without prejudice the interest levied u/s 234B and 234D is unjustified and unwarranted.”*

Grounds of I.T.A.No.21/JAB/2018

- “1. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.62,50,000/- made by Assessing Officer on account of unexplained cash found.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.1,13,24,686/- made by Assessing Officer on account of unexplained investment.”*
3. Brief facts of the case are that, the assessee being one of the ‘persons’ of Singhania Group on which search action u/s 132(1) of Income Tax Act 1961 was undertaken on 16/10/2014. The main business concerns of the aforesaid group are M/s. Tirupati Buildcon Pvt. Ltd., M/s. Shivangi

Oil Pvt. Ltd. and M/s. Tirupati Construction. In the course of search cash of Rs.13.26 lakhs and Rs.11.28 lakhs and ornaments and jewellery of Rs.77.07 lakhs and Rs.23.28 lakhs were found from premises of Shri Padam Singhania and Shri Santosh Singhania respectively. Out of cash found and ornaments and jewelery found from Shri padam Singhania, sum of Rs.4 lakhs and documents and jewellery of Rs.3.53 lakhs was seized. Out of cash found sum of Rs. 11.00 lakhs was seized. No ornaments and jewellery was seized from Shri Santosh Singhania. Cash of Rs.62.66 lakhs was found from business premise of M/s. Shivangi Oils Pvt. Ltd. out of which sum of Rs.62.50 lakhs was seized. Shri padam Kumar Singhania and other individuals of family members had declared additional income of Rs.9 crores for Assessment Year 2015-16 in the return of income filed by assessee pursuance to notice u/s 153A of Income Tax Act 1961 in terms of declaration made u/s 132(4) of I.T. Act 1961. In the assessment proceedings of the assessee, the A.O. made various additions on the basis of seized documents and statements recorded vide Assessment Order dated 02/12/2016.

4. Aggrieved by the additions made by the A.O., the assessee preferred an appeal before the CIT(A), the Ld. CIT(A) vide order dated 21/01/2017, confirmed the addition at Rs. 43,51,897/- out of Rs. 1,56,76,583/- made by the A.O. on account of unexplained stock. Aggrieved by the

order of the Ld. CIT (A) in deleting the addition of Rs. 62,50,000/- the Department of Revenue filed the Appeal in ITA No. 21/Jab/2018 and in so far sustaining the addition of Rs. 43,51,897/-the assessee preferred the Appeal in ITA No. 8/JAB/2018 on the grounds mentioned above.

5. The issue arises for consideration before us in the present Appeal regarding confirmation of addition of Rs. 43,51,897/- out of Rs. 1,56,76,583/- made by the A.O. on account of unexplained stock and the deletion of Rs. 62,50,000/-. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) erred in partly confirming the addition on account of unexplained stock, the Ld. Counsel has also taken us through the documents produced in the paper book and sought for deletion of addition sustained by the Ld. CIT(A).

6. Per contra, the Ld. Departmental Representative relying on the order of the Ld. A.O., submitted that the Ld. CIT(A) has committed error in partly deleting the addition of Rs. 62,50,000/- out of 1,56,76,583/- made by the A.O. on account of unexplained stock, thus, sought for dismissal of the Appeal filed by the assessee and prayed for allowing the Appeal filed by the Revenue.

7. We have heard both the parties and perused the material available on record. During the course of search conducted in the business premise of the assessee company, inventory of stock was prepared and also valuation of stock was done by registered Valuer and as per the valuation report, the total stock as on 16.10.2014 was valued at Rs. 4,11,99,742/-. The assessee produced its stock register which was incomplete and written up to 31.08.2014 only. Shri Santosh Kumar Singhania stated that the books could not be completed as the Accountant was on leave however, the bills & vouchers were available at the premise and the assessee provided the position of stock as per the books as on 16.10.2014 which came to Rs. 2,55,23,159/-. Shri Santosh Kumar Singhania could not offer any explanation on the excess stock of Rs. 1,56,76,583/-. Shri Padam Kumar Singhania was asked about the difference in stock while recording his statement u/s 132(4) and he after consulting Shri Santosh Kumar Singhania surrendered the amount in the hands of Assessee Company as unaccounted investment for F.Y.2014-15. The assessee Company did not offer Rs. 1,56,76,583/- for taxation while filing return u/s 153A of the Act. The Notice u/s 142(1) dated 03/08/2016 was issued. The assessee submitted reply, to the show cause notice and after considering the reply the same found to be not acceptable and after analyzing the various document and the

statement recorded the excess stock of Rs. 1,56,76,583/- has been added to the total income of the assessee by the A.O. as the source of which was found to be not explained.

8. The Ld. CIT(A) while restricting the addition to Rs. 43,51,897/- held as under:-

“7.2.3. I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned assessment order and other material evidences brought on record and I find substantial force in the same. It is noted that the stock of inventory prepared on the date of search is at Rs.4,11,99,742/- The perusal of inventory shows that note has been appended in the inventory that the value of goods is taken at the sale price of goods except in respect to raw material. The books of account of the appellant company were not complete on the date of search and were written upto 31/08/2014. The estimated working was prepared within a short time wherein value of stock was computed at 505159/-. The perusal of aforesaid valuation indicates that value of detailed cake being by-product has been taken at Rs. Nil as the quantitative details have been computed to show negative stock in respect to de-oiled cake is a bulk stock which is stored in gunny bags and huge storage place is required for its storage. The aforesaid fact is evident from the closing stock inventory prepared on the date of search. The detail sheet in respect to estimated stock as per books of account computed at the time of search also indicates that no production in respect to by-product for October Month has been entered in the aforesaid working. Similarly purchase of De-oiled Cake has also not been reflected in the aforesaid working. The working of stock as per books as on the date of search prepared in hurried manner on estimated basis is thus factually incorrect. It is noted that the addition is made by comparing inventory value which is computed on sale price. The method of

computing difference to assess the difference as unexplained investment is erroneous and is unjustified.

7.2.4 It is noted that the A.O. has not brought any evidence on record to show that any specific item of inventory found on the date of search is not recorded in books of account. It has also not been found that appellant has purchased any item of inventory and stock of which remained unexplained at the hands of appellant. In view of above factual position on record, the addition made in respect to stock as unexplained investment on the date of search is unjustified and unsustainable.

7.2.5. The impugned addition is made by the A.O. by referring to the statement of Shri Padam Singhania. The statement obtained from Sh Padam Singhania has been retracted. The evidentiary value and addition made on the basis of statement has been considered by various Hon'ble High Courts. The Hon'ble High Court of Jharkhand in the case of Shree Ganesh Trading Co. reported at 257 CTR 0159 has held as under:

6. We are of the considered opinion that statement recorded under section 132(4) of the Income Tax Act, 1961 is evidence but its reliability depends upon the facts of the case and particularly surrounding circumstances. Drawing inference from the facts is a question of law. Here in this case, all the authorities below have merely reached to the conclusion of one conclusion merely on the basis of assumption resulting into fastening of the liability upon the assessee. The statement on oath of the assessee is a piece of evidence as per section 132(4) of the Income Tax Act and when there is incriminating admission against himself, then it is required to be examined with due care and caution. In the judgment of Kailashben Manharlal Chokshi (supra), the Division Bench of Gujarat High Court has considered the issue in the facts of that case and found the explanation given by the assessee to be more convincing and that was not considered by the authorities below. Here in this case also, no specific reason has been given for rejection of the assessee's contention by which

the assessee has retracted from his admission. None of the authorities gave any reason as to why Assessing Officer did not proceed further to enquire into the undisclosed income as admitted by the assessee in his statement under section 134(2) in fact situation where during the course of search, there was no recovery of assets or cash by the Department. This fact also has not been taken care of and considered by any of the authorities that in a case where there was search operation, no assets or cash was recovered from the assessee, in that situation what had prompted the assessee to make declaration of undisclosed income of Rs.20 lacs. Mere reading of statement of assessee is not the assessment of evidentiary value of the evidence when such statement is self-incriminating. Therefore, we are of the considered opinion that in the present case, a wrong inference had been drawn by the authorities below in holding that there was undisclosed income to the tune of Rs. 20 lacs.

9. Hon'ble High Court of Andhra Pradesh in the case of Gajjam Chinna Yellappa reported at 370 ITR 0671 has held as under.

9. The Act empowers the Assessing Officers or other authorities to record the statements of the assesses, whenever a survey or search is conducted under the relevant provisions of law. The statements so recorded are preferable to Section 132 of the Act. Sub-section 4 thereof enables the authorities not only to rely upon the statement in the concerned proceedings but also in other proceedings that are pending, by the time the statement was recorded.

10. If the statement is not retracted, the same can constitute the sole basis for the authorities to pass an order of assessment. However, if it is retracted by the person from whom it was recorded, totally different considerations altogether, ensue. The situation resembles the one, which arises on retraction from the statement recorded under Section 164 Cr.P.C. The evidentiary value of a retracted statement becomes diluted and it loses the strength, to stand on its own. Once the statement is retracted, the Assessing Authority has to

garner some support, to the statement for passing an order of assessment.

11. In I.T.A.No.112 of 2003, this Court dealt with the very aspect and held that a retracted statement cannot constitute the sole basis for fastening liability upon the assessee.

12. In the instant case, the appellants specifically pleaded that the statements were recorded from them by applying pressure, till midnight, and that they have been denied access outside the society. The Assessing Officer made an effort to depict that the withdrawal or retraction on the part of the appellants is not genuine. We do not hesitate to observe that an Assessing Officer does not have any power, right or jurisdiction to tell, much less to decide, upon the nature of withdrawal or retraction. His duty ends where the statement is recorded. If the statements are retracted, the fate thereof must be decided by law meaning thereby, a superior forum and not by the very authority, who is alleged to have exerted force.

13. It is not as if the retraction from a statement by an assessee would put an end to the procedure that ensued on account of survey or search. The Assessing Officer can very well support his findings on the basis of other material. If he did not have any other material, in a way, it reflects upon the very perfunctory nature of the survey. We find that the appellate authority and the Tribunal did not apply the correct parameters, while adjudicating the appeals filed before them. On the undisputed facts of the case, there was absolutely no basis for the Assessing Officer to fasten the liability upon the appellants. Our conclusion find support from the Circular dated 10.03.2003 issued by the Central Board of Direct Taxes, which took exception to the initiation of the proceedings on the basis of retracted statements.

“7.2.5. The ratio laid down by the aforesaid decisions squarely applies to the facts in case of appellant. Circular of Board dated 10/03/2003 and further clarification issued on 18/12/2014 also support the contention of appellant. Respectfully following the same I am of the considered opinion that the addition made by A.O. on the basis of statement of Shri Padam Singhania which has been retracted subsequently is unjustified and unsustainable.

7.2.6. In the case of the appellant, the books of account as well as quantitative details are indicated in financial statement and the as shown in books of account have been accepted and not disputed Detail as to stock in respect to various items dealt with by appellants submitted and same is verifiable with reference to books of account maintained by the appellant. The quantitative details as per books of account are to be considered for the purpose of examining the inventory of stock prepared on the date of search. Perusal of the assessment order does not show that the A.O. has found any item of inventory of stock remains unexplained considering the books accounts as produced and examined by him in the course of assessment proceedings. In fact, the A.O. has made addition merely on the basis of inventory value drawn at the time of search without examining the same with books of accounts accepted by him. The exercise of making the addition by the A.O. is not justified. Contention of appellant is fair and reasonable. The stock of inventory prepared at the time of search being verifiable with reference to books of account and no quantity of goods and its value remained unexplained on the date of search, hence the addition made by the A.O. is unjustified and unsustainable.

7.2.7 It is noted that the addition has been made on account of unexplained stock by comparing value of inventory during the mid of accounting year. The increase in valuation of stock during the mid of accounting year would go to increase in value of opening stock for period subsequent to date of search for computing the assessable income in case of the appellant. The A.O. having accepted the closing stock as well as results as shown for the post search period, I am of the view that there could not be separate addition over and above the books results in case of appellant. Reliance for this proposition is placed on the decision of ITAT, Nagpur Bench, Nagpur in case of M/s New Bombay shop in ITA No.742/Nag/94 vide order dated 10/05/1996. The relevant portion of judgment is reproduced hereunder:

2. We have heard the assessee's counsel and the Departmental Representative. It is notable that inspite of the assessee writing a letter to the A.O. on 02/12/1991 the A.O. did not verify the old stock of the assessee. It is

also noted that the purchases and sales are fully vouched and the A.O. had accepted the total sales and purchases shown by the assessee. Even the physical inventory drawn on 31/03/1992 and the closing stock have been accepted by the A.O. as declared by the assessee. He has not found any item of stock for which purchases is not recorded and, therefore, addition u/s 69 cannot be made. As seen from the records, the G.P. shown by the assessee was 21.06% and the closing stock of the assessee was Rs. 3,55,826/-. This is the position upto 16/11/1991. Now if the closing stock on 16/11/1991 is taken at Rs.5,04,477/- the trading account for the period 16/11/1991 to 31/03/1992 had to be re-made which the CIT(Appeal) has done in his order. On the basis of the same a gross loss of Rs.37,216/-has to be worked out it is also notable that the firm was dissolved on 31/03/1992 and partner Shri Anil Sharma, took over all the assets and liabilities for the firm including the closing stock at Rs.4,30,681/-. This value has been shown as opening stock in the case of Shri. Anil Sharma for the Asstt. Year 1993-94 and has been accepted for the A.O. If the gross profit as computed by the A.O. for the first period and the additions made by the A.O. are taken together and gross loss for the second period is deducted, we arrived at a figure of Rs. 2,96,199/- which is the figure disclosed by the assessee in the final account as on 31/03/1992. There is no finding of are taken together and gross loss for the second period is deducted, we arrive at a figure of Rs.2,96,199/- which is the figure disclosed by the assessee any unaccounted purchases and, therefore, no case has been made out for rejection of the book results. We are, therefore, of the opinion that the decision of the ITAT Delhi, reported in (1994) 50 TTJ 246 in the case of Des Raj Dharam Parkesh Vs ITO, is applicable to the facts of this case. We are of the opinion that the entire addition made should have been deleted. The same is directed to be deleted in full. In the result, the assessee's appeal is allowed.

The ratio laid down by the aforesaid decision squarely applies to the facts in case of the appellant and considering the same, the addition made by the A.O. on its entirety solely relying on

the value of stock difference observed between the physically found during the search and the stock value as per the trading account prepared & provided by the appellant on 16.10.2014 which is unjustified and unsustainable.

7.2.8 However, it is noted from the assessment order that the appellant has furnished a reconciled stock statement during the assessment proceedings before the AO and submitted that the actual difference in the stock value was Rs.43,51,897/- as against claimed to be found at Rs. 1,55,76,583/- as certain bills were pending whereas the goods had been physically delivered. It was explained that after entering the pending bills which were not received till the date of search, the above difference arrived as Rs.43,51,897/- would become the actual difference. In fact, the appellant has accepted this difference in the stock value as its undisclosed stock and surrendered the same for taxation.

7.2.9. In view of the above and considering the totality of facts and circumstances in case of appellant, I am of the considered opinion that the entire addition made by the A.O. at Rs.156.76 lakhs on account of undisclosed stock is unjustified and unsustainable. However, I restrict the addition to Rs.43,51,897/- on account of undisclosed stock which was offered by the appellant in its reconciled stock statement furnished during the assessment proceedings. Hence, the appellant gets a relief of Rs.113.24 lakhs in these grounds of appeal and balance addition of Rs.43,51,897/- made on account of undisclosed stock is sustained. Thus, these grounds of appeal of appellant are partly allowed. "

9. Considering the fact that the assessee in the statement recorded u/s 132(4) of the Act and even during the post search enquiry could not explain the source of the excess cash. After lapse of long period, the assessee contended that cash found at the time of search was as per books of the assessee, which has been found to be devoid of merit as the

books of account seized during the course of the search were also not reliable. Considering the several mismatch in the closing balance as per the cash books seized and which was produced by the assessee before the CIT(A) and in the absence of the assessee producing any bills and confirmation of payments received and also considering the fact that the assessee himself has surrendered excess cash of Rs. 62,50,000/-, in our considered opinion, the Ld. CIT(A) has rightly sustained the partial addition out of total addition of Rs. 1,56,76,583/- by appreciating all the facts and the documents available on record and in the absence of any contrary material we find no reason to interfere with the order of the Ld. CIT(A) as the order of the Ld. CIT(A) is neither erroneous nor suffering from any infirmity. Accordingly, we find no merit in both the Appeals of the assessee.

10. In the result, Appeal of the Assessee in ITA No. 08/JAB/2018 and the Appeal of the Revenue ITA No. 21/JAB/2018 are dismissed.

(Order pronounced in the open court on 22/12/2023)

Sd/-

(DR. B.R.R. KUMAR)
Accountant Member

Dated 22/12/2023

*Singh/R.N, Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
Judicial Member

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R.,

Asstt. Registrar