

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.698/Ind/2019
Assessment Year:2016-17

Ved Prakash Goyal, Tejendranath Ki Gali, Dal Bazar, Lashkar, Gwalior	बनाम/ Vs.	DCIT, Central I, Bhopal
(Assessee / Appellant)		(Revenue / Respondent)
PAN: ADCPG0452F		
Assessee by	Shri Sumit Nema Sr. Adv. And Shri Gagan Tiwari, Adv.	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	02.11.2023	
Date of Pronouncement	02.01.2024	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 27.03.2019 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["CIT(A)"], which in turn arises out of assessment-order dated 22.12.2017 passed by learned DCIT, Central-I, Bhopal ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2016-17, the assessee has filed this appeal on following grounds:

- "(1) On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming addition of Rs. 1,76,68,829/- on account of difference in amount declared u/s 132(4) and amount shown in returns of income without considering the facts of the case is illegal, unjustified and bad in law.

- (2) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming addition of Rs. 1,76,68,829/- which was added by the Learned assessing officer without any basis and also without considering the facts that declaration basically related to unaccounted sales, which has already declared by the assessee and some part separately added in income and all the additions on the basis of papers found during search has been made in the relevant years, hence the addition on the basis of difference in amount declared u/s 132(4) and included in returns is illegal, unjustified and bad in law."

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Brief facts relating to the present appeal are such that the assessee is an individual and has income from business of grains. The assessee filed the return of relevant AY 2016-17 on 10.12.2017 declaring a total income of Rs. 93,26,060/-. While completing assessment, the AO made an addition of Rs. 1,76,68,829/- on the basis of declaration made by assessee during a search action u/s 132 taken by department on 07.01.2016. Aggrieved, the assessee contested AO's action in first-appeal but could not succeed. Now, the assessee has come in next appeal before us.

4. The AO has dealt the impugned addition in Para 13 of assessment-order. Precisely the AO has noted that during the course of search proceeding, the statements of assessee were recorded and he was confronted with the seized documents. The AO has also re-produced the statements of assessee. The AO noted that in reply to Q.No. 13 to 15, the assessee admitted/surrendered undisclosed income of Rs. 5,00,00,000/- in his own hands and family members. The assessee further agreed that the tax on such undisclosed income of Rs. 5,00,00,000/- shall be paid. The assessee also stated that he will furnish head-wise and year-wise break-up after going through seized documents. The AO further noted that the assessee was not able to explain all seized documents and considering the unverifiable nature of documents owing to limitations during search proceeding, the assessee was given an opportunity u/s 132(4) for quantification of concealment. Then, the assessee himself preferred to surrender additional income of Rs.

5,00,00,000/- in statements. Thereafter, during assessment-proceedings, opportunities were given to the assessee to prepare statement of affairs and explanation and for that matter the copies of all seized documents were also provided to assessee. However, the assessee failed to furnish explanation and retracted from his commitment. The assessee was also asked, vide notices dated 22.05.2017 and 16.11.2017, to explain the break-up of surrender but the assessee did not explain. The AO further noted that the statements of assessee recorded u/s 132(4) is a piece of evidence and not mere confession of assessee. The AO noted that there cannot be any doubt with regard to the evidentiary value of such statements. The AO also noted that there was no coercion or force upon assessee. The AO noted that the assessee made retraction after a long time-gap, hence retraction is not acceptable. Lastly, the AO noted that no one shall make any statement harming himself. With these precise observations, the AO ultimately held that the assessee and his family members offered an aggregate income of Rs. 2,36,68,100/- in different years as against surrender of Rs. 5,00,00,000/-. Further, a separate addition of Rs. 86,63,071/- has already been made on the basis of seized documents, in Para 9 of assessment-order. Therefore, after giving credit of Rs. 2,36,68,100/- and 86,63,071/- from Rs. 5,00,00,000/-, the AO computed difference of Rs. 1,76,68,829/-. Ultimately, vide Para 13.5 of assessment-order, the AO made addition of Rs. 1,76,68,829/- by concluding thus:

“13.5 Considering the facts discussed above and also considering the fact that there is voluminous seized record with the multiple transactions on each pages, it is to be mentioned here that amount of Rs. 1,76,68,829/- proposed to be added is though on the basis of statement recorded u/s 132(4) of the Act, yet it is also based on incriminating document and I am satisfied that this amount of Rs. 1,76,68,829/- is also emanating from the seized document. The reconciliation of each and every seized document considering the voluminous nature is extremely difficult if not impossible, hence the addition of Rs. 1,76,68,829/- is completely justified to prevent the leakage of revenue. Hence, the amount of Rs. 1,76,68,829/- is added to the total income of assessee for AY 2016-17.”

5. During first-appeal, the CIT(A) upheld AO's order. The final conclusion taken by CIT(A) on Page No. 15 of his order, is re-produced below for an immediate reference:

“(j) Thus, from the above analysis, it emerges that:

- i. The retraction was made after a period of twenty-three months;
- ii. It was never communicated to the Departmental authorities, merely not disclosed with the return of income;
- iii. From record, it is impossible to hold that any threat or coercion has been exerted during the confession statement of the assessee;
- iv. Irrespective of the form or validity of the voluntary disclosure statement of the deposition taken from the assessee on 07.01.2016, the evidence of testimony cannot be wiped out and does not become non-existent and this evidence can well be utilized to frame the assessment on that basis.
- v. Shri Ved Prakash Goyal in his sworn statement recorded on oath on 07.01.2016 has admitted undisclosed income of Rs. 5,00,00,000/- of the entire Goyal Group, however, has only made disclosure of Rs. 2,36,68,100/- and the AO has made total addition on the basis of incriminating document to the tune of Rs. 86,63,071/- leaving a balance of Rs. 1,76,68,829/-.

In view of the above position, the appellant's unsuccessful attempt to retract from the disclosure is untenable being an after-thought and is rejected. Therefore, the additions made by the AO amounting to Rs. 1,76,68,829/- is confirmed. Therefore, the appeal on this ground is dismissed.”

6. Ld. AR for assessee drew us to the orders of lower-authorities and submitted that it is very much clear from those orders that the impugned addition has been made/upheld merely on the basis of surrender/confession obtained during search proceeding. Ld. AR strongly objected such addition with following contentions:

- (i) He carried us to Page No. 1-42 of Paper-Book where the show-cause notice dated 16.11.2017 issued by AO, running over 42 pages, is filed. Drawing our attention to same, Ld. AR submitted that the AO has made a detailed working of the seized material in the show-cause notice itself. In response, the assessee filed a detailed reply explaining

the points raised by AO, copy of assessee's reply is filed at Page 43-53 of Paper-Book. Thus, the AO has made sufficient working and thereby accepted income offered by assessee for various years. After such exercise, the AO was left with an arithmetical difference of 'income surrendered in search' and 'income offered by assessee' at Rs. 1,76,68,829/-; precisely for such difference the AO resorted to addition without any material.

- (ii) Ld. AR further submits that it is not a stand of assessee that he is not honoring his commitment. In fact, the assessee is abiding by his surrender but the assessee's prayer is to look the circumstance and context in which the surrender was made. From the statements of assessee u/s 132(4) as well as notings made by AO in assessment-order, it is clearly discernible that the assessee made a lump sum surrender of Rs. 5,00,00,000/- because it was not possible to instantly explain the seized documents and work out exact figure. That is why, the assessee even stated to authorities that he would subsequently make submission for head-wise and year-wise income after analysis of the documents. Thus, the surrender itself was not absolute; one can easily infer that the surrender was subject to further analysis. Subsequently, after search and before filing return, when the assessee made analysis, it was found that a part of the surrender was only corroborated from documents and not the entire sum of Rs. 5,00,00,000/-. Therefore, the assessee-group declared income of Rs. 2,36,68,100/-. Still, the AO made a separate addition of Rs. 86,63,071/- on the basis of seized documents. Thus, after entire exercise, there left a balance of Rs. 1,76,68,829/- which was unsupported by any piece of evidence.
- (iii) Ld. AR submitted that the AO has made addition on the basis of mere surrender during search though he is making a bald statement that the addition is supported by seized documents. The fact is that the

addition has no evidence or document, it is just mathematical or arithmetical difference. Such addition, which has no corroborative or supportive evidence, cannot be made as per numerous decisions rendered by courts, copies of certain judgements have been filed in the Paper-Book of Case-laws. Ld. AR submitted that the CBDT, which is highest authority in the scheme of Income-tax u/s 116, has also issued Instruction dated 10.03.2003 binding upon authorities, which clearly gives very same direction:

11/23, 5:25 PM

TAXMANN[®]

www.taxmann.com

• Income-Tax • GST • International Taxation • Transfer Pricing
• FEMA & Banking • Competition Laws • Company & SEBI Laws
• IBC • Accounts & Audit • Indian Acts & Rules

INSTRUCTION F. NO. 286/2/2003-IT (INV. II)

**SECTION 132 OF THE INCOME - TAX ACT, 1961 - SEARCH AND SEIZURE - GENERAL
CONFESSION OF ADDITIONAL INCOME DURING THE COURSE OF SEARCH AND
SEIZURE AND SURVEY OPERATION**

INSTRUCTION F. NO. 286/2/2003-IT (INV. II), DATED 10-3-2003

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, such 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 Department. Similarly, while recording statement during the course of search & seizure 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.

(iv) Lastly, Ld. AR also resisted assessee's stand from a different angle. He submitted that from the statements, it is very much clear that the assessee made a lump sum/ad hoc surrender of Rs. 5,00,00,000/- for himself and his family members. Now, even if the authorities stuck to the figure of Rs. 5,00,00,000/-, which though is not valid, how is AO justified in making addition of difference of Rs. 1,76,68,829/- in assessee's hands alone? Ld. AR strongly contended that the impugned addition made in assessee's hands is very much faulty, baseless and unsustainable.

7. Per contra, Ld. DR for revenue relied heavily upon assessee's reply to Q.No. 14 in the statements u/s 132(4). Referring to same, Ld. DR emphasized that it is the assessee who himself admitted undisclosed income of Rs. 5,00,00,000/- and agreed to provide year-wise/assessee-wise chart within 10-15 days. Therefore, once the assessee has admitted and acknowledged a particular figure of undisclosed income with cautious mind, he cannot go away from same. Ld. DR contended that the assessment-order clearly reveals that documents found during search were voluminous and it was not possible for authorities to analyze each and every document. That apart, it is the duty of assessee to explain each and every document which the assessee had not done. Therefore, in the situation, there is nothing wrong in the addition made by AO. Ld. DR submitted that the CIT(A) has, after a careful consideration, rejected the retraction made by assessee. With these submissions, Ld. DR prayed to uphold the orders of lower-authorities.

8. In rejoinder, Ld. AR made following submissions:
- (i) The assessee is not harping on retraction point. What the assessee is submitting for kind consideration is that his surrender of Rs. 5,00,00,000/- must be seen in the context and situation in which it was made. Ld. AR submitted that the statements clearly demonstrate that the assessee made surrender of a lump sum figure and undertook to provide details after examining seized documents. But ultimately after carrying out analysis, the assessee found a part of the surrender having corroboration from seized documents; accordingly, the assessee offered income in return of income. For remaining part, there was no document, hence the assessee did not make any offer. Ld. AR questioned "What is wrong in assessee's approach?".
 - (ii) Ld. AR submitted that it is wrong to say that the assessee has not made submission to AO. In fact, immediately after receiving show-cause notice dated 16.11.2017, the assessee filed a detailed reply to AO which is filed at Page 43-53 of Paper-Book.
9. We have considered the foregoing rival contentions of both sides and perused the orders of lower-authorities as also the documents filed in Paper-Book to which our attention has been drawn. After a careful consideration, we find no merit in the arguments of revenue because of the simple reason that there appears no evidence for the impugned addition made by AO except the assessee's statement during search forming basis of the impugned addition. Ld. DR reiterated Revenue's stand that the addition is very much based on documents found during search. We, however, notice from a perusal of statements recorded u/s 132(4) duly extracted by AO in assessment-order itself that the assessee surrendered a figure of Rs. 5,00,00,000/- and that too in his own hands as well as family member's

hands while agreeing to give year-wise/assessee-wise chart subsequently. Thus, the figure of Rs. 5,00,00,000/- cannot be said to be a final figure, it is in the nature of lump sum, an ad hoc figure. The assessee is very much entitled and justified to do homework after search and arrive at a correct figure for offer in return. Had the correct figure been higher than surrender, the AO would have been entitled to assess more and if it is lower, the AO must assess only lesser amount. This is for the reason that under the scheme of Income-tax, only correct income has to be taxed. On a careful reading of para 13.5 of assessment-order, re-produced earlier, one can find that the AO has himself admitted that he proposed to make addition of Rs. 1,76,68,829/- on the basis of statement recorded u/s 132(4) although the AO has, as contended by Ld. AR, made a bald statement that the addition is also emanating from the seized document. Even the CIT(A) has also supported AO's action on the premise that the statements made u/s 132(4) have evidentiary value and admission made therein warrants addition. We find that the **CBDT instruction dated 10.03.2003 (supra)** is clearly placing restrictions in stricter terms at both levels, namely (i) while recording statements during the course of search/survey, no attempt should be made by search/survey authorities to obtain confession as to the undisclosed income, and (ii) while framing assessment, the AO should rely only upon the evidence/material gathered during the course of search/survey. Further, various judicial rulings of different courts, as filed by Ld. AR in Case Law Paper-Book, also carry a view that no addition can be made on the basis of mere surrender made during survey/search unless the same is corroborated

by some tangible evidence. We thus find no merit in the addition made by revenue authorities after appreciation of the factual matrix of present case in the light of CBDT Instruction as well as judicial rulings quoted at the behest of assessee. Resultantly, we are inclined to delete the addition made/ upheld by lower-authorities. Ordered accordingly. The assessee succeeds in this appeal.

10. Resultantly, this appeal of assessee is allowed.

Order pronounced in the open court on 02.01.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 02.01.2024 .2023
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore