

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.2952/Ahd/2016
(Assessment Year: 2012-13)

Dr. Purvesh Mansukhlal Shah, 16, Udyog Nagar Society, Outside Panigate, B/h. Ayurvedic College, Vadodara-390019	Vs.	Income Tax Officer, Ward-3(1)(2), Vadodara
[PAN No.AVSPS3792E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Manish J. Shah, Shri Jimi Patel & Shri Rushin Patel, A.Rs.
Respondent by:	Shri Kamlesh Makwana, CIT DR

Date of Hearing	29.08.2024
Date of Pronouncement	25.11.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-2, (in short “Ld. CIT(A)”), Vadodara, vide order dated 29.08.2016 passed for A.Y. 2012-13.

2. The Assessee has taken the following grounds of appeal:-

“1. The order passed by the learned CIT(A) is based on incorrect understanding of facts and bad in law.

2. The learned CIT(A) erred in confirming the addition of Rs. 14.00 Cr made by the AO on misconception of facts and on conjectures and surmises.

3. The learned CIT(A) failed to appreciate that:

(i) There was no survey u/s. 133A on the appellant. Survey was carried out at the business premises of the Sumandeep Vidhyapith with which the appellant was unconnected at the relevant point of time.

(ii) *Statement of appellant was neither recorded in any proceedings u/s. 133A nor u/s. 131A of the Act in the case of the appellant and that this aspect would be relevant for considering nature and effect of the statement.*

(iii) *In the Writ petition filed before the High Court, it was categorically stated in para (3) that impounded material was not provided though specifically requested by the Appellant to understand the context of questions asked and the nature of documents with reference to which questions were asked to him in the statement recorded in the course of survey in response to which his disclosure of undisclosed income was recorded and that this aspect has bearing in appreciating the appellant's submission that the survey team recorded questions and answers in their own way.*

(iv) *The presence of Witness who happened to be chartered accountant at the time of recording statement cannot imply that the appellant was allowed to consult them.*

(v) *The act of paying up tax in the immediately preceding year with a view to buy mental peace cannot be used to draw adverse inference in the year under appeal and cannot be cited to confirm addition.*

4. *The learned CIT(A) erred in confirming the addition which is solely on the basis of statement recorded which was neither u/s. 133A nor u/s. 131A and does not have any evidential value in the eyes of law.*

5. *It is submitted that Assessment of Income of Rs. 14 Crores without any evidence whatsoever of the fact of appellant having earned such income is not valid in the eyes of law. In this context, it is relevant to note that neither the AO nor the CIT(A) brought on record any corroborative evidences in support of addition of Rs. 14 Cr.*

6. *The learned CIT(A) failed to understand that statement of appellant was taken under threat and coercion. The appellant's signature was obtained on the statement without giving him an opportunity to read the statement and without allowing him to put a qualifying note.*

6.1 *The learned CIT(A) erred in referring and relying on certain questions and answers recorded in the statement to confirm the conclusion that the statement was not recorded under pressure.*

7. *The learned CIT(A) ought to have appreciate that various averments made in writ petition filed before the High Court, a copy of which was made available to the Department in the course of proceedings before the Court tantamount to retracting and therefore the appellant's retraction cannot be termed as delayed retraction.*

Your appellant prays for leave to add, alter and/or amend all or any of the grounds before the final hearing of appeal."

3. The brief facts of the case are that a survey under section 133A was conducted on 1st June 2011 in the case of the assessee, during which the assessee made a disclosure of an undisclosed income of Rs. 14 crores for the assessment year (A.Y.) 2012-13. The assessee, during the course of survey, admitted to generating this income from unaccounted cash in land dealings acting in the capacity as a land broker. The original return of income for A.Y. 2011-12 was filed by the assessee on 30th September 2011, declaring an income of Rs.22,19,48,963/-, which was accepted by the Assessing Officer (AO) in an order passed on 12th April 2012. Subsequently, the assessee filed a Writ Petition before the Gujarat High Court challenging the order, particularly seeking copies of the seized documents from the survey. The High Court set aside the order and directed the AO to provide the documents requested by the assessee or give an explanation as to why these documents could not be provided to the assessee. In response to the survey, the assessee confirmed that he had invested Rs. 22 crores in the names of family members, declaring it as undisclosed income for the financial year 2010-11. The assessee also offered the above income of Rs. 22 crores declared in the survey, in the return of income filed for A.Y. 2011-12. However, for the A.Y. 2012-13, although in the survey the assessee stated to have received undisclosed income of Rs. 14 crores from land dealings acting as a land broker, the Assessing Officer observed that the assessee failed to include this amount in his return of income filed for assessment year 2012-13, which declared an income of Rs. 94,19,670/-. The AO noted that while the assessee had admitted to earning Rs. 14 crores as undisclosed income during the survey from land broking, this amount was not disclosed in the A.Y. 2012-13 return. The assessee's retraction of his statement was based on his averment that the assessee was coerced into signing the statement during

the survey and that no documentary evidence had been provided to substantiate the land dealings from which the assessee allegedly earned brokerage income. The assessee also contended that the disclosure was not backed by any material to show that he was engaged in brokering land transactions. However, despite the retraction, the AO proceeded to make the addition of Rs. 14 crores to the assessee's income, relying on the statement made by the assessee during the survey, **which as per the Ld. AO was corroborated by the frequent purchase and sale of properties by the assessee and his family members.** The assessee's argument that no documentation supported the survey statement was rejected, and the AO found that the disclosure was made voluntarily during the survey. The AO also noted that the assessee's retraction came after a significant delay of 16 months and lacked any substantive basis. During the assessment proceedings, the assessee contested the addition by reiterating his position from the writ petition and challenging the absence of supporting documentation. However, the AO, relied on various judicial precedents, including the decision of the Bombay High Court in *Dr. Dinesh Jain v. Income Tax Officer*, in which the addition based on the statement made during the survey was upheld, despite the retraction. Accordingly, the AO was of the view that the assessee's retraction of his statement was not reliable and that the undisclosed income of Rs. 14 crores, admitted during the survey, was included in the return for A.Y. 2012-13.

4. In appeal before Ld. CIT(Appeals), the assessee contended that the statement was made under coercion and without the opportunity to review it, and that no supporting documentary evidence was provided by the survey team to demonstrate that the assessee was engaged in land broking. The assessee relied on a decision by the Gujarat High Court in the case of *Ramanbhai B. Patel* (Tax Appeal No. 207 of 2008), which held that

additions made solely on the basis of statements recorded during a survey, without supporting material, are unsustainable. The assessee argued that the AO's addition lacked evidentiary support, as there was no proof that the assessee had earned unaccounted brokerage income. Additionally, the assessee stated that the admission of Rs. 14 crores was made voluntarily in connection with his share application money for a previous assessment year, and that the facts between the two years were different. The assessee submitted that he was not allowed to review or add a qualifying note to his statement made during the course of survey. The assessee also argued that the retraction of the declaration made during the survey was valid, as it was based on an understanding that the information was not supported by documentary evidence. Ld. CIT(Appeals) observed that the AO, had refuted these claims on the ground that the assessee had made a voluntary admission of the undisclosed income during the survey and had confirmed the statement in the presence of two Chartered Accountants. Ld. CIT(Appeals) observed that the assessee had disclosed the Rs. 22 crore income for A.Y. 2011-12 based on land dealings, and therefore, the admission by assessee for A.Y. 2012-13 that he was engaged in land dealings was consistent with the earlier admission and his involvement in land brokering. CIT(A) observed that the assessee had made a similar disclosure in his return of income for A.Y. 2011-12, where he had acknowledged unaccounted cash from land dealings, which reinforced the credibility of the survey team's findings that even in the present year, the assessee was engaged in land dealings as a broker. Ld. CIT(Appeals) was of the view that the assessee's claims of coercion were also found unsubstantiated, as the Hon'ble Gujarat High Court had dismissed the assessee's writ petition in 2012, which had challenged the validity of the survey and the coercion allegation. The High Court's direction to supply

the copy of the statement and impounded documents did not substantiate the assessee's claims. Ld. CIT(Appeals) was of the view that the AO had correctly noted that if there had been any coercion, the assessee would have retracted his statement immediately after the survey, rather than waiting for over 16 months until the filing of his return in 2012. Given the overwhelming evidence, including the assessee's voluntary admission of earning a sum of Rs. 14 crores from land broking and his failure to provide any supporting evidence or reasonable explanation for the retraction, Ld. CIT(Appeals) confirmed the addition. The retraction of the disclosure was deemed an afterthought to evade tax liability. The appeal was, therefore, dismissed, with the addition of Rs. 14 crores for undisclosed income from land brokerage being upheld by Ld. CIT(Appeals).

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A).

6. Before us, the Counsel for the assessee reiterated that there was no incriminating material which could substantiate that the assessee was engaged in land dealing / broking during the impugned year under consideration. Further, the Counsel for the assessee submitted that as per directions of the High Court, on the perusal / analysis of documents furnished by the Department, the assessee had observed that the entire additions proposed to be made were not on the basis of any documentary evidence / incriminating material which could substantiate that the assessee was engaged in land dealing / land broking. The Counsel for the assessee submitted that it is a well settled law that additions cannot be sustained only on the basis of statement made by the assessee during the course of survey proceedings. Further, even the aforesaid statement made by the assessee had been subsequently retracted since firstly, the same was

given by the assessee under coercion, and secondly, there was no incriminating material found by the Department on the basis of which the aforesaid additions could be sustained since there was nothing concrete to show that assessee was engaged in land broking. The Counsel for the assessee drew our attention to attachment / notice to the computation of income for the impugned assessment year, in which the assessee had specifically mentioned that from the impounded material received by the assessee as per the directions of the Hon'ble High Court, there is no document in the impounded material indicating that the assessee had earned income as a land broker. The Counsel for the assessee submitted that in the assessment order, no specific details of transactions undertaken by the assessee, name of buyer and seller, there was no reference of land which were sold, value of transactions and the brokerage amount etc. were not found on the basis of which the additions were proposed to be made. Further, the Counsel for the assessee submitted that so far as details of property as mentioned at question No. 10 of the statement taken is concerned, those properties pertained to a different assessment year and further, these properties were purchased / sold by other family members and not the assessee. Further, with regards to two properties mentioned at question No. 13, the assessee has already replied that these transactions have already been declared by the assessee in his income for A.Y. 2008-09 and tax has been paid on the same. Therefore, the Counsel for the assessee submitted that entire additions made by the AO during the impugned assessment year have been made on the basis irrelevant data which does not pertain to the impugned year under consideration, there are no details of properties mentioned in the assessment order, the names of the purchasers and sellers of these properties alleged to have been sold by the assessee are not mentioned in the assessment order and therefore,

in light of these facts, no additions are liable to be sustained in the hands of the assessee.

7. In response, the Ld. D.R. drew our attention to question No. 4 of the statement made by the assessee in which he has specifically stated that he has generated unaccounted cash in land dealing in the capacity of a land broker and has earned unaccounted money to the tune of Rs. 14 crores approximately during F.Y. 2011-12, relevant to A.Y. 2012-13. Secondly, there was substantial delay in retraction of statement by the assessee, after delay of 16 months and such retraction was only an afterthought by the assessee, only with a view to evade taxes. Thirdly, the Ld. D.R. submitted that the facts of both the years should be taken into consideration together, since for immediately preceding year, the assessee had declared income of Rs. 22 crores mainly out of land brokerage deals and therefore, in light of the statement made by the assessee voluntarily in which he declared land broking for this year as well, the additions are liable to be sustained.

8. We have heard the rival contentions and perused the material on record.

9. In our considered view, from the facts placed on record we observe that the additions have been made in the hands of the assessee primarily on the basis of statement of the assessee recorded during the course of survey proceedings. It is observed that while making the additions in the hands of the assessee on account of undisclosed income earned from land broking, there is no specific reference to land transactions deals done by the assessee during the impugned assessment year, there is no specific reference with regards to the name of purchaser and seller of such properties, there is no reference as to how this figure of Rs. 14 crores was

arrived by the Department and in respect to which specific properties, there is no specific details of land which was purchased and sold for which the assessee earned brokerage income and further, there is no mention of the value of transactions for which the assessee earned brokerage income. It is seen that the entire basis of making addition of Rs. 14 crores to the income of the assessee is on the basis of statement recorded under Section 131A of the Act, during the course of survey proceedings. It is a well settled law that no additions can be made only on the basis of statement of the assessee unless supported by incriminating evidence against the assessee.

10. It would be useful to reproduce the relevant extracts of decision in the case of **DCIT vs. M/s. Real Strips Ltd. in ITA No. 2255/Ahd/2016** vide order dated 31.05.2018, wherein the ITAT made the following observations:

“We also note that the statement u/s 133A was recorded on 21-01-2015, wherein, the excess production loss was observed. The same observations was applied to the A.Y. 2012-13 and accordingly, suppressed production leading to suppress sale was determined. In our considered view, the statement recorded during the F.Y. 2014-15 on the basis of documentary evidences pertaining to F.Y. 2014-15 cannot be ipso facto applied to the A.Y. 2012-13 without having any corroborative evidence.”

11. In the case of **CIT vs. M.P. Scrap Traders 60 taxmann.com 205 (Gujarat)**, while passing the order the Gujarat High Court made the following observations:

“6. In view of the aforesaid factual aspect, more particularly, when the Assessing Officer had no other material and/or corroborative material to justify the aforesaid additions except the confessional statement of Shri Kishorebhai Mohanlal Karia recorded on January 4, 2007, which was subsequently retracted within a period 19 days and the same came to be explained with respect to aforesaid additions, we are in complete agreement with the view taken by the learned Tribunal. We see no reasons to interfere with the impugned judgment and order passed by the learned Tribunal deleting the aforesaid additions. Under the circumstances, the proposed question of law are answered against the Revenue.

Consequently, both the appeals deserve to be dismissed and are accordingly dismissed.”

12. In the case of **Kailashben Manharlal Chokshi vs. CIT 174 taxman 466 (Gujarat)**, has made the following observations in this regard:

“Therefore, the explanation offered by the assessee had not been duly considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4). Despite the fact that the said statement was later on retracted, no evidence had been furnished by the revenue authority. Therefore, merely on the basis of admission, the assessee could not have been subjected to such additions, unless and until some corroborative evidence was found in support of such admission. Further, the statement recorded at such odd hours could not be considered to be a voluntary statement, if it was subsequently retracted and necessary evidence was led contrary to such admission. Hence, there was no reason to disbelieve the retraction made by the assessee and his explanation duly supported by the evidence.”

13. Further, we would also like to reproduce the Circular Number F. No. 286/2/2003-IT (Inv.) issued by CBDT with regards to addition on the basis of confession made during the course of search and seizure operations:

“F. No. 286/2/2003-IT (Inv)

*GOVERNMENT OF INDIA
MINISTRY OF FINANCE & COMPANY AFFAIRS
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES
Room No. 254/North Block, New Delhi, the 10th March, 2003*

*To
All Chief Commissioners of Income Tax, (Cadre Contra)
&
All Directors General of Income Tax Inv.*

Sir

Subject:- Confession of additional Income during the course of search & seizure survey operation -regarding

Instances have come to the notice of the Board 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

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*retracted by the concerned assessee while filing returns of income. **In these circumstances, on 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 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 Departments.** Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be 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.

Yours faithfully,

*Sd/-
(S.R. Mahapratra)
Under Secretary (Inv. II)”*

14. In light of the above judicial precedents and Circular referred to above and in light of our observations in the preceding paragraphs, in our considered view, the present additions are not liable to be sustained in the hands of the assessee.

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

This Order pronounced in Open Court on	25/11/2024
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**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 25/11/2024

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad