

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

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 73/GTY/2023
Assessment Year: 2017-18
&
I.T.A. No. 74/GTY/2023
Assessment Year: 2019-20

DCIT, Central Circle1, Guwahati,
Room No. 507, 5th Floor,
Aayakar Bhawan, G.S Road,
Christian Bast,
Guwahati – 781005

.....**Appellant**

vs.

Lakhi Chutia,
Khelmati Girls College Road,
Khelmati Ward No. 1A,
Lakhimpur, Assam - 787031
[PAN: AGVPC5247Q]

..... **Respondent**

Appearances by:

Assessee represented by : Kishor Jain, FCA
Department represented by : Sanjay Jha, JCIT

Date of concluding the hearing : 07.01.2025
Date of pronouncing the order : 16.01.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. These are a batch of two appeals pertaining to Assessment Year (AY) 2017-18 and 2019-2020. Appeal for AY 2017-18 arises from the order of Ld. Commissioner of Income Tax (Appeals), passed u/s 250 of the Act, 1961 (hereafter 'the Act') dated 28.02.2023 and the appeal for AY 2019-2020 arises from the Ld. CIT(A) order dated 28.02.2023. Since, the issues

are inter-connected, these appeals are being dealt with through a single order.

1.1 The brief facts are that in this case a survey was conducted on the business premises of the assessee on 06.03.2019. During the course of survey, the assessee had disclosed following income:

<i>SL No.</i>	<i>Additional Income disclosed voluntarily during the course of survey on 06-03-2019</i>	<i>Assessment Year</i>	<i>Disclosure made on account of</i>
<i>1</i>	<i>75,00,000</i>	<i>2017-18</i>	<i>Bogus Sub Contract Payment claimed</i>
<i>Total</i>	<i>75,00,000</i>		
<i>1</i>	<i>20,00,000</i>	<i>2018-19</i>	<i>Bogus Sub Contract Payment claimed</i>
<i>2</i>	<i>10,00,000</i>	<i>2018-19</i>	<i>Investment Made in building and furniture & fixture</i>
<i>Total</i>	<i>30,00,000</i>		
<i>1</i>	<i>1,79,80,832</i>	<i>2019-20</i>	<i>Sundry Creditors written off</i>
<i>2</i>	<i>1,16,80,500</i>	<i>2019-20</i>	<i>Cash payments above Rs. 10,000/- u/s 40A(3)</i>
<i>Total</i>	<i>2,96,61,332</i>		

In both of the years the notices issued u/s 142(1) of the Act seeking information and details regarding the income of the assessee did not elicit any response. Accordingly, the additional income disclosed during the course of survey was added for both of the years as under:

(a) AY 2017-18 – Rs. 75,00,000/-

(b) AY 2019-20 – Rs. 1,79,80,832/-

While the Ld. AO appears to be in the dark regarding the action of the assessee in retracting his statement recorded under oath during the course of survey, the Ld. CIT(A) is seen to have relied on this fact to state, for both the matters, that Ld. AO, should have conducted independent enquiries for determining undisclosed income and should not have relied merely on the statement under oath of the assessee, which was retracted

in any case. With this finding, the Ld. CIT(A) deleted the additions in both of the years. It is seen that in the impugned orders reliance has been placed on several case laws and CBDT Circulars to strengthen the argument that a confessional statement recorded during survey alone would not be sufficient for making additions to the income of the assessee.

1.2 Aggrieved with this action of Ld. CIT(A), the Revenue is in appeal before the ITAT with the following grounds:

ITA No. 73/Gty/2023 (AY 2017-18)

“1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition to the tune of Rs. 75,00,000/- by stating that Assessing Officer should not rely solely upon the statements or confessions taken during the Survey, which do not serve any useful purpose. In this regard, the statement of the assessee is to be treated as incriminating documents for the purpose of addition in the assessment order.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition by accepting the retraction of statement recorded by the assessee by not taking into consideration of below mentioned cases:

(i) CIT vs Mac Charitable Trust (2022) 144 taxmann.com 54 (Madras).

(ii) Thir AJ Ramesh Kumar vs DCIT(2022) 139 taxmann.com 190 (Madras).

3. The appellant craves the leave to add/modify/ alter any or all the grounds during the course of hearing/ pendency of appeal.”

ITA No. 74/Gty/2023 (AY 2019-20)

“1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition to the tune of Rs. 1,79,80,932/- by stating that Assessing Officer should not rely solely upon the statements or confessions taken during the Survey, which do not serve any useful purpose. In this regard, the statement of the assessee is to be treated as incriminating documents for the purpose of addition in the assessment order.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition by accepting the retraction of statement recorded by the assessee by not taking into consideration of below mentioned cases:

(i) CIT vs Mac Charitable Trust (2022) 144 taxmann.com 54 (Madras).

(ii) Thir AJ Ramesh Kumar vs DCIT(2022) 139 taxmann.com 190 (Madras).

3. The appellant craves the leave to add/modify/ alter any or all the grounds during the course of hearing/ pendency of appeal.”

2. Before us, the Ld. DR argued that nothing substantial was produced before the Ld. AO and notices issued for filing details etc. were not responded to by the assessee. The Ld. DR expressed a doubt that even the fact of retraction of statement may not have been before the Ld. AO since there is nothing on record, as per the Ld. AO's order, to indicate any such knowledge on the part of the Ld. AO. The Ld. DR further argued that rather than explaining the reasons for disclosure made during the survey operation and even explaining why that statement under oath was not reflective of the exact state of affairs and therefore, needed to be retracted, the assessee's case has been dealt with favourably by the Ld. CIT(A) for both of the years. The Ld. DR further stated that in case the assessee had cooperated during the course of assessment proceedings then perhaps his correct income could have been determined by the Ld. AO.

2.1 Per contra, the Ld. AR stated that the first appellate order is a very detailed and comprehensive document, in which a number of authorities have been relied on and the Ld. CIT(A)'s decision is sound and correct for both of the years. The Ld. AR also stated that the confessional statement was obtained under duress and therefore, it was retracted.

3. We have carefully considered the submissions of the Ld. DR/AR and also gone through the orders of authorities below. While there is some merit in the finding of Ld. CIT(A) that a bald statement under oath may not be sufficient to enhance the income of an assessee, especially when the same has been retracted. However, a perusal of the two orders of Ld. AO reveal that there was no response from the side of the assessee and no representation before the Ld. AO. In such a situation, the action of Ld. CIT(A) cannot be upheld since he has under-played the non-compliance by the assessee before the Ld. AO and has been persuaded by the submissions made before him. Considering the totality of facts and circumstances of this case, we deem it fit to remand both the matters back to the file of Ld. AO for a proper investigation into the accounts of the

assessee and thereby the Ld. AO must assessee his true and correct income, whatever the quantum of the same may be. While the Ld. AO would give adequate opportunity to the assessee, the assessee would do well to cooperate with the Ld. AO during the course of these fresh proceedings.

4. In the result, both the appeals of the Revenue are allowed for statistical purposes.

Order pronounced in the court on 16.01.2025

Sd/-
[Manomohan Das]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 16.01.2025
AK, PS

Copy of the order forwarded to:

1. Lakhi Chutia
2. DCIT, Central Circle1, Guwahati
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches