

आयकर अपीलीय अधिकरण, 'बी' (एस एम सी), न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' (SMC) BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज, उपाध्यक्ष के समक्ष
BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

आयकर अपील सं./ITA No.: **3215/CHNY/2024**
निर्धारण वर्ष/Assessment Year: 2018-19

**Ms. Soundra Rajan Aruna
Divya,**
5/7/11, Second East Cross Street,
Tirunelveli H.O.,
Tirunelveli – 627 001.

**The Deputy Commissioner
of Income Tax,**
Vs. Circle 1,
Tirunelveli

PAN: BICPA 8838B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri P.M. Kathir, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri Ashwin Gowda, JCIT

सुनवाई की तारीख/Date of Hearing : 03.07.2025

घोषणा की तारीख/Date of Pronouncement : 07.07.2025

आदेश/ ORDER

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 06.12.2024 passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2018-19.

2. The grounds raised by the assessee read as follows:-

1. *The order of CIT(A) is erroneous, bad in law and liable to be annulled as the same is opposed to the facts of the case and provisions of the law.*

2. *The CIT(A) erred in upholding the action of AO without adverting to the facts and circumstances of the case.*

3. *The CIT(A) erred in passing the order without considering the merits of the case and the submissions of the appellant during the appeal proceedings.*

4.1 *The CITA) erred in upholding the order of AO, arrived solely on the basis of sworn statement recorded from an another person, during the survey proceedings without any corroboration.*

4.2 *In any case, sworn statement recorded during survey u/s 133A of the Act by force or compulsion by the revenue doesn't have any evidentiary value.*

4.1 *The CIT(A) erred in upholding the addition u/s 69 of the Act only on the basis of assumption arrived on the basis of sworn statement and not on facts.*

4.2. *The CIT(A) erred in treating the sum of Rs. 7,50,0000/- as unexplained income u/s 69A and taxing at the rates prescribed u/s 115 BBE of the Act.*

4.3. *As there was no undisclosed money of the assessee, addition u/s 69A of the Act, without any justification is wholly arbitrary and liable to be deleted in full.*

5. *The CIT(A) erred in upholding the interest payable amounting to Rs. 2,07,613/- collectively u/ss 234A, 234B and 234D of the Act.*

6. *Any grounds that may be raised at the time of hearing*

3. Brief facts of the case are as follows: The assessee is an individual doing business of accounting and e-filing center. She is

also a working partner in a firm running lodging and restaurant business. There was a survey conducted u/s.133A of the Act in the business premises of the firm on 13.01.2018. During the course of survey u/s.133A of the Act, a statement was recorded from Shri Hariharan, one of the partners of the firm wherein he had agreed to offer an additional income of Rs.7,50,000/- for each of partners as income earned from unaccounted sales and other discrepancies. Subsequently on the basis of the statement recorded from the other partner Shri Hariharan, assessment u/s.143(3) of the Act in the hands of the assessee was completed on 13.04.2021 by making addition of Rs.7,50,000/- u/s.69A r.w.s. 115BBE of the Act.

4. Aggrieved by the addition made in the assessment order dated 13.04.2021, assessee filed appeal before the FAA. The FAA confirmed the addition made by the AO. The FAA reiterated the findings of the AO that addition is based on the said partner's letter dated 19.03.2018 and same was not retracted immediately. The FAA stated retraction was made only during the course of assessment proceedings after a long gap and admission originally given will have evidentiary value.

5. Aggrieved by the order of the FAA, assessee has filed the present appeal before the Tribunal. The Ld.AR has filed two sets of paper-book, one being case laws compilation and the other, the statement recorded from the partner Shri S. Hariharan on 13.3.2018, letter filed by Shri S. Hariharan dated 19.03.2018 with regard to disclosure, the order passed u/s.127 centralizing the assessee's case, notice issued during the course of assessment proceedings and the reply of the assessee. The Ld.AR had raised legal contentions that assessment order passed by the National e-Assessment Centre is bad in law since the assessee's case has been centralized by the order of PCIT dated 29.12.2020 passed u/s.127 of the Act. Therefore, it was contended that the order of assessment ought to have been passed by the central circle officer. In support of the assessee's submission, the Ld.AR relied on the order of the Chennai Bench of the Tribunal in the case of Shri Prabhakar vs. ITO in ITA No.840/CHNY/2022 dated 20.01.2023. Further, the Ld.AR submitted that the statement recorded u/s.131 of the Act is bad in law since the conditions enumerated u/s.133A(6) of the Act are not satisfied in the facts of the instant case. Therefore, the statement ought to have been recorded u/s.133A(3)(iii) of the Act instead of section 131 of the

Act. Further, it was contented the addition made merely on statement without any corroborative evidence is to be deleted.

6. The Ld.DR supported the orders of the AO and the FAA.

7. I have heard rival submissions and perused the material on record. The survey was conducted u/s. 133A of the Act in the premise of partnership firm namely Hotel Ramesh Iyer on 13.03.2018. A sworn statement was recorded u/s.131 of the Act and not u/s 133A(3)(ii) of the Act during the course of survey. Under survey operation, Income Tax Officers can record statements u/s.133A(3)(iii) of the Act. The ITO can resort to recording a statement u/s.131 of the Act only if the conditions enumerated u/s. 133A(6) of the Act are satisfied, (i.e.) the deponent refuses to have his statement recorded or evades to produce any documents called for. Recording of statement u/s.131 of the Act in the absence of existence of such conditions is illegal. The CBDT had issued Guidelines (F No. 286/98/2013-IT (Inv.II) dated 18.12.2014 instructing the income tax officers - *"that they have to focus on gathering evidences during the Search/Survey and to strictly avoid obtaining demission of undisclosed income under coercion/undue influence from the*

Assessee". The relevant portion of the Survey Manual 2019 (Page 18 of Survey Manual 2019) is as follows:-

“The statement is recorded u/s 133A(3) (ii) of the Act. This section does not empower any authority to administer an oath, therefore, an oath should not be administered by the Income-tax authority while recording such a statement. If the person either refuses to afford facility to the income-tax authority to inspect books of account or other documents or to check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded, the income-tax authority shall have all the powers u/s 131(1) of the Act for enforcing compliance with the requirement made. In such a condition, a statement u/s 131(1) of the Act may also be recorded after administering him an oath.”

8. The Hon'ble Calcutta High Court in the case of Dr Vijya Pahwa v SCIT in [1996] 84 Taxman 416 has observed

2..... Summons can be served under section 131(1) only in case of obstruction by the person concerned or when some sort of hindrance is put up by him. In the instant case the summons was immediately executed on the same day within 30 minutes or so.

3..... Now There are other powers for search and seizure. There are other powers for reopening of computed assessments. These were not utilized. Under the garb of conducting a simple survey under section 133A, books of Dr Pahwa were seized without any apparent authority. The I TOs and authorities do not have any power to interrupt the ordinary peaceful citizens of the country in any manner they like by utilizing the large powers given to them, without keeping strictly within the four corners of those large powers. Since the powers vested are large, even a millimetre of departure therefrom must be immediately shorn off by the impartial Courts of law if this country is to continue to remain a free one.

9. The Hon'ble Delhi High Court in the case of Khem Chand Mukim vs PDIT (Inv) reported in [2021] 123 Taxmann.com 117(Delhi) has held

“7. The submission of Ms. Malhotra is that the action under section 132 of the Act was preceded by action under section 131(1A), and not vice versa. Be that as it may, we are of the opinion that even if the proceedings conducted on 10-9-2018 had indeed been carried out under section 131 (1A) of the Act. and action under section 132 of the Act was taken subsequent thereto, such an exercise by the Revenue was nevertheless contrary to the scheme of the Act. Section 131(1A) stipulates that if the officer named in the said statute, before taking action under Clauses (i) to (v) of sub-section (1) of section 132, has reason to suspect that any income has been concealed or is likely to be concealed, by any person or class of persons within his jurisdiction, then for the purpose of making an enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) of section 131, notwithstanding that no proceedings with respect to such persons are pending before any Income-tax Authority.”

10. Further, Chennai Bench of the Tribunal in the case of Foundation One Infrastructure Private Limited v ACIT in ITA Nos:3148 to 3152/Chny/2024 held;

“11.....We also find that the survey team recorded three statements from the employees and Managing Director of the assessee company in the case under consideration under section 131[1A] of the Act which are not valid and which will not give jurisdiction to the assessing officer to make any additions based on the invalid statement recorded under section 131(1A) of the Act. As held by the Hon. Calcutta High Court in the case of Dr. Vijay Pahwa v DCIT reported in 250 ITR 354, it can be seen that unless the provisions of section 133A[6] of the Act were satisfied, no statement could have been recorded invoking the powers of section 131 of the Income Tax Act. Much less, in the instant case, the statement recorded by the Survey team is invalid since there was no

reason to suspect that any income has been concealed or is likely to be concealed that was brought out by the revenue but for which a statement could be recorded u/s. 131(1A) of the Act. This view was taken by the Hon. Delhi High Court in the case of Khem Chand Mukim v PDIT (Inv.) reported in 423 ITR 129 and also the decision of Khem Chand Mukim v PDIT (Inv.) reported in 123 taxmann. com 117. The Hon. Bombay High Court in the case of Jamnadas Madhavji & Co. v ITO Surmmon V ITO reported in 27 Taxman 157 held that an invalid summon issued u/s.131[1A) of Act would make the same non est and was liable to be quashed.”

11. In light of aforesaid judicial pronouncements, since conditions enumerated u/s.133A of the Act are not satisfied on the facts of the instant case, the statement recorded u/s.131 of the Act is illegal. Thus, the addition made on the basis of the same is also illegal and is deleted.

12. The FAA has solely proceeded to confirm the addition in the hands of the assessee on the basis of the sworn statement recorded from one of the partners of the firm. The partner of the firm vide letter dated 19.03.2018 clarified that due to the pressure of the department an estimated additional income of Rs.2 Crores will be offered to tax; split between the partners and the firm. The relevant portion of said letter dated 19.03.2018 is extracted at page 8 of FAA's order (para 5.3). Further during the assessment proceedings, the assessee in her submission on 05.02.2021 clarified that the partner was under coercion and

pressure from the income tax officers while making the statement. The addition has been made solely based on the sworn statement recorded from one of the partners without any corroborative evidence. In light of the aforesaid reasoning and relying on the judicial pronouncement cited supra, I delete the addition of Rs.7,50,000/- made u/s.69A of the Act.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 7th July, 2025 at Chennai.

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 7th July, 2025

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.