

आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 306/Kol/2025
Assessment Year: 2020-21

ACIT, Central Circle-4(3), Kolkata	Vs.	M/s Citizen Umbrella Manufacturers Ltd. (PAN: AABCC 1673 M)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

C.O. No. 34/Kol/2025
(Arising out of ITA No. 306/Kol/2025)
Assessment Year: 2020-21

M/s Citizen Umbrella Manufacturers Ltd. (PAN: AABCC 1673 M)	Vs.	ACIT, Central Circle-4(3), Kolkata
Cross-objector		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	21.05.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	30.06.2025
For the assessee / निर्धारिती की ओर से	Shri S. M. Surana, Advocate

For the revenue / राजस्व की ओर से	Smt. Ruchika Sharma, Sr. DR
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ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is the appeal preferred by the revenue and the cross-objection preferred by the assessee against the order of Commissioner of Income Tax (Appeals), -27, Kolkata (hereinafter referred to as the Ld. CIT(A)] dated 31.12.2024 for AY 2020-21.

2. The facts of the case are that the assessee is a Kolkata based manufacturer of umbrellas & its related accessories and wearing accessories. A Survey operation under section 133A of the Act was conducted on 19.02.2020 by the Director of Income Tax Investigation Kolkata in case of 'Citizen Group'. Later, the assessee filed its return of income u/s 139 of the Act for the A.Y. 2020-21 on 13.02.2021 declaring total income at Rs.8,56,45,950/-. Being a survey case, the return was selected under compulsory scrutiny and accordingly, notice u/s 143(2) of the Act was issued on 28.06.2021. Later, notice u/s 142(1) of the Act along with the requisites/questioners was issued to the assessee. In response to the same, the assessee had filed submissions. The AO had passed the assessment order u/s 143(3) of the Act on 17.03.2021 by determining the total income of the assessee at Rs.11,82,30,880/-. On perusal of the assessment order, it is observed that the AO had made three additions viz. a) Addition of Rs.1,44,81,738/- on account of undisclosed profit derived from the undisclosed cash sale of Rs.13,31,04,211/-, (b) On account of undisclosed investment of Rs.1,81,02,172/- u/s 69A of the Act for achieving the said undisclosed sale. & c) Disallowance u/s 36(1)(va) r.w.s 2(24)(x) amounting to Rs.1,018/-.

3. Aggrieved by the said order, the assessee filed an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been allowed.

Being aggrieved and dissatisfied the revenue has preferred an appeal before us.

4. The Ld. D.R challenges the very impugned order thereby submitting that the Ld. CIT(A) has erred in allowing the relief to the assessee amounting to Rs. 1,44,81,738/- added as undisclosed profit derived from undisclosed cash sales. The Ld. D.R further submits that the Ld. CIT(A) has further erred in allowing relief to the assessee against the addition made u/s 69A of the Act of Rs. 1,81,02,174/- by estimating unexplained capital employed achieving the corresponding undisclosed sales.

5. Contrary to that the ld. A.R supports the impugned order thereby submitting that cash sale found in loose papers was duly credited the cash sale of Rs. 15,57,25,671/- out of total sales of Rs. 1,64,65,82,244/- in the regular books of account. The ld. AR further submits that the cash sales found in loose sheets was part of the regular books of account. The Ld. Counsel further submits that there is no infirmity in the impugned order and filing cross-objection assessee has supported the order of the Ld. CIT(A).

6. Upon hearing the submission of the counsel of the respective parties, we have perused the order passed by the lower authorities and find that there was a survey in the business premises of the assessee. It is a fact that the assessee company engaged in manufacturing of umbrella and related accessories and sale of assessee is both by credit as well by cash. It further appears to us those entire sales whether credit or cash was duly recorded in the books of account. The assessee furnished audited balance sheet, profit and loss account and tax audit report for the relevant FY 2019-20 and there were no adverse comments by the auditor in the audit report. The total sales recorded in the books was to the extent of Rs. 1,64,65,82,244/- out of which Rs. 15,57,25,671/- was in cash which is about 10% of the total sales. It is pertinent to mention here that during the assessment proceeding full sets of books of account were produced before the AO which were examined with reference to bills and vouchers that has been accepted by the AO. On perusal of the assessment order, it appears that the AO relied on some memos and statement of S. K Banthia and Pritam Sureka recorded in the course of survey and it is a fact that the statement of the parties which was recorded on 19.02.2020 and 20.02.2020 was immediately retracted and filed the same on 24.02.2020 before the ADIT(Inv). We have gone through the order passed by the Ld. CIT(A) and find that the Ld. CIT(A) has

examined the cash sales as per loose papers/ memos found with books and found that cash sales in loose paper were duly recorded in the books of account. The operative portion of the order are hereby essential to reproduce as under:

6.2. Discussion and decision:

6.2.1. I have gone through the assessment order as well as the submission of the assessee. On examining the same, it is observed that in the present case, survey operation u/s 133A of the Act were carried out against the appellant company on 19.02.2020 wherein several documents were found and impounded. Subsequently statements of Shri Suresh Kumar Banthia, Shri Pritam Sureka and Shri Rajendra Daga were recorded on 19.02.2020 however the said statements were immediately retracted by them on 24.02.2020 and was informed to the DDIT of the Investigation wing on 24.02.2020 itself vide affidavit filed. It is observed that against the query raised by the AO in course of the assessment proceedings, the appellant had submitted all the relevant details and documents viz. copies of letter along with affidavit, retail cash sales ledger, sales reconciliation statement, sales register dt. 27.01.2020 to 10.02.2020, 01.02.2020, 15.02.2020, copies of the submission before the DDIT(Inv) U2(4)/Kolkata and relevant documentary evidence and explanations etc. The appellant further submitted that in course of the assessment proceedings the AO had not considered the entire submissions filed by the assessee.

6.2.2. It is observed from the findings in the assessment order with regard to the survey operation and the submission made by the appellant that the appellant company duly recorded the alleged cash sales of Rs.13,31,04,211/- in its regular books of accounts. It was submitted by the assessee that the AO accepted the cash sales as per books of accounts which was Rs.15,57,25,671/- which was more than the cash sale found in the course of survey of Rs.13,31,04,211/-. Not only that the appellant has clearly demonstrated that the books of accounts were accepted during the course of Assessment proceeding and no adverse inference was drawn on the same, the assessee also demonstrated that the unaccounted sales as alleged vide the impounded documents were not unaccounted sales but were duly recorded in their regular books of accounts of the appellant company. This was as evident from the sales register, retail cash ledger and sales reconciliation submitted. Further the assessee had claimed that addition cannot be made simply on the basis of the statements of Shri Suresh Kumar Banthia, Shri Pritam Sureka and Shri Rajendra Daga which statements too were retracted immediately after the survey vide the affidavit duly filed before the DDIT(Inv), U-2(4) /Kolkata on 24.02.2020.

6.2.3. It is also observed from the assessment order that the AO has mentioned some sales to Prakash Surana of Rs.2,19,150/- vide challan and ledger copy in his name and also few bill details of sale to Pintu garments of Rs.47,120/- & 70,610/- dated 01.02.2020 & 10.02.2020 and also bill to B.S. Enterprise of Rs.2,41,409/-. It is imperative to mention that during the asst. proceedings and also in the appellate proceedings, the assessee had submitted copy of its audited sales register, where the aforesaid sales were reflected and recorded. Hence, the entries of the sale in the name of Pintu Garments and Prakash Surana are part of the regular books of accounts. Further, it is observed that the AO had worked out and alleged the total undisclosed cash sales of the assessee at Rs.11,00,89,231/- (for the period 01.04.2019 to 31.01.2020) and 2,30,14,680/- (for the period 01.02.2020 to 18.02.2020) totalling Rs.13,31,04,211/- on which the gross profit has been estimated. However, on perusal of the audited cash book filed by the assessee, it is found that the cash sale up to the month of January 2020 as per books was Rs.13,60,38,758/-. Thus, it is discernible that the cash sales declared as per books before the date of survey is more than the total cash sale found in the impounded papers.

6.2.4. Further, it is also observed that during the post-search proceedings before the DDIT, the assessee has given page wise clarification of the papers found in the course of survey which was filed on 17.11.2020 before the said DDIT (Inv). Wherein, it was clearly stated by the appellant that the cash sale found in the course of survey was recorded in the regular books of accounts. However, against such declaration and retraction of earlier recorded statements of the assessee, no further statement of the director or the assessee company was recorded by the said DDIT and also by the AO during the asst. proceedings. It is palpable that the only ground for making the said addition is answer to question no. 25 in the statement of Suresh Kumar Banthia recorded at the time of survey u/s 133A. What is more relevant, in the instant case, is that the circular of the Central Board of Direct Taxes dated 10.3.2003 with regard to the confession of additional income during the course of search and seizure and survey operations. The said circular dated 10.3.2003 reads as follows:

"Instances have come to the notice of the Board where assessees 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 assessees 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 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."

6.2.5. It is worth mentioning that the Hon'ble Gujarat High Court in the case of 'Pr. CIT-2 vs. Parshwa Enterprises Tax Appeal No. 372 of 2017 19 June, 2017' relied on the aforesaid CBDT's Circular which was as under and confirmed the order of ITAT holding that no addition can be made on the basis of statement recorded u/s 131 in the course of survey proceedings:

"We further note that in CBDT Instruction F. NO. 286/2/2003-IT (Inv. II), dated 10.03.2003 it has been made clear that reliance shall not be solely placed on statements recorded in search survey. Relevant extracts of the same are reproduced as under;

"Instances have come to the notice of the Board where assessees 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 assessees 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.
"

7. We further find that the Ld. CIT(A) has placed reliance on the judgment of the Hon'ble Apex Court passed in the case of CIT vs. M/s S Kader Khan which is needless

to reiterate the operative portion of the said order as the Ld. CIT(A) discussed the same in its impugned order.

8. Keeping in view, the facts of the case as well as going over the finding of the Ld. CIT(A), we do not find any infirmity in the impugned order. Accordingly, the appeal of the revenue is hereby dismissed. Since the Cross-objection has only been filed in support of the order of Ld. CIT(A), hence it is needless to adjudicate the same as in view of the order passed in revenue's appeal the cross-objection became infructuous.

In the result, the appeal of the revenue is dismissed and the cross-objection of the assessee is also dismissed as infructuous.

Order is pronounced in the open court on 30th June, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 30th June, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- ACIT, Central Circle-4(3), Kolkata
2. Respondent – Citizen Umbrella Manufacturers Ltd. 147, M. G. Road, Burrabazar-700007
3. Ld. CIT(A)- 27, Kolkata
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata