

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.2963/Del/2017
Assessment Year: 2013-14

Sh. Sandeep Agarwal, C/o- M/s. RRA Taxindia, D-28, South Extension, Part-I, New Delhi	Vs.	DCIT, Central Circle, Ghaziabad
PAN :ABPPA7461A		
(Appellant)		(Respondent)

Appellant by	Ms. Rano Jain, Adv. Ms. Mansi Jain, CA
Respondent by	Sh. H.K. Choudhary, CIT (DR)

Date of hearing	08.07.2021
Date of pronouncement	16.07.2021

ORDER

PER O.P. KANT, AM:

This Appeal by the assessee is directed against order dated 31/03/2017 passed by the learned Commissioner of Income Tax (Appeals)-IV, Kanpur [in short 'the Ld. CIT(A)'] for assessment year 2013-14 raising following grounds:

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order and that too without assuming jurisdiction as per law.*

2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.7,98,880/- on account of difference between the disclosure made at the time of search and that too by recording incorrect facts and findings and without considering the submissions of the assessee and without observing the principles of natural justice.*
3. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making the impugned addition of Rs.7,98,880/- by treating it as alleged undisclosed income is bad in law and against the facts and circumstances of the case.*
4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in giving direction to take action in the case of M/s Inspiration Enterprises (P) Ltd., more so when this case was not before him and that too without giving opportunity of hearing.*
5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234C of Income Tax Act, 1961.*

2. Briefly stated facts of the case are that a search and seizure action under section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out on 13/02/2013 at the premises of the assessee along with other cases of "Panchsheel Group". During the course of search, the assessee made declaration of undisclosed income of Rs. 1 crore in statement recorded under section 132(4) of the Act. The assessee filed return of income for the year under consideration on 28/04/2014, declaring total income of Rs.16,29,730/-. In the scrutiny assessment, the learned Assessing Officer observed that against disclosure of Rs. 1 crore, the assessee declared undisclosed income of ₹ 92,01,120/-, which consisted of ₹ 6 lakh in his own case and ₹

86,01,120/- in the case of M/s Inspiration Enterprises Private Limited (in short 'M/s. Inspiration') and, therefore, the balance amount of ₹ 7,98,880/- (Rs.1,00,00,000 – Rs.92,01,120) was held as undisclosed income of the assessee and accordingly, addition was made in order under section 143(3) of the Act passed by the Assessing Officer on 30/03/2015. The assessee filed appeal before the Learned CIT(A). In the written submission before the Ld. CIT(A), the assessee submitted that while filing return of income of 'M/s Inspiration' and the assessee, all the seized documents were reconciled with the books of account of 'M/s Inspiration'. On reconciliation, cash of ₹ 6 lakh was declared in the hands of the assessee and amount of ₹ 86,01,120/- was declared in the hands of 'M/s Inspiration'. It was further submitted that the Assessing Officer in the case of 'M/s Inspiration' examined all the seized documents and after verification, admitted the undisclosed income of ₹ 86,01,120/- declared by the assessee. The written submission of the assessee were forwarded by the Ld. CIT(A) to the Assessing Officer, who in his remand report dated 17/10/2016 submitted that in view of the various seized documents undisclosed income of 'M/s Inspiration' should be enhanced by ₹ 62,05,880/-. On this remand report, the assessee submitted a rejoinder dated 04/02/2017, wherein the assessee explained as how the seized documents have been reconciled with the books of accounts and net undisclosed income of ₹ 86,01,120/- has been worked out in the case of 'M/s Inspiration'. The said rejoinder has been reproduced by the Learned CIT(A) in the impugned order on page 12 to 17. After considering submission on both side i.e. the

assessee and the Assessing Officer, the Ld. CIT(A) upheld the addition observing as under:

“5.1 I have carefully gone through the assessment order, written submission, remand report and rejoinder. It may be seen from the assessment order that the AO has made addition of Rs. 7,98,880/- because the appellant has made surrender of Rs. 1 Crore during course of search and seizure action. While he has disclosed only Rs. 92,01,120/- in his return of income filed in response to the notice u/s 153A the Act.

The Ld. A.R. contended that he has shown all of the undisclosed income either in individual edacity or in hands of company M/s. Inspiration Enterprises (P) Ltd. The Ld. A.R. has also submitted that since no incriminating material was in support of AO to make addition of Rs. 7,98,880/-. Therefore, in his opinion, addition is not justified. The Ld. A.R. has also relied upon various case laws which have already been reproduced above. I do not agree with the contention of the appellant that the no addition should be made only on the basis of statement recorded from the remand report of the AO, it is very much clear that there are several documents seized which indicate for undisclosed income of the appellant and that of the company i.e. M/s. Inspiration Enterprises (P) Ltd.

Moreover, in the case of Dayavanti Vs. CIT (75 Taxman.com 308(Del.) dated 27 10 2016, Hon'ble High Court, Delhi has held that even statement of appellant during course of search and seizure action may be treated as incriminating material by the AO. Thus, I do not find merit in the various contention of the appellant and addition of Rs. 7,98,880/- is hereby confirmed.

Further, it is also noticed from the remand report that there is discrepancy in the explanation furnished by the appellant in the case of company M/s. Inspiration Enterprises (P) Ltd. during the assessment proceedings. The AO has clearly pointed out that instead of furnishing details of receipts and expenditure year wise, the details have been furnished by clubbing it only in one year. In view of these facts as mentioned by the AO in remand report dated 20.03.2017. The AO is directed to taken suitable remedial action in the case of M/s Inspiration Enterprises (P) Ltd.”

2.1 Aggrieved with the above finding of the Ld. CIT(A), the assessee is in appeal before the Income-Tax Appellate Tribunal (in short ‘the Tribunal’) raising the grounds as reproduced above.

3. Before us, the parties appeared through Video Conferencing facility. The assessee filed a paper-book containing pages 1 to 72. The learned Departmental Representative (DR) also filed a paper-book containing case laws.

4. The learned Counsel of the assessee referred to statement of assessee under section 132(4) of the Act, available on page 5-10 of the paper-book. She submitted that in response to question No. 18, surrender was made to cooperate with the Department and by peace of mind and there was as such no basis for the figure of Rs. 1 crore and it was just estimation. She further submitted that later on, while filing return of income, the figures were tallied and it came to the notice that the amount of undisclosed income was of ₹ 92,01,210/- and accordingly amount of ₹ 86,01,120/- was declared in the case of 'M/s. Inspiration' and ₹ 6 lakh in the case of the assessee. She further referred to paper-book pages 24-26, which are copies of seized documents. The Learned Counsel submitted that those documents relates to 'M/s. Inspiration' and peak of receipt or credit has been worked out to ₹ 86,01,120/-, which has already been declared in the hands of 'M/s. Inspiration'. Out of the cash found at the residence of the assessee of ₹ 6,12,580/-, there was opening balance of ₹ 12,580/- and remaining amount has been declared as unexplained in the hands of the assessee. According to her, it is not mandatory to declare the surrendered amount irrespective of the undisclosed income appearing in seized documents. She submitted that whatever amount was appearing in the seized documents has already been declared and therefore making addition of the amount of ₹ 7,98,880/- in the hands of the assessee is not

justified, when no adverse comment has been made either by the Assessing Officer or learned CIT(A) in respect of undisclosed income the assessee. She further submitted that case of the Dayawanti- (supra) relied upon by the Learned CIT(A) is distinguishable on the facts, as in that case, the assessee was found to be a habitual offender in the seized material, which was never explained in a reasonable manner. To support the contention that *“though the admission is an extremely important piece of evidence but it cannot be said to be conclusive and it is open to the person who made the admission to show that it is incorrect,* she relied on the decision of the Hon’ble Supreme Court in the case of **Pullangode Rubber & Produce Co Ltd (1973) 91 ITR 18 (SC)**. She also relied on the decision of the Hon’ble Andhra Pradesh High Court in the case of CIT Vs Naresh Kumar Aggarwal, reported in 369 ITR 171, wherein it is held that mere confessional statement without there being any documentary proof, shall not be used in evidence against the persons who made such statement.

5. On the contrary, the Learned DR relied on the order of the Ld. CIT(A) and submitted that assessee himself admitted undisclosed income of Rs. 1 crore and said statement was never retracted. The Learned DR relied on the decision of Hon’ble Delhi High Court in the case of Bhagirath Aggarwal Vs CIT (2013) 351 ITR 141 and submitted that the statement made u/s 132(4) of the Act can be relied upon even without corroboration by the department. The Learned DR also relied on the decision of the Hon’ble Supreme Court in the case of Bannalal Jat Construction

Private Limited vs ACIT reported in (2019) 106 taxmann.com 128 (SC).

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In the case, the assessee surrendered undisclosed income of Rs. 1 crore in statement under section 132(4) of the Act. For ready reference, a typed copy of relevant part of the said statement is reproduced as under:

Q.16 Seized Material को देखते हुए आप कुछ कहना चाहते है।

Ans Seized Material + Cash को देखते, जमीन की खरीद एवं बिक्री में अन्तर आ सकता है। अपने मन की शान्ति के लिए Department को Co-operate करने के लिए मैं रुपये एक करोड मात्र (मूल्य 1,00,00,000/-) Surrender कर रहा हूँ। Subject to No Penal Action वित्तीय वर्ष 2012-13 एवं AY 2013-14 वर्ष का है। इस पर जो भी Tax आयेगा तो मैं 31 मार्च 2013 से पहले जमा कर दूंगा।

पढ़ कर समझ कर बिना किसी दबाव के हस्ताक्षर किया। अतः ईश्वर मेरी मदद करें। //

Raj Kumar

13-02-2013

Sandeep Agarwal

13-02-2013

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6.1 It is evident from the above that the surrender was on the basis of rough estimates of the cash and other documents seized. No calculation of the document-wise or item-wise surrender amount has been provided in the statement. Before us, the Learned Counsel of the assessee has submitted that cash found has been offered as undisclosed income in the hands of the assessee and whatever amount reflected in seized document, which were pertain to 'M/s. Inspiration', has been worked out to ₹ 86,01,120/- and declared in the hands of 'M/s. Inspiration'. We find that the assessee has worked out the undisclosed income on the basis of the seized material, which has not been disputed by the Assessing Officer of M/s Inspiration. The assessee has been able to point out the mistake or error in the disclosure amount based on the seized document and, therefore, it is not a retraction and rather it is honouring of the statement. If any error is pointed out in the surrendered amount, same is to be allowed. If by mistake, 2+2 (two plus two) has been calculated to 5 (five) in the statement under section 132(4) of the Act, then it is within the rights of the assessee to rectify the error and it cannot be said either retraction or dishonouring of the statement. The Assessing Officer cannot treat the balance 1 (one) as undisclosed income of the assessee. Any such action of the Assessing Officer is not justified. In the case of Bhagirath Aggrwal (supra) also the Hon'ble Delhi high court has held that, if the admission is incorrect, same would not be binding. The relevant paragraph of the said decision is reproduced as under:

“11. Before us the learned counsel for the appellant contended that the statement made by an assess could always be subsequently retracted. He further submitted that it was open to the person who made an admission to show that the admission was incorrect. For this proposition he placed reliance on a Division Bench decision of this Court titled *Ester Industries Ltd. Vs. Commissioner of Income-tax: (2009) 316 ITR 0260*. However, that case was not one of search and seizure u/s 132 of the said Act. Furthermore, in the present case no material has been produced by the appellant/assessee to show that the admission made by him was incorrect in any way. On the other hand, it is the assessee who is insisting that it is for the department to corroborate the statement of admission made by him and until and unless the department corroborates the same, the statement cannot be relied upon. We are afraid that is not the correct position of law. The admission once made can certainly be retracted, if the circumstances permit, and it can also be shown to have been made under some mistake or to be otherwise incorrect. But, the onus would be on the maker of that admission. In this case it is the appellant/assessee who has admitted and surrendered a sum of Rs.1.75 crores as his undisclosed income. **It was incumbent upon him to show that he had made a mistake in making that admission and that the said admission was incorrect.** He had access to all the documents which has been seized in as much as the copies had been supplied to him. However, he did not produce anything to establish that the admission was incorrect in any way. That being the position, the appellant/assessee cannot resile from his earlier statement made on 10-11.11.2005 and 21.11.2005.

(Emphasis supplied externally)”

6.2 The Hon’ble Delhi High Court has also relied on the decision of Pullangode Rubber Produce Co. Ltd. (supra) to highlight that it was open to the person who made the statement to show that it was incorrect. The relevant para of the decision of the Hon’ble Delhi High Court is reproduced as under:

“12. The learned counsel for the appellant/assessee also referred to the Supreme Court decision in the case of *Pullangode Rubber Products Co. Ltd. Vs. State of Kerala: (1973) 91 ITR 18 SC* for the proposition that **an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It was contended that it was open to the person who made the statement to show that it was incorrect.** There cannot be any

*doubt about this position in law, but, in the present case the appellant/assessee has not produced any material to show that the admissions made by him were incorrect. The statements recorded u/s 132 (4) of the said Act are clearly relevant and admissible and they can be used as evidence. In fact, once there is a clear admission, voluntarily made, on the part of the assessee, that would constitute a good piece of evidence at the hands of the Revenue.
(Emphasis supplied externally)”*

6.3 In the light of above decisions, we are of the opinion that the assessee computed the undisclosed income appearing in seized documents, which has been accepted by the Assessing Officer. The assessee has successfully demonstrated the error in statement and the Assessing Officer in the case of M/s Inspiration also accepted the computation of undisclosed income by the assessee. In the present case, the addition has been made for the difference of surrendered amount during the statement u/s 132(4) and amount declared in the returned income, just because the assessee surrendered said amount under section 132(4). This addition has been made in complete disregard to the error pointed out by the assessee in surrendered amount.

6.4 We also note that the seized documents are not related to the assessee. The direction given by the Learned CIT(A) to take remedial action in the case of M/s Inspiration also goes to prove that, if any higher amount was to be assessed looking to the surrender, then it would have to be done in the case of M/s inspiration and not in the case of the assessee.

6.5 In view of the above facts and circumstances, we set aside the order of the lower authorities on the issue in dispute and

delete the addition in the hands of the assessee. The grounds of the appeal of the assessee are accordingly allowed.

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

Order pronounced in the open court on 16th July, 2021.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

Dated: 16th July, 2021.

RK/-(DTDC)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi