



BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

AND

SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 1074/PUN/2024

Assessment Year : 2014-15



M/s Sheetal Collection
Shop No. 16, Fule Market,
Jalgaon-425001
PAN: ACIFS1530K.

..... *Appellant*

V/s

Dy. Commissioner of Income Tax,
Circle-2, Jalgaon.

..... *Respondent*

Appearances

Assessee by : Mr V V Kawdia ['Ld. AR']

Revenue by : Mr Umashankar Prasad ['Ld. DR']

Date of conclusive Hearing : 25/07/2024

Date of Pronouncement : 01/08/2024

ORDER

PER G. D. PADMAHSHALI, AM;

Against DIN & Order No. ITBA/APL/S/250/2023-24/1063185555(1) dt. 22/03/2024 passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] passed by the Commissioner of Income Tax Appeal-11 Pune ['CIT(A)' hereinafter] which in turn arisen out of order of assessment passed u/s 143(3) of the Act by the Dy. Commissioner of Income Tax, Circle-2, Jalgaon ['AO' hereinafter] anent to assessment year 2014-15 ['AY' hereinafter] the assessee is in appeal.

2. Tersely stated the facts of the case are that;

2.1 The assessee is a partnership firm and engaged in retail trading business of readymade garments. During the year under consideration a survey action u/s 133A of the Act on the assessee firm was carried out and a statement of its partner was recorded. In answering to question number 16 the partner declared/admitted certain



undisclosed income in relation to firm's business activities viz; (a) excess cash ₹7,51,313/- (b) unpaid sundry creditors ₹2,32,087/- (c) excess stock ₹16,08,121/- & (d) towards Gross Profit ₹6,57,442/-. In addition to former specific declaration/admission, further an amount of ₹8,00,000/- was also declared as undisclosed business income to cover-up errors & omissions under the pretext that the Revenue may surface them on examination of records, documents & books etc.

2.2 The return of income ['ITR' hereinafter] filed by the assessee u/s 139(1) of the Act declaring total income of ₹23,36,020/- was selected for scrutiny u/s 143(2) of the Act. Upon finding that, out of total business income declared during the course of survey i.e. ₹32,48,952/- the assessee did fail to offer an amount of ₹8,00,000/- which was disclosed to cover-up probable errors & omissions committed, the Ld. AO added the same and accordingly framed the assessment u/s 143(3) of the Act.

2.3 Aggrieved assessee contested the former solitary addition in first appeal unsuccessfully, hence brought-up the one in present appeal on a sole ground as;

Under the facts and circumstances of the case and in law the learned CIT(A), NFAC has erred in confirming the addition of Rs. 8,00,000/- made by AO [DCIT, Circle-2, Jalgaon] solely on the basis of statement recorded during the course of survey action and without bringing on record any corroborative evidence in support of the same.

3. Heard rival parties and subject to rule 18 of ITAT-Rules 1963 perused material placed on record and considered the fact & circumstances of the case in the light of settled legal position and case laws relied upon. The sole & substantive issue in the present appeal revolves around the permissibility of addition on the basis of statement recorded in the course of survey action u/s 133A of the Act where no corroborative evidences/findings were brought on record by the Revenue.



4. There is no definition in the Act as to what constitutes a 'statement'. The dictionary meaning of 'statement' is '*something that is said formally and officially either orally or in written form which either confirms or denies any fact*'. The clause (iii) of s/s (3) of section 133A of the Act empowers an income tax authority to record statement of any person which may be useful for or relevant in connection with on-going survey proceedings. This provision however does not specify as to whether such statement is to be recorded on oath or otherwise, because a Statement recorded on oath carries evidential value and automatically binds the assessee unlike the statement recorded otherwise than on oath.

5. In this context we note that, Hon'ble High Court '*Paul Mathews & Sons Vs CIT*' [2003, 263 ITR 101 (Ker)] has settled a position of law by categorically holding that power to examine a person on oath is explicitly conferred u/s 132(4) of the Act only in search or seizure cases, and no such authorisation has been expressly provided in section 133A of the Act. The question of entitlement to record the statement on oath in the course of survey operation is put to rest by the Hon'ble Supreme Court in '*CIT Vs S. Khader Khan Son*' [2012, 352 ITR 480] whereby it is settled that, section 133A of the Act does not empower tax authorities to examine any person on oath, therefore, statement obtained thereunder would not automatically bind the assessee.

6. In the instant case, admittedly the partner of the assessee firm in a statement recorded u/s 133A of the Act has admitted the impugned sum as an additional income of ₹8,00,000/- of his firm towards probable errors & omissions which was unknown to both the rival parties at the time of survey. The said disclosure/admission was simply made under the pretext that the Revenue may at any time thereafter would discover the same and probably tax it as non-business income of the assessee.



However, in the ITR filed the assessee offered all the additional income admitted by it in the statement recorded u/s 133A of the Act but the impugned sum, for the reasons that both the parties could neither discover any error or omission nor there was any in the records, books & documents etc., came to surface. Insofar as the retraction of statement is concerned, unlike admission made in statement recorded u/s 133A of the Act, the assessee may specifically be required in writing to retract the admission made on 'statement on oath' u/s 132 of the Act. The non-inclusion of admitted sum/amount in the return of income filed by the assessee itself solitarily sufficient to constitutes retraction from the admission so made while recording the statement u/s 133A of the Act. There is no separate written retraction requirement is fastened upon assessee either u/s 133A or any other provisions of the Act, therefore such requirement cannot be created one for the purpose of assessment/adjudication.

7. In upshot, the impugned addition made by the Ld. AO and sustained in appeal by the Ld. CIT(A) is founded merely on the basis of admission made u/s 133A of the Act but it badly lacked by corroborative evidence of presence of any errors or omissions in the records, hence deserves to be reversed, ordered accordingly.

8. **The appeal of the assessee in result stands ALLOWED.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Thursday, 01st August, 2024.

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 01st August, 2024.

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

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|-------------------------------|---------------------------------|----------------------------|
| 1. अपीलार्थी / The Appellant. | 2. प्रत्यर्थी / The Respondent. | 3. The Pr. CIT Concerned. |
| 4. The CIT(A)/NFAC Concerned. | 5. DR, ITAT, 'SMC' Bench, Pune | 6. गार्डफाइल / Guard File. |

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.