



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

TAXC No. 176 of 2023

1 - Smt. Neetu Sharma Aged About 35 Years Prop. Of M/s Venkatesh Accessories Shoppee, Jawahar Lal Nehru Ward No. 37, Sindhi Bazar, Raipur- 492001 (C.G.) ... **Applicant**

versus

1 - Pr. Commissioner Of Income Tax Income Tax Officer- 1(1), Central Revenue Building, Civil Line, Raipur (C.G.) ... **Respondent**

(Cause-title taken from the Case Information System)

For Applicant :- Dr. Shiv Kumar Shrivastava, Advocate

For Respondent:- Mr. Ajay Kumrani, Advocate on behalf of
Mr. Ajay Chaudhari, Advocate

DB- Hon'ble Smt. Justice Rajani Dubey & Hon'ble Shri

Justice Amitendra Kishore Prasad

Order On Board

10.11.2025

Per, Amitendra Kishore Prasad, J.

1. This tax appeal preferred under Section 260-A of the Income Tax Act, 1961 (for brevity "the Act, 1961) was admitted for hearing on 04.11.2025 by formulating the following substantial question of law:-

"Whether on the facts and in the circumstances of the case, the ITAT was justified in sustaining the additions towards alleged excess stock & excess cash based

solely on a statement recorded under Section 133A, of the Income Tax Act, 1961 ?”

2. The aforesaid substantial question of law has arisen on the following factual backdrop:-

(i) The appellant herein i.e. assessee is engaged in the business of trading of car accessories was on 03.03.2011 subjected to survey u/s.133A of the Act. The assessee thereafter filed her return of income for the year under consideration i.e. A.Y.2011-12 on 02.02.2012, declaring an income of Rs, 13,37,110/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

(ii) During the course of assessment proceedings, it was observed by the Assessing Officer (for short “A.O.”) that the assessee during the course of survey proceedings had come with disclosure of an amount of ₹29,49,394/- as under:-

Sr. No.	Particular	Amount
1	Disclosure of excess cash	₹3,40,009/-
2	Disclosure of excess stock	₹16,09,385/-
3	Disclosure of unexplained investment	₹10,00,000/-
	Total	₹29,49,394/-

(iii) It was further observed by the A.O. that the assessee had retracted her statement recorded during the course of survey proceedings under Section 133A of the Act, 1961 and had not

offered for tax on the excess stock and cash that was disclosed by her during the course of the aforesaid proceedings. Accordingly, the assessment order was passed under Section 143(3) of the Act, 1961 on 18.03.2014 by making total addition to the tune of ₹32,81,100/-.

(iv) Feeling aggrieved with the order of assessment, the assessee preferred an appeal before the CIT (Appeals), which was dismissed leading to filing of the appeal before the ITAT. The ITAT has also maintained the order of the CIT (Appeals). Questioning the legality, validity and correctness of the order of the ITAT, the appellant/assessee preferred the instant tax appeal.

3. Dr. Shiv Kumar Shrivastava, learned counsel for the applicant, would submit that all three Revenue Authorities have concurrently erred in making addition on the basis of statement recorded under Section 133A of the Act, 1961 which runs contrary to the decision of the Madras High Court in the matter of **Commissioner of Income-tax v. S. Khader Khan Son**¹ which has been affirmed by the Supreme Court in the matter of **Commissioner of Income-tax, Salem v. S. Khader Khan Son**² and, as such, the appeal be allowed and the orders of all the Authorities are liable to be set aside.

4. Mr. Ajay Kumrani, learned counsel for the respondent, would oppose the prayer made by learned counsel for the appellant and

¹ (2008) 300 ITR 157 (Madras)

² (2012) 25 taxmann.com 413 (SC)

support the impugned orders. He would also submit that the three authorities have concurrently held that statement in the survey proceedings was verified and after scrutiny assessment, they have rightly made an addition of ₹19,43,994/- which calls for no interference and, therefore, the instant appeal deserves to be dismissed.

5. We have heard learned counsel for the parties, considered their rival submissions made herein-above and gone through the records precisely.
6. Admittedly, the survey proceedings were conducted in the business premises of the assessee and the disclosure of cash to the tune of ₹3,40,009/- and disclosure of excess stock to the tune of ₹16,09,385/- & ₹10,00,000/- were made and also statement of the assessee under Section 133A of the Act, 1961 was recorded.
7. At this stage, it would be appropriate to notice Section 133A of the Act, 1961, which states as under:-

“133A. Power of survey.—(1) Notwithstanding anything contained in any other provision of this Act, an income-tax authority may enter—

(a) any place within the limits of the area assigned to him, or

(b) any place occupied by any person in respect of whom he exercises jurisdiction, or

(c) any place in respect of which he is authorised for the purposes of this section by such income tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person

occupying such place, at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession—

(i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place,

(ii) to afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and

(iii) to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

Explanation.—For the purposes of this sub-section, a place where a business or profession is carried on shall also include any other place, whether any business or profession is carried on therein or not, in which the person carrying on the business or profession states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession are or is kept.

(2) An income-tax authority may enter any place of business or profession referred to in sub-section (1) only during the hours at which such place is open for the conduct of business or profession and, in the case of any other place, only after sunrise and before sunset.

(3) An income tax authority acting under this section may,—

(i) if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom,

(ia) impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him:

Provided that such income tax authority shall not—

(a) impound any books of account or other documents except after recording his reasons for so doing; or

(b) retain in his custody any such books of account or other documents for a period exceeding ten days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General therefor, as the case may be,

(ii) make an inventory of any cash, stock or other valuable article or thing checked or verified by him,

(iii) record the statement of any person which may be useful for, or relevant to, any proceeding under this Act:

(4) An income tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered any books of account or other documents or any cash, stock or other valuable article or thing.

(5) Where, having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, the income tax authority is of the opinion that it is necessary or expedient so to do, he may, at any time after such function, ceremony or event, require the assessee by whom such expenditure has been incurred or any person who, in the opinion of the income tax authority, is likely to possess information as respects the expenditure incurred, to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act and may have the statements of the assessee or any other person recorded and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.

(6) If a person under this section is required 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 either refuses or evades to do so, the income tax authority shall have all the powers under sub-section (1) of Section 131 for enforcing compliance with the requirement made:

Explanation.—In this section,—

(a) “income tax authority” means a Commissioner, a Joint Commissioner, a Director, a Joint Director, an Assistant Director or a Deputy Director or an Assessing Officer and for the purposes of clause (i) of sub-section (1), clause (i) of sub-section (3) and sub-section (5), includes an Inspector of Income-tax;

(b) “proceeding” means any proceeding under this Act in respect of any year which may be pending on the date on which the powers under this section are exercised, or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.”

8. From careful perusal of the aforesaid section, it is quite vivid that it does not mandate that any statement recorded under Section 133A of the Act, 1961, would have any evidentiary value. As such, in our considered opinion, for a statement to have evidentiary value, the survey Officer should have been authorized to oath and to record sworn statement. This would also be apparent from Section 132(4) of the Act, 1961, which states as under:-

“132. Search and seizure.—

(1) to (3) xxx xxx xxx xxx

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-Tax Act, 1922 (11 of 1922), or under this Act.

Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act.”

9. As such, Section 132(4) of the Act, 1961 specifically authorizes an Officer to examine a person on oath, however, Section 133A of the Act, 1961 does not permit the same. The Madras High Court in the matter of **S. Khader Khan Son (1)** (supra) has clearly held that statement recorded under Section 133A during survey is not conclusive piece of evidence and observed as under:-

“From the foregoing discussion, the following principles can be culled out:

(i) An admission is an extremely important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of account do not correctly disclose the correct state of facts, vide decision of the Apex Court in

Pulkngode Rubber Produce Co. Ltd. v. State of Kerala³.

(ii) In contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A of the Income-tax Act is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law, vide **Paul Mathews and Sons v. Commissioner of Income-tax⁴** [(2003) 263 I.T.R. 101];

(iii) The expression "such other materials or information as are available with the Assessing Officer" contained in Section 158BB of the Income-tax Act, 1961, would include the materials gathered during the survey operation under Section 133A, vide **Commissioner of Income-tax v. G.K.Senniappan⁵**.

(iv) The material or information found in the course of survey proceeding could not be a basis for making any addition in the block assessment, vide decision of this Court in T.C.(A) No.2620 of 2006 (between Commissioner of Income-tax v. S. Ajit Kumar);

(v) Finally, the word "may" used in Section 133A (3)(iii) of the Act, viz., "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act", as already extracted above, makes it clear that the materials collected and the statement recorded during the survey under Section 133A are not conclusive piece of evidence by itself.

3 (1973) 91 ITR 18

4 (2003) 263 ITR 101 (Ker.)

5 (2006) 284 ITR 220 (Mad.)

For all these reasons, particularly, when the Commissioner and the Tribunal followed the circular of the Central Board of Direct Taxes dated March 10, 2003, extracted above, for arriving at the conclusion that the materials collected and the statement obtained under Section 133A would not automatically bind upon the assessee, we do not see any reason to interfere with the order of the Tribunal.

10. The aforesaid decision of the Madras High Court has been challenged by Revenue before the Supreme Court which has been dismissed while affirming the order of the Madras High Court. [See:-**S. Khader Khan Son (2)** (supra)]. In that view of the matter, material collected and the statement recorded under Section 133A of the Act, 1961 are not conclusive piece of evidence.
11. A careful perusal of order of the Assessing Officer in light of the above-stated legal position would show that the A.O., has clearly recorded a finding that assessee has retracted her statement and held that assessee had not offered any genuine proof of the differences found in the cash book on the day of survey and the one during scrutiny proceedings. It was also held, in the statement of the assessee recorded under Section 133A of the Act, 1961, the assessee was unable to explain the excess amount of cash found on the premises that the one recorded in her cash book and observed in as under:-

“(a) However the assessee did not submit any substantial proof to prove the above that there was an increase in sales. Further the assessee was asked to

present the sale bills for Verification but the same was not presented by the assessee, this was noted vide note Rasheet entry dated 3/02/2014 in point no. 02. Therefore the assessee's claim cannot be verified due to absence of sale bills. It is always the onus of the assessee to prove with positive evidence and clarify the doubts raised by the AO. However in this case, the assessee has not provided any evidence to prove his statement and has not discharged his onus even though an opportunity was given to the assessee to do so.

Thus it appears that it was deliberate intention of the assessee to retract the surrendered income without any genuine proof and he adjusted the surrendered income by increasing the closing stock.

Considering the above facts the retracted amount of Rs. 16,09,385/- of excess stock is hereby added back to the total income of the assessee.

(b) Further the assessee was asked to submit the retraction made on the cash surrendered during the survey proceedings. In response the assessee again presented the same contention and adjusted the cash on making adjustments in the cash book, However the assessee has not provided any genuine proof of these adjustments made in the cash book. Further the cash book should be prepared on day to day basis so that the availability of cash could be considered on daily basis. As per statement recorded, the assessee was unable to explain the excess cash found on its premises.

In view of above discussion it clearly appears that the assessee had the same malafide intention that is to adjust the amount of stock and cash in such a manner so as to retract his earlier statement recorded during the survey proceedings. It is always the onus of the assessee to prove with positive evidence and clarify the doubts raised by the AO. However in this case, the assessee has not provided any evidence to prove his Statement and has not discharged his onus even though an opportunity was given to the assessee to do so. No proof or bills were produced before the

undersigned to prove the claims made by the assessee. As the assessee has failed to provide any evidence or explanation regarding these adjustments made in cash book. The same amount of Rs 3,40,009/- is hereby added back to the total income of the assessee.”

12. As such, the Assessing Officer has clearly relied upon the material collected and the statement obtained under Section 133A of the Act, 1961 to make addition of ₹19,43,994/- which has been affirmed by the CIT (Appeals) and ITAT. However, in light of the decision of the Madras High Court in the matter of **S. Khader Khan Son** (supra) which has been affirmed by the Supreme Court in the matter of **Commissioner of Income-tax, Salem** (supra), material collected and statement recorded under Section 133A of the Act, 1961, in the survey proceedings are not conclusive piece of evidence and in the instant case, there is no other material evidence available on record for addition of such an amount, as such, the order passed by the Assessing Officer, affirmed by the CIT(Appeals) and ITAT is hereby set aside and the instant tax appeal is **allowed**.

13. Consequently, the substantial question of law is answered in favour of the assessee/appellant herein and against the Revenue. No order as to cost(s).

sd/-
(Rajani Dubey)
Judge

sd/-
(Amitendra Kishore Prasad)
Judge