

IN THE INCOME TAX APPELLATE TRIBUNAL òAö BENCH : KOLKATA  
BEFORE HONøBLE SHRI P.K BANSAL, AM & HONøBLE SHRI RAJPAL YADAV, JM

I.T.A No. 312/Kol/2013 A.Y 2009-10

A.C.I.T, Cir-2, Midnapore

Vs.

Ajoy Bakli

PAN: ADJPB-3331M

[Appellant]

[Respondent]

Appellant by : Shri Anjan Prasad Roy, JCIT/ld.Sr.DR

Respondent by : Shri Somnath Ghosh, Advocate, ld.AR

Date of Hearing : 29/04/2015

Date of Pronouncement: 6 /5 /2015

**ORDER**

**PER RAJPAL YADAV, JM:**

The revenue is in appeal before us against the order of Ld. CIT(A) dated 11-12-.2012 passed for assessment year 2009-10.

2. The solitary substantial grievance of the revenue is that the ld. CIT(A) has erred in deleting the addition of Rs. 23 lakhs made by the AO with the aid of section 69 of the I.T Act 1961.

3. The brief facts of the case are that the assessee is engaged in the business of running a petrol pump and rice trading. It has filed his return of income on 30-09-2009 declaring total income of Rs.22,24,550. A survey u/s. 133A of the I.T Act 1961 was carried out at the business premises of the assessee on 24-03-2009. During the survey, statement of the assessee was recorded u/s.133A as well as u/s.131 of the I.T Act 1961. According to the AO, during the course of survey, the assessee has disclosed an income of Rs. 23 lakhs, but he failed to include this income in his return. The ld.AO has reproduced the question No. 13 & 14 along with answer exhibiting the disclosure of Rs. 23 lakhs. He made an addition of Rs. 23 lakhs in the total income of the assessee.

4. On appeal the ld. CIT(A) has deleted the addition by observing as under:-

*“6. In this case, the appellant has filed his return along with regular books of accounts which are duly audited by an auditor u/s. 44AB of the Act and the entries therein are duly supported by evidence. The AO while framing the assessment was satisfied with the books of the appellant and did not even pass any adverse remarks on the same. There being no evidence, apart from the specious admission of disclosure obtained during survey, the impugned addition made to his total income was in disregard of law. Therefore, taking into consideration the factual as well as the legal position on the issue, I find no*

*justification to sustain the impugned addition of Rs. 23,00,000/- made on account of alleged “ income from undisclosed sources ” solely on the basis of an unsubstantiated statement of disclosure obtained from the appellant during survey operation u/s. 133A of the Act, which is, therefore, directed to be deleted. The ground nos. 1 and 2 of the appeal are allowed by upholding his grievance on the issue. Appellant gets a relief of Rs. 23,00,000/-.”*

5. The Id.DR has relied upon the order of the Id.AO, whereas the Id. Counsel for the assessee has contended that the statement recorded u/s. 133A of the I.T Act 1961 has no evidentiary value. The statement u/s. 133A of the I.T Act 1961 was recorded without any oath. Therefore, unless some other corroborative material was collected by the revenue officer, no addition can be made on the basis of alleged disclosure statement. For buttressing his contention, he relied upon the judgment of the Honøble Madras High Court in the case of CIT Vs. S. Khader Khan Son reported in (2008) 300 ITR 157 (Mad.). This judgment has been upheld by the Honøble Supreme Court and SLP has been dismissed. The judgment of the Honøble Supreme Court is available in (2012) 210 Taxman 248 /254 CTR 228(SC). He further relied upon the order of the ITAT Delhi in the case of Mahesh Ohri Vs. ACIT in IT Appeal No.4109/Del/09 A.Y 2005-06 dated March 8, 2013. He placed on record copies of all these judgments.

6. We have duly considered the rival contentions and gone through the record carefully. Honøble Madras High Court in the case of CIT Vs. S.Khader Khan Son (supra) has considered the evidentiary value of the statement recorded during the survey and held that on the basis of the statement addition cannot be made. Similarly, the ITAT Delhi in the case of Mahesh Ohri (supra) has also considered this aspect and after putting reliance upon the judgment of the Honøble Kerala High Court in the case of Paul Mathews & Sons Vs. CIT reported in (2003) 263 ITR 101 (Ker.) has held that section 133A empowers the authority to record the statement of any person, which may be useful for, or relevant to any proceeding under the Act. This section only enables the authority to record any statement of any person, which may be useful, but does not authorise for taking any sworn statement. On the other hand, such power to examine a person on oath is specifically conferred on the authorized officer u/s. 132(4) of the I.T Act, 1961. The statement recorded by an officer on oath will be used as evidence in any proceeding, whereas statement recorded u/s. 133A has not given any evidentiary value because it was recorded by the authority, which has not been empowered to administer the oath to the assessee and take sworn statement.

6.1 Respectfully following the judgments of the Honøble Madras High Court, Kerala High and Honøble Supreme Court, we are of the view that the 1<sup>st</sup> appellate authority has not committed any error while deleting the addition. The Id.DR was also unable to point out any other corroborative evidence. In view of the above discussion, we dismiss the appeal of the revenue.

7. In the result, the appeal revenue is dismissed as stated above.

Order pronounced in the open court on 6-5-2015

Sd/-  
[ P.K BANSAL]  
ACCOUNTANT MEMBER

Sd/-  
[ RAJPAL YADAV]  
JUDICIAL MEMBER

Dated: 6-5-2015

Copy of the order forwarded to:

1. Appellant-O/o the Asstt. Commissioner of Income-tax, Cir-2, Midnapore, Sahoo Bhawan, Kshudiram Naga, Midnapore-721 101 (WB).
2. Respondent : Shri Ajoy Bkli, Kaushllya, Kharagpur-721301, Dist: Paschim Medinipur, WB.
3. CIT,
4. CIT(A),
5. DR, Kolkata Benches, Kolkata

\*PP/SPS

True Copy]

By order,

Asstt Registrar