



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK ' SMC' BENCH, CUTTACK**

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.348/CTK/2019

Assessment Year : 2012-2013

Sanjay Sultania, Anandi Niwas, Main Road, Rourkela.	Vs.	ITO, Ward-3, Rourkela
PAN/GIR No.ACBPS 9298 M		
(Appellant)	..	(Respondent)

Assessee by : Shri Damodar Pati, AR

Revenue by : Shri S.C.Mohanty, DR

Date of Hearing : 30 /3/ 2021

Date of Pronouncement : 17/5/2021

ORDER

This is an appeal filed by the assessee against the order of the CIT(A), Sambalpur dated 29.8.2019 for the assessment year 2012-13.

2. The assessee has raised the following grounds:

"1. For that the order passed by the Id. below forum suffers vice of illegality and arbitrariness;

2. For that under the facts and circumstances of the case the Id. below forum has grossly erred in making additions of Rs. 19,41,740/- on the basis of writing on loose sheets and admission extracted under coercion and under influence during the course of survey proceedings;

3. For that the additions are not backed by any cohesive primary and circumstantial evidence as to its nature and its source. The persons from whom receipts have been purported to be made are

unidentifiable, not-existent and are thus a sham and imaginary transaction;

4. For that the Id. below forum has not applied his mind judicial conclude to the case;

5. For that the survey proceedings u/s,133A of the IT Act, 1961 itself have been conducted in a manner defying instruction and circulars of CBDT which is binding upon all its subordinates;

6. For that the survey proceedings and assessment proceedings have been headed by same official. The assessment thus made is biased and unjustified and therefore bad in the eyes of law;

7. For that under the facts and circumstances of the case the Id. below forum has erred in considering the interest of Rs.42,771/- on the basis of form 26AS without verification from bank."

3. Ground Nos.1 and 3 to 6 are general in nature.

4. In Ground No.2, the assessee has challenged the addition of Rs.19,41,740/- on the basis of material found during the course of survey.

5. Facts of the case are that a survey action u/s.133A of the I.T.Act, 1961 was conducted on 18.1.2012 at the business premises of the assessee. During the course of survey, certain documents were found that the assessee has received Rs.7,23,452/-, from Maa Ambe Enterprises, Jharsuguda, Rs.5,76,291/- from Unicon Tech Co. Jharkhand and Rs.6,41,997/- from Sundaram Technical Services, Barpali totaling to Rs.19,41,740/- in the name of Shreshta Nirman, prop. Concern of the assessee. During the course of survey, statement of assessee was recorded wherein, he has admitted to be the same as undisclosed income and advance tax of Rs.6,00,000/- was paid. Later on during the course of

assessment proceedings, the assessee has stated that undisclosed income was made under duress and coercion and claimed refund of the same while filing the return of income. The Assessing Officer did not accept the contention of the assessee and observed that the statement during the assessment proceedings that the confession of undisclosed income is under duress is an afterthought. He, therefore, treated Rs.19,61,740/- as undisclosed income and added the same to the total income of the assessee.

6. In first appeal, the action of the AO was confirmed.

7. Ld A.R. of the assessee submitted that during the course of assessment proceedings, books of account alongwith bills and vouchers were produced and same were test checked. He submitted that the assessee has not made any transaction with the three parties as claimed by the department. He submitted that during survey proceedings, income tax officers all of a sudden entered the business premises and made enquiries and compelled the assessee make statement that Rs.19,61,740/- as his undisclosed income and statement was given under duress. Ld A.R. referred to the circular issued by the Central Board of Direct Taxes dated 10.03.2003 which reads as follows :-

"Instances have come to the notice of the Board where assessee have claimed that they have been forced to confess the undisclosed income during the course of the search and seizure and survey operations. Such confessions, if not based upon credible evidence,

are later retracted by the concerned assessee while filing returns of income. In these circumstances, on confessions during the course of search and 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 and 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, the Assessing Officer should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders."

Even the CBDT has taken cognizance of such instances which compel to issue advisory circular that while recording statement during the course of search and seizure and survey operations no attempt should be made to obtain confession to the undisclosed income.

8. Ld A.R. further submitted that the assessee is a contractor and even it assumes that Rs.19,41,740/- is treated as undisclosed receipts, any business receipts would be treated as contract receipt. Therefore, the entire receipt cannot be added to the total income of the assessee and income embedded therefrom can be added only. Ld A.R. also submitted that the expenditure on the receipts was not considered.

9. Replying to above, Id DR submits that a survey was conducted at the business premises of the assessee. During the survey action statement of the assessee was recorded on oath. The assessee admitted to have received Rs.19,41,740/- from three entities in the name of Shreshtha Nirman, prop. Concern of the assessee. The statement was given voluntarily

and binds the assessee form. Ld D.R. submits that Section 31 of Evidence Act binds the persons who make statement. The onus was upon the assessee to prove that statement was obtained under any duress or presser. No such averment was ever made by the assessee.. During the assessment or during the first appellate authority, the assessee failed to bring any material on record to prove that the amount has not been received by the assessee. He submitted that the assessee has paid advance tax of Rs.6 lakhs on Rs.19,41,740/-. Therefore, he submits that the lower authorities were fully justified in adding the same to the income of the assessee.

10. I have considered the rival submissions and perused the materials placed on the record of the Tribunal. It is not in dispute that during the course of survey in the case of the assessee, certain documents were found that the assessee has received Rs.7,23,452/-, from Maa Ambe Enterprises, Jharsuguda, Rs.5,76,291/- from Unicon Tech Co. Jharkhand and Rs.6,41,997/- from Sundaram Technical Services, Barpali totaling to Rs.19,41,740/- in the name of Shreshta Nirman, prop. Concern of the assessee. From the assessment order, I observe that on this issue, the assessee explained that if receipts are capital in nature then it is not taxable and if receipts are revenue in nature then it must be out of sales or services rendered. It was further explained by the assessee that if these are contract receipts then the assessee must have incurred some expenditure to

earn these receipts, therefore, provisions of section 44AD of the Act should be applied and enhancement be only restricted to 8% of impugned amount of Rs.19,41,740/-. The Assessing Officer dismissed this explanation by observing that during the recording of statement u/s.1334A of the Act, the assessee had admitted/deposited the advance tax of Rs.6 lakhs on the undisclosed impugned receipts, since he could not explain the source of above receipts, hence, the plea taken by the assessee is afterthought and not acceptable. With these observations, the AO treated the impugned amount as undisclosed income of the assessee and added the same to the return income of the assessee.

11. From the relevant para of the impugned order of the Id CIT(A), I observe that the assessee submitted that all of a sudden, nearly 13 officers of the Income tax Department entered into the premises and made enquiries and undisclosed income was made under duress. Ld CIT(A) relying on the statement made by the assessee during the survey proceedings made and dismissing the explanation of the assessee confirmed the addition by observing that on perusal of both the statements, it clearly suggests that there was neither duress nor coercion on the appellant at the time of giving statement. He also observed that survey was conducted on 18.1.2012 and there was no retraction till January, 2015, when the appellant replied to the show cause notice of the AO and thus a period nearly three years passed without any communication from the assessee

that the said disclosure of unaccounted income was under coercion. With these observation, the Id CIT(A) dismissed the explanation offered by the assessee and further observation that the statement of the assessee was under coercion is an afterthought. He relied on several orders including the order of ITAT Delhi in the case of Raj Hans Towers Pvt Ltd.,(2015) 56 taxmann.com 67 (Delhi) and PCIT, New Delhi vs Avinash Kumar Setia, (2017) 81 taxmann.com 476 (Delhi) to hold that in absence of any evidence of coercion or undue influence the statements recorded during the survey are admissible evidence. Further, I may point out that the CBDT in the circular dated 10.3.2003 (supra) has directed the revenue authorities that if confession not based upon credible evidence, are later retracted by the concerned assesses while filing the returns of income, such confessions do not serve any useful purpose.

12. In the present case, I am satisfied that there was substantial evidence in the hands of survey team in the form of receipts (Assessee's PB 17,18 & 19). Therefore, statements recorded by the survey team on the basis of such receipts cannot be alleged as not based upon credible evidence. I may point out that in the present case, no retraction was filed by the assessee before the authorities below nor during the course of survey proceedings and also during the course of assessment proceedings by way of any plausible evidence or by any other mode. Therefore, the statements recorded by the survey team based on credible evidence without

any retraction by the assessee has to be accepted and thus the findings recorded by the AO as well as Id CIT(A) deserves to be upheld being sustainable and based on reasonable basis and evidence. In view of these foregoing, I concur with the findings recorded by the authorities below and hence, the grounds of appeal of the assessee are rejected.

13. In the result, appeal of the assessee is dismissed.

Order pronounced on 17/5/2021.

Sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 17/5/2021
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Sanjay Sultania, Anandi Niwas,
Main Road, Rourkela
2. The Respondent. ITO, Ward-3, Rourkela
3. The CIT(A)-, Sambalpur
4. Pr.CIT-, Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack