

Reserved on. 5.3.2019

Delivered on. 15.3.2019

Case :- INCOME TAX APPEAL No. - 304 of 2009

Appellant :- Commissioner Income Tax

Respondent :- Sri. Dilbagh Rai Arora

Counsel for Appellant :- S.C. Inc. Tax, Gaurav Mahajan, Rk Upadhyay, S.S.C. I.T.

Counsel for Respondent :- Ashish Bansal, S.K. Garg

Hon'ble Bharati Sapru, J.

Hon'ble Piyush Agrawal, J.

(Delivered by Hon'ble Piyush Agrawal, J)

The present appeal has been filed under Section 260A of Income Tax Act, 1961 arising out of order dated 27.2.2009 passed by Income Tax Appellate Tribunal, Lucknow Bench 'A', Lucknow in ITA No. 658/Luc/2008 for the assessment year 2006-2007. The aforesaid appeal was admitted by this Court on 6.12.2012 on the following questions of law-

"1. Whether on the facts and in the circumstances of the case, the order of the Hon'ble ITAT is perverse in as much as on identical issue and on similar facts in the case of Mr. Ravindra Kumar Verma in ITA No. 892/Luc/05 dated 04.02.2009, the same bench held the

retraction to be void & illegal.

2. Whether on the facts and circumstance of the case the Hon'ble ITAT was right in law in deleting the addition of Rs. 7 crore inspite of the fact that the surrender was made voluntarily with due care and caution and after necessary consultation, with all concerned.

3. Whether on the facts and circumstance of the case the Hon'ble ITAT was right in law in holding that the addition was not based on any evidence. In doing so the ITAT ignored the fact that statement recorded under Section 132(4) of the I.T. Act was itself an evidence."

On 1.9.2005, the business premises and residence of the respondent-assessee was searched. During the course of search operation cash, jewellery and other valuables were found and seized. On 30.10.2006, the respondent-assessee filed its return and declared its income of Rs. 24,05,86,630/-. Thereafter, notices under Section 143(2) and 142(1) were issued on 2.7.2007 and 5.11.2007 and questionnaires were issued on 14.12.2007 and 17.12.2007. In response to the notice and questionnaires, the detailed written replies were submitted and case was also discussed in detail with representative of Assessee.

On 6.10.2005 the statement on oath of assessee-respondent was recorded under Section 132(4) in which he has offered to surrender a sum of Rs. 31 Crores for taxation for the Assessment Year

2006-07.

In the statement, it has been accepted that out of said surrender a sum of Rs. 18 crores were surrendered on account of investment made in the acquisition of jewellery/precious stones and balance Rs. 6 crores were in the form of cash for which necessary entries in his books of account under the head capital accounts were being shown. He further added that details of remaining Rs. 7 crores would be given in due course of time. It was also stated that the income has been earned from trading in commodity exchange.

Further on 15.9.2005 the statement of Raj Kumar Arora son of assessee was also recorded who reiterated the surrender of Rs. 31 crores to be taxed. But, seen the return filed by the Assessee disclosing taxable income of Rs. 24 crores (even after surrendering Rs. 31 crores) has retracted from his statement.

The assessing authority while framing the assessment order dated 31.12.2007 has assessed the total income at Rs. 31,03,04,332/- and imposed tax accordingly. The assessing authority added back Rs. 7 crores to the income of assessee on the basis of statement given by the assessee-respondent

under Section 132(4) of the Act.

Feeling aggrieved by the aforesaid order the assessee preferred appeal before the CIT (Appeals) who by its order dated 18.6.2008 has allowed the appeal and deleted the addition of Rs. 7 crores.

Feeling aggrieved by the order of CIT (Appeals), the Revenue filed an appeal before ITAT Lucknow Bench, Lucknow, who by the impugned order has confirmed the order passed by CIT(Appeals) deleting addition of Rs. 7 crores.

Heard Mr. Gaurav Mahajan, counsel for the appellant and Mr. Ashish Bansal, counsel for the respondent.

On perusal of the record, it reveals that the business premises of the appellant was searched on 1.9.2005 and during the course of search, cash, jewellery and other valuables were found and seized and the statement of the assessee-respondent was recorded. On 6.10.2005, the statement given by the assessee that Rs.18 crores were in the form of investment and Rs. 6 crores were in cash which has been shown in the books of account for the Assessment Year 2006-07 and balance Rs. 7 crores due details would be given in due course of time.

The counsel for the revenue has argued that

once a statement has been given for surrender of Rs. 31 crores towards taxation, the Tribunal was not justified in confirming the deletion of Rs. 7 crores and has relied upon the judgment given in ***Ravindra Kumar Verma v. Commissioner of Income-tax, Kanpur [2013] 30 taxmann.com 367 (Allahabad)***, ITA No. 481 of 2009 dated 23 January 2013 and ***M/S Vertex Chemical Industries v. Income Tax Appellate Tribunal, Lko.***, ITA No. 250 of 2000 decided on 27.9.2016.

Counsel for the respondent had argued that the concurrent findings of fact have been recorded by the authorities below in favour of the assessee respondent and no question of law arises in the present appeal. It was further emphasised that though the surrender was made for Rs. 31 crores, immediately thereafter, on 6.10.2005 when the statement was recorded under Section 132(4) the assessee has explained and had given the details that only sum of Rs. 24 crores can be taxed in the year under dispute and balance Rs. 7 crores detail will be given.

The Tribunal as well as CIT(Appeals) after recording finding of fact in favour of the assessee has rightly deleted the addition of Rs. 7 crores as

there is no incriminating document or material on record which could be a good ground for addition of seven crores be added in the hand of the assessee. He further emphasized that merely a disclosure of confession cannot be ground for addition of Rs. 7 crores in the hand of assessee.

Assesse counsel has further relied upon the circular dated 10.3.2003 F. No. 286/2/2003- IT (Inv). Wherein it has been held that mere confession during the course of search and seizure operation cannot be a ground for addition in the income of the Assessee.

We have perused the record of the case. The respondent-assessee has filed his return on 30.10.2006 and offered Rs. 24 crores for taxation. Assessee has filed the return and disclosed income from house property, income from other sources and loss on Long Term Capital Gain on the sale of immovable property. The assessee has further disclosed profit from trading in commodity exchange and has also filed evidence in support of his claim. The assessing authority has added back Rs. 7 crores only on the ground that at the time of survey dated 1.9.2005 the assessee had made a disclosure of sum of Rs. 31 crores for taxation in the year under

consideration. But, no incriminating materials and documents had been brought on record for addition of such amount. The CIT(Appeals) while allowing the appeal of the assessee has deleted the said amount, which was being confirmed by the impugned order. The assessee-respondent in the statement given on 6.10.2005, has surrendered Rs. 18 crores on account of investment made in purchase of jewellery/precious stones and Rs. 6 crores were surrendered as cash in hand duly shown in the books of account, balance Rs. 7 crores were surrendered with stipulation that details of the same would be given in due course of time.

The assets to the magnitude of Rs. 7 crores were neither found by the authorities below nor such assets were identified or declared by the appellant. In such a situation, it could be inferred that no such assets actually exists. In other words, there is no clinching evidence or material to justify such addition of Rs. 7 crores.

The addition can only be made, if there is incriminating material or the surrounding circumstances reveal that there is any material to justify the addition.

The person making an admission is not always

mindful of it and some time can get out of its binding purview. If the person can explain exclusive with supportive evidence/material or otherwise that the admission by him earlier is not correct or contain a wrong statement or that a true state of affairs is different from that represented therein and so the same should not be accepted upon forecasting tax liability which should rather be fixed on the basis of correct and true affairs as ascertained from the material on record.

The case law cited by the department in the case of ***Ravinder Kumar Verma (supra)*** wherein the search was conducted on 14.5.1998 at the business premises in Lucknow and various papers, books of account and cash were seized and later on by letter dated 5.4.2002 the assessee retracted the confessional statement and on that basis the Hon'ble Court came to the conclusion that after almost 4 years the retraction was made and further there was no allegation of coercion or any threat whereupon addition was made, which is afterthought.

Paragraph 29 of the judgment in ***M/S Vertex Chemical Industries (Supra)*** is quoted herein below:-

“29. In our case, the aforesaid judgment has no application. The reason

is that here is not a case of retraction by Assessee but during the course of assessment, documents produced by him have been examined threadbare and thereafter, reasons for addition have been given. This approach is evident from the fact that Assessing Officer has not mechanically made addition of Rs. 9 lacs which was disclosed in the statement under Section 132(4) of Act, 1961 but actual addition is only Rs. 8,12,360/- which shows due application of mind on the part of Assessing Officer, which has been affirmed by Tribunal.”

In the above judgment the Hon'ble Court has come to the conclusion that the addition was not made merely on the statement made but after looking into the explanation, books of account and other material placed before him and then made the certain addition. The case in hand, the addition have only been made on the basis of statement given on 6.10.2005.

Therefore, the case law relied upon by the Appellant is of no help. The case in hand the assessee-respondent has given documents, material and explained threadbare with regard to amount of Rs. 24 crores but the assessing authority has mechanically made the addition of Rs. 7 crores and added back the same amount only on the basis of statement having been made by the assessee which is not permitted.

There is no legal infirmity in the order passed by the Tribunal.

The appeal fails and is dismissed. The questions of law are answered in favour of respondent and against the appellant.

Order Date :- 15.3.2019

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