

## No addition merely on basis of statement recorded during survey if assessee retracted from said statement later on

**Summary – The Chandigarh ITAT in a recent case of Sanjeev Kumar, (the Assessee) held that where assessee retracted from surrender as same was obtained through intimidation and forged documents and no additional evidence was allowed to produce, addition would not be sustained**

### Facts

- A survey was conducted in the premises of the assessee where certain discrepancies were noticed. On the basis of these alleged discrepancies Rs. 75 lakh was said to have been surrendered. The assessee retracted from the surrender by writing a letter to the Additional Commissioner.
- During the course of assessment, the assessee submitted that the surrender was obtained under intimidation and coercion and was also based on forged documents and same was illegal. Therefore, the same could not be included.
- The Assessing Officer however, held that the assessee's statement being in the nature of an admission and therefore, the same was valid. He ultimately added Rs. 69 lakh on account of receivables and Rs. 5 lakh on account of surrender letter against cash.
- On appeal, the Commissioner (Appeals) observed that the admission was proper evidence and a proper statement had been recorded which could not be proved by the assessee to be wrong and, therefore, the assessment was justified.
- On second appeal before the Tribunal, the assessee submitted that nothing incriminating was found during the survey but the survey team was adamant and bent upon to extract surrender. The team planted certain slips. Original slips were never given to the assessee. Within a week the assessee retracted from the surrender and in fact wrote a complaint how the surrender was obtained illegally, addressed to the Additional Commissioner. Though the assessee received a reply from the office of the Additional Commissioner, no enquiries were conducted by the Additional Commissioner. He also pointed out that the persons against whose name some slips were planted showing receivables never existed and that is why the assessee wanted to furnish evidence that these persons did not exist but the Commissioner (Appeals) wrongly refused to admit such additional evidence. In fact such original slips which were planted by the Department and were taken away by the survey team and had never been shown to the assessee. Only copies had been provided. He also submitted that the he had been filing the return regularly and no substantial addition had been made even when the assessment were taken up in the scrutiny which clearly showed that the assessee was a low abiding citizen.

Held

**General**

- It seems no enquiry has been conducted and the Department has not been able to produce any records or evidences to show whether any enquiry was conducted. The assessee in the absence of any enquiry approached the office of the Commissioner.
- The contents of the correspondence clearly show that the assessee has bravely pointed out how the survey team has extracted surrender from him, which is illegal. Instead of conducting an enquiry the Revenue has simply hushed up the matter. In such circumstances the assessee could do nothing. The assessee who was brave enough to write these letters is to be appreciated.

**Evidentiary value of statement recorded in the survey**

- In case of *CIT v. S. Khader Khan Son* [\[2008\] 300 ITR 157 \(Mad.\)](#) the High Court observed that the statement recorded during the survey under section 133A does not have evidentiary value. There was difference between the statement recorded under sections 132(4) and 133A. A reference was made to the decision of the Supreme Court in the case of *Pullangode Rubber Produce Co. Ltd. v. State of Kerala* [\[1973\] 91 ITR 18 \(SC\)](#).
- Pointing that the apex court has held that admission is extremely important piece of evidence but it cannot be said that it is conclusive and is still open to the person who made admission to show that it is incorrect.
- The Court concluded as follows —

(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 *Pullangode Rubber Produce Co. Ltd. (supra)*;

(ii) In contradistinction to the power under section 133A, section 132(4) 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 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. CIT* [\[2003\] 263 ITR 101/129 Taxman 416 \(Ker.\)](#);

(iii) The expression 'such other materials or information as are available with the Assessing Officer' contained in section 158BB, would include the materials gathered during the survey operation under section 133A, *vide* *CIT v. G.K. Senniappan* [\[2006\] 284 ITR 220/155 Taxman 118 \(Mad.\)](#);

(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 CIT v. S. Ajit Kumar* [2008] 300 ITR 152 (Mad.);

(v) Finally, the word 'may' used in section 133A(3)(iii) 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. From the above, it becomes absolutely clear that the addition cannot be made merely on the basis of statement which has no evidentiary value. This is further clarified by the Board itself that no efforts should be made to extract the surrender without corroborating evidence.

- Once the assessee has retracted from surrender within seven days and has in fact complained against high headedness of the survey team led by the Additional Commissioner, what prevented the Department from making any enquiries in respect of the persons from whom so called receivables were there which had not been recorded in the books of account. As held by the Supreme Court in the case of *Pullangode Rubber Produce Co. Ltd. (supra)* that admission is important piece of evidence but the person making admission can show that such admission is not correct. Once this was done by the assessee, the onus was on the Revenue to make enquiries and only then some addition could have been made on the basis of such enquiries.
- The slips of receivables have been perused which are stated to have been found during survey.
- It clearly shows that no address is mentioned. It does not indicate that the amount is receivable. If the assessee admitted during the survey that these amounts represent receivables, the Revenue should have at least extracted address of such persons and when the assessee retracted from the surrender then the statements of these persons should have been recorded which has not been done.
- There is a clear cut overwriting in the inventory of notes of Rs. 500. Further, there is no mention about any note found in the denomination of Rs. 50. These features create doubt regarding the genuineness of the survey. The details of the return filed in the earlier years have been also perused.
- Above clearly show that in the last four years two assessments have been taken up in scrutiny but hardly any substantial addition have been made. In fact perusal of the assessment orders would show that additions have been made mainly on account of disallowance of certain expenses which is a routine feature.
- Therefore, addition has been made without any evidence and is merely on the basis of statement recorded during the survey which cannot be sustained. Accordingly the order of the Commissioner (Appeals) is set aside and the addition is deleted.