

Statement of senior partner couldn't be retracted on pretext that he had no knowledge of business

Summary – The High Court of Bombay in a recent case of T. Lakhamshi Ladha & Co., (the Assessee) held that Statement made by senior partner of assessee-firm at time of search could not be retracted by other partner in absence of any allegation of any pressure and coercion by revenue and there being no evidence to establish that original statement was incorrect

Facts

- Assessee was engaged in the business of trading in tarpaulins, including renting the tarpaulins for hire and erection of Monsoon Sheds as required by its customers.
- During search conducted on firm on 15-9-1989, a statement of its senior partner 'T' was recorded wherein he offered certain additional income including an amount of Rs. 4 lakhs on account of inflated expenses and an amount of Rs. 6 lakhs on account of discrepancy in bills.
- On 19-10-1989, assessee-firm addressed a communication to the department seeking to withdraw/retract earlier statement in respect of aforesaid amount of Rs. 10 lakhs, alleging that partner 'T' offered said amount without any idea of business.
- The above communication was not signed by T but by another partner. T Merely confirmed the view of the partner.
- The Assessing Officer, while passing assessment order, did not accept the retraction made by the assessee-firm and made addition on basis of earlier statement.
- On appeal, the Commissioner (Appeals) held that the statement of T made under section 132(4) could not be accepted as there was no corroborative evidence to support the statement. While completely deleting the addition of Rs. 6 lakhs on account of wrong billing, he restricted the addition on account of inflated expenses to 10 per cent of the labour charges.
- On revenue's appeal, the Tribunal held that the retraction of the statement made by T was an after thought. Thus, it could not be accepted. In the result, the addition of Rs. 10 lakhs made on account of labour charges and wrong billing by the Assessing Officer, was restored.
- On appeal before the High Court:

Held

- The retraction of the statement made on 15-9-1988 by communication dated 19-10-1988 has not been made by the original deponent, i.e., 'T' but has been made by another partner of the firm and T has merely confirmed it. The alleged retraction, in fact, does not allege any pressure and/or coercion by the revenue to make the statement dated 15-9-1988. It only seeks to amend the statement made on 15-9-1988. On the date of search, it is undisputed that T was a partner of the firm and voluntarily made statement in respect of the business of the firm. Nothing prevented him from stating that he is not aware of the business of the firm rather than proceed and make

statement which suggest that he is a person in the know of the business of the firm and the manner in which it is conducted. In fact, his statement was made in the context of signed bank vouchers and loose papers found during the search. Those loose papers found during search, were explained as record of payments made outside the books of account and so far as blank signed vouchers are concerned, it was stated that the figures are filled in later so as to enable inflating the expenses actually incurred. The above details in the statement are indicative of a person in the knowledge of the manner in which the business activities of the firm is being conducted. Besides, when the statement was made, another partner of the firm endorsed the statement made by T, thus, approving the same. In case the aforesaid statement was not correct, the other partner would have certainly protested and not endorsed the statement made by T. In the above view, the finding by the Tribunal that the statement recorded on 15-9-1988 is not effectively retracted on 19-10-1988 cannot be said to be perverse and/or arbitrary. It is a possible view on the facts.

- Though the Commissioner (Appeals) had disregarded the statement made on oath under section 132(4), it was on the basis that the statement made by a partner of the firm cannot bind the firm in the absence of it being confronted to all the other partners. This goes against the basic principle of partnership law.
- In the above view, reliance upon the statement dated 15-9-1989 given by T to the authorities under section 132(4) cannot be found fault with.