# Statement of family members would be considered for making additions even if it wasn't made during search

**Summary – The High Court of Delhi in a recent case of Smt. Dayawanti, (the Assessee) held that Statements recorded during search operations could be relied upon to make addition to assessee's income**

**Where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as statements recorded by assessee's son in course of search operations and assessee had not been able to show as to how estimation made by Assessing Officer was arbitrary or unreasonable, additions so made by Assessing Officer by rejecting books of account was justified**

**Facts**

- The assessee was proprietor of Assam Supari Traders and her late husband was proprietor of Balajee Perfumes. They had three sons who through the firms Balajee Perfumes and Assam Supari Traders, managed *gutka* manufacturing as well as sale and purchase of areca nut business.
- Search and seizure operation were carried out on 22-3-2006 in the premises of Balajee Perfumes Group. The assessee along with other family members surrendered a sum of Rs. 3.5 crores at the time of the search, as additional income in respect of business carried on outside books of account in connection with production and sale of Gutka.
- Statement of the assessee was also recorded in the course of search. In her statement she said that she had no source of income; that she did not even own any bank account and that she was not assessed to tax. She admitted to being proprietor only on the record and one of her sons looked after all operations along with the help of other family members.
- Notice under section 153A was issued on 21-8-2006 requiring the assessee to furnish returns. In response the assessee filed no proper return, though a photocopy of the return filed earlier under section 139(1) along with an audit report was placed on record before the Assessing Officer.
- The Assessing Officer rejected books of account and made additions by estimating sales and gross profit rates, *inter alia* on ground that in course of search a statement was recorded by assessee's son on behalf of assessee and other family members.
- On appeal, the Commissioner (Appeals) upheld initiation of section 153A proceedings and also the rejection of books of account. He however directed the Assessing Officer to re-compute the addition by adopting the declared sales by the assessee. The Commissioner (Appeals) adopted GP rate at 20 per cent as opposed to 12 per cent declared by the assessee.
- On cross appeals, the Tribunal upheld the rejection of books of account as there was no material to substantiate the correctness and completeness of such books of account. However, the Assessing Officer was directed to compute the trading addition by adopting GP rate at 15 per cent.
- On appeal to the High Court:

**Held**

***Whether addition made by Tribunal relying on basis of incriminating material found during search was justified?***

- Section 153A, which provides for an assessment in case of search, and was introduced by the Finance Act, 2003 with effect from 1-6-2003, does not provide that a search assessment has to be made strictly on the basis of evidence found as a result of search or other documents and such other materials or information as are available with the Assessing Officer and relatable to the evidence found. The earlier section 158BB which is not applicable in case of a search conducted after 31-5-2003, provided that the computation of the undisclosed income can only be on the basis of the evidence found as a result of search or other documents and materials or information as are available with the Assessing Officer, provided they are related to the materials found. Section 153A(1)(*b*) requires assessment or reassessment of total income of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search took place. This, however, does not mean that the assessment under section 153A can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this section only on the basis of seized material. The question, however, is whether the seized material can be relied upon to also draw the inference that there can be similar transactions throughout the period of six years covered by section 153A. With introduction of section 153A the Act resembles the pre-Chapter XIV-B regime, where assessments were completed on the basis of material and evidence collected during search.
- The impugned order dealt with this aspect and concluded that the statement made under oath could be acted upon, especially since materials and documents were recovered during the search proceedings.
- The nature of the books included *katchaparchas,* papers containing calculations and amounts routed to bank accounts of various members of the family, sums receivable towards business, etc. They also included documents relating to purchase of property. The statements were made under oath on 18-4-2006 and 3-5-2006. No doubt, they were not during the course of search. Yet, they were made voluntarily. There was no allegation ever that the assessee or any of her family members, including Abhay and Varun Gupta, who made the main statements under oath, were pressurized to do so; there was in fact no contemporaneous retraction. Indeed, the assessee appears to have resiled from the statement, only through the returns, filed after receipt of notice under section 153A. The probative value of these statements is to be seen not from only whether it was allowed to stand, or whether it was resiled from. The stage when such statement is resiled, whether the assessee was able to give any explanation for the statement, its connection with the material seized, all are relevant, in the opinion of the court, to judge if it is to be considered in an assessment. In other words, there cannot be a rule carved in stone, as it were, that statements that are resiled cannot be considered at all.

- The assessee's submissions on this aspect that the statements were not recorded during the search but later and that they cannot be considered of any value is not acceptable. The search was conducted on 22-3-2006. Various materials: documents, agreements, invoices and statements in the form of accounts and calculations were seized. On 18-4-2006 and 3-5-2006, the assessee's sons (including one of the appellants) recorded statements under oath; the assessee too made her statement under oath, admitting that though returns were filed ostensibly on her behalf, she was not in control of the business. She and all other family members made short statements and endorsed the statements under oath, of those who elaborated the trading and business operations relating to clandestine income. These statements under oath were part of the record and continued to be so. They were never explained in any reasonable manner. Their probative value is undeniable; the occasion for making them arose because of the search and seizure that occurred and the seizure of various documents, etc. that pointed to undeclared income. In these circumstances, the assessee's argument that they could not be acted upon or given any weight is insubstantial and meritless.

***Whether lower authorities' approach in rejecting books, estimating turn over and applying a high GP rate to estimate profit, was arbitrary?***

- The Tribunal's findings do not reveal any fundamental error, calling for correction. The inferences drawn in respect of undeclared income were premised on the materials found as well as the statements recorded by the assessees. These additions therefore were not baseless. Given that the assessing authorities in such cases have to draw inferences, because of the nature of the materials - since they could be scanty (as one habitually concealing income or indulging in clandestine operations can hardly be expected to maintain meticulous books or records for long and in all probability be anxious to do away with such evidence at the shortest possibility) the element of guess work is to have some reasonable nexus with the statements recorded and documents seized. In this case, the differences of opinion between the Commissioner (Appeals) on the one hand and the Assessing Officer and Tribunal on the other cannot be the sole basis for disagreeing with what is essentially a factual surmise that is logical and plausible. These findings do not call for interference.
- In view of the above conclusions, it is held that these appeals lack merit; they are accordingly dismissed.