

No additions if AO didn't find assets surrendered by assessee in statement made during search: HC

Summary – The High Court of Allahabad in a recent case of Dilbagh Rai Arora, (the Assessee) held that Merely because during search, assessee surrendered an amount in stipulation that details of same would be given in due course of time, but no such assets were ever found/identified by authorities, no addition could be made to assessee's income

Facts

- During the course of search operation, cash, jewellery and other valuables were found and seized. The assessee filed its return and declared its income of Rs. 24.05 crores. Thereafter, notices under sections 143(2) and 142(1) were issued to the assessee.
- The statement on oath under section 132(4) was recorded in which the assessee had offered to surrender a sum of Rs. 31 crores for taxation out of which a sum of Rs. 18 crores were surrendered on account of investment made in jewellery/precious stones and Rs. 6 crores were in cash which had been shown in the books of account. In respect of balance Rs. 7 crores the assessee stipulated that due details would be given in due course of time.
- The Assessing Officer added back Rs. 7 crores to the income of the assessee on the basis of statement given by the assessee under section 132(4).
- On appeal, the Commissioner (Appeals) allowed the appeal of assessee and deleted the addition.
- On further appeal, the Tribunal confirmed the order passed by the Commissioner.
- On the revenue's appeal to the High Court:

Held

- The assessee has filed his return on 30-10-2006 and offered Rs. 24 crores for taxation. The assessee 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 Commissioner (Appeals) while allowing the appeal of the assessee has deleted the said amount, which was being confirmed by the impugned order. The assessee 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 assessee. In such a situation, it could be inferred that no such assets actually exists.
- 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 sometime 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.
- In the instant case, the addition have only been made on the basis of statement given on 6-10-2005.
- In the instant case the assessee 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.