

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
And
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

	I.T.A. No. 3898/DEL/2016	
	A.Y. : 2012-13	
MNP TURNMATICS C/O DEVINDER PROOTHI PARTNER M/S MNP TURNMATICS, 342/1, HISAR ROAD, ROHTAK (PAN: AAEFM9419R)	VS.	ITO, WARD-2, ROHTAK
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Ved Jain, Adv.
Department by : Sh. Saras Kumar, Sr. DR.

ORDER

PER H.S. SIDHU : JM

This appeal by the Assessee is directed against the impugned Order of the Ld. Commissioner of Income Tax (Appeals), Rohtak dated 16.05.2016 pertaining to assessment year 2012-13. The assessee has filed the following concise grounds of appeal:-

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) CIT(A) is bad both in the eye of law and on facts.
2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of RS.9,70,640/- made by AO on account of cash surrendered at the time of survey.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.31,80,470 /- made by AO on account of stock surrendered at the time of survey.
- 4 On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.18,98,000/- made by AO on account of expenditure incurred on renovation and addition in factory building and Shed.
- 5 On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.14,49,550/- made by AO on account of unaccounted wages.
6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the adhoc disallowance of RS. 60,000/- made by the AO on account of various expenses incurred during the year.
7. The appellant craves leave to add, amend or alter any of the grounds of appeal.

2. The brief facts of the case are that the assessee has filed the return of income on 30.9.2012 declaring total income of Rs. 14,62,390/-. The return of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act") accepting the income returned. In this case a Survey action was carried out u/s. 133A of the Act on 23.3.2012 and statement of assessee was recorded on 23.3.2012 alongwith this, surrender letter and post dated cheques for payment of demand was submitted by the assessee wherein total disclosure of Rs. 75,00,000/- was made on account of various counts i.e. excess cash found; excess stock found; unaccounted wages and renovation and addition in factory

building and shed. However, the assessee, later on, retracted its statement without filing any supporting documents into substantiate his retraction and did not include the disclosed income in his return for AY 2012-13. During the proceedings, the assessee was asked to produce the books of accounts for verification vide notice u/s. 142(1) of the Act dated 3.12.2014. Further vide notice u/s. 142(1) of the Act dated 10.10.2014, the assessee was asked to submitted its reply. After considering the replies, the AO held that assessee has filed retraction without any grounds and he failed to substantiate the same even during the assessment proceedings, hence, the disclosure made by him wroth Rs. 75 lacs during the survey proceedings was added to the total income of the assessee and income of the assessee was assessed at Rs. 90,22,400/- vide order dated 31.3.2015 passed u/s. 143(3) of the Act. Against the assessment order dated 31.3.2015, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 16.5.2016 has dismissed the appeal of the assessee. Against the impugned order dated 16.5.2016, assessee is in appeal before the Tribunal.

3. During the hearing, Ld. Counsel for the assessee submitted that the lower authorities erred in rejecting the explanation of the assessee with respect to the circumstances under which the surrender was made and also rejected the contention of the assessee that the amount of Rs. 75 lacs was not the real income of the assessee and hence cannot be exigible to tax irrespective of the same being surrendered at the time of survey. Hence, the addition in dispute may be deleted.

4. On the contrary, Ld. DR relied upon the orders of the authorities below.

5. We have heard the rival submissions and perused the order passed by the authorities below and the paper book filed by the assessee. We find that the issue in dispute is that addition of Rs.75,00,000/- was made by the AO on the basis of the survey carried out at the premises of the

assessee on 23.03.2012. The AO has mentioned in the assessment order dated 31.3.2015 that a survey action was carried out u/s. 133A of the Act and statement of assessee u/s. 131 of the Act was recorded on 23.03.2012. It is noted that the assessee has made disclosure of Rs.75,00,000/-. The AO has alleged that the assessee later on retracted its above statement without filing any supporting document to substantiate its retraction and has not included the income disclosed in the return filed for the assessment year in dispute. The AO has rejected the retraction on the ground that the same was obtained was under threat. The AO has stated that this retraction is an afterthought and self-serving statement as he has not substantiated the same with supporting document. The Ld. CIT(A) has confirmed the action of the AO holding that no explanation was offered by the assessee and no books of accounts are produced. The explanation given is vague and cursory. On going through the paper book we note that the above facts are not correct. A survey was carried out at the premises of the assessee on 23.03.2012. A statement of the assessee was recorded at the time of the search on 23.03.2012 which continue till 24.03.2012 as is evident from the statement placed at paper book pages 25 to 30. In this statement there is no surrender or additional income admitted by the assessee. Thereafter assessee had filed a letter dated 24.03.2012 placed at paper book page 46-47 addressed to Ld. Addl. Commissioner of Income Tax, Rohtak range whereby he has offered additional income of Rs.75,00,000/- to cover up discrepancies on account of excess stock, wages and expenditure on renovation of building. The assessee thereafter on 30.03.2012 has filed an ITR with Ld. CIT, Rohtak Range Rohtak, placed at paper book pages 48-49 whereby he has stated that on 23.03.2012 a survey was carried out and around 35 people barged into his premises around 12:00 PM and he was forced to sign some paper along with cheque of Rs.23,17,500/. It was also stated in the said letter that the liability generated is totally unjust. The assessee has filed another letter dated 02.07.2012 addressed to the Income Tax Office, Ward (1), Rohtak placed at paper book page

50-51 again reiterating that he was coerced to surrender the income. The assessee also retracted the statement. During the course of assessment when the matter was taken up by the AO the assessee made submissions. Vide letter dated 25.03.2015 placed at paper book page 55-58 the assessee made detailed submissions in respect of the each of the item on which additional income was disclosed. The assessee explained that the valuation of the closing stock as per the assessee books of account is at cost whereas the valuation of the stock done at the time of survey was taken inclusive of taxes i.e. Excise and VAT. The assessee also submitted reconciliation statement which is placed at paper book page 59. In support of this reconciliation the assessee submitted complete details of the inventory and the invoices placed at paper book page 60 to 432. Regarding the excess cash it was explained that no excess cash was actually found but just to cover up the figure of Rs.75 lacs, the amount of Rs.9,70,640/- was got declared under pressure from the assessee. We note that as per the Board Circular, if during the course of search/survey any unrecorded cash found in excess of Rs.5,00,000/- the Department is duty bound to seize the same which was not done because no excess cash was found. The assessee also submitted the details of wages placed at paper book page 435 to 439 along with supporting evidences at pages 440 to 450. The assessee also pointed out that it is simply stated "as per observation of survey team" which indicate that assessee has been pressurized to make the declaration. The assessee also asked the AO to provide the details of Rs.14,49,550/- of unaccounted wages as is being alleged. The assessee also submitted the details of building maintenance expenses placed at paper book pages 451-453 along with supporting evidences placed at paper book page 454 to 529. It was further submitted by the assessee that no paper/incriminating document relating to repair/addition to building was found during survey. The assessee further asked the AO if there any such document to provide the copy of the same. The assessee also asked the AO to provide the details of any expense or any map on the basis of which allegation is being made about

expenditure on renovation/addition to the building. The AO has referred to this letter dated 25.03.2015 in the assessment order in para 2 on page 2 wherein it has been admitted by the AO that assessee has filed these submission. Thus the contention of the AO and the Ld. CIT(A) that the retraction by the assessee is vague and assessee has failed to substantiate the same is incorrect. In fact on going through these details we note the assessee has given explanation for each Item under which the additional income was offered. Further on going through the statement recorded at the time of survey in respect to the difference in the stock, the assessee clearly stated that he will explain the discrepancy after consulting the records. Further, in the statement recorded there is no allegation coming out on account of any discrepancy in job work or expenditure on account of renovation. In the assessment order also the AO has not pointed out or referred to any material or evidence to substantiate the allegation that there was an discrepancy in the wages or expenditure incurred on the renovation. The difference in the stock has been duly explained by the assessee vide letter dated 25.03.2015 along with supporting evidences. The AO has simply ignored the same and has made the addition merely on the basis of the letter submitted by the assessee on 24.03.2012 which stand retracted later on by the assessee vide letter dated 30.03.2012 and 02.07.2012. It may be germane to mention here that reference to these letter dated 30.03.2012 has been stated by the assessee in its letter dated 25.03.2015 which has been quoted by the AO in its assessment order. Thus, this letter dated 30.03.2012 was filed by the assessee and there is no rebuttal to this letter. The entire addition is based on the surrender on the basis of a letter dated 24.03.2012 which stand retracted by letter dated 30.03.2012 and 02.07.2012. Moreover, this surrender is not under oath. The AO has not brought any material to rebut the explanation of the assessee. Further, the issue is also covered by the judgment of the Hon'ble Supreme Court in the case of CIT vs. Khader Khan Son reported in (2012) 254 CTR 229 wherein the Court has held that section 133A of the Act does not

empower any Income Tax Authority to examine any person on oath and therefore any admission made in a statement recorded during survey cannot by itself be made the basis of addition. Keeping in view of the above facts and circumstances as explained above and respectfully following the precedent as aforesaid, we are of the considered opinion that the addition in dispute made by the AO and confirmed by the Ld. CIT(A) is not tenable in the eyes of law, hence, the same is deleted.

6. In the result, the Appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 02/01/2020.

Sd/-

**[DR. B.R.R. KUMAR]
ACCOUNTANT MEMBER**

Date 02/01/2020

“SRB”

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

By Order,

Assistant Registrar,
ITAT, Delhi Benches