

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1717/PUN/2017  
निर्धारण वर्ष / Assessment Year: 2013-14

Bhagwan Madhukar Kale, Prop. Swami Construction, 204, Padma Vishwa Apartment, Old Pandit Colony, Sharanpur Road, Nashik- 422005. PAN : ABGPK0588J	Vs.	ACIT, Circle-1, Nashik.
Appellant		Respondent

Assessee by : Shri Sanket M. Joshi  
Revenue by : Shri M. J. Jasnani

Date of hearing : 17.01.2022  
Date of pronouncement : 18.01.2022

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 1, Nashik ['CIT(A)' for short] dated 08.05.2017 for the assessment year 2013-14.

2. Briefly, the facts of the case are that the appellant is an individual engaged in the business of property developers. The return of income for the assessment year 2013-14 was filed on

24.09.2013 declaring total income of Rs.80,96,061/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Circle-1, Nashik ('the Assessing Officer') vide order dated 12.02.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income of Rs.2,38,73,310/-. While doing so, the Assessing Officer made the following disallowances :-

- (i) Disallowance under valuation of work in progress – declared in survey action u/s 133A of Rs.26,00,000/-.
- (ii) Disallowance of expenditure partly supported by self made vouchers and not fully supported as declared in survey action u/s 133A of Rs.5,00,000/-.
- (iii) Disallowance of expenditure of sub-contracting work incurred during the year under consideration of Rs.62,25,000/-.
- (iv) Disallowance on account of cessation of liability towards amounts payable to sub-contractors added u/s 41 of Rs.64,52,248/-.

3. Being aggrieved by the above additions, an appeal was filed before the Id. CIT(A), who vide impugned order granted part relief deleting the additions in respect of expenditure of sub-contracting work of Rs.62,25,000/- and cessation of liability payable to sub-contractors u/s 41 of Rs.64,52,248/-. However, the Id. CIT(A) confirmed the addition made by the Assessing Officer based on

statement recorded during the course of survey action u/s 133A of the Act amounting to Rs.31,00,000/-.

4. The factual background leading to the above addition of Rs.31,00,000/- is as under :

The survey operations u/s 133A had taken place in the business premises of the appellant on 15.02.2013. During the course of survey proceedings, the Assessing Officer recorded the statement from the appellant wherein, vide reply to question no.10, the assessee had stated that as on the date of survey i.e. on 15.02.2013, work in progress is evaluated on estimate basis and agreed to offer a sum of Rs.26,00,000/- as additional income. Similarly, vide reply to question no.11, the assessee had also agreed to offer a sum of Rs.5,00,000/- in respect of expenditure which was not verifiable as the vouchers are self made. However, in the return of income, no income was offered to tax in respect of the statement made by the assessee. During the course of assessment proceedings, the assessee had contended that there is no undervaluation of work in progress and the statement was given by the appellant under wrong impression that there is undervaluation of work in progress.

5. Similarly, as regards to the statement given in respect of unverifiable expenditure of Rs.5,00,000/-, it is contended that the expenditure which is supported by self made vouchers was totalling to Rs.7,55,188/- and the Assessing Officer disallowed a sum of Rs.5,00,000/- out of Rs.7,55,188/- is unreasonable. It is further submitted that the evidence in respect of the expenditure which is the nature of wages of labours, conveyance etc. vouchers are always self made. It is further contended that no addition can be made based on the mere statements given during the course of survey operations u/s 133A placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. S. Khader Khan Son, 210 Taxman 248 (SC) and CBDT Instruction bearing F.No.286 dated 10.01.2003. However, the Assessing Officer without meeting the objection raised had simply made addition on these items to the returned income merely based on the statement given by the appellant.

6. Even on appeal before the ld. CIT(A), the ld. CIT(A) confirmed the addition by holding that there was no retraction of the statement given during the course of survey operations.

7. Being aggrieved by the above decision of the ld. CIT(A), the appellant is before us in the present appeal.

8. The ld. AR submitted that the addition was made by the Assessing Officer merely based on the statement given during the course of survey operation without bringing any corroborative evidence on record. He further submitted that no addition can be made based on the mere statement recorded during the course of survey operation u/s 133A placing reliance on the decisions of Hon'ble Madras High Court in the case of CIT vs. P. Balasubramanian, 354 ITR 116 (Mad.); Hon'ble Kerala High Court in the case of Paul Mathews & Sons vs. CIT, 263 ITR 101 (Ker.); Hon'ble Supreme Court in the case of CIT vs. S. Khader Khan Son, 210 Taxman 248 (SC); CBDT Instruction bearing F.No.286/2/2003-IT(Inv) dated 10.03.2003 and CBDT Instruction bearing F.No.286/98/2013-IT(Inv.II) dated 18.12.2014.

9. On the other hand, ld. CIT-DR placing reliance on the orders of the lower authorities submitted that the addition is made based on the admission as made by the assessee and no further corroborative evidence is required for the purpose of making any addition based on the statement.

10. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the addition of Rs.31,00,000/- made by the Assessing Officer based on the

statement recorded during the course of survey operations u/s 133A of the Act. In reply to question nos.10 and 11, the assessee had stated that he had agreed to offer an additional income of Rs.31,00,000/- on account of undervaluation of closing stock of Rs.26,00,000/- and unverifiable expenditure of Rs.5,00,000/-. On going through the statement recorded during the course of survey action u/s 133A, which is extracted by the Assessing Officer in the assessment order vide para 6, it would be clear that from the questions posed to the appellant, the Assessing Officer had not brought any specific instance of discrepancies in the valuation of closing work in progress as well as any evidence in support of the bogus expenditure incurred by the assessee. It is a different matter as to why the assessee had agreed to make the addition, but the issue of valuation of work in progress as well as proof of genuineness of expenditure incurred, are pure questions of facts, which the Assessing Officer should brought on record. The Assessing Officer failed to do so, but merely based on the statement given by the assessee, had proceeded to make the assessment and made addition. It is settled position of law that no addition can be made on the mere basis of the statement given by the assessee as held by the catena of the following decisions :-

- (i) CIT vs. P. Balasubramanian, 354 ITR 116 (Mad.);
- (ii) Paul Mathews & Sons vs. CIT, 263 ITR 101 (Ker.);
- (iii) CIT vs. S. Khader Khan Son, 210 Taxman 248 (SC);

Furthermore, the appellant had categorically stated before the Assessing Officer that there was no discrepancy in the valuation of work in progress, as well as no doubts as to the genuineness of expenditure incurred, inspite of this fact, the Assessing Officer proceeded with making of addition based on the mere statement given by the assessee u/s 133A of the Act. It is not the case of the Department that, the discrepancy if any in the valuation of closing work in progress as on date of survey, still existed in the valuation of closing work in progress as on date of end of previous year, nor no addition can be made based on discrepancies, if any, in the valuation of work in progress in the middle of previous year. This approach of the Assessing Officer does not stand to the judicial scrutiny. Even the ld. CIT(A) had merely confirmed the action of the Assessing Officer without appreciating the ratio of the following judicial precedents and the CBDT's Instructions i.e. Hon'ble Madras High Court in the case of CIT vs. P. Balasubramanian, 354 ITR 116 (Mad.); Hon'ble Kerala High Court in the case of Paul Mathews & Sons vs. CIT, 263 ITR 101 (Ker.); Hon'ble Supreme

Court in the case of CIT vs. S. Khader Khan Son, 210 Taxman 248 (SC); CBDT Instruction bearing F.No.286/2/2003-IT(Inv) dated 10.03.2003 and spirit of CBDT Instruction bearing F.No.286/98/2013-IT(Inv.II) dated 18.12.2014. Thus, the action of the lower authorities cannot be sustained and the orders of the Assessing Officer as well as the Id. CIT(A) are hereby set-aside. Accordingly, we direct the Assessing Officer to delete the addition of Rs.31,00,000/-. Hence, the issue raised in the grounds of appeal stands allowed.

11. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 18<sup>th</sup> day of January, 2022.

**Sd/-**  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 18<sup>th</sup> January, 2022.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nashik.
4. The Pr. CIT-1, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.