

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC-1" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND  
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1200/MUM/2021**

**Assessment Year: 2013-14**

**&**

**ITA No. 1201/MUM/2021**

**Assessment Year: 2014-15**

Nitin A. Shah,  
31/32, 8<sup>th</sup> floor,  
Giriraj Apartment,  
Teen Batti, Walkeshwar,  
Mumbai-400 006.  
**PAN No. AAHPS 3826 K**  
**Appellant**

DCIT, CC-1(3),  
905, 9<sup>th</sup> floor, Pratishta Bhavan,  
**Vs.** Old CGO Building Annex,  
Maharshi Karve Road,  
Mumbai-400020.

**Respondent**

Assessee by : Mr. Suchek Anchaliya, AR  
Revenue by : Mr. Kiran P. Unavekar, DR

Date of Hearing : 02/06/2022  
Date of pronouncement : 05/07/2022

**ORDER**

**PER OM PRAKASH KANT, AM**

These two appeals by the assessee are directed against two separate orders dated 28/05/2021 and 31/05/2021 passed by the Ld. Commissioner of Income-tax (Appeals)-47, Mumbai [in short



'the Ld. CIT(A)'] for assessment year 2013-14 and 2014-15 respectively. As common issue-in-dispute are involved in both these appeals, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. First we take of the appeal for assessment year 2013-14, the grounds of appeal of which are reproduced as under:

1. *On the facts and circumstances of the case and in laws the Ld. CIT(A) erred in confirming the assessed income at Rs. 8,48,930/- as against the returned income of Rs. 7,86,930/-.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not holding the assumption of jurisdiction by the Ld. Assessing Officer as bad in law as the legal conditions laid down for initiating assessment proceedings W/s 153C of the Act have not been fulfilled.*
3. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in not holding that the Learned Assessing Officer erred in not providing an opportunity to cross examine to the appellant while relying on a third party statement as the same was also in violation of the principles of natural justice.*
4. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition of interest of Rs. 62,000/- on account of interest allegedly received in cash by the appellant, without providing any corroborative evidence to*



*substantiate the same and without appreciating the fact that the appellant has not earned any interest income, other than mentioned in the return of income.*

5. *The appellant craves to add, alter, classify, reclassify, delete or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another.*

3. Briefly stated facts of the case are that the assessee filed regular return of income declaring total income of ₹7,86,930/-on 24/07/2013. Subsequently, in connection with the searches carried out on Sh Bhanwarlal Jain, a survey action under section 133A of the Income-tax Act, 1961 (in short 'the Act') was carried out on 04/10/2013 by the Investigation Wing in the office premises of the assessee located at Panchratna, Opera House, Mumbai. In the case of the assessee, notice under section 153A read with section 153C of the Act was issued by the Assessing Officer on the ground that incriminating documents belonging to the assessee were seized during the course of the search in the case of Sh Bhanwarlal Jain. The assessee filed return of income in response to notice issued for



153C proceedings. The assessment was completed after making addition of interest income of ₹2,60,000/- to the returned income. On further appeal, the Ld. CIT(A) upheld the legality of the proceedings as well as addition on merit. Aggrieved, the assessee is before the Tribunal raising the grounds as reproduced above.

4. Before us, the Ld. counsel of the assessee filed a copy of the statement of the assessee recorded during survey proceedings.

5. We have heard rival submission of the parties on the issue in dispute and perused relevant material on record. As far as merit of the addition is concerned, the brief facts are that during survey proceedings at the premises of the assessee a person namely 'Sh Mahendra Kumar R Patel' came to deliver an envelope on which name of 'Ms. Meenakshi N Shah' was written in pencil. The authorised Officer at the survey premises, recorded statement of Sh Mahendra Kumar R Patel, wherein the stated that said envelope contained quarterly interest in cash and cheque on loan, which had



been taken by one Sh Kantilal A Shah, partner of M/s Hirok Construction. The survey team further gathered that said envelope contains cheque of ₹55,200/-, which was the interest on the loan amount of ₹20 lakh for 92 days at the rate of 12% per annum (after deducting TDS) and cash of ₹30,666/- towards interest payment at the rate of 6% on ₹20 lakh. A statement of assessee was also recorded during survey proceeding. In said statement, the assessee admitted that he was also engaged in advancing loan at the rate of 18% out of which 12% was received in cheque and remaining 6% was received in cash, whereas only 12% interest was recorded in books of accounts. In view of the statement in survey proceedings, during assessment proceedings the Assessing Officer asked the assessee as why the interest at the rate of 6% might not be assessed as received in cash on the loans outstanding at the year end. The assessee retracted from the statement and said that statement during the survey was involuntary and under coercion. The Ld.



Assessing Officer rejected the retraction of statement by the assessee holding that it was after a lapse of such a long time and in attempt to thwart efforts of the Department. According to him the statement was recorded under section 131 of the Act and therefore it was one of the admissible evidence. According to the Ld. Assessing Officer retraction was not corroborated by any other evidences and therefore it was liable for the rejection. The Ld. Assessing Officer finally concluded as under:

*“6. As discussed above that during the course of survey at 210 A Panchratna, Opera House, on 04.10.2013, the assessee when confronted with the clinching evidences, has very categorically admitted in his statement that he does advance loan @ 18 % interest out of which 12 % interest is recived in cheque and the remaining 6 % is received in cash, but only 12 % Is recorded in the books of account.*

*The above admission conclusively prove that assessee in his individual capacity advances unsecured loans to various parties wherein the rate of interest charged is 18 % pa. However, only 12% interest income is received in cheque and the same is accounted for in the regular books of accounts and remaining 6% interest is received in cash and is not accounted for in the regular books of accounts which requires no further validation.*



*Accordingly the difference of Interest @ 6% (18%-12%) of the interest amounting to Rs. 62000/- being cash component of the interest received as discussed above is brought to tax and is added back to the total income.*

*Accordingly it is also held that inaccurate particulars of income has been filed to conceal income chargeable to tax and penalty u/s. 271(1)c of the IT act is separately initiated for the same.”*

5.1 On further appeal, the Ld. CIT(A) on the issue of merit upheld the finding of the Assessing Officer in view of the statement of the assessee during survey proceedings. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“14. I have considered the arguments of the assessee and facts of the case. It is relevant to mention over here that in his statement on oath u/s.133A on 3/10/13, when the assessee was asked about interest charged on loan given, the very clearly and categorically mentioned that he was receiving quarterly interest @ 18%; 12% by cheque and 6% by cash. After that statement, there was left no doubts as to the assessee was receiving interest @GX in cash over and above interest @ 12% through cheque. Further, cash portion of interest was no where disclosed by the assessee in the books of accounts or the return. Therefore, the Assessing Officer was justified in adding a sum of Rs.62,000/- additional interest income in the hands of the assessee being cash component of interest @ 6% on loan amount.*



*15. During the appellate proceedings, the assessee has produced no evidence or explanation as to why the addition made by the Assessing Officer was unfair or unreasonable. I am therefore, not in a position to deviate from the position taken by the Assessing Officer and therefore, addition taken by the Assessing Officer as undisclosed interest is upheld”.*

5.2 In our opinion, the only basis for making addition for cash component of interest is the statement of ‘Sh Mahendra Kumar R Patel’, which was not in respect of loan given by the assessee. The said envelope was in respect of the loan given by ‘Ms. Meenakshi N Shah’. On the basis of said statement of ‘Sri Mahendra R Patel’, statement of the assessee was recorded in survey proceedings under section 133A of the Act. The contention of the Ld. Assessing Officer that said statement was recorded under section 131 of the Act is incorrect. On perusal of the copy of statement of Sh Nitin A shah i.e. the assessee on 06/10/2013, it is clear that said was recorded under section 133A proceedings. The Hon’ble Supreme Court in the case of **CIT Vs S Khader Khan Son reported in (2012) 25v taxmann.com 413 (SC)** has held that section 133A does not





empower any ITO to examine any person on oath and so statement recorded under section 133A does not have any evidencing of value and any admission made during such a statement cannot be made basis for addition. The relevant part of the decision of the Hon'ble Supreme Court is reproduced as under:

*“In the instant case, there was a survey operation conducted under Section 133A of the Act in the assessee's premises and a statement was recorded from one of the partner. Assuming there were discrepancies and irregularities in the books of accounts maintained by the assessee, an offer of additional income for the respective assessment years was made by the partner of the firm. But, such statement, in view of the scope and ambit of the materials collected during the course of survey action under Section 133A shall not have any evidentiary value, as rightly held by the Commissioner and the Tribunal, since such statement was not attached to the provisions of Section 133A of the Act. It could not be said solely on the basis of the statement given by one of the partner of the assessee-firm that the disclosed income was assessable as lawful income of the assessee. Since there was no material on record to prove the existence of such disclosed income or earning of such income in the hands of the assessee, it could not be said that the Revenue had lost lawful tax payable by the assessee.”*



5.3 We find that there is no other evidence on record except the statement of the assessee recorded during survey proceedings, which has already been retracted by the assessee.

5.4 In view of above facts and circumstances, the action of the Ld. CIT(A) in sustaining the addition made by the Assessing Officer is not justified and we accordingly set aside the said finding of the Ld. CIT(A). The ground No. 4 of the appeal is accordingly allowed.

5.5 Since we have allowed the ground of the assessee on merit of the addition and therefore we are not adjudicating upon legality of the assessment proceedings challenged. The other grounds of appeal are rendered as academic only and dismissed as infructuous.

5.6 In the appeal for assessment year 2014-15 identical issue of addition of interest amounting to ₹1,59,708/- has been raised by the assessee. The Ld. CIT(A) has also decided identical to his finding in assessment year 2013-14. The basis of sustaining addition in the



year under consideration is also statement of the assessee during survey proceedings i.e. same basis which is in assessment year 2013-14. Since we have already allowed the appeal of the assessee for assessment year 2013-14, to have consistency in our decision, the grounds raised in assessment year 2014-15 challenging merit of the addition are allowed.

6. In the result, both the appeals of the assessee i.e. for assessment year 2013-14 and 2014-15 are allowed.

**Order pronounced in the Court on 05/07/2022.**

Sd/-

**(KULDIP SINGH)  
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;

Dated: 05/07/2022

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**