(2013) 04 GUJ CK 0016

In the Gujarat High Court

Case No : Tax Appeal No. 261 of 2013

Zafarulla I Malek Sevalia APPELLANT

Vs

Dy. CIT RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2013) 04 GUJ CK 0016

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Judgement

1. Assessee is in appeal against the judgment of the Income Tax Appellate Tribunal dt. 21-9-2012 raising following questions for our consideration:

(A) Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal erred in confirming the order of Respondent solely on the basis of statement made during the survey u/s 133A which has no evidentiary value?

(B) Whether the Income Tax Appellate Tribunal has erred on facts and in law in not appreciating that statement rendered by the assessee at time of survey u/s 133A does not become the sole material to rest the assessment more so when the assessee has retracted the same by producing material evidence in support of such retraction and on the other hand revenue could not furnish any corroborative evidence in support of such admission?

2. Issue pertains to addition of sum of Rs. 20 lakh as undisclosed income of the assessee. Brief facts are that sometime in the month of March, 2005 when the employees of the assessee firm were travelling on a scooter carrying on cash of Rs. 20 lakhs, they were robbed. An FIR to this effect was lodged before the concerned police station. Revenue authorities were intimated about the occurrence. Search action was initiated and two statements of the assessee were recorded u/s 133A of the Income Tax Act, 1961 on 1-4-2005. In such statements, the assessee disclosed additional income of Rs. 50 lakhs. In particular, with respect to cash of Rs. 20 lakh, the assessee agreed that same

represented assessees unaccounted money. Additional income of Rs. 30 lakhs was admitted on the basis of other loose paper and documents found at the time of survey. We are concerned with this disputed sum of Rs. 20 lakh with respect to which assessee contends that there was no material other than bare statement of the assessee recorded u/s 133A of the Act. The stand of the assessee is that such statement itself cannot form basis of any additions and that therefore, Revenue authorities as well as Tribunal erred in making such additions.

3. Having heard learned counsel Shri Hemani for the appellant who raised above contentions before us, we notice that the Tribunal has in the impugned order confirmed additions making following observations:

8. After hearing both the parties and perusing the record we find that a survey u/s 133A of the Act was conducted at the business premises of assessee on 1-4-2005 during which additional income of Rs. 50 lacs was disclosed by the assessee which include a sum of Rs. 20 lacs robbed from the employee of the assessee on 31-3-2005 when he was going to deposit this amount to the account of some shroff at Umreth. The assessees explanation that cash of Rs. 20 lacs robbed from his employee was out of withdrawal of Rs. 24 lacs from bank account of M/s. Neelam Construction on 25-3-2005 was not accepted by the assessing officer on the ground that when his statement was recorded during the survey proceedings, he admitted that this amount was out of his unaccounted income. The other ground for not accepting the assessees explanation was that in the books of account impounded at the time of survey there was no account of shroff at Umreth. Assessee however, during the appellate proceedings was able to show that Shroff was assessees creditor and the total borrowings during the year was Rs. 82,83,279 and the assessees employee was going to deposit the sum of Rs. 20 lacs in the account of shroff at Umreth. This submission, of the assessee was not acceptable to the learned Commissioner (Appeals) as he was also of the view that all these explanation are afterthought as at the time of survey the assessee had accounted that the amount robbed on 31-3-2005 was out of assessees unaccounted income and the assessee could not establish that this amount was out of an amount of Rs. 24 lacs withdrawn on 25-3-2005. We are inclined to agree with this view of learned Commissioner (Appeals) on account of two reasons '' (1) If assessee was to pay any sum to Mr. Shroff, he could have paid the same through cheque as both the parties were having their bank accounts and there was no need to withdraw any sum in cash and then deposit the same to the account of Mr. Shroff. (2) If the contention of the assessee is accepted that this amount of Rs. 20 lacs was out of Rs. 24 lacs withdrawn from the bank on 25-3-2005, the remaining amount of Rs. 4 lakhs or part of it should have been found at the time of survey was not shown in the return filed by the assessee on the basis of concrete evidence to show that assessee was wrong in disclosing the same at the time of survey. In the instant case the assessee has failed to give any cogent evidence in support of his contention that a sum of Rs. 20 lacs robbed on 31-3-2005 was actually out of money withdrawn from the bank on 25-3-2005. Therefore, the ratio as laid down

in those case laws is not applicable to the facts of this case.

4. From the record, we notice that assessees explanation was that such amount was being carried for being deposited with Angadia and that same was withdrawn from the account of a sister concern from which bank account a total sum of Rs. 24 lakhs was withdrawn a few days back. Residue thereof represented this sum of Rs. 20 lakhs. Assessing officer as well as higher authorities have given cogent reasons for rejecting such theory. When cash was admittedly found in possession of the employee of the assessee, it cannot be stated that additions were made on the basis of bare statement recorded u/s 133A of the Act. Additionally explanation of the assessee was found to be completely not acceptable. It was found that there was no account of shroff at Umreth.

5. Under the circumstances, no question of law arises. Tax appeal is dismissed.

