New Alfa Vs. Dy Cit

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Aug-24-2004

Reported in : (2005)1SOT302(Mum.)

Appellant : New Alfa

Respondent : Dy Cit

Judgement :

This Block assessment appeal is filed by the assessee. It is directed against the order of the CIT (A), Mumbai dated 16-2-2004, passed in the context of assessment framed under section 158BC for the block period from 1-4-1990 to 5-3-2001, on an undisclosed income of Rs. 1 crore, as against returned undisclosed income of Rs. 35 lakhs.

Assessee is a partnership firm which was constituted in October, 1997 at Dadi House situated at Irla Society Road, Vile Parle (West), Mumbai.

The assessee, being a well-known custom notified shop, is engaged in the business of trading in consumer goods such as confectioneries, perfumes, electronic goods, home appliances, etc. In August, 1999, the business of M/s. New Alfa was expanded by opening an additional showroom at Oscar House, Irla Society Road, Vile Parle (W), Mumbai.

A search and seizure action under section 132 of the Act took place on 5-3-2001 on the business premises of the assessee. At the time of search on 5-3-2001, cash of Rs. 2,650 was found, besides a loose paper file containing pages 1 to 100 which was seized. On verification of the loose paper filed containing pages 1 to 100 marked as Annexure AI seized on 5-3-2001, it was noticed that most of the loose papers in the file related to monthly stock statement given to the bank. It was stated by the assessee's representative by letter dated 9-3-2003 addressed to the assessing officer that the statements given to the bank are of ad hoc nature, without any reference to the books of account, and comparative stock as per books cannot be ascertained on account of non-maintenance of stock register. It was also stated that stock inventory was being taken only at the end of the year, determining the value of the stock and not quantitative tally. Further cash memos/loose paper files marked as Annexures A/ 1 to A/4 were seized as per panchnama dated 16-3-2001, the contents of which, as noted in the assessment order as under: This is a loose paper file which contains pages 1 to 389. These are the purchase invoices.

This is a loose paper file which contains pages 1 to 241. These are the purchase invoices.

This is a loose paper file which contains pages 1 to 171. These are the purchase invoices.

This is a cash memo of M/s. New Alfa for the period 17-1-2000 to 8-2-2001." A survey under section 133A of the Act was also carried out at the same premises on 5-3-2001. In the survey report, it was mentioned that the total stock was valued as per price tag at Rs. 20,13,723; that the assessee does not maintain any books of account nor any stock register and therefore, the survey team could not ascertain the stock as per the books of account and that the assessee does not maintain any records of daily cash sales made from the said premises. These facts are stated to be confirmed by Shri Mohamed Junus Khatri, in his statement recorded during the course of survey proceedings. The assessing officer on careful analysis of material found and seized, noted the various discrepancies, and proceeded to examine in para 11 of the impugned assessment order, the relevant portion of the statement of Shri Taiyab J. Khatri, the main partner, recorded at the time of search on 5-3-2001, wherein the disclosed inter alia an amount of Rs. 1

crore, in order to cover up the discrepancies found during the course of search proceedings. The assessing officer also noted that during the course of search proceedings, Shri Khatri has also filed an affidavit dated 15-3-2001 reiterating the above-mentioned disclosure of Rs. 1 crore by way of additional income.

During the course of assessment proceedings, it was also brought to the notice of the assessing officer by the letter dated 26-3-2003 of the representative for the assessee that all the statements given by the partners and staff members at the time of search were retracted by Shri Tayyab J. Khatri vide his retraction letter dated 16-3-2001 allegedly filed with DDIT (Inv.) HO-II, Mumbai, and it was also stated that vide letter dated 27-3-2003; the disclosure of Rs. 35 lakhs in the block return was made to cover (a) Stock and alleged discrepancies in stock; (b) Cash found at the hands of the partners; (c) Any discrepancies or deficiency in maintaining books of account; (d) Redemption fine; and (e) Any other such item or discrepancy, if any. Assessing officer noted that the assessee had admitted further that even the profit on the suppressed cash sales are also covered in the above returned disclosure of Rs. 35 lakhs.

The assessing officer noted that the alleged letter of retraction dated 16-3-2001 did not bear any stamp or signature in token of receipt by the office of the DDIT (Inv.); and that no communication was received in respect of the retraction from the DDIT (Inv.), though while forwarding the seized material, the DDIT (Inv.) has also forwarded a copy of the affidavit made on 15-3-2001 by Shri Khatri, confirming that he has of fered an estimated undisclosed income upto Rs. 1 crore for the group as a whole. The assessing officer concluded that the assessee was trying to play hide and seek, by filing on the one hand an affidavit dated 15-3-2001 and on the other hand, claiming to have filed the retraction letter on 16-3-2001. He, therefere, held that the copy of the alleged letter of retraction dated 16-3-2001 submitted by the assessee's representative was not admissible and bears no evidentiary value.

On the merits of the matter, he was of the view that the disclosure of Rs. 35 lakhs made in the block return cannot be accepted as true and full disclosure for the various reasons noted in para 13.2 on pages 11 to 13 of the impugned assessment order. He accordingly completed the assessment on an undisclosed income for the block period of Rs. 1 crore.

On appeal, the CIT (A) after detailed consideration of the factual background of the case and the contentions of the assessee, for the detailed reasons discussed in paras 5. 1 to 5.4 of the impugned order dated 16-2-2004, concluded that the assessing officer has not only relied on the statements recorded at the time of search, but also brought out evidence to show that the books are not properly maintained; that there are discrepancies in stock and excess stock was found; and that there was also suppression of sales. He relied on the decision of the Apex Court in CST v. H.M Eusufali H.M. Abudali (1973) 90 ITR 271 (SC), wherein it has been held that the suppressed sale for a particular period can form the basis of an estimate of turnover for the whole year. He also noted from the assessment order that Shri Neffishi B. Shah, partner gave a statement on 5-3-2001 that he had received Rs. 7-8 lakhs from M/s. New Alfa as his share of profit/remuneration, etc. including Rs. 1.25 lakhs to Rs. 1.5 lakhs in cash and this gave clear indication that the assessee generated profit outside books through suppression of sales which is shared by the partners. It was further noted that no specific submission have been made during the appellate proceedings regarding the G.P. rate of 15%, accepted by Shri Taiyab J. Khatri in his statement of 5-3-2001, as basis for his disclosure. As for the retraction from the earlier statement made at the time of search, the CIT (A) that in the absence of any evidence for the filing of the same, it was correctly rejected by the assessing officer. He further took note of the visit of Enforcement Branch of Sales Tax Department to the business premises of the assessee on 2-1-1999 revealed unaccounted cash sales of Rs. 8,79,323 and unexplained stock of Rs. 19,40,606, which was not supported by purchase bills, and unaccounted cash sales were included in the quantum of sales turnover shown by the assessee to the sales-tax authorities. Taking note of the discrepancies foun an action taken by the sales-tax authorities and customs authorities, the CIT (A) proceeded to examine the relevant legal position, as to the validity of statements recorded at the time of search, and consequences of subsequent retractions from the said statements, under the Income Tax Act, and following the ratio of the decisions of Hyderabad Bench decision of the Tribunal in Prasanchand Surana v. Asstt. CIT(2001) 76 ITD 423 (Hyd); of the Mumbai Bench of the Tribunal in Video Master v.Joint CIT(2002) 83 ITD 102 (Mum); of the Pune Bench in Hotel Kiran v.Asstt. CIT (2002) 82 ITD 453 (Pune), the CIT (A) concluded that disclosure made by Shri Khatri in the instant case is not only made voluntarily and not on account of any threat, coercion and undue influence as stated at the end of his statement, but was also based on documents and material found during the search. He observed that the disclosure was made by him, after detailed examination and elucidation of the facts relevant to the disclosure. He noted that the disclosure is supported by affidavit filed on 15-3-2001, and the claim in the letter dated 26-3-2003 filed during the assessment proceedings to the effect that a retraction letter dated 16-3-2001 was filed with DDIT (Inv.) HQ-II was unsubstantiated. He also concluded that the contention in the said retraction letter that the statement was not given voluntarily and 'we were forced to give the same was also unsubstantiated. In that view of the matter, the CIT (A) observing that the decisions relied upon by the assessee are distinguishable, confirmed the action of the assessing officer in determining the undisclosed income at Rs. 1 crore. Aggrieved by the order of the CIT (A), assessee has preferred the present appeal before us.

The learned counsel for the assessee reiterating the contentions urged before the revenue authorities submitted that the impugned addition is unjustified and unwarranted, and it was made only on the basis of the statements recorded at the time of search, in which Shri Khatri admitted an undisclosed income of Rs. 1 crore. He submitted that the assessee by the letter of Shri Khatri dated 16-3-2001 filed before the DDIT (Inv.) has retracted from the admissions made in the statements recorded at the time of search. Apart from the disclosure made, no adverse material has been found by the search party from the premises of the assessee and other partners, and the addition made merely on the basis of admission made or statement recorded under section 132(4) is not sustainable in the eye of law. Even otherwise, he submitted that consequent to the retraction from the admissions made in the statements under section 132(4), by the letter dated 16-3-2001 addressed to the DDIT, a copy of which was filed before the assessing officer also during the course of assessment proceedings, there was no basis for the impugned addition made by the assessing officer and sustained by the CIT (A). He submitted that the retractions from the earlier statements, made by the assessee were valid and acceptable in law, as the earlier statements were not voluntary and made under threat, as mentioned in the letter dated 16-3-2001. It is pleaded that the CIT (A) was not justified in holding that the assessee's undisclosed sales were to the tune of Rs. 2.5 lakhs to Rs. 3 lakhs per day and the assessee has furnished evidence to show that the recorded sales of the assessee were in order and there was no reason for the assessee to make a statement of suppressed sales, and consequently make a disclosure of Rs. 1,00,00,000. Notwithstanding the retraction from the earlier statements made under section 132(4), the learned counsel for the assessee submitted that the assessee has filed block return admitting undisclosed income of Rs. 35 lakhs to cover up various discrepancies in books of account. As the undisclosed income declared in the return is reasonable, he submitted that no further addition is called for. The learned counsel for the, assessee, has filed a detailed paper-book running into 231 pages, containing inter alia preliminary; statements recorded under section 132(4) at the time of search on 5-3-2001; letter dated 16-10-2002, addressed to the Dy. CIT regarding credit of cash seized along with enclosures; details of turnover and sales and purchase payments; ledger accounts of sales, purchases, bank account, cash in hand, sundry creditors; statement of income and drawings; details of stock and cash; audit reports under section 44AB for assessment years 1998-99 to 2000-01; acknowledgement pages of returns of income of Shri T.L Khatri for the assessment years 1991-92 to 2001-02 along with computation of income and challans for taxes paid for the assessment years 1998-99 to 2000-01. in a further paper book filed on 30-6-2004, copies of statements of Shri Mohamed Junus Khatri and Shri Deepak Babulal Shah, recorded on 5-3-2001; Ledger accounts of sales and purchases for various periods, besides copies of the decisions in Surinder Pal Varma v. Asstt. CIT (2004) 89 ITD 129 (Chd.) (TM), in Ranjnaben Mansukhlal Shah v. Asstt. CIT (2004) 136 Taxman 168/2 SOT 881 (Ahd. - Rajkot) and in Asstt. CIT v. Fertilizer Traders (2004) 83 TTJ (All.) 473 are also filed. fie has taken us through the various portions of the statements of Shri Khatri and Shri Deepak Shah, and submitted that the details given by Shri Shah were only in respect of one year, and even those statements recorded under section 132(4) did not reveal any voluntary disclosures made, and as the same have been retracted, the same should not have been acted upon. He has also filed before us a comparative table giving details of sales; No. of working days; average daily sales; proportionate sales concealed in previous year and gross profit in relation to such proportionate concealed sales, for the period from 1997-98 to 2000-01, to show that the undisclosed income of Rs. 35 lakhs returned in the return is quite reasonable, and no addition is called for.

On the other hand, the learned Departmental Representative controverted the arguments advanced by the learned counsel for the assessee and strongly supported the orders of the revenue authorities, and submitted that the action of the assessing officer in completing the assessment on an undisclosed income of Rs. 1 crore was based not merely on the statements recorded under section 132(4), but also after due examination of the material found and seized at the time of search. The detailed analysis of the said material by the assessing officer in the impugned block assessment order, clearly brings out the various discrepancies in the accounts of the assessee. She submitted that the assessing officer should have in fact made an addition of Rs. 1 crore to the undisclosed income returned by the assessee, considering the scale of turnover of the assessee outside the books, and discrepancies found by him. He was, however, reasonable in completing the assessment on a total undisclosed income of Rs. 1 crore. Even with regard to the alleged retraction from the earlier statements recorded under section 132(4), the learned Departmental Representative strongly supported the action of the lower authorities, stating that they were justified in rejecting the plea of the assessee in that behalf. The learned Departmental Representative, has also filed a detailed paper-book running into 59 pages, containing inter alia statements recorded under section 132(4) at the time of search, alleged letter of retraction submitted by the assessee, copy of sales ledger for March, 2-1, and has taken us through various portions in the statements recorded under section 132(4) at the time of search. She submitted that the case law relied upon by the learned counsel for the assessee is clearly distinguishable and submitted that the decisions relied upon by the CIT (A) in the impugned order and also the decisions of the Tribunal in Ramesh T Salve v. Asstt. CIT (2000) 75 ITD 75 (Mum.); Hotel Kiran v.Assa. CIT(2002) 82 ITD 453 (Pune); and Wall-Street Construction Ltd. v.Dy. CIT (2003) 87 ITD 43 (Mum.) (TM), copies of which are filed in her paper book, clearly apply to the facts of the case on hand. In the circumstances, the learned Departmental Representative submitted that the addition made by the assessing officer is quite justified and reasonable. and the same should be upheld.We have considered the rival submissions and perused the elaborate orders passed by the revenue authorities, in the light of detailed paper books filed by the parties and other material on record and case-law relied upon by the parties. Material seized at the time of search has clearly brought out several discrepancies in stock and sales, besides resulting in seizure of cash of Rs. 18,27,000 in Alfa group of cases, which prompted disclosure of Rs. 1 crore, in the statement recorded under section 132(4). The assessing officer has analysed the material seized in correct perspective in paras 3 to 7 and 9 of the impugned assessment order, but went totally by the disclosure by Shri T.J. Khatri in his statement under section 132(4) admitting undisclosed income of Rs. 1 crore. It is the case of the assessee that it has retracted from the disclosures made in the statements recorded at the time of search, by the letter of Shri Taiyab Khatri dated 16-3-2001. addressed to DDIT (Inv.), HQ-II, Mumbai on the ground that those admissions were not voluntary and made under force. This letter of retraction, copy of which was filed before the assessing officer, during the course of assessment proceedings, was disbelieved, firstly because it did not bear any stamp or acknowledgement or proof of it having been received by the office of the DDIT, and secondly, it came just a day after making an affidavit on 15-3-2001 by Shri Khatri reaffirming that he has offered the estimated undisclosed income upto Rs. 1 crore for the group as a whole. A copy of the said affidavit, according to the assessing officer, was also forwarded along with the seized material by the DDIT. The learned CIT (A) has relied upon a number of decisions in support of the action of the assessing officer in rejecting the allegedly made by the retraction made by the assessing officer. However, it may be noted at this juncture, that acceptance or otherwise of such retractions would have to be decided based upon the facts and circumstances of each case, and the circumstances in which admission was originally made at the time of search and retraction was subsequently claimed, and genuineness of such claim of retraction. In the instant case, when the assessee was confronted with several discrepancies in stock and sales outside the books, he made disclosure of undisclosed income to the tune of Rs. 1 crore. When the assessee claims to have retracted from the said disclosure, by writing letter dated 16-3-2001 to the DDIT and even filed an affidavit in support thereof, it may be true that copy of the letter filed did not bear the date stamp or acknowledgement of the office of DDIT in token of having received it, but the Assessing officer, in all fairness, could have verified the receipt or otherwise of the same by the office of the DDIT, instead of rejecting it outright and proceeding on the basis of presumptions. He did not even attempt to find out the receipt or otherwise of such retraction letter and affidavit in the office of the DDIT.Considering huge discrepancies found at the time of search, and detailed analysis of the material seized made by the assessing officer in the impugned order of assessment, in our considered opinion, the assessing officer should have arrived at the undisclosed income of the assessee for the block, independent of the disclosure made in the statement of Shri U. Khatri either at the time of search or thereafter till 15-3-2001, as the same is claimed to have been retracted by the letter dated 16-3 -2001. It is no doubt true that there is no evidence of the receipt of letter of retraction of the assessee dated 16-3-2001 by the office of the DDIT, but that, by itself cannot be the reason for outright rejection of such retraction. Viewed in that context, we have to examine the reasonableness of the undisclosed income determined by the assessing officer independent of the disclosures made.

Notwithstanding the alleged retraction from the disclosure made at the time of search, the assessee has filed block return admitting undisclosed income for the block of Rs. 35 lakhs. As against this, the assessing officer determined the same at Rs. 1 crore, on an estimation basis and going by the admission made at the time of search. We find no merit in the contention of the learned Departmental Representative that the estimated undisclosed income returned of Rs. 35 lakhs was over and above Rs. 1 crore admitted on estimation in the statement under section 132(4). At the same time, considering the several discrepancies and the scale of turnover outside the books, brought out by the seized material, very meticulously analysed by the assessing officer in the impugned order, we do not agree with the learned counsel for the assessee either that what is disclosed in the return as undisclosed income of the block is reasonable, and no further addition is called for. Considering totality of facts and circumstances of the case, we are of the considered opinion that an estimated net addition of Rs. 15 lakhs to the returned estimated undisclosed income of the block of Rs. 35 lakhs would meet the ends of justice. We accordingly set aside the order of the CIT (A) and sustain an estimated net addition of Rs. 15 lakhs to the estimated income of Rs. 35 lakhs disclosed by the assessee in the block return. The assessing officer is directed accordingly.