आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE:SHRI SANDEEP GOSAIN,JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 198/JP/2021 TO 203/JP/2021
निर्धारण वर्ष/Assessment Years : 2011-12 TO 2016-17

Dr. Archna Shukla 26, Dayal Nagar, Gopalpura Bypass Tonk Road, Jaipur	बनाम Vs.	The ACIT Central Circle-4 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACUPS 9847 B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से/ Revenue by: Shri Sanjay Dhariwal, CIT

सुनवाई की तारीख/ Date of Hearing : 24/02/2022
उदघोषणा की तारीख/Date of Pronouncement: 06 /04/2022

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This bunch of six appeals have been filed by the assessee against different orders of the Commissioner of Income Tax, Appeals-4, Jaipur [Hereinafter referred as Ld. CIT(A)] which are tabulated as under:

ITA No.	**Assessment Year**	**Date of Order of the CIT(A)**	**Issue/Nature of addition****
198/JPR/2021	2011-12	17.09.2021	See Note 1 below table
199/JPR/2021	2012-13	25.08.2021	See Note 1 below table
200/JPR/2021	2013-14	25.08.2021	See Note 2 below table
201/JPR/2021	2014-15	25.08.2021	See Note 1 below table
202/JPR/2021	2015-16	25.08.2021	See Note 1 below table
203/JPR/2021	2016-17	17.09.2021	See Note 2 below table

** Note:
(1) Addition based on the statement recorded u/s. 132(4) of the Act.
(2) Addition based on the statement recorded u/s. 132(4) of the Act and based on the loose paper found

2. The hearing of the appeals were concluded through audio-visual medium on account of Government guidelines and on account of prevalent situation of Covid-19 Pandemic. Both the parties have placed their written as well as oral arguments during this online hearing process.

3. In all these bunch of appeals, one issue is identical for being the alleged suppression of professional receipt. In the statement recorded for alleged disclosure and under dispute is based on the one bill book found at the time of search for the period dated 11-09-2016 to 07-11-2016 which is daily patient register in which the errors were found in recording the receipt. This bill book was seized as annexure AS exhibit -05 and patient register as annexure AS, exhibit-06. At the time of the search the assessee explained that the indoor patient receipts shown in the books was 75 % of the total amount as 25 % was given to the visiting doctors. This version of the assessee is interpreted that the receipt for all the past years is shown less @ 25 % and the statement of the assessee was taken as confession that in all the past years 25 % of the receipt were under recorded. The addition is merely based on receipt for the said period 11-09-2016 to 07-11-2016 found at the time of search and based on that ratio of the receipt alleging it as receipt under

recorded and the statement of the assessee recorded at the time of search taking the disclosure based on that misunderstanding of the fact. Discourse was obtained from the assessee based on these certain period documents wherein she has clarified in her retraction letter that the reasons as to why there is difference in the receipt shown on those papers and recorded in the books of the assessee as that practice of giving 25 % to the visiting doctors for each case was started in the current financial year by her as outside doctors were not invited to the hospital before that and hence it cannot be added back for all the 6 years. When the assessee found that the statement taken has been misconstrued than she filed a clarificatory retraction statement vide here letter dated 14.03.2017. In that letter she has also stated that if required she may give another statement on oath.

4. In respect of these appeals the issue and facts are similar. It has been agreed by the parties that to take assessment year 2011-12 as lead year for deciding all these bunch of appeals. Therefore, facts and arguments before the lower authorities relating thereto were adverted by them for this year and we have also extracted the same for the sake of convenience from the said folder.

5. The grounds of appeal of the assessee in ITA No 198/JPR/2021 for the A. Y. 2011-12 are as under :

> ‘’1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 2,74,080/- [3,51,415 less 77,335] on account of alleged suppressed receipt only on the basis of

statement recorded u/s. 132(4) dt. 12.11.2016 by not appreciating the fact that :-

(i) except the statement u/s. 132(4), no evidence of suppression of alleged receipt of Rs. 3,51,415 is found.
(ii) the evidence of suppressed receipt found of Rs. 77,335/- is offered by the assessee in the return filed u/s. 153A and also accepted and reduced from suppressed receipt assessee by the AO.
(iii) Once the statement stood retracted and evidence of suppressed receipt of Rs. 77,335/- is only found, no addition on the basis of the statement can be made by AO without bringing evidence on record that suppressed receipt is more than that found in search."

6. To adjudicate on these appeals, material facts need to be noted for understanding the issue on hand. The assessee is senior citizen and senior most Gynaecologist Doctor by profession and running a hospital in the name of Rajasthan Nursing Home. She filed the original return of income u/s 139(1) on 18.09.2011 declaring total income of Rs.4,59,060/- for the A. Y. 2011-2012.

6.1 A search and seizure operation was caried out at the premises of the assessee on 11.11.2016 as per provision of section 132 of the Income Tax Act, 1961 [Here in after referred to as " the Act"].

6.2 In response to notice issued u/s 153A she filed the return on 31.08.2018 declaring total income of Rs.4,76,960/-. The reason for difference in the return filed u/s. 139(1) & 153A is because income side of the assessee is increased by net Rs. 77,335/- and the expenses side is increase by 59,446/- on account of salary not booked earlier in the books

of accounts based on the evidence found in the search. Thus, net increase of Rs. 17,893/- is added to net profit declared earlier u/s. 139(1). Thus, while filling the return of income she has offered the additional income where ever she found that there were mistake in filling the original returns and the records that has been seized and she offered an additional income of Rs. 77,335/- on account of error in the offering the professional income in the original return of income filed.

6.3 The increase of income of Rs. 77,335/- is on account of totalling difference in indoor patients receipts as against the shown in original ITR, further the assessee has claimed of Rs. 59,446/- a salary expenditure which was according to her left from clamming in the computation of original ITR based on the seized material. The AO has contended that since the assessee has not disclosed this income in original ITR and the income declared here is only due to result of search, accordingly penalty u/s. 271(1)(c) is being initiated separately for this default. Furthermore, the claim of salary of Rs. 59,446/- was disallowed and added to the income of the assessee. The AO has also made an addition of Rs. 3,51,415/- being the amount of the suppressed receipt based on the statement recorded under section 132(4) of the Act.

6.4 In the search proceeding one bill book for the period 11.09.2016 to 07.11.2016 along with patient register was found. On verification of these documents, the search party noted that there is some difference in

the amount of bill and receipt amount recorded in patient register. On these differences, statement of the assessee was recorded u/s 132(4). The relevant extract of statement of the assessee is reproduced in assessment order on page no. 4 to 11.

6.5 In this statement, the assessee in reply to Q. No.12 (PB 6-11) admitted that she has shown receipt less by 20% to 25% approx. in the daily patient register. However, in the OPD fees actual receipt is recorded. In respect of indoor patients, in doing procedures (Normal delivery, Caesarean, D&C, MTP etc.) services of other specialist doctors, i.e. anaesthetists, paediatrician, surgeon are required to be taken for which they were paid in cash. Many a times in emergency specialist is called by making higher payment. She has further stated this typical type of services is started in the year under search. But the search team understood this version as on an average in last 6-7 years in procedure work for indoor patients, receipt is shown less and income is shown less by 25% net. Accordingly, surrender of Rs.25,72,465/- for last 6 FYs which included Rs.3,51,415/- for the year under consideration was obtained in a statement recorded at the time of search.

6.6 After search assessee vide letter dated 14.03.2017 (PB 14-15) addressed to DDIT (Inv.), Jaipur retracted from the statement recorded under section 132(4) of the Act and clarified that:

(i) In course of search, she stated that 75% of the total amount of indoor patient receipt is shown in the books of accounts as 25% was given to the visiting doctors but the same was wrongly interpreted and written in a wrong way in the statement and considered as receipt unrecorded in the books.

(ii) The bills impounded relate to current financial year (the year of the search) whereas inference has been drawn as ifit was the normal practice in all earlier years.

(iii) Upto 31.03.2016, the amount charged from the patient was fully recorded in the patient register and same amount of receipt was given to the patient.

(iv) Only from Sept. 2016 some advance surgical procedures were undertaken for which outside doctor's help was taken. A large amount was given to these doctors as their fees which were not entered into books as this amount was not received by the hospital. Only the amount received by the hospital was entered into books. But as the patient pays the total amount to the hospital, irrespective of what they gave to the outside doctors, a bill of total amount was raised for the patient which is understandably more than what is accounted for in the books.

(v) The practice of giving 25% to the visiting doctors for each case was started in the currentfinancial year as outside doctors were not invited to the hospital prior to that.

7 The AO, however, rejected the said explanation of assessee and stated that :

(i) The statement was given by the assessee on 12.11.2016 after initiation of search on 11.11.2016 which is after proper rest and therefore, the statement given in presence of two witnesses by the qualified professional was voluntarily and not under any pressure.

(ii) In search evidence of unaccounted receipts were found in Exhibit 6- the patient register when compared with the bill book in

> Exhibit 5. In search only one bill book for the period 11.09.2016 to 07.11.2016 was found. The total of this bill book is Rs.4,26,480/- whereas in the patient register the receipts shown from the same patients was only Rs.1,72,050/- which is 40% of the actual receipt recorded in the books. Therefore, after allowing the assessee' s claim in respect of payment to outside doctors, unaccounted income from suppression of receipts has been considered at 25% though assessee has not produced any evidence that outside doctors were actually paid or not.

Accordingly, the AO after relying on the decision of Hon'ble Rajasthan High Court in case of Roshan Lal Sancheti rejected the retraction letter filed by the assessee as afterthought and made addition of Rs.3,51,415/- on account of suppression of receipt for the year under consideration based on the statement recorded.

8 Aggrieved from the said order, assessee filed an appeal before the ld. CIT(A) where in the ld. CIT(A) after allowing the set off of unrecorded receipt of Rs. 77,335 offered for tax by the assessee confirmed the addition of Rs. 2,74,080/- (3,51,415 - 77,335) on account of alleged supressed receipt by giving the following findings :

(i) The appellant has contended that the bills impounded relate to the FY 2016-17 whereas inference has been drawn as if it was the normal practice in all earlier years. However, the appellant in her statement recorded u/s 132(4) has categorically admitted that the practice of declaring less receipts in the bill book was followed since the last 6-7 years. In fact the appellant has herself admitted that the bill book was written by her in her own handwriting.

(ii) The contention of the appellant that large amount was given to these doctors as their fees which were not entered into books as this amount was not received by the hospital is also not found acceptable in absence of any cogent evidence filed by the appellant in this regard.

Further no such document was found during the course of search to prove the claim of appellant.

(iii) There is plethora of judgment (as reproduced at Pg 13-16 of the CIT(A) order) which hold that the burden to prove the admission as incorrect is on the maker and in case there is a failure then the earlier statement of assessee is sufficient to conclude a matter. For any retraction to be successful in the eyes of law, the maker has to show as to how earlier recorded statements do not state the true facts or there was coercion, inducement or threat while recording his earlier statements. However, in the present case, the retraction letter only focuses on the method of working and calculation of suppressed receipts during the course of search and states as to the wrong assumption made by the Investigation team in working out the suppressed receipts. It nowhere states that there been any coercion, inducement or threat while recording the statement.

(iv) The AO has rightly made the addition of unaccounted income based on suppression of receipts for the AY 2011-12 to 2017-18 though the bill book was found for the AY 2017-18 only. The application of the extrapolation technique shall depend on facts and circumstances of each case and there can be no universal law on this issue. Though the assessee has filed a retraction letter, however, the same is not acceptable in view of the fact that it has been filed after 4 months of search whereas the appellant in her statement has explained the modus operandi of suppression of receipts by her and has also admitted the unaccounted income for the year under consideration. Further the appellant has not been able to furnish any cogent evidence in support of her contention of retraction.

(v) The evidence does not mean only documentary evidence but the statement recorded u/s132(4) has also been judicially held as an important piece of evidence collected as a result ofsearch and seizure operation. In the present case, it is not only the statement of the appellantbut also documents found and seized during the course of search which were relied upon bythe AO.

9. The ld. AR of the assessee during the course of hearing argued the various points based on the written submission filed, are reproduced herein below;

1. From the facts stated above it can be noted that the lower authorities have made the addition on account of alleged suppressed receipt only on the basis of the statement of assessee recorded u/s 132(4) in search. Except for this statement no other evidence is available with them to make the addition. The evidence of suppressed receipt of Rs.77,335/- only was found which was offered for taxation by the assessee. The said statement was retracted by filing a detailed letter dt. 14.03.2017 before DDIT (Inv.), Jaipur (PB 14-15) in post search proceedings explaining the reasons as to why the statement given by assessee on this issue was misinterpreted and incorrectly written. The lower authorities have not accepted this retraction letter only because it has been filed after 4 months of search. However, after filing this letter neither the search party in post search proceedings nor the AO in course of assessment proceedings examined the assessee to ascertain the veracity of the retraction letter filed by her more particularly when she herself in the letter has requested to take the statement on oath in this matter. Hence, solely on the basis of statement which is not considered to be an incriminating material, no addition can be made. Reliance in this connection is placed on the following cases:

   PCIT &Ors. Vs. Anand Kumar Jain (HUF) (2021) 432 ITR 384 (Del.) (HC) The relevant para 8 is as under:

   > 8. Next, we find that, the assessment has been framed under s. 153A, consequent to the search action. The scope and ambit of s. 153A is well defined. This Court, in CIT vs. Kabul Chawla (2015) 281 CTR (Del) 45 (2015) 126 DTR (Del) 130 (2016) 380 ITR 573 (Del): 2015 SCC OnLine Del 11554, concerning the scope of assessment under s. 153A, has laid out and summarized the legal position after taking into account the earlier decisions of this Court as well as the decisions of other High Courts and Tribunals. In the said case, it was held that the existence of incriminating material found during the course of the search is a sine qua non for making additions pursuant to a search and seizure operation. In the event no incriminating material is found during search, no addition could be made in respect of the assessments that had become final. Revenue's case is hinged on the statement of Mr. Jindal, which according to them is the incriminating material discovered during the search action. This statement certainly has the evidentiary value and relevance as contemplated under the Explanation to s. 132(4) of the Act. However, this statement cannot, on a standalone basis, without reference to any other

material discovered during search and seizure operations, empower the AO to frame the block assessment.

CIT Vs. Dilbagh Rai Arora (2019) 177 DTR 220/263 Taxman 30 (All.) (HC) Addition can only be made if there is incriminating material or the surrounding circumstances reveal that there is any material to justify the addition. If the person can explain with supportive evidence, material or otherwise that the admission by him earlier is not correct or contain a wrong statement or that a true state of affairs is different from that represented therein, addition cannot be made solely relying on statement under sec. 132(4).

PCIT Vs. Best Infrastructure India Pvt. Ltd. (2017) 397 ITR 82/ 159 DTR 257 (Del.) (HC) Statements recorded u/s 132(4) do not by themselves constitute incriminating material. A copy of the statement together with the opportunity to cross-examine the deponent has to provided to the assessee. If the statement is retracted and/or if cross-examination is not provided, the statement has to be discarded. The onus of ensuring the presence of the deponent cannot be shifted to the assessees. The onus is on the Revenue to ensure his presence.

CIT VS. SKS Ispat and Power Ltd. [2017] 398 ITR 584 (Bom.) (HC) In this case the learned counsel for the Department contended that the Tribunal was not justified in deleting the addition made on the basis of unaccounted sundry creditors (purchases) and unexplained share of the money, thereby limiting the scope of assessment under section 153A of the Act only on the basis of incriminating material discovered in the search and thus, denying the Revenue to assess the undisclosed income on the basis of other evidence or post-search enquiries or investigations made during subsequent assessment proceedings. Dismissing the appeals of the Department, it was held in this case that the scope of assessment u/s 153A of the Act is limited to the incriminating evidence found during the search and no further.

Smt. Aruna Sankhla Vs. DCIT, ITA No.483/JP/2016-order dated-16.05.2019 (Jaipur) (Trib.) Where no incriminating material was either found or seized during the course of search and seizure action to indicate any undisclosed income on account of on money payment by the assessee for purchase of land, subsequent recording of statement of sellers by ACB after a gap of around two years from the date of search and consequential inquiry conducted

by the AO during the assessment proceedings u/s 153A r.w.s. 143(3) of the Act wherein sellers have admitted on money receipt in respect of the land purchase by the assessee cannot be treated as incriminating material to justify the addition on account of on money when the assessment was completed and not pending at the time of search.

2. It is further submitted that in search evidence of suppression of receipt was found only for the period 11.09.2016 to 07.11.2016. No paper/ document showing any suppression of receipt was found for the year under consideration. Therefore, only on the basis of few instances of suppression of receipts relating to AY 2017-18, no negative inference on that basis can be drawn in other assessment years for which no incriminating material was found. It is a settled law that in assessment framed u/s 153A, addition can be made only in respect of transactions for which incriminating evidences are found. The same can't be interpolated to all the transactions and for all the years. The Gujarat High Court in case of CIT Vs. Amar Corporation 2012 (7) TMI 983 where papers relating to receipt of 'on money' was found in respect of one flat and on that basis 'on money' was calculated for all the flats in that project, restricted the addition only in respect of that flat for which evidence of 'on money' receipt was found and deleted the addition made for other flats holding that on the basis of guess work and extrapolation, no addition can be sustained. Reliance is also placed on the following cases:

   Ashoka Infrastructure Ltd. Vs. ACIT (2017) 189 TTJ 0749 (Pune) It was held that "evidence found during the course of search indicating that full toll receipts were not recorded in the books of account for certain period can be utilised for extrapolation of income for the relevant financial year(s); however, the said material cannot be made the basis for working out the income for other years for which no incriminating documents or entries in any cash book or note books were found during the course of search."

   Thakkar PopatlalVelji Sales Ltd. Vs. ACIT (2013) ITA No. 4845/M/2010 (Mum.) (Trib.) In its order, the ITAT held that "Considering the above, we are of the opinion that it is a reasonably settled issue that no estimation can be made by the AO for which no incriminating material were discovered and no estimations were made based on the theories of extrapolation and multiplication. In the absence of any material of evidence

found during the course of search to suggest that assessee was all along indulging in such unaccounted transactions, we are of the opinion that the decision of the CIT (A) to all the issues raised in all the three appeals does not call for any interference. Accordingly, grounds raised by the Revenue in all the three appeals are dismissed"

CIT Vs. CJ Shah & Co. 117 Taxman 577 (Bom.) (HC) The facts of the case are that the seized material had indicated unaccounted sale for the period 3.9.96 to 4.12.96 i.e. for the three month period. The AO on that basis had estimated undisclosed profit for the entire block period at Rs.3.40 crores. The tribunal however deleted the addition on the ground that there was no material found indicating undisclosed sale for the period prior to the three months period. The order of tribunal was upheld, by the High Court by holding as under:

"It is well settled that in cases where material is detected after search and seizure operations are carried out, the Assessing Officer is required to determine the undisclosed income. In such cases additions are generally based on estimates. In matters of estimation some amount of latitude is required to be shown to the Assessing Officer particularly when relevant documents are not forthcoming. However, it does not mean that the Assessing Officer can arrive at any figure without any basis by adopting an arbitrary method of calculation. In the present matter, A3, A4 and A6 nowhere records the turnover of the assessee as found by the Tribunal and yet on the wrong basis of the incoming and outgoing cash transactions, the Assessing Officer has arrived at the turnover. Moreover, the peak investment was Rs. 40,14,806 for three months. However, there is no material seized to justify any figure to be included for a period earlier to the said period of three months. In the circumstances, the Tribunal has recorded a finding of fact and has held that the addition of Rs. 3.40 crores was totally unjustified. The entire finding of the Tribunal is based on the facts. No substantial question of law arises." "

CIT Vs. Smt. Usha Tripathi 116 Taxman 838 In its order, the Hon'ble High Court held that the AO was not justified in estimating undisclosed income for the period for which there were no details in any of the seized materials.

DCIT Vs. Royal Marwar Tobacco Products Pvt. Ltd. 29 SOT 53 In this case the search has resulted into material showing suppressed sales for A.Y.2004-05 but there was no material for 2001-02 to 2003-04. The AO had however estimated suppressed sales for A.Y.2001-02 to 2003-04 based on the material for A.Y.2004-05 in assessments made under section 153A. The tribunal held that there was no material found for the earlier years and there was also no defect in the books and therefore addition in the earlier years was not justified and in absence of any material being found during the search relevant to the aforesaid assessment years, in our considered opinion, the learned CIT(A) was justified in deleting the addition made for these years only on the basis of assumption and surmises.

3. The AO in making the addition on the basis of statement has observed that the statement of assessee who is a qualified professional given on 12.11.2016 after proper rest in presence of two independent witness is voluntary and not under any pressure. Further Ld. CIT(A) also held that there was no coercion, inducement or threat while recording the statement. In this connection it may be noted that statement of assessee was first recorded at 7:30 PM on 11.11.2016 which was deferred at 10.30 PM on same date. On 12.11.2016 statement of Yogesh Shukla, husband of assessee was recorded at 8.00 AM which continued till 11.15 AM. Thereafter assessee and her husband was taken to bank locker for operation and after that statement of assessee was again recorded on 12.11.2016 at 8.30 PM and of her husband at 8.45 PM on the same day which was concluded at midnight. Therefore, these statements cannot be said to be after proper rest. Further only because it was recorded in presence of two witness would not ipso fact mean that statement was voluntary and not under pressure. The fact of getting surrender by extracting pressure on assessee is also accepted by the courts/Tribunal in various cases. Some of these cases are as under:

CIT Vs. Hiranand 272 ITR 626 (Raj.) (HC) In Para 16, Court observed as under:

"It is difficult to appreciate, what to say, to accept this approach of the revenue officer only to concern with the augmenting of the revenue by all means and seldom to bother about the rightful claims made of the deduction from the gross income as a result of business loss. The Income tax officers are first also the citizens of the country. They are equally concerned to see and look into

that whatever legally permissible deduction available are to be given to the assessee. This one sided approach of the revenue officers of the Income tax department only concerned with the revenue and not to bother about the assessee's legal right, rightful deductions and other claims, is not befitting to their position. They are the officers of the welfare state and have duty and obligation to see that assessee's are given their legal, rightful and legitimate claims and deduction and other benefits. Whatever may be the reason or ground it is not unknown that the assessees have fear and are afraid of entering in the Income tax Department."

Rajesh Jain Vs. DCIT (2006) 100 TTJ 929 (Del.) (Trib.) Computation of undisclosed income solely on the basis of confessional statement of assessee was not justified, inter alia, where the conduct of affairs by the Revenue authorities showed that good amount of psychological pressure was built on the assessee to make the said statement and all material found during search was duly explained by assessee on which no adverse comment was made by AO. It is to be noted that it is not possible to lead direct evidence of use of pressure tactics. It is to be gathered from the evidence, mostly circumstantial.

Grandhi Narendra Vs. ACIT (2010) 41 DTR 227 (Visakha) (Trib.) The very fact that the assessee agreed to disclose an amount of Rs. 12 lakhs, despite the fact that the Department did not unearth any material against him, would only suggest that there might have been some mental pressure upon the assessee to make such a confession.

Surinder Pal Verma Vs. ACIT (2004) 89 ITD 129 (Chd) (TM) Confessional statement made during search are often venerable on ground that person giving such statement remain under a great mental stress and strain. They also do not have the availability of relevant details, documents and books of accounts at the time of giving statement in the absence of which precise information as to utilization of such income and year of investment cannot be correctly furnished.

Harshad L. Thakker Vs. ACIT (2005) 3 SOT 277 (Mum.) (Trib.) In the course of search/survey, every assessee is under mental pressure and factual errors may be committed.

> Hence simply on the basis of statement which is retracted later on, addition can't be made.

4. It is a settled law that though the admission is an extremely important piece of evidence, it cannot be said to be conclusive. An admission which stood retracted has to be weighed with reference to facts and circumstances of that case. This is also accepted by CBDT in Instruction No.286/2/2003 IT(Inv.) dt. 10.03.2003 where it was directed as under:

> Instances have come to the notice of the Board where assessees have claimed that they have been forced confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.
>
> Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders."
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> This is again reiterated in Instruction No.286/98/2013-IT(Inv.II) dt. 18.12.2014. Therefore, solely on the basis of the statement made by the assessee without bringing any corroborative material/ evidence on record, addition made is not justified. Reliance in this connection is placed on the following cases:
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> Pullangode Rubber Produce Company Ltd. V. State of Kerala and Another 91 ITR 0018 (SC)
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> Admission is an extremely important piece of evidence but it can't be said that it is conclusive. It is open to the assessee who made

admission to show that it is incorrect and the assessee should be given proper opportunity to show the correct state of affairs.

PCIT &Ors. Vs. Anand Kumar Jain (HUF) (2021) 110 CCH 102 (Del.) (HC) A statement recorded u/s 132(4) has evidentiary value but cannot justify the additions in the absence of corroborative material.

Chetnaben J. Shah LR of Jagdishchandra K. Shah Vs. ITO (2016) 140 DTR 235 (Guj.) (HC) CIT(A) has rightly appreciated the case based on the sound principles of law and has also considered the statement made by the assessee at the relevant point of time. He clearly found that there is no evidence to support the very existence of the income except the so called statement u/s 132(4). Mere speculation cannot be a ground for addition of income. There must be some material substance either in the form of documents or the like to arrive at a ground for addition of income.

Federal Bank Ltd. Vs. State of Kerala 124 CTR 355 (Ker.) (HC) While an admission made by an assessee is relevant, it is not conclusive. It is open to the assessee to explain or clarify under what circumstances it was made or to prove that what was stated did not reflect the true state of affairs.
CIT VS. Ashok Kumar Soni 291 ITR 172 (Raj.) (HC) Admissions are relevant & strong piece of evidence that may be used against the person making such admission but they are not conclusive proof of the statement contained in the admission & can always be explained. Ashok Kumar Vs. ITO 201 CTR 178 (J&K) (HC) It is true that an admission is no doubt a relevant piece of evidence but it is never conclusive. It is

open to the assessee to explain or clarify under what circumstances it was made or to prove that what was stated did not reflect true state of affairs.

Shri Nirmal Kumar Kedia Vs. DCIT ITA Nos. 124 to 126/JP/2019 order dt. 03.06.2019

(Jaipur) (Trib.)

"From the record we found that except to search statement which was later on retracted by assessee by filing affidavit there

is nothing with the department to visualize that the assessee made undisclosed investment in jewellery. It is well settled principal of law that no addition can be made only on the basis of survey/search statement more so when there is no supporting evidence with department to prove that the surrender made in the statement was correct. The department has no evidence/documents which prove that surrender in statement by assessee is correct, therefore the same cannot be relied upon. The Hon'ble Apex Court in the case of Pullangode Rubber Produce Co Ltd v/s State of Kerala & Another (1973) 91 ITR 18 (SC) has held that admission is an extremely important piece of evidence but it can't be said that it is conclusive. It is upon to the assessee to show that it is incorrect. The Hon'ble Rajasthan High Court in the case of CIT v/s Ashok Kumar Soni 291 ITR 172 (Raj.) has held that admission in statement during search is not conclusive proof of fact and can always be explained.

125. Hon'ble Gujarat High Court, vide its order dated 14.07.2016, in the case of CHETNABEN J SHAH LEGAL HEIR OFJAGDISHCHANDRA K. SHAH, in TAX APPEAL NO. 1437 of 2007, laid down the ratio that no additions can be made in the hands of the assessee merely on the basis of statements recorded, during the course of search, under section 132(4). Hon'ble High Court in the above mentioned case relied on its earlier order in the case of KailashbenManharlalChokshi [2008] 174 Taxman 466 (Guj.), wherein a similar ratio was laid down. Further, in the case of Narendra Garg& Ashok Garg (AOP) [2016] 72 taxmann.com 355 (Gujarat), Hon'ble Gujarat High Court held that

"....It is required to be borne in mind that the revenue ought to have collected enough evidence during the search in support of the disclosure statement. It is a settled position of law that if an assessee, under a mistake, misconception or on not being properly instructed, is over assessed, the authorities are required to assist him and ensure that only legitimate taxes are collected. The Assessing Officer cannot proceed on presumption w/s 134(2) of the Act and there must be something more than bare suspicion to support the assessment or addition. In the present case, though the revenue's case is based on disclosure of the assessee stated to have been made during the search u/s 132(4) of the Act, there is no reference to any undisclosed cash, jewellery,

bullion, valuable article or documents containing any undisclosed income having been found during the search..."

126. In view of the above discussion vis a vis finding of the ld. CIT(A), which has not been controverted by the ld DR by bringing any positive material on record, we do not find any reason to interfere with the findings so recorded by the ld. CIT(A) for deleting the addition of 5,93,76,213/-made by the A.O.

127. In the result, appeals of the revenue are dismissed whereas the appeals of the assessee are allowed in part in terms indicated hereinabove.

5. The case laws relied by the Ld. CIT(A) are not applicable on facts. In the present case, no variation in the bill book for earlier period was found. The Ld. CIT(A) has given a finding that the contention of the appellant that large amount was given to these doctors as their fees which were not entered into books as this amount was not received by the hospital is also not found acceptable in absence of any cogent evidence filed by the appellant in this regard. On the same analogy, when no evidence of suppressed receipts as stated in the statement is found, the same in the absence of any cogent evidence cannot be accepted as sacrosanct. The assessee has retracted the statement by not simply filing the retraction letter rather explained how incorrect inference has been drawn from the statement given by her. After filing this letter before DDIT (Inv.), neither in the post search proceedings nor in the assessment proceedings she was examined with reference to this letter more particularly when she herself in the letter (PB 15) has requested to take the statement on oath in this matter. Therefore, in the absence of any incriminating material regarding suppression of receipt for the year under consideration, solely on the basis of this statement addition cannot be made.

6. Without prejudice to above, it is submitted that assessee has declared an income of Rs.29,44,800/ for AY 2016-17 against cash of Rs.52,61,650/- found in search. This declaration is accepted by PCIT. As against this after the order of CIT(A), the addition on account of unrecorded receipt confirmed works out at Rs.18,54,963/- for AY 2011-12 to 2016-17 and Rs.2,81,913/- for AY 2017-18, aggregating to Rs.21,36,876/-. The addition made for AY 2011-12 to 2016-17 is without any incriminating material found in search. As against this on the basis of cash found assessee has. declared income of Rs.29,44,800/- under PMGKY Scheme which is more than the addition

confirmed by Ld. CIT(A) in different years. Hence, addition so made is otherwise unjustified and has resulted into double taxation.

In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.

10. On the other hand, the Ld. DR has relied on the finding of the AO and ld CIT(A). The ld. DR also pleaded that the addition is not only based on the statement recorded u/s. 132(4), even the cash balance as per books were not available on the date of search. The evidence of the specific unaccounted receipts were found in the form of bill book and that too in the assessee' s own hand writing. She has categorically admitted that the fact that receipt to the extent of the other doctors is not recorded in the books. Filling of mere retraction letter without any other corroborative evidence the retraction based on the merely retraction letter has no relevance. She has accepted the practice being followed up. As regards the recording of statement under pressure he has stated that the assessee was given proper rest and the statement was recorded one day after the search. He has also stated that the CBDT's instructions squarely covers as there are evidence found based upon which the disclosure is obtained. Based on this argument he has strongly relied upon the order of the lower authorities and supported his arguments on the contentions stated as above and recommended to confirm the finding of the lower authorities.

11. We have heard the rival contentions and perused the material available on record and relied upon judicial decisions. It is not disputed about the

understanding or misunderstanding about the ratio of the fees paid to doctors @ 25 % of the receipt. The AR of the assessee vehemently argued that the evidence that has been found in the search is for the particular period of around two month and even the same has been explained in detailed as to why there is such difference in the receipt recorded in the patient register and the bill book found for the said period. The Ld. AR further argued that now looking to the many experts team of doctors are available and to avoid the complication in birth of child it is the patient who insist the presence of various expert doctors at the time maternity of mothers and this is being their (patient) instance this type of practice is followed for such cases and not in all and in past years. There is no dispute pending before us for the year under search and whatever income earned on the evidence found at the time of search has reached to the finality and the only dispute is pending about applicability of the statement without any supportive evidence for past years. The Ld. AR stated that the doctor replied instantlyat reply to question no 12 wherein she has confirmed that this record has been kept for last some period. Thus, there is no afterthought so far as related to the record under question. The difference in bill book and patient register is relates to the period under search and there is no record found for past years. Thus, this aspect is not an afterthought. In addition to the written argument the AR of the assessee also during the course of personal hearing stated that the assessee has filed a declaration under Pradhan Mantri Garib Kalyan Yojana [

here in after referred as "PMGKY"] on 23.03.2017 [date of search 11.11.2016] where in out of cash found in her possession to the extent of Rs. 29,44,800/- disclosed under that scheme and related tax has also been paid higher rate of tax and there is no pending grievance of either party at least for the year under search. So, even on these alternative entreaties the addition made for the past years, cannot be made merely based on the statement recorded u/s. 132(4) of the Act and that too without any corroborative evidence. For this contention, the assessee relied upon various judicial decisions. Respectfully following the ratio of those decisions and looking to that the fact that in year whatever discrepancies found based on the material found, the assessee has already disclosed the additional income not only that cash available with the assessee to the extent of Rs. 29,44,800- disclosed under PKGKY. Therefore, no separate addition merely based on the statement is called for in the absence of any clear incriminating evidences. Not only that if the total of all the additions for past year as proposed based on the statement recorded as per reply to question no. 12 [AO's page no. 9] amounts to Rs. 25,72,465/-, whereas the disclosure under PMGKY is Rs. 29,44,800/- which covers the any error or omission on the part of the assessee and based on this observation also no addition is sustainable as disclosure covers the amount for which the tax has been paid at higher rate in the year of the search by filing a separate declaration under PMGKY. The ld. AR thus, argued that considering this information, the

grievance of the assessing officer covers the amount for which assessee has suffered the tax and therefore, he has prayed to give the relief to the assessee considering her statement being not considered in the right perspective and in the absence of any clear-cut finding or evidence by applying the same ratio for all the past years, the benefit of doubt rests with the assessee. The ld. AR also argued that while filling the return of income of each year and whatever mistake assessee has observed has already been taken care of, considering the evidence found at the time search The AO has not observed any single defect on that additional disclosure offered while filling the return u/s. 153A of the Act. Even the regular receipt that she has offered for all these years is on increasing trend. She is a senior citizen and practicing since long and her regular tax compliance in past cannot be brushed aside merely on a statement which has been placed along with the evidence on record. The statement of the assessee misunderstood so as to convey the content or the meaning that she intends to communicate. Therefore, looking to all these aspects and looking to the facts that in the absence of clear evidence for the past year, receipt @ 25 % cannot be added. The benefit of doubt based on the arguments advanced before us goes in favour of the assessee and it is evident that there was no such practice in past found based on the evidences found at the time of search. Her compliance and disclosing the additional income disclosing a sum of Rs. 29,44,800 in PMGKY, wherein she has disclosed a sum which is higher than

the addition under dispute for all these years also suggest that no separate addition is called for considering the facts and arguments advanced before us on the offering of the additional income under PMGKY. We found merit in arguments of the assessee that there is no direct or indirect evidence that in past year the assessee got engaged and using same practice of following under-reporting of income in past year and based on the mistake found the assessee has already offered the additional income while complying the notice u/s. 153A of the Act wherein the AO has not found any fault that the said additional income offered is incorrect or under-reported, even the ld DR has not pointed that the past year addition made is based on the evidence found in the course of search. Thus, looking to these facts the addition merely based on the statement and that too for all the years at same rate @ 25 % as supressed receipt proposed by AO is unwarranted and the same is not survived based on the finding and reasoning placed before us. Even the contention of the ld. CIT(A) sustaining the balance addition from the income already disclosed by the assessee will also not survive as there is no contrary arguments placed by the Ld. DR but mainly repeated the contentions of the AO and Ld. CIT(A). Based on the above finding, addition of Rs. 3,51,415/- confirmed by the CIT(A) to the extent of Rs. 2,74,080/- is deleted for A. Y. 2011-2012 and thus the ground raised by the assessee in ITA No. 198/JPR/2021 are allowed.

12. As regards the appeals of the assessee for the Assessment Years 2012-13, 2014-15 and 2016-17, we find that the issue as observed in ITA No. 198/JPR/2021 is similar in ITA No. 199/JPR/2021, for Assessment year 2012-2013, ITA No. 201/JPR/2021 for Assessment year 2014-2015 and ITA No. 203/JPR/21, for Assessment year 2016-2017.Hence, the decision taken in ITA No. 198/JPR/2021 shall apply mutatis mutandis in these appeals of the assessee. Thus, the appeals of the assessee for the Assessment Years 2012-2013, 2014-2015 and 2016-2017 are also allowed.

13. Now we take up the appeal of the assessee in assessment year 2013-2014 in ITA No. 200/JPR/21 where in the assessee has taken following grounds

1. The Ld. CIT(A) has erred in law as well as on facts in confirming addition of Rs. 2,85,206/- [3,87,921-1,02,715/-] for alleged suppression of receipts only on the basis of statement recorded u/s. 132(4) dt. 12.11.2016 by not appreciating the fact that once the statement stood retracted and no evidence of suppressed receipt was found for the year, no addition on the basis of statement can be made by AO without bringing evidence on record that there is actually any suppressed receipt in the year under consideration.

2. The Ld. CIT(A) has erred in law as well as on facts in confirming addition of Rs. 27,500/- treating it as expenditure from undisclosed source ignoring that some is dully verifiable from the revised capital account filed with the return of income filed in response to notice u/s. 153A.

3. The Ld. CIT(A) has erred in law as well as on facts in confirming addition of Rs. 75,000/- for the amount duly recorded in the capital account of assessee without any incriminating material found in search which is beyond the scope of assessment u/s. 153A.

13.1 **This ground No. 1** raised by the assessee is similar to the ground that has been raised by the assessee in ITA No. 198/JPR/2021 and finding of this

ground is equally applies to this ground and hence, the decision taken in ITA No. 198/JPR/2021 shall apply mutatis mutandis in the appeal of the assessee for ground no 1 and thus, the Ground No. 1 raised by the assessee in ITA No. 200/JPR/21 for assessment year 2013-2014 is allowed.

14.1 **In Ground No. 2,** the assessee has contended that Ld. CIT(A) as well as AO has erred in law as well as on facts in confirming addition of Rs. 27,500/- treating it as expenditure from undisclosed source ignoring that same is dully verifiable from the revised capital account filed with the return of income filed in response to notice u/s. 153A.

14.2 In this ground of appeal, the AO observed that at Pg 14 of Annexure AS-3, a bill dated 03.04.2012 of cash payment of Rs.27,500/- towards purchase of air conditioner was found. He holds the view that assessee failed to explain the source. Accordingly, the AO made addition for the same. Before Ld. CIT(A), the assessee submitted that payment of Rs.27,500/- towards purchase of air conditioner is duly recorded in the capital account of assessee. She has shown drawings from her proprietorship concern M/s Rajasthan Nursing Home at Rs.4,33,680/ (PB 30-31). This includes drawings for purchase of air conditioner on 03.04.2012 of Rs.27,500/ (PB 30). Thus, source of purchase of AC is duly recorded in her books and explained. However, the same was not considered by the Ld. CIT(A) and she has given her finding in para 5.2(iii) which is extracted for the sake of brevity.

"I have considered the facts of the case and it is observed that the appellant has not filed any cogent evidence in this regard to justify his claim. On perusal of the capital account, it is observed that it is a revised capital account filed with the return of income filed in pursuant to notice u/s.153A. In the capital account filed with the original return of income no such amount is reflected and therefore, the claim of the appellant is not found acceptable and the addition of Rs. 27,500/- made by the AO is confirmed."

14.3 The ld. AR of the assessee has argued before us that the seized material is to be read together when the assessee has already disclosed additional income of Rs. 1,02,715/- for the year under consideration and the expenses incurred is covered that such investment no separate addition is required to be made in the case of the assessee as she is having the additional income for her disposal to meet such investment in the capital asset and prayed to consider this aspect which the AO and Ld. CIT(A) failed to consider that the assessee has already shown sufficient income and the investment made is duly explained and no separate addition is required looking to the following facts:-

1. The Ld. DR has relied on the findings of the lower authorities and also stated that there is no direct evidence that the assessee has in fact made investment from that income and in the absence of that evidence the addition made is required to be sustained.

2. There is no dispute that the additional income is not disclosed by the assessee in the year under consideration, as argued by the Ld. AR of the assessee that this additional income was available before the assessee and the income and its utilisation both cannot be taxed in the hands of the assessee and in fact that the expenses is of the same year is not disputed by the DR but merely the same is not explained in the original return is the contention of the DR. Therefore, he has requested not give the benefit of the setoff against the additional

income declared in the return of income filed in response to notice u/s. 153A.The Ld. CIT(A), however, held that assessee has filed the revised capital account with the return of income in pursuant to notice u/s 153A. In the capital account filed with the original return of income, no such amount is reflected and therefore, the claim of appellant is not found acceptable. Accordingly, he confirmed the addition made by AO.

3. It is submitted by the Ld. AR that assessee has declared additional receipt of Rs.77,335/- for AY 2011-12 and for the year under consideration at Rs.1,02,715/-, totaling to Rs.1,80,050/-. These receipts were incorporated in the revised P&L A/c and the same has been accepted and taxed. Thus, this amount was available with the assessee out of which Rs.27,500/- was utilized for purchase of AC duly recorded in the revised capital account. Thus, the source of Rs.27,500/- is fully explained and income and expenses both cannot be taxed. In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.

14.4 We have heard the rival contentions and perused the material available on record. It is not disputed that the assessee has not disclosed the additional income. It is also not disputed that the investment made in AC is of the year under consideration and we find force in the argument of ld. AR of the assessee that the income and investment both cannot be taxed. Whereas, the Ld. DR and ld CIT(A) contended only the same is not disclosed in the original return and assessee cannot take benefit of that additional income merely by filing the revised capital account. This view is not correct as the additional income disclosed by the assessee has already suffered the tax and the said additional income is available with the assessee and the investment made in AC is not exceeding that income thus, the income and expenses both cannot be taxed and benefit of set off of income with that of the expenses of the

same can be given and the thus the addition made to the extent of Rs. 27,500/- for purchase of AC is deleted. Thus the ground no 2 raised by the assessee in this appeal is allowed.

15.1 Apropos Ground No. 3 of the assessee, the AO observed that during the year, there is increase in the capital of assessee by Rs.75,000/-, source of which has neither been explained nor any evidence in this regard is produced. Accordingly, the AO made addition of Rs.75,000/- u/s 69A of the IT Act, 1961.

15.2 Before Ld. CIT(A), the assessee submitted that the source of capital of Rs.75,000/- is sale proceeds of plot of land at Bagru which was purchased in earlier years. Accordingly, the cost of land is debited in the capital account and sale proceeds of land are credited in the capital account. Thus, the source of capital introduced during the year is fully verifiable.

15.3 The Ld. CIT(A) held that assessee has not filed any cogent evidence in this regard to justify her claim of sale of land at Bagru neither during the course of assessment proceedings nor during the course of present appellate proceedings. In fact, the claim of the assessee that the cost of land at Bagru is debited in the capital account and sale proceeds of land is credited in the capital account is not found to be correct in view of the fact that no such amount has been debited to the capital account. Further this fact was never raised by the assessee before the AO and therefore a fresh claim made in the present proceedings without any cogent evidence is not found acceptable.

The assessee has filed the revised capital account with the return of income in pursuant to notice u/s 153A. In the capital account filed with the original return of income, no such amount is reflected and therefore, the claim of the assessee is not found acceptable. Accordingly, the ld. CIT(A) confirmed the addition made by AO.

15.4 It is submitted by the ld.AR of the assessee that the said addition in the capital is part of the regular books of accounts. This amount is credited in the original capital account filed with the return of income (PB 33). In search no incriminating material was found in relation to the said addition to the capital account. Therefore, no addition for the same dehors any incriminating material can be made where the assessment has not abated as held in the following cases:

> PCIT Vs. Vimal Kumar Rathi (2020) 115 taxmann.com 219 (Bom.) (HC) Scope of section 153A is limited to assessing only search related income and thereby revenue is denied opportunity of taxing other escaped income that came to the notice of AO.
>
> SLP filed by the department against the said decision is dismissed by Hon'ble Supreme Court reported at 273 Taxman 274.
>
> CIT VS. Deepak Kumar Agarwal &Ors. (2017) 398 ITR 589 (Bom.) (HC) No addition could have been made while completing assessment under s. 153A in the case of completed assessment if no incriminating material is recovered and no undisclosed income was determinable from the material found as a result of search.
>
> CIT VS. Kabul Chawla (2016) 380 ITR 573 (Del.) (HC) Completed assessments can be interfered with by the AO while making the assessment under s. 153A only on the basis of some incriminating

> material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

The ld.AR of the assessee further submitted that the Ld. CIT(A) has incorrectly held that the said amount is not found in the original capital account. Further she wrongly held that assessee has made a fresh claim before her ignoring that there is no fresh claim but only an explanation about the credit in the capital account which was never asked by the AO in course of assessment proceedings. Her further observation that cost of the land as stated by the assessee as debited in the capital account is not found recorded is by not correctly appreciating the explanation of assessee in as much as the assessee only stated that in earlier years when the land was acquired it was debited in the capital account and not in the year under consideration.In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.

15.5 The ld. DR has relied upon the order of the lower authorities and stated that there is no explanation of the assessee about this credit reflected in her capital account.

15.6 We have heard the rival contentions and perused the materials available on record. During the course of hearing, the ld. AR of the assessee has drawn our attention to the revised capital account and original capital account wherein the credit of Rs. 75,000 is appearing in both the capital account. Thus, the findings of the lower authorities are incorrect on facts so

far as to the contention that the same was in the revised capital account is incorrect that credit is already appearing in the old capital account already filed in the original return of income. Thus, the contention of the DR and lower authorities is incorrect that the same is filed or claimed or credited in the revised capital account is in fact not so, and thus in the absence of any incriminating material in respect of this credit the addition of credit already reflected in the original return of income can not be made in proceeding-initiated u/s. 153A of the Act considering the various decision relied upon. This addition has no merit and is required to be deleted. Thus, the Ground no. 3 raised by the assessee in this appeal is allowed.

16. Now we take up the appeal of the assessee in assessment year 2016-2017 in ITA No. 203/JPR/21 wherein the assessee has taken following grounds.

1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.3,35,059/- (5,06,941-1,71,882) on account of alleged suppressed receipt only on the basis of statement recorded u/s 132(4) dt. 12.11.2016 by not appreciating the fact that:
   (i) except the statement u/s 132(4), no evidence of suppression of alleged receipt of Rs.3,35,059/- is found.

   (ii) the evidence of suppressed receipt found of Rs.1,71,882/- is offered by the assessee in the return filed u/s 153A and also accepted and reduced from suppressed receipt assessed by the AO.

   (iii) once the statement stood retracted and evidence of suppressed receipt of Rs.1,71,882/- is only found, no addition on the basis of statement can be made by AO without bringing evidence on record that suppressed receipt is more than that found in search.

2. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.3,93,000/- on the basis of Page 19 of 2. Annexure AS 3 on account of unexplained investment in jewellery which is only an estimate slip and for which no evidence of payment is found.

3. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.1,29,000/- on account of unexplained investment in purchase of fridge on the basis of Page 16 & 3. 17 of Annexure AS 3 by not correctly appreciating that such investment is only of Rs.80,000/- which is duly recorded in the revised capital account filed with the return of income filed in response to notice u/s 153A.

4. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.30,800/- on account of unexplained expenditure in construction of house on the basis f Page 2 of Annexure AS 1 ignoring that the same is duly recorded in the revised capital account filed with return of income filed in response to notice u/s 153A.

5. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 2,27,741/- on account of unexplained expenditure by allowing set off against the supressed receipt confirmed during the year but not of previous year.

17. Apropos Ground no. 1, this ground raised by the assessee is similar to the ground that has been raised by the assessee in ITA No. 198/JPR/2021 and finding of this ground is equally applies to this ground and hence, the decision taken in ITA No. 198/JPR/2021 shall apply mutatis mutandis in these appeals of the assessee for ground no 1 and thus, the Ground No. 1 raised by the assessee in ITA No. 203/JPR/21 for assessment year 2016-2017 is allowed.

18. Apropos ground No.2, the AO observed that at Page 19 of Annexure AS-3 (reproduced at page no. 16 of the assessment order), papers relating to purchase of jewellery dated 29.12.2015 of Rs.4,03,000/- were found. The explanation of assessee that it was estimate of jewellery which was not materialized and not purchased is considered as unacceptable as this paper

was found and seized from the premises of assessee and found kept with proper care. Accordingly, AO made addition of Rs.4,03,000/- by treating it as unexplained investment u/s 69C of IT Act, 1961.

18.1 The Ld. CIT(A) held that page 19 of Annexure AS 3 is a slip of order dt. 29.12.2015 for purchase of certain jewellery items, the value of which is at Rs.3,93,000/- (4,03,000-10,000). Further the aforesaid paper contains the date, name of the appellant, mobile nos. of the appellant as well as her husband Dr. Yogesh Shukla, place of purchase being Ooty and it bears the specific details of the order items with weight. In fact, there is additional charge of 15% to the total weight of the jewellery and thereafter reduction of Rs.10,000/- from the total cost of the jewellery of Rs.4,03,000/-. Thus, the cost of jewellery has been computed at Rs.3,93,000/- (4,03,000- 10,000).In view of the above detailed working and specific details, the contention of the appellant cannotbe accepted that it is a mere estimate and no purchase of jewellery has been materialized.Accordingly, he confirmed the addition of Rs.3,93,000/- made by the AO on account ofunexplained investment in jewellery.

18.2 During the course of hearing, the ld. AR of the assessee submitted that from Page 19 of Annexure A-3 it can be noted that it is a slip in respect of order for purchase of certain jewellery items value of which is Rs.3,93,000/- (4,03,000-10,000). In search no evidence/ material was found to indicate that assessee has actually paid this amount. **Further no such jewellery item**

was also found[emphasis supplied]. It is simply a slip for order item as mentioned on the paper itself which did not materialize. Even in search no statement was recorded on this paper. The lower authorities have rejected the explanation of assessee on the ground that this paper was found and seized from the premises of assessee, found kept with proper care and the paper contains the detailed working and specific details. Thus, merely other than this suspicion, they have no other corroborative material to presume that assessee has made any payment in respect of purchase of the said jewellery item. The conclusion of the lower authorities is thus, purely based on suspicion and surmises. It is a settled law that suspicion howsoever may be strong could not take place of legal proof. Therefore, in the absence of any document suggesting purchase of jewellery as per this slip or any payment there against, addition on the basis of this paper is not justified. In view of above submission, the addition confirmed by Ld. CIT(A) be directed to be deleted.

18.3 The ld. DR submitted that the slip is found very safely wherein the date, mobile number weight and items purchased is clearly mentioned and therefore the ld. DR has relied upon the order of lower authorities and vehemently argued that these items were purchased by her from her unaccounted sources and therefore the same should be sustained.

18.4 We have heard the rival contentions and perused the material available on record. The DR has not disputed the fact that of the AR of the assessee

that these ornaments are not found in the course of search in the absence of the assets it self at the time of purchase there is no case rest with the department that the assessee has made purchase and invested the said amount in the jewellery as unaccounted purchase chargeable to tax u/s. 69C of the Act. Not only that there is no details mentioned about the terms of the payment received, receivable or details of payment and its mode to be executed on this paper heavily relied upon by the department. Thus, in absence of the impugned asset being not available at the time of search the contention of the department has no force and there is no reasons so as to believe the arguments placed by the AR of the assessee that in the absence of the these jewellery not found the addition cannot be made. Looking to the force of argument of the Ld. AR of the assessee the addition merely based on this loose paper cannot be made and the same is required to be deleted. Thus, the Ground no. 2 raised by the assessee is allowed.

19**.** Apropos Ground No.3 of the assessee, the AO observed that at page 16 & 17 of Annexure AS-3 (PB 21-22), bills/ payment slips of Rs.80,000/& Rs.49,000/- dated 30.07.2015 were found. The assessee has failed to explain the source thereof. Accordingly, the AO made addition of Rs.1,29,000/- u/s 69C of IT Act, 1961 by treating it from unexplained sources.

19.1 The Ld. CIT(A) held that page 16 refers to the cash memo issued by M/s Ghiya's for an amount of Rs.49,000/- for purchase of the refrigerator wherein the details of the make and model of the refrigerator has also been

mentioned. Further, page 17 refers to a handwritten note wherein it has been specifically mentioned to give Rs.80,000/- plus Rs.500/- to the delivery boy for delivering the aforesaid refrigerator. The receipt of Rs.80,000/- is also mentioned in the aforesaid document. Therefore, the contention of the appellant that the cost of the refrigerator is only Rs.80,000/- is not found to be correct. Accordingly, the ld. CIT(A) confirmed the addition of Rs.1,29,000/- made by the AO.

19.2 During the course of hearing, the learned AR of the assessee drew our attention to page 16 & 17 of Annexure AS-3 which indicate purchase of fridge by the assessee. The bill is reflected at page 16 and is dated 30.07.2015 of M/s Ghiya's for purchase of siemens side by side refrigerator at Rs.49,000/ and the said bill is cash memo, whereas as per page 17 it appears the actual cost of this fridge is Rs.80,000/- for which payment is also made on 30.07.2015 same day when cash memo is prepared. Thus, lower authorities have incorrectly made addition both for Rs.80,000/- and Rs.49,000/- ignoring that the actual cost of purchase of fridge for which payment is made is only Rs.80,000/-. Thus, the addition of Rs.49,000/- is unwarranted because the 80,000/- includes that 49,000/- invoice value. So far as source of payment of Rs.80,000/- plus freight of Rs.500/- as noted on the paper is concerned, same is duly reflected in the capital account of assessee (PB page 42). Thus, the source of payment is also verifiable from the revised capital account prepared. In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.

19.3 The ld. DR has vehemently argued that the findings of the AO and ld. CIT(A) are both based on the business practice followed for not showing the correct value of the assets purchased not only that both the amount separately shown in these paper and therefore he relied upon the findings of the lower authorities and prayed to confirm the addition at Rs. 1,29,000/-.

19.4 We have heard the rival contentions and perused the material available on record. Looking to the bills and receipt shown and attached to assessee's paper book at page 21-22 (which is page 16 & 17 of the seized annexure) it is clear that the price of the fridge is Rs. 80,000 as the same has been paid by the assessee and signature of the person accepting that money is written and page 16 being the purchase bill consisting of cash memo which is for Rs 49,000/- this being read with the loose receipt it is not separately shown that bill amount of Rs. 49,000/- already given by the assessee. In absence of this details, the cost cannot be considered more than what is confirmed by the party in rough note at Rs. 80,000/- given at the time of delivery taken. This amount of Rs. 80,000/- included by the assessee in a revised capital account and withdrawal ledger filed by the assessee's paper book at page 41 & 42 and sufficient undisclosed income offered in the return filed u/s. 153A is already cover this investment/Expenditure for purchase of this fridge cannot be made separately as the source of this investment / expense already suffered the tax in the return filed in response to notice u/s. 153A of the Act. Thus, the Ground no 3 raised by the assessee is allowed.

20. Apropos Ground No.4 of the assessee, the AO observed that at Page 2 of Annexure AS-1 (PB 20), a bill of expenditure dated 01.05.2015 of Rs.30,800/- was found. The assessee claimed that it was incurred from the housing loan towards construction of house at Plot No.52/181, VT Road, Mansarovar, Jaipur but no evidence in this regard has been filed moreover when in assessment order of AY 2011-12 it has already been established that the assessee was not having any funds for expenditure in the house loan account as the same were already exhausted prior to AY 2011-12. Accordingly, he made addition of Rs.30,800/- u/s 69C of IT Act, 1961 by treating it from unexplained sources.

20.1. In first appeal, the Ld. CIT(A) held that on perusal of Page 2 of Annexure AS Exhibit 1, it is observed that the outstanding amount of Rs.30,800/- has been paid on 01.05.2015 in cash to Ratna Constructions. Further during the assessment proceedings, the appellant claimed it to be incurred from the housing loan towards the construction of house on Plot No. 52/181, V.T. Road Mansarovar, Jaipur. It is observed that the aforesaid loan pertained to FY 2010-11. As per the bank statement, the first amount of Rs.5,00,000/- was deposited on 01.01.2010 and withdrawals were made on various dates thereafter. It was further observed that the second amount of Rs.4,00,000/- was credited on 15.04.2010 and thereafter Rs.98,900/- was credited on 01.10.2010 and that the last balance available in that account on 30.10.2010 was Rs. Nil as observed in the appellate proceedings for the AY

2011-12. Therefore, the contention of the appellant before the AO that the amount has been paid out of the housing loan is not correct. Further the contention of the appellant that this payment is duly verified from the capital account and therefore, source of payment is explained is not found acceptable as on perusal of the capital account, no such amount is discernible. Accordingly, he confirmed the addition of Rs.30,800/- made by the AO.

20.2 During the course of hearing, the Ld. AR of the assessee stated that page 2 of Annexure AS-1 indicate that assessee made payment of Rs.30,800/- on 01.05.2015 to Ratna Constructions in full and final settlement of construction work of basement flooring of Plot No.52/181, VT Road, Mansarovar, Jaipur. This payment is duly verifiable from the capital account of assessee (PB 42). Thus, the source of payment is explained. The Ld. CIT(A) has wrongly held that this amount is not reflected in the capital account of assessee.

20.3 On the other hand, the ld. DR has heavily relied on the orders of the lower authorities. He has not controverted the fact of revised capital account placed on record.

20.4 On the contrary the Ld. AR of the assessee argued that since, the assessee has already owned that the payment made is considered in the revised capital account filed and the source of this payment is duly offered in the form of the additional income for the year under consideration no separate addition is called and both income and its utilisation both cannot be

taxed. Therefore, addition confirmed by not correctly appreciating the fact/ assuming incorrect facts is not justified.In view of above, Ld. AR argued that addition confirmed by Ld. CIT(A) be directed to be deleted.

20.5 We have heard the rival contentions and perused the material available on record. This amount of Rs. 30,800/- included by the assessee in a revised capital account and withdrawal ledger filed by the assessee's paper book at page 41 & 42 and sufficient undisclosed income offered in the return filed u/s. 153A. This income already covers this payment made to M/s. Ratna Construction separately as the source of this payment already suffered the tax in the return filed in response to notice u/s. 153A of the Act. Thus, the Ground no 4 raised by the assessee is allowed.

21. Apropos Ground No.5 of the assesee, the assessee has challenged the action of the learned CIT(A) wherein the she confirmed the addition on account of suppressed receipt at Rs. 3,35,059/- (addition made by AO Rs.5,06,941/- less addition declared in the return Rs.1,71,882/-). As against this the addition confirmed towards unexplained expenditure is Rs.5,62,800/- (correct amount is Rs.5,52,800/-, i.e. 3,93,000+1,29,000+30,800). Accordingly, the ld. CIT(A) allowed set off of receipt of Rs.3,35,059/- against unexplained expenditure of Rs.5,62,800/- and thus, confirmed the addition on account of unexplained expenditure at Rs.2,27,741/- (5,62,800 3,35,059). The argument of the ld. AR of the assessee is that the assessee has sufficient

income of the previous years declared and accepted in past years for incurring this year expenditure which is not considered by the ld. CIT(A).

21.1 We have heard the rival contentions and perused the material available on record. Since, the addition for which set off against income is sought is allowed considering the merits of the addition thus, allowing of set off against income is already considered while dealing with each addition in ground no. 2,3 & 4 above. This ground becomes academic and needs not required to be adjudicated upon for technical purpose and the same is allowed. In view of above, addition confirmed by Ld. CIT(A) is directed to be deleted.

22. In the result, the above mentioned appeals of the assessee are allowed.

Sd/- Sd/-

(संदीप गोसाई) (राठोड कमलेश जयन्तभाई)
(Sandeep Gosain) (Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 06/04/2022

*Mishra
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:
1. The Appellant- Dr. Archana Shukla, Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Central Circle – 4, Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 198/JP/2021)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar