

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 256/JP/2018
निर्धारण वर्ष / Assessment Year :2015-16

Shri Ashok Dharendra, 23, Shivraj Niketan Scheme, Gautam Marg, NR Vaishali Nagar Circle, Jaipur.	बनाम Vs.	D.C.I.T. Central Circle-3, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAVPD 6554 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (CA)
राजस्व की ओर से / Revenue by : Shri S. Najmi (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 02/02/2022
उद्घोषणा की तारीख / Date of Pronouncement : 12 /04/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-4, Jaipur dated 01/12/2017 for the A.Y. 2015-16 in the matter of order passed U/s 143(3) read with Section 153B(1)(b) of the Income Tax Act, 1961 (in short, the Act), wherein following grounds have been taken.

- "1. On the facts and in the circumstances of the case the Ld. CIT(A) has grossly erred in confirming the addition of Rs. 1,50,00,000/- made in the assessment completed u/s 143(3) r.w.s. 153B(1)(b) solely on the basis of statements recorded during the course of search which stood retracted by the assessee through an affidavit filed. Thus, the addition made solely on the basis of such retracted statements deserves to be deleted.

2. *That the Ld. CIT(A) has further erred in confirming the addition of Rs. 1,50,00,000/- made by Id. AO solely on the basis of alleged loose paper though same was dumb document and without bringing any material on record to support the allegation. Appellant prays that addition so made deserves to be deleted.*
3. *On the facts and in the circumstances of the case Id. CIT(A) erred in confirming the action of Id. AO in making addition of Rs. 1,39,581/- without appreciating the submission made by assessee. Appellant prays addition so made is not in accordance with law and deserves to be deleted.*
4. *That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee is a trader dealing mainly in Iron and Steel business. Besides this, he was director in M/s Bagru Ferro Alloys Pvt. Ltd., M/s Siddhi Vinayak Induction Pvt. Ltd. and M/s Panchsheel Infotech Pvt. Ltd. During the year under consideration, a search action u/s 132 of the Act was conducted on Adventage Group on 17.12.2014 to which the assessee belongs. Various assets/books of account and documents were found and seized. In this case, original return of income was e-filed on 03/10/2016 for the year under consideration declaring total income of Rs. 4,28,580/-. Various statutory notices were issued and served upon the alongwith questionnaire requiring details/information. Finally the assessment was completed by the A.O. U/s

143(3) r.w.s. 153B(1)(b) of the Act on 28/12/2016 determining total income of Rs. 1,55,93,930/- by making addition of Rs. 1,50,00,000/- on account of undisclosed income detected during the course of search and added the same in the total income of the assessee and also made additions with regard to various expenditure incurred by the assessee.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of both the parties and the material placed on record, upheld the action taken by the A.O. by dismissing the appeal of the assessee. Against the order passed by the Id. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

5. Grounds No. 1 and 2 of the appeal raised by the assessee are interrelated and interconnected and the same are being adjudicated by this consolidated order and the grounds are mainly relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 1,50,00,000/- made in the assessment completed U/s 143(3) r.w.s. 153B(1)(b) of the Act. In this regard, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied upon the written submissions filed before the Bench and the contents of the same are as under:

"It is that a search and seizure action was carried out at residential premises of the assessee on early morning of 17.12.2014, which was continued till 18.12.2014 night. During the search proceedings, assessee was required to be continuously present on the spot and to explain and give clarification on different issues which even were not directly related with him. The department officials recorded his statements in their own handwriting during the period from 17.12.2014 to 18.12.2014 (APB 20-31). He was harassed and put to severe physical stress and mental agony. The said statements are not voluntary statements as they were recorded by putting the assessee under severe tension / pressure and the uncomfortable circumstances created due to the presence of so many departmental officials asking on various issues so many times during the entire period. They also did not allow the assessee to properly read and understand what has been written in the statements recorded and simply got his signatures on them. Immediately after conclusion of the search proceedings (i.e. within a week), the assessee filed an affidavit on 24.12.2014 (APB 34-35) retracting from the statements recorded during search as the assessee had signed them in haste without reading completely for the main reason that statements were recorded at odd hours and as assessee was not in normal state of mind due to lack of sleep and charged atmosphere.

At this juncture, it is submitted that surrender during the course of search was obtained from assessee on the basis of an alleged loose slip marked as page 7 of Exhibit 2 (APB 40), which was stated to have been found from the possession of assessee and as per statements recorded, said slip contained some entries of cash advances made to various persons for supply of goods from M/s Shri Siddhi Vinayak Induction Pvt. Ltd. It was further recorded that such advance was made by assessee out of his undisclosed income earned from property transactions.

So far as facts of the case are concerned, assessee had neither made any such advances nor had any undisclosed income from any such property

transactions. Accordingly, in the retraction affidavit filed by assessee on 24.12.2014 (APB 34-35), assessee has elaborated that during the interaction with Income Tax officials at the time of search, queries were raised regarding modus operandi of M/s Shri Siddhi Vinayak Inductions Pvt. Ltd. such as process of purchase of raw material, conversion of raw material into finished goods viz. billets, their sales and future purchases as well for converting them in long steel products on job work basis. However, such general explanation about the company was molded by departmental officials in such a manner as if assessee had made advances in cash to Siddhi Vinayak Inductions Pvt. Ltd. for purchase of material. A summary of scribbling found noted on slip is as under (APB 40):

SVIPL for purchases of material

<i>15.12.2014</i>	
<i>...07.2014</i>	<i>Rs. 25,00,000/-</i>
<i>...07.2014</i>	<i>Rs.35,00,000/-</i>
<i>19.08.2014</i>	<i>Rs. 25,00,000/-</i>
<i>14.10.2014</i>	<i>Rs.20,00,000/-</i>
<i>15.11.2014</i>	<i>Rs. 40,00,000/-</i>
<i>24.11.2014</i>	<i><u>Rs.5,00,000/-</u></i>
	<i>Total <u>150.00 lacs</u></i>

Condition: Goods to be recd. From SSVIPL before 31.03.2014.

At this juncture, it is submitted that there are major inconsistencies in the notings on such loose slip which are evident from the face of it such as (i) while against each entry, value is given in rupees where as in total the value is mentioned in Lacs. Surprisingly it is even signed and dated by the assessee which is again not a normal practice / behavior. Further, though the entries pertain to F.Y. year 2014-15, the condition in the last says that the goods to be received from SSVIPL before 31.03.2014. In fact, it nowhere states that the value written against each entry is cash given. Further, while it is duly signed and dated by the assessee, there is no confirmation / signatures by SVIPL. Moreover, though it is specifically mentioned in the slip that the Goods to be received from SSVIPL before

31.03.2014 however, search officials as well as by Id. AO miss-interpreted and twisted the facts to read "For" in place of "From" and "31.03.2015" in place of "31.03.2014". All these discrepancies clearly indicate that it was rough noting which is got signed from the assessee to create evidence for alleged declaration of undisclosed income of Rs. 1.50 crores which was obtained from the assessee on the dotted lines. It is settled law that the paper should be read as a whole. In the instant case the department has read the paper in the manner which suits to it and not considered the same in its entirety. In this regard reliance is placed on the following judicial pronouncements:

253 ITR 454 (Guj.) Glass Lines Equipments Co. Ltd. V/s CIT

Interpretation of documents - Documents must be read as a whole. It is a well settled canon of interpretation that a document has to be read as a whole" it is not permissible to accept a part and ignore the rest of the document.

22 TW 684 Hissaria Brothers V/s ACIT (Jpr.)

Held that the seized document has to be read in its entirety and the parties are not allowed to read only that part which is suitable to it.

21 Tax World 213 Lal Chand Agarwal V/s ACIT (Jpr)

In no case AO can be allowed to consider a part of a particular document as true being favourable revenue and other part of the very document as false since that is favourable to assessee - Duality of the approach of AO is not fair –

As no advance was made by assessee to SSVIPL nor was slip prepared by him as per his sweet will, assessee has clearly mentioned in affidavit that assessee was compelled to sign the paper on which some dates and amounts were written mentioning them as advances to Siddhi Vinayak Inductions Pvt. Ltd. by assessee whereas assessee had not traded in any purchase / sale transactions in land and did not have any undisclosed income out of which alleged advances were stated to be given (APB 34-35). However retraction affidavit filed by assessee was not considered and addition was made. Not a single enquiry was made by Id. AO when the assessee made retraction from the alleged surrender to find out as to

whom the advance was given or from whom the goods is to be received. It is further submitted that in the case of Shri Ashok Kumar Jain 369 ITR 145 the Jurisdictional High Court of Rajasthan has held that if the assessee does not adhere to the surrender made then it is for the Learned Assessing Officer to bring on record cogent material and other evidences to support the addition rather than simply rely on the statement. In this case the position is exactly the same. As submitted above, the Learned AO has just made addition on the basis of statement recorded u/s 132(4) which has been retracted by the assessee and without bringing any material on record. It is further relevant to submit that the Learned Assessing Officer has made additions without making any post search enquiries with reference to contents of page. No material has been brought on record that the assessee has received the goods or the company has received the goods against such money alleged as advance given to various persons. These pages admittedly do not contain name of any supplier or the person to whom advance was given yet additions have been made solely on the basis of these papers on presumption and assumption.

Further as submitted above, it is reiterated that the search proceedings continued for two days and assessee not being technical expert on Income Tax, had suffered 'persecution – mania' which is a most normal human disposition in such circumstances, particularly when he was not permitted to consult his tax advisors and not even was permitted to take or make the phone calls thus the atmosphere was deliberately converted in to a charged atmosphere where the normalcy of the human mind is bound to disappear.

It is further submitted that Search officials even did not allow the assessee to read and understand what has been recorded and simply got his signatures on them, and thus statements so recorded cannot be relied upon. In this regard, reliance is placed on decision of Patna High Court in the case of Bihar Human Rights Commission vs Rajendra Singh, (case law paper book pages 128-150):

The said position was further clarified by CBDT vide Circular no.10 dated 2003, which clearly stated that focus and concentration should be 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 rather than on obtaining confession.

It is further submitted that Id.AO has not even tried to identify and verify the persons to whom alleged advances were made as per the AO's version. In fact, when the statements were already recorded and concluded, no sooner the intimation of retraction of statements was received by department, again summons were issued to assessee and his statements were recorded after the lapse of almost 4 months i.e. on 14.4.2015 APB 36-38), wherein no new queries were made and rather assessee was forced to state that the slip marked as page 7 of Annexure II was documentary evidence in support of surrender made and undisclosed income of assessee was earned from property transactions (Q. No. 4 to statements APB 37). Also, assessee was forced to re-affirm statements recorded during search (however there was no mention of statements recorded on 14.04.2015). Thus, basically re affirmation of statements was nothing but another attempt by the department not to accept the retraction, which is further evident from the fact that the very next day, i.e. on 15.04.2015 assessee again filed letter before Id.AO (APB-39), wherein he again retracted from the confirmatory statements obtained from him on 14.4.2015 duly explaining the circumstances under which such reaffirmation statements were recorded.

The statements of assessee were not recorded as per his own version, is further fortified from the content of statement dated 17/18.12.2014 which started at 9.00 AM on 17.12.2014 and concluded at 8.00 PM on 18.12.2014 (APB 20-33), it was mentioned that the impugned amount was cash advance given by assessee to his company M/s Shri Siddhi Vinayak Induction Pvt. Ltd. on different dates as mentioned in the loose papers.

However, in the re-statement dated 14.04.2015 (APB 36-38), completely different version was got recorded that these advances were given to different parties (not to company M/s Shri Siddhi Vinayak Pvt. Ltd.) for purchase of material. Moreover, as per statement dated 18.12.2014, material was to be delivered by the company to assessee individual, however in the statement dated 14.04.2015 entirely different story has been got mentioned that material was to be delivered by different parties to the assessee [and not by the company to the assessee.

It is thus submitted that surrender was obtained on dotted lines without any corroborative evidence and incriminating documents, and therefore cannot form basis for imposing tax and any subsequent so-called confirmation / affidavit cannot make it legal, more so when in subsequent so-called confirmation there is complete change in the recipient of alleged advances. It is submitted that the Learned Assessing Officer has failed to take into consideration the retraction made by the assessee. No plausible reasons have been given for the same. It is settled position of law that if there is evidence then assessee has a right to retract. During the course of search amidst a number of officers, the poor assessee is brow-beaten and on account of undue pressure exerted there remains no option but to surrender. It was a case like this and the assessee was forced to surrender income of Rs. 1,50,00,000/- with reference to pages 7 of Annexure-1 whereas the paper is rough paper and has no relevance with the business of the assessee. The retraction of the assessee was fully justified and substantiated with adequate evidence. However ignoring and disregarding the retraction made by the assessee the Learned Assessing Officer has stuck to surrender obtained from the assessee under coercion in statement recorded u/s 132(4) of the Income Tax Act, 1961. It is settled position of law that no addition can be made simply and simply only and only on the basis of a naked statement having no clothing. The Learned Assessing Officer has not brought any material to establish the truthfulness of the

contents of the paper on the basis of which surrender was obtained. On the other hand the assessee has established that the paper is dump document. In the case of Shri Ashok Kumar Jain 369 ITR 145 (case law paper book pages 260-265) the Jurisdictional High Court of Rajasthan has held that if the assessee does not adhere to the surrender made then it is for the Learned Assessing Officer to bring on record cogent material and other evidences to support the addition rather than simply rely on the statement. In this case the position is exactly the same. The following case laws are cited in support: -

- (a) Contech Transport Service (P) ltd Ors V/s ACIT 19 DTR 191 (Mumbai)*
- (b) Chitra Devi V/s ACIT (Jodhpur Branch) (2002) 77 TTJ (Jd) 640*
- (c) Kailashhen Manharlal ChokshiVs CIT (2008) 14 DTR 257 (Guj)*
- (d) Pullanguode Rubber & Produce Co. Ltd. Vs. State of Kerala 91 ITR 18 (SC)*
- (e) Kailash Ben MohanlalChoksi v/s CIT (2008) 14 DTR (Guj) 257 ITA 324/JP/2017 & 1 Anr*
- (f) Hukum Chand Jain Vs. Income Tax Officer (2011) 334 ITR 197 (Rajasthan High Court)*
- (g) Ajit Chintaman Karve V/s I.T.O. (2009) 311 ITR (AT) 66 (Puna) Assistant Commissioner of Income Tax*

The following facts further established that the exercise of surrender by the Revenue Authority was under duress. No effort was made at the time search and seizure to verify the genuineness of these rough papers. The revenue authorities just got hold of these papers and pressed the assessee for surrender. The assessee at that stage of search had no option but to agree with the authorities so as to escape further harassment. In the normal course if the surrender was genuine the revenue authorities should have and would have crossed checked the details and facts of amount mentioned in these pages. They should have verified at least a few entries of the accounted amount mentioned in the said paper. No such exercise was done neither during the search nor during the course of assessment proceedings and the post search enquiries do not reveal anything against

the assessee. Merely harping on the rough paper and on the statement of the assessee u/s 132(4) won't help in making additions.

Under identical circumstances where surrender was obtained from the assessee during the course of search which was retracted late on and got re-affirmed by the department, additions were made on the basis of such surrender was deleted by this hon'ble bench in the case of DCIT Vs. JKD Pearl India Developers Pvt. Ltd. in ITA NO. 324/JP/2017, copy of order at case laws paper book pages 154-259.

It is further submitted that Id AO has disregarded the retraction affidavit on the allegation that the assessee has not filed retraction with his jurisdictional Income Tax officer [ITO Ward 3(1)] with whom he was filing his income tax returns or with DDIT(III)-Inv. Jaipur or Addl. DIT (Inv.), Jaipur or DIT (Inv.) Jaipur or DGIT (Inv.) Jaipur and has in fact filed the same with ACIT Circle-1, Jaipur. In this regard, as submitted before Id. AO, it is submitted that since M/s Shri Siddhi Vinayak Induction Pvt. Ltd. (in which Sh. D.P.Sehgal was also director and because of which search was conducted on assessee) had jurisdiction with ACIT, Circle 1, Jaipur, thus the assessee was under bonafide belief that ACIT, Circle-I was the competent authority for filing affidavit in case of assessee (Director) and therefore, assessee filed both the retraction affidavit vide letter dated 24.12.2014 and letter dated 15.04.2015 with the ACIT Circle-I, Jaipur.

Further, as submitted above, that the assessee was called upon subsequently at the office of the Director of Income Tax (Investigation) on 14.04.2015 on the pretext of discussions on aforesaid retraction but was threatened and coerced to take back his retraction and confess that the so called statements recorded by the Income Tax Officials on 17/18.12.2014 were correct and that he had made some declaration for un-disclosed income of Rs. 1.50 crores. Such action of departmental authorities clearly establishes that DDIT (Investigation) -III was well aware of the retraction

made by the assessee and thus had called him again to file another affidavit accepting the earlier statements. Such conduct of the Income tax department officials clearly establishes that as there was no incriminating documents or any other corroborative evidence found as a result of search or gathered in post search enquiry in support of surrender obtained, they simply went ahead in forcing the assessee to re-affirm the retracted statement that too with new set of alleged recipients.

Your honours would appreciate that the assessee is a businessman and not an expert in taxation laws to have detailed knowledge on the jurisdiction and acted in bonafide belief and to the best of his knowledge and understanding in respect of filing of retraction affidavit and letter.

Further, Id.AO has alleged that retraction letters filed by assessee were not recorded in Dak Register. In this regard, it is submitted that the assessee had sent his accountant to file the retraction letters, who was instructed to receive acknowledgement on office copy, by way of stamp of the Income Tax Office. He was not aware of the procedures internally followed by the department and thus did not ask for any other evidence like receipt number along with the stamped copy. It is only on receipt of this show cause notice that the assessee has learned about the system of Dak Receipt serial numbers on perusal of the certified copies of the dak register provided. Thus, no adverse inference may be drawn against assessee for non recording the retraction affidavit/ letter filed in subject Dak Receipt register.

In view of above, it is submitted that assessee had not offered Rs. 1.50 crores in statements and rather forced surrender was obtained by the department and therefore he retracted such statements at the earliest opportunity i.e. on 24.12.2014, which was again confirmed on 15.04.2015. However these evidences were not considered by Id.AO and additions were made without corroborating such statements with any material on record and it is therefore prayed that addition so made may be deleted.

So far as slip on the basis of which is department has tried to substantiate the addition of Rs.1.50 crores is concerned, it is submitted that the slip did not bear any signature of third party nor were the figures mentioned therein proved to be undisclosed income of assessee with any supporting evidence. In fact, no effort whatsoever was made to verify the recipients of such advances.

It is further submitted that learned AO in assessment order has mentioned that "As per the Computation of Income filed as well as the details available on record the assessee indulged in the sale of two properties during AY 2014-15 and AY 2015-16 as under:

- i) Flat G-13/21, Chitrakoot Yojana, Gandhi Path Jaipur sold on 13.11.13; and,*
- ii) Plot No. H-34, Sun City Sikar Road, Jaipur sold on 31.01.2015.*

It is worth noticing here that while the first property was sold in FY 2013-14, the second was sold after the date of search i.e. 17.12.2014 and thus both do not corroborate with the claim in the recorded statements that the income was earned out of sale transactions of property in current FY 2014-15. Further, the total value of these two sale transactions was only Rs. 44.00 lacs. In this scenario, it is beyond understanding as to how these can generate undisclosed income of Rs. 150.00 lacs. The Learned AO has also given the details of other properties purchased by the Assessee and his family members in past 6-7 years. The returns of income of the assessee and his family members have been filed in the paper book Volume-2, pages 57-104 wherein no any income from the dealing in properties/ capital gains except in the case of assessee for AY 2014-15 and 2015-16 was declared. This further proves that the addition is made on mere conjecture and surmises without any corroborative material. It is a settled law that the presumption whosoever strong may be but it cannot take place of proof

and thus the A.O. has acted more on suspicion and doubt than on evidence. It is settled principle of law that suspicion however strong cannot take the place of evidence. In following cases it has been time and again held that suspicion howsoever cannot take place of evidence:

- (i) Uma Charan Shaw & Brothers 37 ITR 271*
- (ii) CIT vs. Anupam Kapoor 299 ITR 179 (P&H)*
- (iii) CIT vs. Dhiraj Lal Girdhari Lal 26 OTR 736*
- (iv) State Vs. Guljari Lal Tondon AIR 1979 (SC) 1382*
- (v) J.A. Naidu vs. State of Maharashtra SC 1537*
- (vi) Krishnand vs. State of Mandharsinghi P. Jadera 281 ITR 0019 AIR 1977 SC 796*
- (vii) Dhakeshwari Cotton Mills 26 ITR 775 (SC)*
- (viii) Omar Salay 37 ITR 151 (SC)*
- (ix) Lal Chand Bhagat Ambika Ram (1959) 37 ITR 288*

It is thus submitted that Id.AO has interpreted a dumb document having no legal validity as per his suitability and addition based on this paper deserves to be deleted more particularly when the paper itself contained errors and addition is made merely and solely on the basis of confession without any corroborative evidence. Moreover the said confession made by the assessee was subsequently retracted and since the addition was not supported by any cogent, convincing independent documentary evidence, therefore, it is humbly prayed that the same deserves to be deleted."

6. On the other hand, the Id. CIT-DR has vehemently supported the orders of the lower authorities.

7. We have heard the rival contentions of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. As per the facts of the present case, we noticed that the

assessee is a trader and dealing in Iron and Steel business. He was also a director in M/s Bagru Ferro Alloys Pvt. Ltd., M/s Siddhi Vinayak Induction Pvt. Ltd. and M/s Panchsheel Infotech Pvt. Ltd. etc. During the year under consideration, a search action u/s 132 of the Act was conducted on Advantage Group on 17.12.2014 of which Mr. D.P.Sehgal was key person and one of the director in the company namely Shri Siddhi Vinayak Induction Pvt. Ltd., residence of assessee was also searched. During the course of search, surrender to the tune of Rs.1.50 crores was obtained from assessee in the statements recorded which is solely based on the scribbling found noted on the slip alleged stated to have been found from the possession of assessee.

8. We observed from perusal of the record that a search and seizure action was carried out at residential premises of the assessee on early morning of 17.12.2014, which was continued till 18.12.2014 night. During the search proceedings, assessee was required to be continuously present on the spot and to explain and give clarification on different issues. The department officials recorded his statements in their own handwriting during the period from 17.12.2014 to 18.12.2014 which are at page No. 20-31 of the paper book. After conclusion of the search proceedings, the assessee filed an affidavit on 24.12.2014 which are at page No. 34-35 of the paper book retracting from the statements recorded during search as

the assessee had signed them in haste without reading completely for the main reason that statements were recorded at odd hours and as assessee was not in normal state of mind due to lack of sleep and changed atmosphere. At this juncture, it was submitted by the Id.AR that surrender during the course of search was obtained from assessee on the basis of an alleged loose slip marked as page 7 of Exhibit 2 which is at page No. 40 of the paper book, which was stated to have been found from the possession of assessee and as per statements recorded, said slip contained some entries of cash advances made to various persons for supply of goods from M/s Shri Siddhi Vinayak Induction Pvt. Ltd. It was further recorded that such advance was made by assessee out of his undisclosed income earned from property transactions.

9. We further observed that, as per the Id. AR, the assessee had neither made any such advances nor had any undisclosed income from any such property transactions. Accordingly, in the retraction affidavit filed by assessee on 24.12.2014, the assessee has elaborated that during the interaction with Income Tax officials at the time of search, queries were raised regarding modus operandi of M/s Shri Siddhi Vinayak Inductions Pvt. Ltd. such as process of purchase of raw material, conversion of raw material into finished goods viz. billets, their sales and future purchases as well for converting them in long steel products on job work basis. However, such

general explanation about the company was molded by departmental officials in such a manner as if assessee had made advances in cash to Siddhi Vinayak Inductions Pvt. Ltd. for purchase of material. A summary of scribbling found noted on slip is as under

<i>SVIPL for purchases of material</i>	
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<i>Total</i>	<i><u>150.00 lacs</u></i>

Condition: Goods to be recd. From SSVIPL before 31.03.2014.

From the above, it is clear there are major inconsistencies in the notings on such loose slip which are evident from the face of it such as (i) while against each entry, value is given in rupees where as in total the value is mentioned in Lacs. Surprisingly it is even signed and dated by the assessee which is again not a normal practice / behavior. Further, though the entries pertain to F.Y. year 2014-15, the condition in the last says that the goods to be received from SSVIPL before 31.03.2014. In fact, it nowhere stated that the value written against each entry is cash given. Further, while it is duly signed and dated by the assessee, there is no confirmation / signatures by SVIPL. Moreover, though it is specifically mentioned in the slip that the

Goods to be received from SSVIPL before 31.03.2014, however, search officials as well as by the AO miss-interpreted and twisted the facts to read "For" in place of "From" and "31.03.2015" in place of "31.03.2014". All these discrepancies clearly indicate that it was rough noting which got signed from the assessee to create evidence for alleged declaration of undisclosed income of Rs. 1.50 crores which was obtained from the assessee on the dotted lines. It is settled law that the paper should be read as a whole. In the instant case the department has read the paper in the manner which suits to it and not considered the same in its entirety. In this regard we draw strength from the decisions, as relied by the Id. AR in the case of **Glass Lines Equipments Co. Ltd. V/s CIT 253 ITR 454 (Guj.)** wherein it was held that "Interpretation of documents - Documents must be read as a whole. It is a well settled canon of interpretation that a document has to be read as a whole" it is not permissible to accept a part and ignore the rest of the document." **Hissaria Brothers V/s ACIT (Jpr.) 22 TW 684** wherein it was held that "the seized document has to be read in its entirety and the parties are not allowed to read only that part which is suitable to it". **Lal Chand Agarwal V/s ACIT (Jpr) 21 Tax World 213** wherein it was held that "in no case AO can be allowed to consider a part of a particular document as true being favourable revenue and other part of

the very document as false since that is favourable to assessee - Duality of the approach of AO is not fair”

10. We further observed that as no advance was made by assessee to SSVIPL nor was slip prepared by him as per his sweet will, assessee has clearly mentioned in affidavit that assessee was compelled to sign the paper on which some dates and amounts were written mentioning them as advances to Siddhi Vinayak Inductions Pvt. Ltd. by assessee whereas assessee had not traded in any purchase / sale transactions in land and did not have any undisclosed income out of which alleged advances were stated to be given. Not a single enquiry was made by theAO when the assessee made retraction from the alleged surrender to find out as to whom the advance was given or from whom the goods is to be received. In this regard, we draw strength from the decision of Hon'ble Jurisdictional High Court in the case of **Shri Ashok Kumar Jain 369 ITR 145** wherein the Hon'ble High Court held that “if the assessee does not adhere to the surrender made then it is for the Assessing Officer to bring on record cogent material and other evidences to support the addition rather than simply rely on the statement”. In this case the position is exactly the same. As stated above, the AO has just made addition on the basis of statement recorded u/s 132(4) of the Act which has been retracted by the assessee and without bringing any material on record. It is important to mention here that the

A.O. has made additions without making any post search enquiries with reference to contents of page. No material has been brought on record that the assessee has received the goods or the company has received the goods against such money alleged as advance given to various persons. These pages admittedly do not contain name of any supplier or the person to whom advance was given yet additions have been made solely on the basis of these papers on presumption and assumption. As per the A.R., the Search officials had not allowed the assessee to read and understand what has been recorded and simply got his signatures on them, and thus statements so recorded cannot be relied upon. In this regard, we draw strength from the decision of Hon'ble Patna High Court in the case of **Bihar Human Rights Commission vs Rajendra Singh in CWJC No. 10707 of 2011 judgment dated 02/02/2012**, wherein it was held as under:

"the members of the raiding party may take their own time to conclude the search & seizure operations but such operations must be carried out keeping in view the basic human rights of the individual. They have no right to cause physical and mental torture to him. If the officer in-charge of the interrogation/recording of statements wanted to continue with the process he should have stopped the same at the proper time and resumed it next morning. But continuing the process without any break or interval at odd hours up to 3:30 AM, forcing the applicant and/or his family members to remain awake when it is time to sleep was torturous act which and cannot be countenanced in a civilised society. It was violative of their rights relating to dignity of the individual and therefore violative of human rights. Even die-hard criminal offenders have certain human rights which cannot be taken away. The applicant's position was not worse than that. In the opinion of the Commission, the Income Tax Department should ensure that the search & seizure operations at large in future are carried out without violating one's basic human rights. To conclude the

Commission is prima facie satisfied that there has been violation of the applicant's human rights by the concerned officials of the Income Tax Department while continuing the search and seizure operations for which he is entitled to be monetarily compensated."

The Id. AR has also drawn our attention relevant extracts of Budget Speech of Hon'ble Finance Minister for F.Y.2003-04 as under:

"Simplifying the procedure and methods employed during search and seizure, and during survey by the Income Tax department. First, hereafter, stocks found during the course of a search and seizure operation will not be seized under any circumstances. Second, no confession shall be obtained during such search and seizure operations. Third, no survey operation will be authorized by an officer below the rank of Joint Commissioner of Income Tax. Finally, books of account impounded during survey will not be retained beyond ten days, without the prior approval of the Chief Commissioner."

The above said position was further clarified by CBDT vide Circular no.10 dated 2003, which clearly stated that focus and concentration should be 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 rather than on obtaining confession. From the above, it can be said that the AO had not even tried to identify and verify the persons to whom alleged advances were made. In fact, when the statements were already recorded and concluded, no sooner the intimation of retraction of statements was received by department, again summons were issued to assessee and his statements were recorded after the lapse of almost 4 months i.e. on 14.4.2015 which are at page No. 36-38 of the paper book, wherein no new queries were made and rather assessee was to state that

the slip marked as page 7 of Annexure II was documentary evidence in support of surrender made and undisclosed income of assessee was earned from property transactions. Also, assessee was to re-affirm statements recorded during search (however there was no mention of statements recorded on 14.04.2015). Thus, basically re-affirmation of statements was nothing but another attempt by the department not to accept the retraction, which is further evident from the fact that the very next day, i.e. on 15.04.2015 assessee again filed letter before the AO which is at page No. 39 of the paper book, wherein the assessee again retracted from the confirmatory statements obtained from him on 14.4.2015 duly explaining the circumstances under which such reaffirmation statements were recorded. Thus, the statements of assessee were not recorded as per his own version, is further fortified from the content of statement dated 17/18.12.2014 which started at 9.00 AM on 17.12.2014 and concluded at 8.00 PM on 18.12.2014 which are at page Nos. 20-33 of the paper book, it was mentioned that the impugned amount was cash advance given by assessee to his company M/s Shri Siddhi Vinayak Induction Pvt. Ltd. on different dates as mentioned in the loose papers. However, in the re-statement dated 14.04.2015 which are at page Nos. 36-38 of the paper book, completely different version was got recorded that these advances were given to different parties (not to company M/s Shri Siddhi Vinayak Pvt.

Ltd.) for purchase of material. Moreover, as per statement dated 18.12.2014, material was to be delivered by the company to assessee individual, however in the statement dated 14.04.2015 entirely different story has been got mentioned that material was to be delivered by different parties to the assessee [and not by the company to the assessee]. For the sake of ready reference, relevant portion of answers in the two statements is reproduced below:

Statement dated 18.12.2014

Q. No. 21 आपको यहाँ सर्च की कार्यवाही के दौरान Exhibit-II Page No. 1 से 7 पाये गये हैं जो मैं आपको दिखा रहा हूँ। आप इन पृष्ठों पर अंकित जमा खर्च व अन्य लेनदेन के बारे में स्पष्टीकरण दें ?

Ans. मैंने Exhibit-II Page No. 1 से 7 को भली भाँति देख लिया है। इसमें पेज नं० 1 से 6 तक मेरे कमरे से पाये गये हैं तथा पेज नं० 7 मेरे पर्स से निकाल कर जब्त किया गया है। पेज नं० 1 से लेकर 5 तक हमारी कम्पनी मै० सिद्धि विनायक इण्डकशन प्रा० लि० के बहीखातों में मै० Advert Infraproject Pvt. Ltd. के खाते की नकल है। तथा पेज नं० 6 पर मैं मै० सिद्धि विनायक इण्डकशन प्रा० लि० व पंचशील ग्लोबल में श्री धर्मपाल सहगल कब से कब तक निदेशक रहे, उसका विवरण है। तथा उनके पास कम्पनी के कितने शेयर्स रहे हैं उसका विवरण है। “इसके अलावा जो पृष्ठ सं० 7 है, जो कि मेरे पर्स से निकाला गया है, उसमें मेरे द्वारा कम्पनी को जिसका तात्पर्य हमारी कम्पनी श्री सिद्धि विनायक इण्डकशन प्रा० लि० (SSVIPL) को माल खरीदने के लिए अलग अलग समय पर जो पैसे दिये गए हैं, उसका विवरण है।

Q. No. 23 कृपया आप ये बताइये कि आपने जो ये पैसा आपने कम्पनी को दिया है, उसके बदले में कोई माल प्राप्त किया है अथवा नहीं ?

Ans. मैंने अभी तक जो पैसा कम्पनी को दिया है, उसके बदले कोई माल अभी तक नहीं लिया है। पैसे के बदले जो माल मुझे कम्पनी से मिलना है वह 15.12.2014 से लेकर 31.03.2015 तक लेना है।

Statement dated 14.04.2015

Q. No. 4 आपने Search में जो 1 करोड़ 50 लाख रुपये Surrender किये हैं, उससे संबंधित Documents को प्रमाणित करें ?

Ans. Search के दौरान जब्त दस्तावेज जिसको Exhibit-II के रूप में दिखाया गया है तथा जिनकी मैंने फोटो कॉपी प्राप्त कर ली है। इस Exhibit के पेज नं० 7 पर वित्तीय वर्ष 2014-15 की विभिन्न तारीखों के सामने जो विभिन्न राशियां लिखी हैं, जिनका कुल योग 1 करोड़ 50 लाख रुपये आता है। मेरे Surrender को प्रमाणित करने के लिए एक Documentary evidence है। ये विभिन्न राशियां मैंने जमीन की खरीद – फरोशत से संबंधित अघोषित आय के रूप में प्राप्त की थी। इन राशियों को मैंने अपनी व्यक्तिगत हैसियत से कम्पनी से संबंधित Material खरीदने के लिए विभिन्न व्यक्तियों को Material Advance के रूप में दिया था। लेकिन वे व्यक्ति यह Material उपलब्ध नहीं करवा पाए। अतः ये राशियां मुझे वापस प्राप्त हो जायेगी, ऐसा मेरा सोचना था। और ये राशियां Search के बाद 31 मार्च, 2015 से पहले ही मुझे प्राप्त हो चुकी हैं।

From the above it can be seen that the surrender was obtained on dotted lines without any corroborative evidence and incriminating documents, and therefore cannot form basis for imposing tax and any subsequent so-called confirmation / affidavit cannot make it legal, more so when in subsequent so-called confirmation there is complete change in the recipient of alleged advances. It was submitted by the Id. AR that the Assessing Officer has failed to take into consideration the retraction made by the assessee. No plausible reasons have been given for the same. It is settled position of law that if there is evidence then assessee has a right to retract. The retraction of the assessee was fully justified and substantiated with adequate evidence. However ignoring and disregarding the retraction made by the assessee the Assessing Officer has stuck to surrender obtained from the

assessee under coercion in statement recorded u/s 132(4) of the Act. It is settled position of law that no addition can be made simply and simply only and only on the basis of a naked statement having no clothing. The A.O. has not brought any material to establish the truthfulness of the contents of the paper on the basis of which surrender was obtained. On the other hand, the assessee has established that the paper is dump document. In this regard, we draw strength from the decision in the case of Shri Ashok Kumar Jain 369 ITR 145 wherein the Hon'ble Jurisdictional High Court of Rajasthan has held that "if the assessee does not adhere to the surrender made then it is for the Learned Assessing Officer to bring on record cogent material and other evidences to support the addition rather than simply rely on the statement. In this case the position is exactly the same." We also found support from the following judicial pronouncements:

- (a) Contech Transport Service (P) Ltd Ors V/s ACIT 19 DTR 191 (Mumbai)
- (b) Chitra Devi V/s ACIT (Jodhpur Branch) (2002) 77 TTJ (Jd) 640
- (c) Kailashhen Manharlal Chokshi Vs CIT (2008) 14 DTR 257 (Guj)
- (d) Pullanguode Rubber & Produce Co. Ltd. Vs. State of Kerala 91 ITR 18 (SC)
- (e) Kailash Ben Mohanlal Choksi v/s CIT (2008) 14 DTR (Guj) 257 ITA 324/JP/2017 & 1 Anr
- (f) Hukum Chand Jain Vs. Income Tax Officer (2011) 334 ITR 197 (Rajasthan High Court)

(g) *Ajit Chintaman Karve V/s I.T.O. (2009) 311 ITR (AT) 66 (Puna)*
Assistant Commissioner of Income Tax

11. From the above facts and circumstances, we are of the view that the exercise of surrender by the Revenue Authority was under duress. No effort was made at the time of search and seizure to verify the genuineness of these rough papers. The revenue authorities just got hold of these papers and pressed the assessee for surrender. The assessee at that stage of search had no option but to agree with the authorities so as to escape from further harassment. In the normal course, if the surrender was genuine, the revenue authorities should have and would have crossed checked the details and facts of amount mentioned in these pages. They should have verified at least a few entries of the accounted amount mentioned in the said paper. No such exercise was done neither during the search nor during the course of assessment proceedings and the post search enquiries do not reveal anything against the assessee. Merely harping on the rough paper and on the statement of the assessee u/s 132(4) won't help in making additions. Under identical circumstances where surrender was obtained from the assessee during the course of search which was retracted late on and got re-affirmed by the department, additions were made on the basis of such surrender was deleted by Coordinate Bench of this Tribunal in the case of **DCIT Vs. JKD Pearl India Developers Pvt. Ltd. in ITA No.**


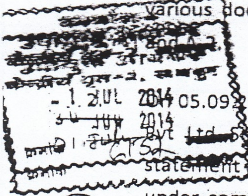
324/JP/2017 order dated 09/09/2020, wherein the Coordinate Bench had decided the issue by holding as under:

"11. We have heard the rival contentions of both the parties and have perused the material placed on record. We have also deliberated upon the judicial pronouncements referred by the lower authorities in their respective orders as well as before us with reference to factual matrix of the instant case, the judgments cited by both the parties, as well as the orders passed by the revenue authorities. Before we decide merits of this ground, it is necessary and imperative to evaluate the orders passed by the Id. CIT(A) while disposing of this ground. The Id. CIT(A) has discussed the ground raised by the revenue in detail in para Nos. 2 to 4 of its order. The operative portion of the order is contained in para 4.1.2 and the same is reproduced below:

"4.1.2 I have duly considered assessee's submission and carefully gone through assessment order passed by the AO. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. I have also carefully perused the assessment record. On careful perusal of the seized documents (Supra), on which during the search assessment Shri Vijay Kr Jain in his sworn statement on oath u/s 132(4) of the Act recorded on 05.09.2013, had admitted to have received on-money of Rs. 27,50,31,216/= and Rs. 2.5 crore on a/c of other discrepancies, the gist of head wise & entry wise break up of admission of undisclosed income is mentioned as under:

S. No.	Amount admitted in Rs.	Basis of admission of undisclosed income	Relevant question No. of the sworn statement	Remark
1.	27,50,31,216/-	Unaccounted receipts in cash on sale of flats	Q. No. 1 & 12 of statements of Shri Vijay Jain director of M/s JKD Pearl India Developers Pvt. Ltd. dt. 04/09/2013	Shri Vijay Jain director of M/s JKD Pearl India Developers Pvt. Ltd. had admitted the undisclosed income of Rs. 30,00,31,216/- in the hands of the company
2.	2,50,00,000/-	Other discrepancies	Q. No. 13 of statements of Shri Vijay Jain director of M/s JKD Pearl India Developers Pvt. Ltd. dated 04/09/2013	Shri Vijay Kumar Jain has also furnished affidavit dated 18/09/2013 for confirming the admission of on-money of Rs. 27,50,31,216/- and for other discrepancies of Rs. 2.5 crore.

On perusal of assessment record, it is also seen that the assessee vide letter dt 27.06.2014 has filed retraction letter with the AO. Scanned copies of the relevant pages of the letter are reproduced as under:

	JKD Pearl India Developers (P) Ltd. Pearl Suryavanshi, 401, A-5, Sardar Patel Marg, C-Scheme, Jaipur-302001 Ph.: +91 141 4014044 e-mail: jkdpearl@gmail.com www.pearlgroupindia.com
<p>To,</p> <p>The Deputy Commissioner of Income Tax Central Circle – 2, Jaipur</p>	
<p>Sub: Retraction from surrender of income of Rs. 27,50,31,216/- made in the statement recorded u/s 132(4) on 05.09.2013 by the authorized officer during the course of search being under threat and duress in the case of M/s JKD Pearl Developers Pvt. Ltd., Chomu House, C-Scheme, Jaipur— search conducted on 04.09.2013</p>	
<p>PAN - AAFC5640Q</p>	
<p>1. In this case search was conducted on 04.09.2013 at the residential and business premises of the assessee group. During the course of search various document, loose papers etc. were seized as per annexure A-1</p>	
	<p>05.09.2013 statement u/s 132(4) of director of JKD Pearl Developers Sri Vijay Kumar Jain was recorded. During the course of statement surrender of income of Rs. 27,50,31,216/- was obtained under compulsion, threat, stress and duress. Apparently the surrender was obtained on the basis of the following papers but these papers carry only fake information which is not at all relevant with the business affairs of the assessee and nothing is verifiable with reference to any other record found during the course of search and there is no nexus of these papers with the material found during search.</p>
<p>For JKD Pearl India Developers Pvt. Ltd. Director</p>	


JKD Pearl India Developers (P) Ltd.

'Pearl Suryavanshi', 401, A-5, Sardar Patel Marg, C-Scheme, Jaipur-302001 Ph: +91 141 4014044
e-mail: jkdpearl@gmail.com www.pearlgroupindia.com

Page No. 4 of annexure A-2

Pearl Divline Bahupark, Jaipur

Sr. No	Flat No	Flat Area In Sq.ft	Rate/Sq.ft	Amount	A @3000 Per sq.ft	B
1	209	1742.63	6100.00	10630043.00	5227890.00	5402153.00
2	210	1742.63	6100.00	10630043.00	5227890.00	5402153.00
3	302	1795.60	6100.00	10953160.00	5386800.00	5566360.00
						16370666.00

Wpms
5/9/13.

3
5/9


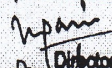
Details of total surrender:-

Sr. No.	Page no. of annexure A-2	Amount surrendered
1	1	126168050
2	2	44703000
3	3	87790000
4	4	16370666
		275031716

The printouts of the above papers were taken out from the computer at the office premises located at 401, Pearl Suryavanshi, A-5, Sardar Patel Marg, Jaipur. The surrender was made on the allegation that the

Wpms
Director

Pg 6

	<p>JKD Pearl India Developers (P) Ltd. 'Pearl Suryavanshi', 401, A-5, Sardar Patel Marg, C-Scheme, Jaipur-302001 Ph.: +91 141 4014044</p>
<p>noted in these papers. The minimum thing which was expected from the authorized officer was that he should have ascertained the date and the year of transaction and then he should have verified whether the accounted amount shown in column 'A' was verifiable or not from the regular books of accounts. This minimum exercise was not done. It appears that the investigation team was in haste in getting the surrender from the assessee by pressing him and by threatening him with dire consequences. If the accounted money on alleged sale of flats as shown in these papers is not verifiable from the books of accounts then the natural conclusion is that these papers are rough papers only. The papers contained only projections of imaginary sale value (dream of the directors) of the flats. Thus these papers taken out from the computer are nothing but a part of the business strategy of the assessee. These papers are not related to any sale of any flat of any building. The entire surrender obtained is unlawful and illegal. The Revenue has not been able to link the transactions of these papers either with the material seized during the course of search or by way of post search enquiries. The papers do not contain the name of buyers, these do not contain the details of cheques vide which accounted money was given. Likewise the department has also failed to find out the name of buyers. The entire exercise of surrender is nothing but a vanity of affairs. The papers on the basis of which surrender was obtained suffer from the following deficiency: -</p>	
<p style="text-align: right;">For JKD Pearl India Developers Pvt. Ltd.  Director</p>	


JKD Pearl India Developers (P) Ltd.

'Pearl Suryavanshi', 401, A-5, Sardar Patel Marg, C-Scheme, Jaipur-302001 Ph.: +91 141 4014044
e-mail: jkdpearl@gmail.com www.pearlgroupindia.com

- (i) The papers do not contain the date of transaction. It is settled position of law that undated papers found during search have to be treated as dump papers. It has been held in the case of **Mool Chand Kumar & Sons Vs. DCIT 42 Taxworld 241** that "A document which does not contain any date or name and only contain numerical figure is vague and dump paper".
- (ii) The names of buyers are not available on these papers which only establishes that these papers contain only projections of prospective sales.
- (iii) Even the amount shown in column 'A' which is alleged to be the accounted part of the sale price is also not verifiable from the books of accounts. This shows that the figures which are available on these papers are not relatable to the business of the assessee and these are only rough papers. If a sale had taken place as per noting on these papers then atleast part of the accounted amount would have been reflected in the regular books of accounts. Thus these papers have no nexus with the business of the assessee. Any surrender obtained on the basis of these papers is unjustified and unlawful. This is supported by the decision of the Hon'ble ITAT Jaipur Bench Jaipur in the case of **Income Tax Officer Vs. Manna Lal Jhalani 22 Taxworld 551** wherein it has been held that "In the absence of any nexus with the business of the assessee the seized papers are just dump papers".

For JKD Pearl India Developers Pvt. Ltd.

Director

pg 8


JKD Pearl India Developers (P) Ltd.

'Pearl Suryavanshi', 401, A-5, Sardar Patel Marg, C-Scheme, Jaipur-302001 Ph.: +91 141 4014044
e-mail: jkdpearl@gmail.com www.pearlgroupindia.com

- (iv) These papers are nothing but projections drawn for the purposes for business strategy. They do not have any real value. There should be treated at dump the deaf papers. These should not have been considered for obtaining surrender of income. The entire exercise of surrender obtained on the basis of these papers is of no avail. The department has not been able to record statement of any of the buyers of these flats in support of the sale considerations alleged to be on these papers. The surrender was obtained simply under threat, pressure and stress.

In view of the aforesaid deficiencies which are apparent from these papers, the assessee has full right to retract the surrender made during the course of search proceeding in statement recorded u/s 132(4) of the Income Tax Act, 1961 on 05.09.2013. The assessee has fully substantiated the basis for making the retraction. Such retraction is fully justified in the eye of law and deserves to be considered during the course of assessment proceedings.

4. The following case laws support retraction: -

- (a) Pullanguode Rubber & Produce Co. Ltd. Vs. State of Kerala 91 ITR 18 (Supreme Court)

An admission is extremely an important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect.

For JKD Pearl India Developers Pvt. Ltd.
Director


JKD Pearl India Developers (P) Ltd.

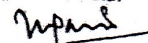
'Pearl Suryavanshi', 401, A-5, Sardar Patel Marg, C-Scheme, Jaipur-302001 Ph.: +91 141 4014044
 Ashok Dharendra Vs DCIT (2008) 14 DTR 257 (Guj)

It is also to be seen as to whether an addition made is merely based on the statement recorded by the AO under s. 132(4) and whether any cognizance may be taken of the retracted statement. So far as case on hand is concerned, the glaring fact required to be noted is that the statement of the assessee was recorded under s. 132(4) at midnight. In normal circumstances, it is too much to give any credit to the statement recorded at such odd hours. The person may not be in a position to make any correct or conscious disclosure in a statement if such statement is recorded at such odd hours. Moreover, this statement was retracted after two months. The main grievance of the AO was that the statement was not retracted immediately and it was done after two months. It was an afterthought and made under legal advise. However, if such retraction is to be viewed in light of the evidence furnished along with the affidavit, it would immediately be clear that the assessee has given proper explanation for all the items under which disclosure was sought to be obtained from the assessee.

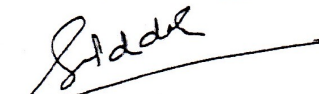
Thanking You.

Date: 27.06.2014
Place: Delhi

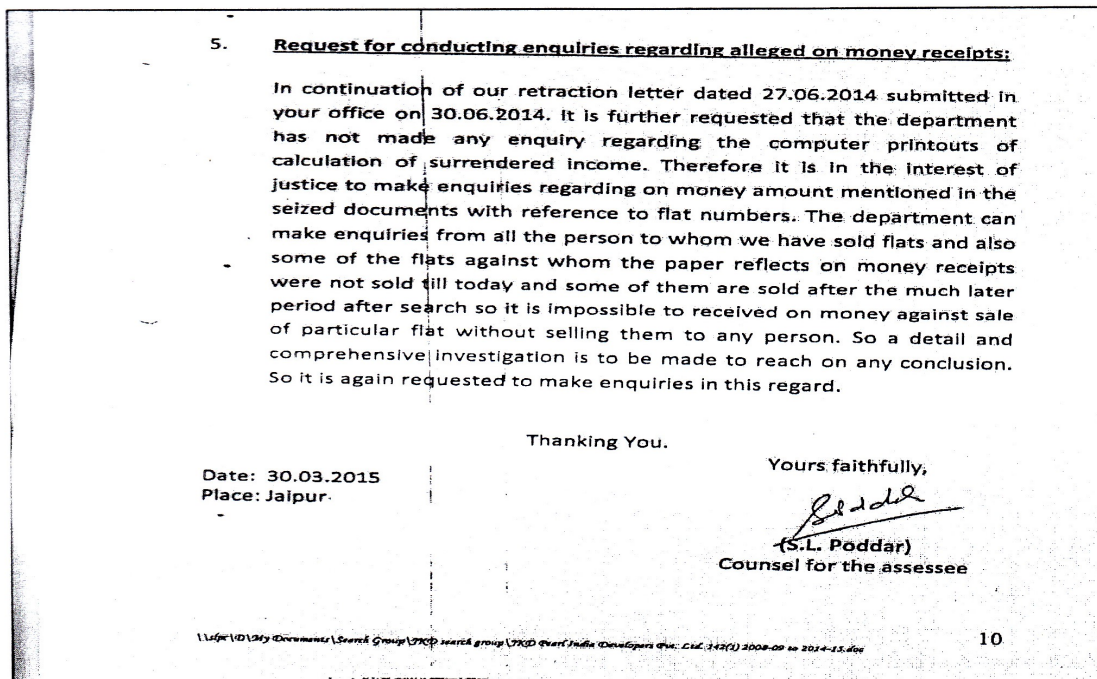
Yours faithfully,
For JKD Pearl India Developers Pvt. Ltd.


Director

(Vijay Kumar Jain)
Director of M/s JKD Pearl
Developers Pvt Ltd


(S.L. Poddar)
Counsel for the assessee

However, in the return income filed pursuant to notice issued u/s 153A of the assessee has not offered the surrendered amount of on-money in its return. Instead assessee declared total income at a loss of Rs. 1,47,63,169/= on 29/11/2014 in view of these, the AO vide letter dt 26.03.2015 relying on following decisions has asked the assessee why an addition of Rs. 30,00,31,216/= should not be made to the total income of the assessee. Vide letter dt 30.03.2015 (received on 31.03.2015 in the office of AO) assessee has reiterated its earlier stand taken in the retraction letter dt 27.06.2014 (received in the office of AO on 01/07/2014). In the said letter, assessee has also requested the AO for conducting enquiries regarding alleged on-money receipts, scanned copy of the relevant portion of the said letter is reproduced here as under:



The assessee's contention with regard to the retraction as reiterated vide letters (Dt 27.06.2014, 30.03.2015, 22.01.2016 & 13.02.2016) submitted during assessment proceeding can be summarized as under:

- a) The voluntary surrender made by Sh Vijay Kr Jain was on the basis of seized documents which is computer printout taken from assessee's hard

disc found during the search operation from his premises located at 401, Pearl Survanshi, A-5, Sardar Patel Marg, Jaipur.

- b) No money trail or cash seizure evidencing receipt of on-money was found during the search operation.*
- c) The area as per seized documents (in sq. ft.) does not match with the area mentioned in the Sale Deed. The Sale Deed in respect of flats mentioned had not been executed by the date of search; accordingly, the amount mentioned in these papers is not verifiable vis-a-vis total sales consideration.*
- d) The seize paper are computer printouts having no date and also unverifiable contents. The seized papers don't contain (i) date of transactions, (ii) name of buyers, (iii) details of the cheque payments vide which accounted money was given, and (iv) name of the person receiving such on-money from buyers. Even the amounts shown on "column A" which is alleged to be the accounted part of sale price is also not verifiable for books of accounts, meaning thereby the details mentioned in the seized documents cannot be corroborated with the transactions recorded in the regular books of accounts.*
- e) The assessee company recognizes the sale of flats only when the flats are fully ready to be sold and title is transferred to the purchaser and the possession is give. But during the year under consideration the flats were not fully developed and also the title of property was not transferred and no possession was given. Hence there was no sale of flats. There was only booking of flats in advance. The person who made the advance payment against purchase of property deduct TDS as per provision of section 192(IA) of the Act. So the amount received on which TDS was deducted is shown in advance received and not in the sales of the assessee company. Therefore the sale consideration of property in ITR is less than consideration. The flats are fully prepared in AY 2015-16 and then they are sold.*

On perusal of assessment record, it is seen that AO has not carried out any investigation/enquiry to prove his contention with regard to receipt of on-money as mentioned in the seized documents (Supra). AO has simply relied upon the admission based on the recorded sworn statement u/s 132(2) of Act of Sh Vijay Kr Jain & added the receipt of on-money of Rs. 25,86,60,550/- from the three projects.

The Hon'ble Bombay High Court in the case of Surendra M. Khandhar Vs ACIT 321 ITR 254 held as under:

"The language of section 132(4A) of the Income- tax Act, 1961, is similar to the language used in section 292C. The provisions raise a presumption that the contents of a document found during search proceedings are true. The presumption can be rebutted."

Here I would like to quote the decision of Hon'ble ITAT Jabalpur in the case of ACIT Vs Satyapal Wassan[(2007) 295 ITR (AT) 352 ITAT Jabalpur] wherein elucidating with respect to the same issue, the Hon'ble the Tribunal has held as under:

'The crux of these decisions is that a document found during the course of search must be a speaking one and without any second interpretation, must reflect all the details about the transactions of the assessee in the relevant assessment year. Any gap in the various components as mentioned in section 4 of the Income tax Act must be filled up by the Assessing Officer through investigations and correlations with the other material found either during the course of the search or on investigation....."

From above decision of Hon'ble ITAT Jabalpur Bench it is pertinent to note that a charge can be levied on the basis of document only when the document is a speaking one. The document should speak either out of itself or the company of other material found on investigation and /or in the search. The document should be clear and unambiguous in respect of all four components of charge of tax. If it is not so, the document is only a dumb document and no charge of tax can be levied on the assessee on the basis of a dumb document.

The search action at the appellant's premises has yielded materials which justify such inference. It is so, in my opinion, even after presumption applied to the facts under Section 292C of the Act, there are not adequate materials to conclude that the transactions in the seized documents are the transactions of the appellant which remained undisclosed. The appellant, under the principles of natural justice, has the right to rebut the

presumption. This is very important since the presumption under section 292C is permitted only in respect of the documents in "possession or control" of the assessee. Therefore, onus is on the AO to prove that what was stated in the seized document, are true. Such an interpretation would render the deeming provisions of section 292C otiose and presumption as to the correctness of seized documents is automatic under section 292C of the Act unless the contrary is proved and as such, the assessee was legally required to substantiate the seized documents with supporting evidence.

Here I would also like to quote decision in case of ACIT vs. VATIKA GREENFIELD (P) LTD (Del) 121 TTJ 208 (2009), wherein Hon'ble Delhi High Court has held that unless some evidence or material is brought on record by the assessee to show that what is stated in the seized document is not correct state of affairs and the state of affairs stated in the seized document has to be presumed to be true as mandated by Sec.292C of the Act. In this regard, AO has also not brought out any further corroborative evidence to support his contention. However, appellant submits that even there are other corroborative evidences to suggest and confirm its contention. Therefore, in view of the facts and circumstances of the case itself would be sufficient to rebut the presumption u/s 292C of the Act.

When no independent material or evidence had been brought or record by the AO to establish that the noting as appearing in the computer prints out (Reference Seized Documents Annexure-A-2 Pg 1 to 4) which according to him, represented an unaccounted transaction; then AO has no option but to accept the explanation of the assessee. The legal provision relating to presumption u/s 132(4A) is applicable to the person from whose possession or control the incriminating material is found & seized. It is further held that the presumption is rebuttable and not conclusive and various courts including the Hon'ble Apex Court have held that it cannot be applied in the absence of corroborative evidence. In case of Straptex India P

Ltd. v DCIT [2003] 84 ITO 320 (Mum), Hon'ble ITAT Mumbai Bench has held inter alia as under:

".....It follows that, if a statement was taken merely confessing to some income without any information to support same, it will have no validity even according to Board Circular apart from general law..."

It is an established principle of law that a party is entitled to show and prove that the statement made by it is in fact not correct and true. in Pullangode Rubber Produce Co. Ltd. V. State of Kerala (1973) 91 ITR 18 (SC), Hon'ble Apex Court has been held that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made the admission to show that it is incorrect.

The Hon'ble Apex Court again in Nagubai Armal v. B. Sharma Rao AIR 1956 SC 100, has laid down that an admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue.

According to Govindram M. Oberoi v. ITO (1996) 58 ITD 73 (Pune-Trib), statement given under section 132(4) can be used as evidence against the assessee. Presumption can be drawn on the basis of such evidence. But, this gives to rise to presumption, which can be rebutted; statement given at the time of search cannot be treated as sacrosanct. Hon'ble Madras High Court in case of M. Narayanan & Bros. v. ACIT (2011) 339 ITR 192 (Mad) has held as under:

".....While statement rendered by assessee at time of search under section 132(4) may be used in evidence in any proceeding, yet that, by itself, does not become sole material to rest assessment, more so when assessee seeks to withdraw same by producing material in support of such retraction "

Or similar facts, Hon'ble Ranchi High Court in case of CIT vs. Ravindra Kumar Jain (2011) 201 Taxman 95 (Jharkhand) in retraction case has held as under:

".....Assessee retracted his statement- Surrender was not corroborated by independent evidence - Assessing Officer was duty bound to collect more evidence in respect of r disclosed income of assessee to justify the addition.."

Now, facts of the case are that during the post search investigation and also during assessment proceeding, no effort was made to investigate from buyers of the flats about alleged on-money payment made to the assessee. During the search no other evidence including money trail evidencing on-payment by the buyers of the flats to assessee has been found.

Even during the appellate proceeding, the AO vide letter dt 07.12.2016 has been asked to carry out necessary enquiry u/s 250(4) of the Act to substantiate his contention. Copies of the affidavits of 28 buyers as submitted by the assessee has also been provided to the AO. However, AO has reiterated same facts as mentioned in the assessment order. It is also a fact that on the day of search flats were not sold and only booking amounts were received from the customers. Meaning thereby facts/contention of the assessee as well as those buyers who filed affidavits has not been controverted by the AO. Therefore, ultimate addition to be made in a case would depend on facts and circumstances of case and not purely on the disclosure made under section 132(4) which also stood retracted subsequently, and also when there was no material or evidence to justify such addition. Now coming to the of addition of Rs. 25,86,60,550/= made u/s 68 of the Act, on plain is seen that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by his is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year. The perusal of the aforesaid provision reveals that the first and foremost condition of making addition under this section is that the sum is required to be credited in the books

of the assessee maintained for the previous year. in the instant case admittedly the on-money amount was not credited in the books maintained by the assessee. Therefore, the provisions could not be ignored and no addition could be made under this section.

From the aforementioned judgments, it is seen that an admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances in which it is made. It can be shown to be erroneous or untrue. Therefore, addition made on the basis of confessional made before DDIT (Inv), which was subsequently retracted, and as the additions which are not supported by corroborative evidence cannot be sustained.

In view of facts and circumstances of the case as discussed above and most respectfully relying on the above decisions(supra), addition made of Rs. 25,86,60,5507= is hereby deleted. Assessee's appeal in Gr No 1 stands allowed."

12. After having heard the Id. Counsels at length and after appreciating the facts contained in the present case, we found that the addition in the present case was made by the A.O. by simply relying upon the sworn statement made U/s 132(4) of the Act by Shri Vijay Kumar Jain Director, of the assessee company without placing any further corroborative evidence to prove his contentions. The Id. CIT(A)after going through the facts of the case, had passed a detailed order discussing entire facts and circumstances and also controverted all the findings and observation of the A.O. As per the factual position during the course of search, statement of one of the directors of Shri Vijay Kumar Jain was recorded. During the course of statement Shri Vijay Kumar Jain was examined with reference to certain rough papers found during the course of search. These papers have already been placed on record as page no. 1 to 4 of Annexure A-2. We have also perused the scanned copies of those page Nos. 1 to 4 put up as Annexure-A2. However, the A.O. has made additions without making any post search enquiries with reference to contents of pages 1 to 4 of annexure A-2. We have also perused

the copies of affidavits of the buyers which have been placed on record by the assessee in paper book page No.1 to 28 but in the entire assessment proceedings, we noted that the A.O. has not carried out any investigation or verification in respect of those affidavits of the buyers. Even no material has been brought on record that the assessee company received any on-money on sale of flats. It is an admitted fact that during the course of search no receipt of on money containing signatures of the assessee which was ever issued by the assessee to buyers. The A.O. also admitted in the assessment order at page 24 & 25 that the pages 1 to 4 of Annexure-A2 are undated and do not contain the name of the buyers, signatures of the assessee or the buyers and even the amount noted in those pages do not exactly tally with the amount of sale as per registered sale deeds. This fact has also been brought before us that the sale deeds in respect of some of the flats have already been got executed but no such enquiry has been carried out by the A.O. in respect of those registered sale deeds. The assessee had also placed on record the detailed affidavits of the buyers which specifically contains the name and addresses of the purchases wherein the buyers have categorically mentioned that the amount paid by them to the assessee and it was also admitted in their affidavits that no on- money amount was ever paid by them to the assessee. But all those affidavits which contains relevant details have been ignored and disregarded by the A.O. without examining the deponents of the said affidavits. Therefore, the contents of those affidavits remained uncontroverted. As per the assessee, the papers i.e. page No. 1 to 4 of Annexure-A2 are rough and dump papers because these papers do not have any signature of the assessee/directors, even the originator/writer of these papers are not found and these papers are undated. On the analysis of page Nos. 1 to 4 of Annexure-A2, we also found that the allegations levelled by the assessee are correct and apart from that these papers do not contain the name of any buyer and the A.O. was not in a position to correlate these papers with regular books of account. As per the assessee, certain flats shown as sold in these papers were actually sold subsequent to the search

and in this respect they have also submitted documents with the A.O.. It is an admitted fact that the A.O. himself in the order of assessment at page No. 24 has categorically admitted that these papers do not have any date but he still presumed that these belong to the period when found and seized. In our view, no liability can be fastened on the basis of assumptions and presumptions and it is a settled law that the presumption whosoever strong may be but it cannot take place of proof and thus the A.O. has acted more on suspicion and doubt than on evidence. It is settled principle of law that suspicion however strong cannot take the place of evidence. We also drawn our attentions from the decisions in different cases wherein it has been time and again held that suspicion howsoever cannot take place of evidence. In this respect we relied upon the following decisions: Uma Charan Shaw & Brothers 37 ITR 271

- (i) CIT vs. Anupam Kapoor 299 ITR 179 (P&H)*
- (ii) CIT vs. Dhiraj Lal Girdhari Lal 26 OTR 736*
- (iii) State Vs. Guljari Lal Tondon AIR 1979 (SC) 1382*
- (iv) J.A. Naidu vs. State of Maharastra SC 1537*
- (v) Krishnand vs. State of Mandharsinghji P. Jadera (2005) 281 ITR 0019 AIR 1977 SC 796*
- (vi) Dhakeshwari Cotton Mills 26 ITR 775 (SC)*
- (vii) Omar Shaa 37 ITR 151 (SC)*
- (viii) Lal Chand Bhagat Ambika Ram (1959) 37 ITR 288*

The A.O. at page 25 of the assessment order has admitted that the amount of sale mentioned in these papers i.e. page No. 1 to 4 of Annexure- A2 was not verifiable with reference to actual sale consideration.

13. We have noticed that those papers which are now in dispute i.e. page Nos. 1 to 4 of Annexure-A2 are computer printouts having no dates. As per the A.O. surrender was made by the assessee by admitting that the amounts noted in column B was received in cash against the sale of various flats in the multi storied buildings located at various places in Jaipur and Alwar. However, no effort was made by the A.O. to prove the genuineness of

transactions noted in these papers. The A.O. was expected during the course of verifications to find out and ascertain the "date and year of transaction" and thereafter should have verified whether the accounted amount shown in the Column-A was verifiable or not from the regular books of account but even this exercise was not carried out by the A.O.. It is a settled proposition of law that if the seized papers mentioned do not carry any date and particulars then such papers are to be treated as rough papers. Admittedly in the present case, all those four pages do not contain any date, signature, person from whom received etc. We have also gone through the decision of the Coordinate Bench of ITAT Jaipur in the case of Moolchand Kumawat & Sons Vs DCIT 42 Taxworld 241 wherein it was held that if a document does not contain any date and name and only contains numerical figures then such document is vague and dump document and no addition can be made on the basis of such document. Similarly, in the case of ACIT Vs Satyapal Wassan, it was also held by the Coordinate Bench of the ITAT, Jabalpur 295 ITR 352 wherein it was held that the document found during search must be a speaking one. Document must reflect all the details about the transaction of the assessee in the relevant Assessment Year and in case if there is any gap then in that eventuality the same has to be filled by the A.O. through post search enquires and co-relate the material found with the business of the assessee, without which no addition can be made on the basis of a loose paper. The Coordinate Bench of ITAT, Hyderabad, in the case of K.V. Laxmi Savitri Devi Vs ACIT 60 DTR 148 has held that no addition can be made on the basis of a loose paper which does not contain the name and the date of payment. The department is precluded in drawing inferences on the basis of suspicion, conjecture and surmises and no addition can be made on the basis of such dump document or loose sheets. The Id AR also invited our attention to the chart which was also filed before lower authorities, which discloses certain flats were not sold upto the date of search as such there was no question of receiving any amount on account of on-money. Even in the written submissions filed before lower authorities, it has categorically

mentioned by the assessee that flat no. 201, 202, 301, 602 of JKD Pearl Landmark and flat no. 101, 102, 302 of JKD Pearl Stylome i.e. Mahaver Nagar Jaipur and flat no. 102, 604 of JKD Pearl Aura, Alwar were sold much later i.e. in the year 2014 whereas the search was conducted on 05.09.2013. The assessee had also specifically submitted that mentioning of receipt of amount against these flats in the seized papers is therefore fake as these have been sold at a later date. Therefore, in these circumstances the sale amount mentioned against these flats and shown to be have been received by the assessee was not verifiable with reference to the books of account.

14. We noticed that the A.O. has not brought on record any independent material to establish that any on-money was received from any of the buyer. Since admittedly, no statement of any buyer was recorded even in respect of fact that buyers have already submitted their respective affidavits which are at page No. 1 to 28 of the paper book, but still the A.O. has not carried out any post search verifications and have not confronted with such buyers. The A.O. was not expected to make any addition merely on the basis of suspicion, conjecture and guess, which is not admissible in law. While drawing our attention towards the pages found during the search, the assessee had pointed out that these pages also do not contain date of payments and whatever is noted on these pages such as the area of the flat is also at variance with the actual area of the flat. In this respect, the Id AR also invited our attention to a chart submitted before the lower authorities reflecting the area as per the seized paper as well as the area as per the sale deed executed by the assessee and the same is reproduced below:

JKD Pearl Landmark

<i>FLAT NO.</i>	<i>AREA AS PER SEIZED PAPERS (Sq. ft)</i>	<i>AREA AS PER SALE DEED (Sq. ft)</i>
<i>101</i>	<i>493.75</i>	<i>792.3</i>
<i>301 *</i>		<i>3033.4</i>

302		3033.4
401	2937.50	2952.5
402	2937.50	2952.5
501 & 502	5875.00	5906.4
601 & 102	2937.50	3033.4+792.3
602 *	2937.50	3033.4
701	2865.25	2865.9
702	2865.25	2865.9
801	2571.25	2660.3

JKD Pearl Stylome

FLAT NO.	AREA AS PER SEIZED (Sq. ft)	AREA AS PER SALE DEED (Sq. ft)
101 *		2615.6
102 *		2615.6
201 & * 201		5231.1
301	2491.25	2615.6
302 *	2491.25	2615.6
401	2491.25	2615.6
501	2491.25	2586.3
502	2491.25	2586.3
801	2491.25	2586.3
802	2491.25	2586.3

JKD Pearl Aura

FLAT NO.	AREA AS PER SEIZED (Sq. ft)	AREA AS PER SALE DEED (Sq. ft)
102 *		1734.8
601	1648	1770.2
604 *	1279	1365.7
703	1279	1362.2
704	1279	1365.7

15. On the scrutiny of those documents in detail, we also found that the area mentioned in the seized paper is at variance with the regular records. The assessee had also drawn our attention to the comparison made by him with respect to amount of sale with regular books vis a vis seized papers. The assessee had also drawn our attention to the fact that even the accounted

amount mentioned in column 'A' of these pages i.e. page Nos. 1 to 4 of Annexure-A2 also do not tally with the consideration shown in the registered sale deeds and in this respect, following chart has been placed on record, which is reproduced below:

JKD Pearl Landmark

<i>FLAT NO.</i>	<i>SALE PRICE AS PER SEIZED PAPERS</i>	<i>SALE PRICE AS PER SALE DEED</i>
<i>101</i>	<i>1728125</i>	<i>2242209</i>
<i>301 *</i>	<i>10616900</i>	<i>10616900</i>
<i>302</i>	<i>10616900</i>	<i>10616900</i>
<i>401</i>	<i>10281250</i>	<i>10333820</i>
<i>402</i>	<i>10281250</i>	<i>10333820</i>
<i>501 & 502</i>	<i>20562500</i>	<i>20672190</i>
<i>601 & 102</i>	<i>10281250</i>	<i>12201500</i>
<i>602 *</i>	<i>10281250</i>	<i>10616900</i>
<i>701</i>	<i>10028375</i>	<i>10030720</i>
<i>702</i>	<i>10028375</i>	<i>10030720</i>
<i>801</i>	<i>8999375</i>	<i>9310980</i>

JKD Pearl Stylome

<i>FLAT NO.</i>	<i>SALE PRICE AS PER SEIZED PAPERS</i>	<i>SALE PRICE AS PER SALE DEED</i>
<i>101 *</i>		<i>6538925</i>
<i>102 *</i>		<i>9572985</i>
<i>201 & * 201</i>		<i>13077850</i>
<i>301</i>	<i>6228125</i>	<i>6538925</i>
<i>302 *</i>	<i>6228125</i>	<i>6538925</i>
<i>401</i>	<i>6228125</i>	<i>6538925</i>
<i>501</i>	<i>6228125</i>	<i>6465675</i>

502	6228125	6465675
801	6228125	6465675
802	6228125	6465675

JKD Pearl Aura

FLAT NO.	SALE PRICE AS PER SEIZED PAPERS	SALE PRICE AS PER SALE DEED
102 *		6071940
601	4120000	6195665
604 *	3197500	4780055
703	3197500	4767735
704	3197500	4780020

16. From perusal of the said table discloses that the sale amount (A) mentioned in the seized papers is at variance with the regular records. In some of the cases, sale deeds were executed post search by the assessee. The Id AR has also submitted before us that although no detail of buyers was drawn in these papers but even then the buyers had submitted respective affidavits and the assessee had sought information from the A.O. with regard to statement if any recorded on the said buyers U/s 131 of the Act or U/s 133(6) of the Act but the A.O. has not supplied any such statement to the assessee in this respect. Our attention was also drawn to the letter dated 28/10/2016 filed by the assessee with the DCIT, central Circle-2, Jaipur, it was specifically stated before us that the buyers have specifically stated in their affidavits that whatever has been paid for purchase of flat has been paid by them through cheque which is fully verifiable from the records and the position being so there was no case with the A.O. for making any addition on the basis of alleged on-money receipts on sale of flats. We have also gone through the judgments relied upon by the assessee wherein it has specifically held that no addition is warranted on the basis of incomplete information and thus those

pages are liable to be declared as rough and dump. In this respect, we relied on the following judicial pronouncements:

- (i) *DCIT Vs. Rajendra Kumar Sancheti (ITAT Jaipur) 42 Taxworld 152 dated 27.03.2009*

Addition cannot be made on the basis of seized paper which is not prepared by the assessee and which appears to be a deaf and dumb document.

- (ii) *Mahaan Foods Ltd. Vs. DCIT (ITAT Delhi) (2009) 27 DTR 185*

In the absence of any other evidence found during the course of search or brought on record by the Assessing Officer to show that the expenditure found noted on seized documents was actually incurred by the assessee, the same cannot be added to the undisclosed income of the assessee.

No inference could be drawn against the assessee much less any inference of unexplained expenses on the basis of a dumb document found at the residence of its director as there is no proof to show that the amount mentioned in the said document was paid by the company.

- (iii) *Moolchand Kumawat & Sons Vs. DCIT (Ajmer) ITAT Jaipur Bench 42 Taxworld241 in M.A. No. 93/JP/2008 arising out of ITSSA No. 24/JP/2005 order dated 20.02.2009*

Addition cannot be made on the basis of a dumb document or on the basis of entries found recorded on a paper seized during search without conducting any enquiry from the concerned party.

- (iv) *Assistant Commissioner of Income Tax Vs. Satya Pal Wassan (2007) 295 ITR 9 AT 352 (Jabalpur)*

A document found during the course of a search must be a speaking one and without any second interpretation, must reflect all the details about the transaction of the assessee in the relevant Assessment Year. Any gap in the various components for the charge of tax must be filled up by the Assessing Officer through investigation and correlation with the other material found either during the course of the search or on investigation. Without this no addition can be made on the basis of a loose sheet.

(v) *It was held in the following cases that addition could not be made on the basis of uncorroborated noting on loose sheets and papers –*

- (1) *S.P. Goyal VS. DCIT (2002) 77 TTJ 1 (Mum)*
- (2) *Chandra Mohan Mehta Vs. ACIT (1999) 65 TTJ 327 (Pune)*
- (3) *Bansal Strips Pvt. Ltd. Vs ACIT (2006) 100 TTJ 665 (Del)*
- (4) *Kishan Chand Sobhraj Mal (1991) 42 TTJ 423 (JP)*
- (5) *CIT Vs. Naresh Khattar (HUF) (2003) 261 ITR 664 (Del)*
- (6) *Lal Chand Agarwal vs A CIT 21 TW 213 (ITAT Jaipur)*
- (7) *CIT Vs. S.M. Agarwal (2007) 293 ITR 43 (Del)*
- (8) *CIT Vs. Girish Choudhary (2008) 296 ITR 619 (Del)*
- (9) *Jayanti Lal Patel Vs. ACIT (1998) 233 ITR 588 (Raj)*
- (10) *Rakesh Goyal Vs. ACIT (2004) 87 TTJ 151 (Del)*
- (11) *ITO Vs. Manna Lal Jhalani 22 TW 551 (ITAT Jaipur)*
- (12) *Hissaria Brother Vs. ACIT 22 TW 684 (ITAT Jaipur)*
- (13) *DCIT Vs. Countrywide Buildestate Pvt Ltd. (2012) 48 TW 50 (Jaipur ITAT) order dated 29.06.2012 ITA No. 961/JP/2011*

17. *The Id DR has specifically pointed out that the retraction made by the Director of the assessee company is of no consequence as the statement was made U/s 132(4) of the Act. He has also submitted that once the admission has been made by the assessee, the same cannot be retracted unless and until establishes the reasons for retraction and it was also submitted by the Id CIT-DR that the retraction in the present case made by the assessee is an afterthought. The Id CIT-DR has drawn our attention to the following judicial pronouncements:*

"I In the case of Video Master Vs JCIT [2016] 66 taxmann.com 361 (SC), it has been held by the Hon'ble Apex Court that:

"3. In the second round, the assessment order dated March 29, 2000, gave detailed reasons for arriving at the conclusion that the figures stated in the statement recorded were corroborated, in particular, by various loose sheets found at the premises of the assessee as well as vouchers, some of which related to the two films in question. In an appeal filed to the Tribunal, the

Tribunal framed three issues, two of which were unnecessary for the reason that the statement recorded on August 25, 1995, was said to be relevant but not conclusive. Therefore, whether the statement was made under duress and whether it was retracted lawfully would have no relevance at this stage. However, the Tribunal went into these issues as well and ultimately, found that the statement could be used as evidence. Further, it examined other corroborative evidence referred to in the assessment order and arrived at a finding that the added income would be income which can be added under section 158BC for the block assessment period in question. In an appeal filed under section 260A to the Bombay High Court, the High Court found, after narrating the facts, that no substantial question of law arises.

4. *We are of the view, in accordance with the view of the High Court, that no substantial question of law arises. Further, though it was vehemently argued by Shri Devansh A. Mohta, learned counsel appearing for the assessee, that this was a case both of perversity and of there being no evidence at all. We find that not only are the findings of fact recorded in some detail but that it is not possible to say that this is a case of no evidence at all inasmuch as evidence in the form of the statement made by the assessee himself and other corroborative material are there on record.*
5. *In view thereof, we find no substance in the present appeal which is accordingly, dismissed."*

II In the case of Banna Lal Jat Construction P Ltd Vs ACIT in ITA No.720/JP/2017, vide order dated 29.12.2017, the Hon'ble ITAT, Jaipur has held as under:

- "20. *The said admission has been reiterated in not just one statement but two subsequent statements — one recorded under section 132 (4) and second recorded under section 131 during post search proceedings. We therefore do not see any inconsistency in assessee's statements, rather the latter statements have been made more clearly and given that these subsequent statements have been recorded on oath under section 132 (4) will thus have a great evidentiary value.*
21. *Thereafter, the assessee company filed its return of income on 30-9-2015 wherein such surrender was not honoured by the assessee company and the undisclosed income in form of cash found at the residence was not offered to tax, effectively retracting from the*

statement recorded on oath under section 132 (4) of the Act. It is relevant to note that during the intervening period i.e., the day the statement was recorded under section 132 (4) on 10-10-2014 and day the return of income was filed on 30-9-2015, almost a period of 11 months, there is no communication from the assessee company to the Revenue authorities retracting from the statement so made and recorded during the course of search proceedings. In fact, during the post search proceedings, the assessee again got an opportunity wherein he was called and his statement was recorded under section 131 on 4-12-2014 and therein, as well, he maintained his earlier stand and didn't retract from the statement so recorded during the course of search. This also proves that the contention of the assessee company that the earlier surrender during the course of search was under pressure is totally unfounded.

23. *Here, we refer to the decision of the Hon'ble Rajasthan High Court in case of Ravi Mathur & Others (D.B Appeal No. 67/2002 & others) vide its order dated 13-5-2016 where Hon'ble High Court has laid down the following proposition in law in respect of retraction of statement recorded under section 132 (4) of the Act:*

"14. *Having noticed the arguments of the learned counsel for the parties, we deem it proper at the outset to take into consideration the finding of the Tribunal about retraction/resiling of the statements recorded under Section 132 (4) as the Tribunal has primarily come to a finding that retraction is proper. We would also deal with the judgments relied on by the learned counsel which has a bearing on the issues and would then give our own view on questions posed by the Revenue.*

15. *In our view, the statements recorded under Section 132 (4) have great evidentiary value and it cannot be discarded as in the instant case by the Tribunal in a summary or in a cryptic manner. Statements recorded under Section 132 (4) cannot be discarded by simply observing that the assessee retracted the statements. One has to come to a definite finding as to the manner in which retraction takes place. On perusal of the facts noticed hereinbefore, we have noticed that while the statements were recorded at the time of search on 9-11-1995 and onwards but retraction, is almost after an year and that too when the assessment proceedings were being taken up in November 1996. We may observe that retraction should be made as soon as possible and immediately after such a statement has been recorded, either by filing a complaint to the*

higher officials or otherwise brought to the notice of the higher officials, either by way of a duly sworn affidavit or statements supported by convincing evidence through which an assessee could demonstrate that the statements initially recorded were under pressure/coercion and factually incorrect. In our view, retraction after a sufficient long gap or point of time, as in the instant case, loses its significance and is an afterthought. Once statements have been recorded on oath, duly signed, it has a great evidentiary value and it is normally presumed that whatever stated at the time of recording of statements under Section 132 (4), are true and correct and brings out the correct picture, as by that time the assessee is uninfluenced by external agencies. Thus, whenever an assessee pleads that the statements have been obtained forcefully/by coercion/undue influence without material/contrary to the material, then it should be supported by strong evidence which we have observed hereinbefore. Once a statement is recorded under Section 132 (4), such a statement can be used as a strong evidence against the assessee in assessing the income, the burden lies on the assessee to establish that the admission made in the statements are incorrect/wrong and that burden has to be discharged by an assessee at the earliest point of time and in the instant case we notice that the assessing officer in the Assessment Order observes:-

"Regarding the amount of Rs. 44.285 lakhs, it is now contended that the statement under section 132 (4) was not correct and these amounts are in thousands, not lakhs i.e. it is now attempted to retract from the statements made at the time of S & S operations."

Therefore, what we gather from the Assessment Order and on perusal of the above finding that the retraction was at the stage when the assessment proceedings were being finalized i.e. almost after a gap of more than a year. Such a so-called retraction in our view is no retraction in law and is simply a self-serving statement without any material.

- 15.1 Thus, in our view, the Tribunal in a summary manner has held that retraction is proper, without going in detail and manner, time of retraction, the addition deleted, is wholly on a perverse finding.*
- 15.2 This Court in Raj kumar Sodhani v. The CIT (D.B ITA No. 15/2015 decided on 28-4-2016) has taken this very view that retraction after a sufficient long gap loses its sanctity."*

24. *In light of legal proposition laid down by the Hon'ble Rajasthan High Court, there is clearly an inordinate delay in retraction and no justifiable explanation has been given by the assessee company for such delay. It is clearly an afterthought and loses its significance. The statement recorded under section 132 (4) has great evidentiary value and there is no material which has been brought on record that such statement has been recorded and obtained forcefully/by coercion/undue influence. Further, the assessee has been consistent in his statements so recorded even during the post search proceedings when his statement was recorded under section 131. Hence, in light of above discussions, the retraction of the statement recorded under section 132 (4) cannot be accepted in the instant case."*

III *It may be mentioned that in D.B. ITA No.140/2018 in the case of M/s Bannalal Jat Constructions Pvt. Ltd. Vs ACIT, the Hon'ble High Court of Rajasthan vide its judgement dated 31.08.2018 has upheld the order of Hon'ble ITAT, Jaipur and has observed that:*

"This court in CIT, Bikaner Vs. Ravi Mathur, supra, which was relied by the ITAT in the present case, after considering catena of previous decisions, held that the statements recorded under Section 132(4) of the IT Act have great evidentiary value and it cannot be discarded in a summary and cryptic manner, by simply observing that the assessee retracted from his statement. One has to come to a definite finding as to the manner in which the retraction takes place. Such retraction should be made as soon as possible and immediately after such statement has been recorded by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials by way of duly sworn affidavit or statement supported by convincing evidence, stating that the earlier statement was recorded under pressure, coercion or compulsion. We deem it appropriate to reproduce para 15 of the said judgment, which reads thus,"

It may be mentioned that the Hon'ble High Court has discussed a number of judicial pronouncements in the above referred judgement and after discussing them, it has been held by the Hon'ble High Court in the case of Banna Lal Jat that:

"Reverting back to the present case, the ITAT, on the basis of such statement of Shri Bannalal Jat, concluded that he was managing his business affairs of both his proprietary concern as well as appellant-

company from his residence and that in the absence of individual cash-book of respective concerns and other details maintained by him, it is not possible to identify whether the cash so found belongs to the proprietary concern or to the assessee company. Subsequently, when the statement under Section 132(4) of the IT Act was recorded on 10.10.2014, which was concluded at his residence, Shri Bannalal Jat categorically admitted that the cash amount of Rs.1,21,43,210/- belonged to his company M/s. Bannalal Jat Construction Private Limited and the same was its undisclosed income. Thereafter another statement under Section 132(4) of the IT Act was recorded at his business premises on 11.10.2014. In reply to question No. 8, he was asked to explain the source of cash amounting to Rs.3,380/- found at his office and Rs.1,21,43,210/- found at his residence, he submitted regarding the amount of Rs.1,21,43,210/- found at his residence that he was unable to give any explanation and admitted that he was in the business of civil construction and in such business, various expenses have been inflated and shown in the books of accounts, and that the income so generated on account of such inflation in expenses is represented in the form of cash was found at his residence. This undisclosed income belonged to his company M/s Bannalal Jat Construction Pvt. Ltd. In response to question no.11 wherein he was asked to provide any other explanation which he wishes to provide, he submitted that pursuant to search operations where various documents, loose papers, entries, cash, investment, advances and individual expenditure details have been found and taking all that into consideration, he surrendered Rs.4,01,43,210/- as his undisclosed income. He also categorically stated that the said disclosure is in the hands of M/s Bannalal Jat Construction Private Limited in respect of unexplained cash amounting to Rs.1,21,43,210/- and Rs.2,50,00,000 and Rs.30,00,000/- totalling to Rs.2,80,00,000 in his individual capacity.

Subsequently, on 04.12.2014 during the post-search proceedings, statement of Shri Bannalal fat was again recorded under Section 131 of the IT Act, wherein he was again confronted with the various documents seized and cash found during the course of search and the consequent surrender made by him in respect of his two concerns and in response thereto, he again confirmed the surrender of undisclosed income amounting to Rs.1,21,43,210/- and Rs.1,35,00,000/-. It is in this background that we have to view his reply to the show-cause notice submitted on 02.12.2016. This show-cause notice was issued to him by the assessing officer when the appellant-company offered the said undisclosed income to tax. The reliability, importance and sanctity of admission made during search could be refuted only by cogent and

convincing evidence. We may in this connection refer to earliest judgment of the Supreme Court in Pullangode Rubber Produce Company Ltd., supra, wherein it was held that admission is an extremely important piece of evidence but it can't be said that it is conclusive. It is open to the person, who made admission to show that it is incorrect. The assessee should be given proper opportunity to show the correct state of affairs. The law with regard to this has developed much thereafter. There is no gainsay the fact that admission made during the search can be disputed by the assessee and at the same time however it is equally well settled that the statement made voluntarily by the assessee could form the basis of assessment. Mere fact that the assessee retracted the statement at later point of time could not make the statement unacceptable. The burden lay on the assessee to show that the admission made by him in the statement earlier at the time of survey was wrong. Such retraction, however, should be supported by a strong evidence stating that the earlier statement was recorded under duress and coercion, and this has to have certain definite evidence to come to the conclusion that indicating that there was an element of compulsion for assessee to make such statement. However, a bald assertion to this effect at much belated stage cannot be accepted. The assessee indulged in maintaining transaction on diaries and loose papers which was not permissible in any of the method of accounting. The assessee, while filing the return of income, has not disclosed any undisclosed income and hence, retracted from the admission made by him during the course of search. Subsequent retraction from the surrender without having evidence or proof of retraction is not permissible in the eyes of law. The statement recorded during the course of search action which was in presence of independent witnesses has overriding effect over the subsequent retraction.

In view of the above discussion, the question formulated vide order dated 09.05.2018 is answered in favour of the revenue and against the assessee."

II-A It may be mentioned that the SLP filed by the assessee in the above case has been dismissed by the Hon'ble Apex Court as reported in Bannalal Jat Constructions (P.) Ltd. Vs CIT [2019] 106 taxmann.com 128 (SC).

III-A In the case of PCIT Vs Shri Roshan Lal Sancheti, in D. B. ITA No. 47/2018 vide its judgement dated 30.10.2018, the Hon'ble Rajasthan High Court has affirmed its above referred earlier judgement in the case of Banna Lal Jat and held as under:

"In view of the law discussed above, it must be held that statement recorded under Section 132(4) of the Act and later confirmed in statement recorded under Section 131 of the Act, cannot be discarded simply by observing that the assessee has retracted the same because such retraction ought to have been generally made within reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence. Such a statement when recorded at two stages cannot be discarded summarily in cryptic manner by observing that the assessee in a belatedly filed affidavit has retracted from his statement. Such retraction is required to be made as soon as possible or immediately after the statement of the assessee was recorded. Duration of time when such retraction is made assumes significance and in the present case retraction has been made by the assessee after almost eight months to be precise, 237 days.

In view of above discussion, we are persuaded to allow the appeal of the revenue which is accordingly allowed. The substantial question of law formulated by this Court vide order dated 10.04.2018 is answered in favour of the revenue and against the assessee in the aforesaid terms."

IV *In the case of Bhagirath Aggarwal Vs CIT [2013] 31 taxmann.com 274 (Delhi), it has been held by the Hon'ble High court of Delhi that:*

"11. Before us the learned counsel for the appellant contended that the statement made by an assess could always be subsequently retracted. He further submitted that it was open to the person who made an admission to show that the admission was incorrect. For this proposition he placed reliance on a Division Bench decision of this Court titled Ester Industries Ltd. v. CIT [2009] 316 ITR 260/185 Taxman 266 (Delhi). However, that case was not one of search and seizure u/s 132 of the said Act. Furthermore, in the present case no material has been produced by the appellant/assessee to show that the admission made by him was incorrect in any way. On the other hand, it is the assessee who is insisting that it is for the department to corroborate the statement of admission made by him and until and unless the department corroborates the same, the statement cannot be relied upon. We are afraid that is not the correct position of law. The admission once made can certainly be retracted, if the circumstances permit, and it can also be shown to have been made under some mistake or to be otherwise incorrect. But, the onus would

be on the maker of that admission. In this case it is the appellant/assessee who has admitted and surrendered a sum of Rs. 1.75 crore as his undisclosed income. It was incumbent upon him to show that he had made a mistake in making that admission and that the said admission was incorrect. He had access to all the documents which has been seized inasmuch as the copies had been supplied to him. However, he did not produce anything to establish that the admission was incorrect in any way. That being the position, the appellant/assessee cannot resile from his earlier statement made on 10-11.11.2005 and 21.11.2005.

- 12. The learned counsel for the appellant/assessee also referred to the Supreme Court decision in the case of Pullangode Rubber Produce Co. Ltd. v. State of Kerala [19731 91 ITR 18 for the proposition that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It was contended that it was open to the person who made the statement to show that it was incorrect. There cannot be any doubt about this position in law, but, in the present case the appellant/assessee has not produced any material to show that the admissions made by him were incorrect. The statements recorded u/s 132(4) of the said Act are clearly relevant and admissible and they can be used as evidence. In fact, once there is a clear admission, voluntarily made, on the part of the assessee, that would constitute a good piece of evidence at the hands of the Revenue.*
- 13. The learned counsel for the appellant also referred to the circular dated 11.03.2003 issued by the Central Board of Direct Taxes on the subject of Additional Income during the course of Search and Seizure Operation. As per the circular, there is an observation of the Board that the focus of the search party should be 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 Department. There is a further observation that, while recording statements during the course of search, seizure and survey operations, no attempt should be made to obtain confessions as to undisclosed income and that any action to the contrary would be viewed adversely.*
- 14. We do not see how this circular would, in anyway, come to the aid and assistance of the appellant. All that it shows is that the Income-tax Officers should not try to force a confession from an assessee. However, if an assessee voluntarily makes a surrender, the officials of the income tax department are bound to record that statement u/s*

132(4) and such a statement, voluntarily made, is relevant and admissible and is liable to be used as evidence."

V. *In the case of CIT Vs O. Abdul Razak [2012] 20 taxmann.com 48 (Ker.), it has been held by the Hon'ble High Court of Kerala that:*

"In the instant case on the clear admission of the assessee corroborated by the documents the burden on the department ceases to exist. On the retraction being filed by the assessee, there is a burden cast on the assessee to prove the detraction or rather disprove the admissions made. It is not a shifting of the onus but a new burden cast on the assessee to disprove the earlier admissions having evidentiary value. As noticed earlier, retraction made by the assessee can only be considered as a self serving afterthought and no reliance can be placed on the same to disbelieve the clear admissions made in the statement recorded under Section 132(4). Deletion of the additions vis-a-vis the property transactions on the reasoning that the department cannot do so on the basis of the admission made under Section 132(4) and on the premise that the Department ought to have proved retraction to be untrue cannot be countenanced in view of the specific words employed in Section 132(4)."

VI *In the case of CIT Vs Lekh Raj Dhunna [2012] 20 taxmann.com 554 (Punjab & Haryana), it has been held by the Hon'ble High court that:*

"17. Thus, in view of sub-ss. (4) and (4A) of s. 132 of the Act, the AO was justified in drawing presumption against the assessee and had made addition of Rs. 9,00,000 in his income under s. 68 of the Act. The onus was upon the assessee to have produced cogent material to rebut the aforesaid presumption which he had failed to displace. The assessee retracted from the said statement vide letters dt. 24th Nov., 1998 and 11th March, 1999 during the course of assessment proceedings. However, no value could be attached thereto in the present case. In case the statement which was made by the assessee at the time of search and seizure was under pressure or due to coercion, the assessee could have retracted from the same at the earliest. No plausible explanation has been furnished as to why the said statement could not be withdrawn earlier. In such a situation, the authenticity of the statement by virtue of which surrender had been made at the time of search cannot be held to be bad. The Tribunal, thus, erred in concluding otherwise. The Tribunal, therefore, was not justified in reversing the order of the AO which was affirmed by the CIT(A) also."

VII *In the case of Thiru S. Shyam Kumar Vs ACIT [2018] 99 taxmann.com 39 (Madras), it has been held by the Hon'ble Madras High Court that:*

- "7. *After elaborately hearing the learned counsels for the parties and carefully perusing the materials placed on record, we find that the decision arrived at by the Commissioner of Income Tax (Appeals) as well as by the Tribunal are cogent and clear. The entire issue revolves around the factual matrix as to whether the slips, which contain certain details, were pertaining to payments made by the assessee, not brought into the books of account. Before the assessing Officer, the assessee has given more than one statement accepting the on-money payment. For the first time, before the Commissioner of Income Tax (Appeals), the assessee took a stand that the slips are only dumb sheets and there was no connection with the purchasing of residential property and further, the assessee sought to explain the notings to mean as monthly instalments and arranging of funds and not for payment. The Commissioner of Income Tax (Appeals), after considering the said statement, has given reasons as to why the statements of the assessee are not tenable. In fact, the assessee in no uncertain terms has accepted in his statement that the slip represents payment made for the purchase of property in question. The retraction is vague and a clear afterthought. Therefore, the Commissioner of Income Tax (Appeals) rightly considered the effect of the notings as well as the statement given by the assessee, wherein he had accepted the on-money payment. Once again before the Tribunal, the attempt of the assessee was to wriggle out of the entries in the slips by stating that they have no corroboration with that of the purchase of the immovable property.*
8. *The argument of the learned Counsel for the assessee is that there should be corroborative evidence to sustain the entries to link the same and treat it as an un-explained investment to bring the case under Section 69 of the Act. In our considered view nothing more is required than the facts, which were considered by the Assessing Officer as well as the Commissioner of Income Tax (Appeals) and the Tribunal. The notings are clear and it is not any scribbling, which shows the figures and also shows whether the payments were in cash or in cheque. The retraction made by the assessee, after a period of two years, was rightly rejected as an afterthought.*"

18. *Whereas on the contrary, the assessee has relied upon the following decisions:*

(a) **Contech Transport Service (P) Ltd Ors V/s ACIT (2009) 19 DTR 191 (Mumbai) 28-11-08**

No addition can be made only on the basis of admission in statement u/s 132 (4)

(b) **Chitra Devi V/s ACIT (Jodhpur Branch) (2002) 77 TTJ (Jd) 640**

Statements recorded during search are not evidences found during search.

Addition cannot be made on the basis of statement alone.

(c) **Kailashhen Manharlal Chokshi Vs CIT (2008) 14 DTR 257 (Guj)**

It is also to be seen as to whether an addition made is merely based on the statement recorded by the AO under s. 132(4) and whether any cognizance may be taken of the retracted statement. So far as case on hand is concerned, the glaring fact required to be noted is that the statement of the assessee was recorded under s. 132(4) at midnight. In normal circumstances, it is too much to give any credit to the statement recorded at such odd hours. The person may not be in a position to make any correct or conscious disclosure in a statement if such statement is recorded at such odd hours. Moreover, this statement was retracted after two months. The main grievance of the AO was that the statement was not retracted immediately and it was done after two months. It was an afterthought and made under legal advise. However, if such retraction is to be viewed in light of the evidence furnished along with the affidavit, it would immediately be clear that the assessee has given proper explanation for all the items under which disclosure was sought to be obtained from the assessee.

(d) **Pullanquegode Rubber & Produce Co. Ltd. Vs. State of Kerala 91 ITR 18 (Supreme Court)**

An admission is extremely an important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect.

(e) **Kailash Ben Mohanlal Choksi v/s CIT (2008) 14 DTR (Guj) 257**

It is too much to give credit to a statement recorded at midnight where a person may not be in a position to make any correct and conscious

discloses" Disclosure statement recorded at odd hours cannot be considered to be a voluntary statement.

(f) Hukum Chand Jain Vs. Income Tax Officer (2011) 334 ITR 197 (Rajasthan High Court)

Admission despite being an important piece of evidence was not conclusive and it was open to the assessee to show that it was not correct.

(g) Ajit Chintaman Karve V/s I.T.O. (2009) 311 ITR (AT) 66 (Puna) Assistant Commissioner of Income Tax Branch

That merely because an offer was made having no cogent basis or approval of law that should not stop a taxpayer from correcting his mistake. It was the duty of the A.O. to tax only the legitimate amount from a taxpayer.

The following facts further established that the exercise of surrender by the Revenue Authority was under duress. No effort was made at the time search and seizure to verify the genuineness of these rough papers. The revenue authorities just got hold of these papers and pressed the assessee for surrender. The assessee at that stage of search had no option but to agree with the authorities so as to escape further harassment. In the normal course if the surrender was genuine the revenue authorities should have and would have crossed checked the details and facts of amount mentioned in these pages. They should have verified at least a few entries of the accounted amount mentioned in these pages. No such exercise was done neither during the search nor during the course of assessment proceedings the post search enquiries do not reveal anything against the assessee. Merely harping on the rough pages and on the statement of the assessee u/s 132(4) wont help in making additions. Further during the course of assessment proceedings parties have been called u/s 131 who have purchased the flats and they have stated that no on money was paid by them. The Learned Assessing Officer also called for information u/s 133(6). Despite a written request the Learned Assessing Officer has not furnished copies of statement recorded u/s 131 and information collected u/s 133(6) as these go in favour of the assessee. The assessee humbly requests that the records of the Learned Assessing Officer may be called for the purpose and verified. Further a number of affidavits were furnished by the assessee from persons who had purchased the flats and in these affidavits it has been stated that no on money was paid. These affidavits have

remained uncontroverted. Considering all these facts the addition made deserves to be deleted.

In view of the aforesaid facts it is submitted that the retraction of the assessee of surrender made of income of Rs. 27,50,31,216/- is in order and is well substantiated with facts and documentary evidence. The same deserves to be accepted. No addition is warranted on the basis of the statement u/s 132(4) of the Income Tax Act, 1961. The case of the assessee is further strengthened by the following circulars of the board wherein the revenue authorities have been advised not to obtain surrender of income during search proceedings.

19. *We have gone through the decisions referred by both the parties but after analyzing the facts of the present case, we are of the opinion that no efforts were made by the A.O. to find out the genuineness of the transactions noted in these papers. The minimum thing which was expected from the authorized officer was that he should have ascertained the date and the year of transaction and then he should have verified whether the accounted amount should in column 'A' was verifiable or not from the regular books of account. Even, this minimum exercise was not done by the A.O. If the accounted money on alleged sale of flats as shown in these papers is not verifiable from the books of account then the natural conclusion which can be drawn by the prudent persons is that these papers are rough papers only. The papers contained only projections of imaginary sale value of the flats. Thus, these papers taken out from the computer are nothing but a part of the business strategy of the assessee. The revenue has not been able to link the transactions of these papers either with the material seized during the course of search or by way of post search enquiries. Since, all the controversy is revolving around these seized papers and admittedly these papers do not contain name of the buyers and also do not contain the date of transactions. It is an admitted fact that the assessee has executed certain sale deeds post search and in this respect, details have also been placed on record. The buyers have also filed their respective affidavits with the revenue authorities. The*

*paper of surrender made do not contain requisite minimum details of transactions and it is a settled proposition of law that if a document does not contain any date and name and only contains numerical figures then such document is vague and dump document and no addition can be made on the basis of such document. In order to avoid any repetition, we would like to confine ourselves to the glaring errors in the investigation/verifications carried out by the revenue authorities. The Id. CIT(A) has already mentioned in detail the deficiencies/discrepancies in the verifications carried out by the revenue department and even according to the assessee, since the sale already stood completed, there was no occasion for the assessee to have shown outstanding amount against the sale of flats and apart from the above certain flats have been sold much after the date of search details of which have also been supplied by the assessee to the revenue authorities. Therefore, according to the assessee, it was all enough to establish that the papers were rough and deserves no consideration, therefore, surrender made on the basis of these papers was correctly retracted. The assessee had retracted on the surrender vide letter dated 29.02.2016 to the DGIT(Inv.) Jaipur, copy of which has already been placed on record. The judgment cited by the Id CIT-DR are not applicable to the facts and circumstances of the present case as para materia contained in those judgements are altogether different from the facts of the present case. Since we have already discussed in detail the discrepancies pointed out in the investigation carried out by the A.O. as well as the discrepancies in the papers at page No. 1 to 4 of Annexure-A2 and we are also conscious of the fact that it is a settled proposition of law that no addition can be made simply on the basis of solitary statement having no corroborative evidence. The A.O. at the same time has not been able to brought on record any material to establish the truthfulness of the contents of pages 1 to 4 of Annexure-A2 on the basis of which surrender was made. In the case of **Shri Ashok Kumar Jain 369 ITR 145**, the Hon'ble Jurisdictional High Court of Rajasthan has categorically held that if the assessee does not adhere to the surrender made then it is for the Assessing Officer to bring on record cogent*

material and other evidences to support the addition rather than simply rely on the statement.

20. The CBDT is an apex authority of the revenue and in this regard, the CBDT it had issued instructions/circulars dated 10/03/2003 and 18/12/2014, wherein it has categorically been directed that focus and concentration should be on collection of evidence of income instead of merely rely upon the statements made during search, for ready reference the same are reproduced below:

(i) F. No. 286/2/2003-IT (Inv) dated 10.03.2003

No confessional statement in the course of search, seizure and survey.

March 10th, 2003

Confession of additional Income during the course of search & seizure and survey operation

*GOVERNMENT OF INDIA MINISTRY OF FINANCE & COMPANY AFFAIRS
DEPARTMENT OF Revenue CENTRAL BOARD OF DIRECT TAXES Room No.
254/North Block, New Delhi, the 10th March, 2003*

*To
All Chief Commissioners of Income Tax, (Cadre Contra)
&
All Directors General of Income Tax Inv.*

Sir

Subject : Confession of additional Income during the course of search & seizure and survey operation -regarding

Instances have come to the notice of the Board where assesseees have claimed that they have been forced to 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 assesseees 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

Yours faithfully,

Sd/-

(S. R. Mahapatra]

Under Secretary (Inv. II)

(ii) F.No. 286/98/2013-IT (Inv.II) dated 18.12.2014

Admissions of Undisclosed Income under coercion/pressure during Search/Survey

Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes Dated- 18th December, 2014 To 1. All Principal Chief Commissioners of Income Tax 2. All Chief Commissioners of Income Tax 3. All Directors General of Income Tax (Inv.) 4. Director General of Income Tax (I & CI), New Delhi
Subject: Admissions of Undisclosed Income under coercion/pressure during Search/Survey – reg. Ref: 1) CBDT letter F.No. 286/57/2002-IT(Inv.II) dt. 03-07-2002 2) CBDT letter F.No. 286/2/2003-IT(Inv.11) dt. 10-03-2003 3) CBDT letter F.No. 286/98/2013-IT(Inv.11) dt. 09-01-2014 Sir/Madam, Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assesseees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light. 2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence. 3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T.Act,1961 and/or

recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the Board adversely. 4. These guidelines may be brought to the notice of all concerned in your Region for strict compliance. 5. I have been further directed to request you to closely observe/oversee the actions of the officers functioning under you in this regard. 6. This issues with approval of the Chairperson, CBDT (K. Ravi Ramchandran) Director (Inv.)-II, CBDT-

*21. The CBDT had issued instructions wherein it has been instructed that no surrender should be obtained and assessment should be completed not on the basis of such surrender but on the basis of material gathered during search. However, in the present case, the A.O. had made additions solely on the basis of solitary statement made by the Director of the assessee. Even the Hon'ble Jurisdictional High Court of Rajasthan in the case of **CWT vs. Sanwarmal Shivkumar 171 ITR 337** has held that the officers of the Department are bound by the circulars of the board. Further in the following cases the Courts have held that circulars issued by the Board are binding: -*

- (i) Navnit Lal C Javeri Vs. Sen (1965) 56 ITR 198 (SC)*
- (ii) K.P. Varghese vs. ITO (1981) 131 ITR 597 (SC)*
- (iii) UCO Bank vs. CIT (1999) 237 ITR 889 (SC)*
- (iv) Union of India vs. Azadi Bachoo Andolan (2003) 263 ITR 706(SC)*

*22. Although, Id CIT-DR has stressed on the fact that the presumption of correctness is attached to the statement recorded U/s 132(4) of the Act and even the A.O. has categorically mentioned that page No. 1 to 4 of Annexure-A2 were found and seized during the course of search, therefore, the assessee cannot claim these documents as dump documents. However, on the contrary, we found that the presumption available U/s 132(4A) of the Act is limited to search period and is not available in the assessment proceedings. In the case of **P.R. METRANI vs. COMMISSIONER OF INCOME TAX (SUPREME COURT OF INDIA) (2006) 287 ITR 209**, it was held that any presumption available under the Act is always rebuttable. In the case of the assessee pages*

1 to 4 of Annexure- A2, found during search have been established by the assessee as defective and even the A.O. could not establish that the contents of these papers related to the business of the assessee and were true. In this respect, we draw strength from the decision of the Hon'ble Jurisdictional High Court and the Coordinate Bench of the ITAT as follows:

- (i) ACIT Vs. Thahrayamal Balchand (1980) 124 ITR 111 (Raj)***
- (ii) CIT vs. SMS Investment Corporation Pvt Ltd (1994) 207 ITR 364 (Raj)***
- (ii) CIT vs. Kishanchand (1993) 45 TTJ (JP) 20***

23. From the totality of the facts and circumstances of the case as narrated and discussed, we are of the considered view that the mere admission is not conclusive as to the truth of the matter. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances in which it is made. It can be shown to be erroneous or untrue. Therefore, addition made merely and solely on the basis of confession without any corroborative evidence was not sustainable in law and moreover the said confession made by the assessee was subsequently retracted and since the addition was not supported by any cogent, convincing independent documentary evidence, therefore, the same was correctly found to be not sustainable by the Id. CIT(A).

24. No new facts and circumstances have been brought before us in order to controvert or rebut the findings so recorded by the Id. CIT(A), therefore, we see no reason to interfere or deviate from the findings so recorded by the Id. CIT(A). Therefore, we uphold the order passed by the Id. CIT(A) qua this issue."

12. As per the Id. AR, the AO has disregarded the retraction affidavit on the allegation that the assessee has not filed retraction with his jurisdictional Income Tax officer [ITO Ward 3(1)] with whom he was filing

his income tax returns or with DDIT(III)-Inv. Jaipur or Addl. DIT (Inv.), Jaipur or DIT (Inv.) Jaipur or DGIT (Inv.) Jaipur and has in fact filed the same with ACIT Circle-1, Jaipur. In this regard, as submitted before AO, we observed that since M/s Shri Siddhi Vinayak Induction Pvt. Ltd. (in which Sh. D.P.Sehgal was also director and because of which search was conducted on assessee) had jurisdiction with ACIT, Circle 1, Jaipur, thus the assessee was under bonafide belief that ACIT, Circle-I was the competent authority for filing affidavit in case of assessee (Director) and therefore, assessee filed both the retraction affidavit vide letter dated 24.12.2014 and letter dated 15.04.2015 with the ACIT Circle-I, Jaipur. We further observed that the assessee was called upon subsequently at the office of the Director of Income Tax (Investigation) on 14.04.2015 on the pretext of discussions on aforesaid retraction but pressurized to take back his retraction and confess that the so called statements recorded by the Income Tax Officials on 17/18.12.2014 were correct and that he had made some declaration for un-disclosed income of Rs. 1.50 crores. Such action of departmental authorities clearly establishes that DDIT (Investigation) -III was well aware of the retraction made by the assessee and thus had called him again to file another affidavit accepting the earlier statements. Such conduct of the Income tax department officials clearly establishes that as there were no incriminating documents or any other corroborative evidence found as a

result of search or gathered in post search enquiry in support of surrender obtained, they simply went ahead in forcing the assessee to re-affirm the retracted statement that too with new set of alleged recipients. It is a known fact that the assessee is a businessman and not an expert in taxation laws to have detailed knowledge on the jurisdiction and acted in bonafide belief and to the best of his knowledge and understanding in respect of filing of retraction affidavit and letter. The retraction letters filed by assessee were not recorded in Dak Register. In this regard, as per Id. AR that the assessee had sent his accountant to file the retraction letters, who was instructed to receive acknowledgement on office copy, by way of stamp of the Income Tax Office. He was not aware of the procedures internally followed by the department and thus did not ask for any other evidence like receipt number along with the stamped copy. It is only on receipt of this show cause notice that the assessee has learned about the system of Dak Receipt serial numbers on perusal of the certified copies of the dak register provided. Thus, no adverse inference may be drawn against assessee for non recording the retraction affidavit/ letter filed in subject Dak Receipt register. In view of the above, we are of the considered view that the assessee had not offered Rs. 1.50 crores in statements and rather forced surrender was obtained by the department and therefore he retracted such statements at the earliest opportunity i.e. on 24.12.2014, which was again

confirmed on 15.04.2015. However these evidences were not considered by the AO and additions were made without corroborating such statements with any material on record. So far as slip on the basis of which is department has tried to substantiate the addition of Rs.1.50 crores is concerned, it was submitted by the Id. AR that the slip did not bear any signature of third party nor were the figures mentioned therein proved to be undisclosed income of assessee with any supporting evidence. In fact, no effort whatsoever was made to verify the recipients of such advances. The AO in assessment order has mentioned that "As per the Computation of Income filed as well as the details available on record the assessee indulged in the sale of two properties during AY 2014-15 and AY 2015-16 as under:

- i) Flat G-13/21, Chitrakoot Yojana, Gandhi Path Jaipur sold on 13.11.13; and,
- ii) Plot No. H-34, Sun City Sikar Road, Jaipur sold on 31.01.2015.

It is worthwhile to mention here that while the first property was sold in FY 2013-14, the second was sold after the date of search i.e. 17.12.2014 and thus both do not corroborate with the claim in the recorded statements that the income was earned out of sale transactions of property in current FY 2014-15. Further, the total value of these two sale transactions was only Rs. 44.00 lacs. In this scenario, it is beyond understanding as to how these can generate undisclosed income of Rs. 150.00 lacs. The AO has also given the

details of other properties purchased by the assessee and his family members in past 6-7 years. The returns of income of the assessee and his family members have been filed in the **paper book Volume-2, pages 57-104** wherein no any income from the dealing in properties/ capital gains except in the case of assessee for AY 2014-15 and 2015-16 was declared. This further proves that the addition is made on mere conjecture and surmises without any corroborative material. It is a settled law that the presumption whosoever strong may be but it cannot take place of proof and thus the A.O. has acted more on suspicion and doubt than on evidence. It is settled principle of law that suspicion however strong cannot take the place of evidence. In following cases it has been time and again held that suspicion howsoever cannot take place of evidence. The AO has interpreted a dumb document having no legal validity as per his suitability and addition based on this paper deserves to be deleted more particularly when the paper itself contained errors and addition is made merely and solely on the basis of confession without any corroborative evidence. Moreover the said confession made by the assessee was subsequently retracted and since the addition was not supported by any cogent, convincing independent documentary evidence, therefore, considering the totality of facts and circumstances, judicial precedents referred above as well as following the decision of the Coordinate Bench of this Tribunal in the case of **DCIT Vs.**

JKD Pearl India Developers Pvt. Ltd.(supra) wherein the present Author of this order was also the Author of that order, therefore, we direct the A.O. to delete the addition so made and confirmed qua this issue.

13. Ground No.3 raised by the assessee in this appeal relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs.1,39,581/- made by AO.

14. Having considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we observed that during the year under consideration, assessee had sold one plot of land at Suncity, Sikar Road Jaipur during the FY 2014-15 for Rs. 23,15,000/- to Mrs. Usha Rani and had paid brokerage of @ 3% on sales amounting to Rs. 69,450/- to the broker Mr. Sunil Gajeria. In support of such claim complete address of broker as well as PAN were furnished before the AO. At this juncture, details of expenses so disallowed is furnished as under:

- Brokerage Expenses		Rs.69,450/-
- JDA Expenses	Rs.6,776/- Indexed Cost	Rs.12,593/-
- JDA Expenses	Rs.5,421/- Indexed Cost	Rs. 7,807/-
- JDA Expenses	Rs.13,700/- Indexed Cost	Rs. 19,731/-
- Expenses to mediator		<u>Rs.30,000/-</u>
		<u>Rs.1,39,581/-</u>

We observed from the above that JDA Expenses of Rs. 6643/- and Rs.5315/- were incurred by assessee, which are evident in the copy of registered deed which is at page No. 48 of the paper book furnished before

AO as well as CIT(A) and after including incidental Misc. expenses comes to Rs.6776/- and Rs.5421/-. So far as brokerage expenses of Rs.69,450/- are concerned, the same are approximately 3% of the gross sale consideration, which is in accordance with market rates. Further, expenses of Rs.30,000/- were paid to mediator / broker Sh. Sunil Gajaria and assessee had submitted complete address as well as PAN details of the mediator / broker. Accordingly, identity of the payee and genuineness of payment is fully established and expenses were not held to be excessive. Therefore, we direct to delete the same.

15. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 12th April, 2022.

Sd/-
(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 12/04/2022

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Ashok Dharendra, Jaipur.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Central Circle-3, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 256/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar