

आयकरअपीलीयअधिकरण,इंदौरन्यग्रपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.916/Ind/2019
Assessment Year : 2014-15

M/s. Kakda Steel Private Limited, Bhopal	बनम/ Vs.	ITO-2(1) Bhopal
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AABCK 5877 F		
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Smt. Simran Bhullar, CIT-DR	
Date of Hearing	28.09.2022	
Date of Pronouncement	22.12.2022	

आदेश/O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 27.08.2019 passed by learned Commissioner of Income-Tax (Appeals)-1, Bhopal[“**Ld. CIT(A)**”], which in turn arises out of assessment-order dated 30.12.2016 passed by learned ITO, Ward-2(1), Bhopal[“**Ld. AO**”] u/s 143(3) of Income-tax Act, 1961 [“**the Act**”] for Assessment-Year[“**AY**”] 2014-15, the assessee has filed this appeal on following grounds:

“1. That under the circumstances, the learned CIT (Appeals) erred in not considering the fact that the assessment order passed on the basis of surrender made during the course of survey by making huge addition of Rs.3,85,09,545/- is unjust, unfair and bad in law as the same was made

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arbitrarily, without any concrete basis, imaginary and without quantifying the figures properly and hence, liable to be quashed.

2. That under the circumstances, the learned CIT (Appeals) erred in confirming the addition of Rs.1,10,00,000/- which includes excess stock of finished goods Rs.12,58,500/-, excess stock of scrap Rs.66,74,844/- and excess stock of coal Rs.30,00,000/- (rounded off to Rs.1,10,00,000) being difference in stock as per books of account and as found during the course of survey was made arbitrarily, without any concrete basis and without considering the fact that the list prepared at the time of survey was prepared hurriedly and without actual measurement of stock.

3. That under the circumstances, the learned CIT (Appeals) erred in confirming the addition of Rs.1,50,00,000/- which was made due to difference in investment in plant & machinery as per books and as per list prepared at the time of survey without considering the explanation offered by the assessee and without considering the fact that the assessee has disclosed all the investment in plant & machinery in its books of account and nothing is undisclosed as stated in the assessment order. The learned CIT (Appeals) also erred in not giving the finding on the objection that the basis of figure adopted in the list of plant & machinery prepared during the course of survey was not given by the AO.

4. That under the circumstances, the learned CIT (Appeals) erred in confirming the addition of Rs. 9,00,000/- being made as unexplained expenditure on account of labour expenses without considering the explanation offered by the assessee and without considering the fact that the entire expenditure on this account is fully vouched and incurred only for manufacturing process and thus, no disallowance should be made under this head.

5. That under the circumstances, the learned CIT (A) erred in confirming the addition of Rs. 30,00,000/- made on account of other miscellaneous discrepancies as the same was made without identifying any expenditure which is of undisclosed nature.

6. That under the circumstances, the learned CIT (A) erred in confirming the

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addition of Rs.86,09,545/- made on account of unexplained sundry creditors after deducting the sundry creditors as disclosed in the return Rs.1,14,90,455/- (Income disclosed by the assessee on account of sundry creditors written off) as the same was made without considering the fact that no such undisclosed payment was made by the assessee to the sundry creditors.

7. That the appellant craves, leave to add, to urge, to alter or to amend any of the grounds of appeal on or before the date of hearing.”

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee-company is engaged in the business of steel manufacturing industry. During current-year, a survey u/s 133A was conducted by revenue-authorities on 21.01.2014 wherein the books of account, stocks, plant and machinery were verified; based thereon the authorities ascertained discrepancies indicating undisclosed income of assessee as detailed below:

Item	Rs.
Excess stock of finished goods	12,58,500
Excess stock of scrap	66,74,844
Excess stock of coal	30,00,000
Total excess stock	1,09,33,344
R/o excess stock (A)	1,10,00,000
Investment in Plant and machinery	1,50,00,000
Bogus wages payable	9,00,000
Misc. discrepancies	30,00,000
Bogus sundry creditors	1,98,00,000
Total (B)	3,87,00,000

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Total (A + B)	4,97,00,000
R/o total (A + B)	5,00,00,000

4. During survey, the statements of Shri Neeraj Goel (It is wrongly mentioned in assessment-order that the statements of Shri Narendra Kumar Goyalwere recorded), director of assessee-company, were also recorded wherein he surrendered an undisclosed income of Rs. 5 crore and offered to disclose this income in the return of assessee-company. However, while filing return of income, the assessee-company declared an additional income of Rs. 1,14,90,455/- only on account of bogus sundry creditors (out of Rs. 1,98,00,000/- mentioned in the above table) and did not declare the full income of Rs. 5 Crore as surrendered.

5. During assessment-proceeding, Ld. AO found the short-disclosure of Rs. 3,85,09,545/- (Rs. 5,00,00,000 surrendered during survey – Rs. 1,14,90,455 declared in the return) and confronted the assessee on this aspect, in response to which the assessee made following submission which is noted by Ld. AO in Para No. 6 of the assessment-order and reproduced below for a quick reference:

"Madam, our mental status at the time of survey was not well and proper and hence statement was given under pressure without considering the fact and figure tally with the books of accounts and without thinking of consequence of such surrender. Thereafter, at the time of finalization of books of accounts out of the above surrender I have found that some sundry creditors which appeared in our books of accounts are not traceable and I was not sure whether payment made in cash and hence the same was written off of Rs. 1,14,90,455.89 in the audited profit and loss account and duly shown in the return filed in A.Y. 2014-15. The copy of accounts of sundry creditors whom balances written off during the year is enclosed herewith. In the other heads of surrender there is no discrepancy noted during the finalization account and hence not credited in profit and loss account during the course of finalization of accounts. Further. it is submitted that our company has maintained regular and proper books of accounts which 'are audited u/s 44AB of the income tax act and also under the companies act and auditor has also not pointed out any discrepancies in the regular books of accounts and hence, you are requested not to added balance surrender in the total income of the company. The amount surrendered at the time of survey however after surrender of Rs. 1,14,90,455.89 regarding sundry creditors balance amount remains of Rs.

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38509544 and it is requested that the same may not be added to the total income as there is no discrepancies in our books.”

6. However, these submissions could not satisfy the Ld. AO, who made an addition of Rs. 3,85,09,545/- by observing and holding thus in the assessment-order:

“The above submissions of the assessee are not acceptable due to the following reasons:

1.The statement of Shri Narendra Kumar Goyal was recorded on oath during the course of survey. In answer to Q No.11 to Q no.17, the director admitted additional income to the tune of Rs.5 crore for A.Y.2014-15.

The relevant portion of statement recorded of Shri Narendra Kumar Goyal is as under:

प्रश्न 11- सर्वे की कार्रवाई के दौरान मंडीदीप स्टील यूनिट की स्क्रेप, इंगॉट्स और कोल की इवेंट्री बनाई गई । भौतिक सत्यापन में यह पाया गया कि इंगॉट्स और स्क्रेप का बस एक्सेस स्टॉक लगभग 79.33 लाख का है जो आपके स्टॉक रजिस्टर से भी अधिक है । इसी प्रकार इस प्रिमाइसेस में कोल का स्टॉक लगभग 300 टन पाया गया, जो आपके खातों में दर्ज नहीं है । इसकी वैल्यू लगभग 30 लाख रुपये आती है । कृपया स्पष्टीकरण दें ।

उत्तर - स्क्रेप, इंगॉट्स और कोल के भौतिक सत्यापन में लगभग 1.10 करोड़ का जो एक्सेस स्टॉक आया है, कृपा करके काकडा स्टील प्राइवेट लिमिटेड में एक्सेस स्टॉक माना जाये एवं इस पर जो भी करारोपण आयेगा वह मैं अदा करने के लिए तैयार हूँ । प्रार्थना है कि इस पर प्रौसिक्यूशन और पेनाल्टी जैसी कार्यवाही न की जाये ।

प्रश्न 12- चूंकि आपके बुक्स ऑफ अकाउंट, 15 सी, गोविंदपुरा में है । इसलिए कृपया अगले प्रश्न का जवाब गोविंदपुरा के प्रिमाइसेस में बुक्स ऑफ अकाउंट के वेरिफिकेशन के साथ उपलब्ध कराये ।

उत्तर- कृपया मैं गोविंदपुरा में इसका जवाब देने के लिए तैयार हूँ ।

प्रश्न 13- मैं आपको काकडा स्टील प्राइवेट लिमिटेड का वेजेस पेयेबल लेजर अकाउंट जो कि 10.05.2013 से 10.01.2014 तक का है । इस लेजर के मुताबिक 9 लाख रुपये वेजेस

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पेयेबल है । कृपया बतायें कि वेजेस पेयेबल अभी तक क्यों पेयेबल दिखाई जा रही है । बताये कि क्या इन वेजेस का अभी तक भुगतान हुआ है या नहीं ?

उत्तर- इन वेजेस पेयेबल का भुगतान नकद में किया जा चुका है और वस्तुतः वर्तमान में कोई वेजेस पेयेबल नहीं है । अतः इसे में 9 लाख को वर्तमान वित्तीय वर्ष में अघोषित आय के रूप में स्वीकार करता हूँ एवं इस पर करारोपण के लिए तैयार हूँ ।

प्रश्न 14- कांकडा स्टील प्राइवेट लिमिटेड के बुक्स ऑफ अकाउंट में हूज संड्री क्रेडिटर्स दिखाई दिये गये है । इसमें ज्यादातर क्रेडिटर्स विगत वर्षों या पूर्व के वर्षों के है । कृपया इस संबंध में स्पष्टीकरण दीजिये ।

उत्तर- कृपया इसका स्पष्टीकरण देने के लिए मुझे आधे घंटे का समय दिया जाये ।

(स्टेटमेंट आधा घंटा के पश्चात पुनः प्रारंभ)

(पुनः प्रारंभ)

उत्तर- मैंने अपने बुक्स ऑफ अकाउंट का एग्जामिनेशन किया । मैं आपको कुछ संड्री क्रेडिटर्स का लिस्ट दे रहा हूँ जिसका भुगता करंट ईयर मे हो चुका है लेकिन बुक्स ऑफ अकाउंट में दर्ज नहीं किया गया है । टोटल संड्री क्रेडिटर्स लगभग 1.98 करोड़ के संड्री क्रेडिटर्स जिनका भुगतान करंट ईयर्स में किया जा चुका है, लेकिन बुक्स में दर्ज नहीं है, स्वेच्छा पूर्वक काकड़ा स्टील प्राइवेट लिमिटेड में अघोषित रूप से किए गए भुगतान के रूप में घोषित कर रहा हूँ ।

प्रश्न 15- आपके बुक्स ऑफ अकाउंट मे कुछ विसंगतियां पाई गई है जैसे संड्री क्रेडिटर्स का भुगतान दर्ज नहीं होने, लेबर वाऊचर का भुगतान दर्ज नहीं होना, कृपया स्पष्टीकरण दीजिए कि आपकी इसके अलावा की बुक्स ऑफ अकाउंट में विसंगतियां हैं, जिस पर आप अपना स्पष्टीकर देना चाहते है ।

उत्तर- जी हाँ, इन विसंगतियों के अलावा की विसंगतियां खातों में दर्ज हो सकती है जिनका विवरण प्रस्तुत कर दूंगा । यह विसंगतियां लगभग 28-30 लाख की होनी चाहिए । इस पर मैं स्वेच्छा से करारोपण के लिए तैयार हूँ । आपसे निवेदन है कि लगभग 28 से 30 लाख रुपये अन्य मदों के लिए काकड़ा स्टील की अघोषित/भुगतान/निवेश के संबंध में करारोपण माना जाये।

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प्रश्न 16- काकड़ा स्टील प्राइवेट लिमिटेड की गोविंदपुरा एवं मंडीदीप में सर्वेक्षण कार्यवाही के दौरान यह पाया गया कि प्लांट एण्ड मशीनरी की इन्वेंट्री बनाई गई एवं बुक्स ऑफ अकाउंट में इसका मिलान किया गया और यह पाया गया कि लगभग रुपये रु. 1.50 करोड़ का निवेश आपके बही खातों में दर्ज नहीं है। कृपया स्पष्टीकरण दीजिए।

उत्तर- आपके एवं आपकी टीम द्वारा किये गये भौतिक सत्यापन और काकड़ा स्टील प्राइवेट लिमिटेड का बुक्स ऑफ अकाउंट का मेरे द्वारा अवलोकन किया गया। इससे मैं सहमत हूँ कि लगभग रुपये 1.50 करोड़ रुपये का प्लांट एण्ड मशीनरी एवं फिक्स्ड असेट्स में किया गया निवेश बुक्स ऑफ अकाउंट में दर्ज नहीं है। इसे मैं स्वेच्छापूर्वक करंट फाइनेंसियल ईयर में काकड़ा स्टील प्राइवेट लिमिटेड में अघोषित रूप से किये गये निवेश के रूप में स्वीकार करता हूँ एवं करारोपण के लिए तैयार हूँ।

प्रश्न 17- इसके अलावा भी क्या आप कुछ कहना चाहते हैं?

उत्तर - मैं यही कहना चाहता हूँ कि सर्वेक्षण की कार्यवाही शांतिपूर्वक एवं सहयोगात्मक रवैये के साथ की गई है। काकड़ा स्टील प्राइवेट में जो भी विसंगतियां पायी गई हैं उसे मैंने काकड़ा स्टील प्राइवेट लिमिटेड की अघोषित आय निवेश के रूप में स्वीकार किया है। यह राशि लगभग 5 करोड़ की होती है। इस पर चालू वित्तीय वर्ष में जो भी करारोपण होता है उसे मैं स्वेच्छापूर्वक देने को तैयार हूँ।

Thus, from the above statement recorded during the Course of survey it is seen that the assessee has made the disclosure to the tune of Rs. 5 crores as under.

Excess Stock	1,10,00,000/-.
Investment in Plant & Machinery	1,50,00,000/.
Bogus Wages Payable	9,00,000/-
Other miscellaneous discrepancies	30,00,000/-
Bogus sundry creditors	1,98,00,000/_

7. The assessee in his letter dated 26.12.2016 submitted that the books of account of the company are audited and the auditor has not pointed out any discrepancies in the regular books of account and hence request is made that only an amount of Rs. 1,14,90,455/- on account of sundry creditors may be added to the total income. The confessional statement made by the director is binding on the assessee as the retraction has not been made within reasonable time with sufficient evidences by the assessee. Further it is not the case that the assessee had surrendered the additional income of Rs. 5 crores under coercion, threat or undue influence. The reliance is placed on the decision of ACIT Vs Hukum Chand Jail (2010) 191 Taxman 319 (Chhattisgarh).

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8. Further, the assessee has not been able to demonstrate the compelling circumstances which had put the Director under mental tension during the Course of survey. It is crystal clear that the Director had surrendered only at the instance of discrepancies earthed during survey operation. **The Director by making surrender during survey, has induced the survey team/Assessing officer to abstain from collecting incriminating evidences against the assessee.** Hence the assessee cannot be allowed to enjoy the benefit of his act surrender and subsequent retraction made during the course of hearing on 26.12.2016.

9. Reliance is placed on recent decision of Deep Colonisers Vs Dy, CIT, Circle-1(2), Bhopal, ITA No. 4 70/Ind/2013. In this case, the survey operation u/s 133A was conducted on 22/06/2007 wherein some loose papers documents and hooks of account were found and seized. A register containing entries regarding extra work done on the plot was found and seized at the time survey. During the course of survey the partner surrendered an amount of Rs. 20 lakhs on account of extra work done. Further, for various irregularities the amount of Rs. 20 lakhs Were surrendered as undisclosed income. The assessee filed the return on 13/09/2008 declaring income of Rs. 36,176/-. However, the assessee did not disclosed additional income admitted during the Course of survey. In light of above facts the A. O. made the addition to the tune of Rs. 140 lakhs to the total income of the assessee relying on the judgement of ACIT Vs Hukum Chand Jail (2010) 191 Taxman 319 (Chhattisgarh). TheLd. CIT(A) confirmed the addition made by the Assessing Officer by relying on the above judgement. The assessee preferred an appeal before Hon' ble I.T.A.T. Indore bench, Indore. The Hon' ble ITA T has dismissed the appeal of the assessee. The relevant Portion of judgement is as under:-

"In the light of above, discussion we are of the considered opinion statement made voluntarily during survey could form basis of addition unless proved otherwise. In view of these fact and circumstances, we are of the considered opinion that by making surrender during survey, the assessee did induce the survey team to abstain from further collecting incriminating evidences against the assessee therefore, the assessee cannot be allowed to enjoy the benefit of his act of surrender by not offering the same for taxation. in view of these facts and circumstances, respectfully following the above judicial pronouncements and statement of partner of the assessee, recorded during the course of survey and specific admission of undisclosed income by the Assessee's, we upheld the finding of the lower authorities in making addition on account of surrender made during survey which was not retracted. accordingly, this ground of appeal is dismissed."

10. In view of these facts the additional income of Rs. 3,85,09,545/- {5,00,00,000(Income disclosed by the assessee) - Rs.1,14,90,455/- (Income disclosed by the assessee on account of sundry creditors written off)} is taxed in the hands of the assessee."

7. Being aggrieved by action of Ld. AO, the assessee carried matter in first-appeal before Ld. CIT(A).

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8. During first-appeal, the assessee made a lengthy submission running over 23 pages to Ld. CIT(A) which is noted in Para No. 4 of the appeal-order, we do not reproduce the same for the sake of brevity. Though the assessee made detailed submissions but on the basis of certain judicial rulings and on the strength of statement given by Shri Neeraj Goyal during the course of survey, the Ld. CIT(A) was of the view that the assessee should have disclosed full income of Rs. 5 Crore. Accordingly, none of the submissions made by assessee impressed the Ld. CIT(A), who upheld the addition made by Ld. AO by observing and holding thus:

"6. Ground No. 1:- Through this ground of appeal, the appellant has challenged the addition of Rs. 3,85,09,545/-. The A.O. made the addition on the ground that during the course of survey u/s 133A on 21.01.2014, the following discrepancies were found:-

<i>Excess stock</i>	<i>1,10,00,000</i>
<i>Investment in plant and machinery</i>	<i>1,50,00,000</i>
<i>Bogus wages payable</i>	<i>9,00,000</i>
<i>Other miscellaneous discrepancies</i>	<i>30,00,000</i>
<i>Bogus sundry creditors</i>	<i>1,98,00,000</i>
<i>Total (Rs.)</i>	<i>4,97,00,000</i>

The statement was recorded during the course of survey and the appellant has made the disclosure to the tune of Rs.5,00,00,000/ -.

In view of above facts the additional income of Rs.3,85,09,545/- - {Rs.50000000 (income disclosed by the assessee) - Rs. 1,14,90,455/- (Income disclosed by the assessee on account of sundry creditors written off)} has been added in the hands of the appellant.

The appellant while filing the return of income has disclosed the income of Rs.1,14,90,455/- and retracted from the disclosure by an amount of Rs.3,85,09,545/-.

As regards to the evidentiary value of the disclosure statement, Sections 17 to 31 of the Indian Evidence Act, 1872 deal with admission. As defined in section 17, it is a "statement, (oral or documentary or contained in electronic form) which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the person, and under the circumstances, hereinafter mentioned". The general rule with regard to admission is that the party or their

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representative says about the matter in dispute or facts relevant thereto which throw light on the issue in dispute or consideration. It is well settled that a party's admission as defined in sections 17 to 20, fulfilling the requirements of s.21, is substantive evidence proprio vigore. An admission, if clearly and unequivocally made, is the best evidence and though not conclusive, shifts the onus on to the maker. Reliance is placed on Thiru Jon v. Returning Officer, A 1977 (SC) 1724. Although, in this case there has been no allegation of coercion, the Courts have gone further and held that the confession need not be ruled out merely because of an allegation of use of coercion. Many statutes make use of such confessional evidence as long as it is proved that it was so obtained by operation or under circumstances which indicate an inference of such operation. The confessions are to be considered as a whole and not in any edited form. In the case of the assessee there has been no allegation of any coercion.

Even retracted confession was held to be binding, reference is made to the case of Surjit Singh Chhabra (1997) ISCC 508, 509(SC) wherein petitioner retracted his confession given to the customs officials, yet it was held to be binding. The Indian Law on confession can be understood from the following passage in a decision under criminal law in State of U.P. v. Boota Singh, AIR 1978 SC 1770.

"As, however, the confession was a retracted one, it could be acted upon only if substantially corroborated by independent circumstances. It is not necessary that a retracted confession should be corroborated in each material particular; it is sufficient that there is a general corroboration of the important incidents mentioned in the confession". In the instant case the confession was correlated to the material found during the course of Survey.

As held by the Supreme Court in Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 an admission is an extremely important piece of evidence though it is not conclusive. Therefore, a statement made voluntarily by the assessee could form the basis of assessment. The mere fact that the assessee retracted the statement could not make the statement unacceptable. The burden lay on the assessee to establish that the admission made in the statement at the time of survey was wrong and in fact there was no additional income. This burden does not even seem to have been attempted to be discharged. Thus, it is a clear and settled law that admission by a person is good piece of evidence though not conclusive and the same can be used against the person who makes it. The reason behind this is a person making a statement stops the opposite party from making further investigation. However, the statement is not conclusive and the person giving the statement can retract the same under certain circumstances:

(i) The first circumstance is where the statement is not given voluntarily but it was obtained under coercion, threat or undue influence. But the burden is upon the person making the statement to prove that the statement given by him was not voluntary. The assessee can discharge this burden by giving a direct evidence of coercion or threat by the Authorised Officer or by circumstantial evidence in this regard. The time gap between the statement and the retraction of statement would also one of the important points to be

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taken into account while deciding whether the statement was voluntary or not.

(ii) The other circumstance is where the statement was given under the mistaken belief of either fact or law. Here again the burden is upon the person giving the statement to prove that the statement given by him was factually incorrect or was untenable in law.

This view is supported by the decision of the Tribunal Bench of Ahmedabad in the case of Manharlal Kasturchand Chokshi v. ACIT [1997] 61 ITD 55 (Ahd.), and also in the case of Hotel Kiran v. A CIT [1971] 82 ITR 453 (Pune).

Apart from the above legal lacunae, the appellant's retraction also suffers from other procedural defects. The appellant, being responsible for the functioning of the manufacturing unit, voluntarily gave statement u/s 133A of the Income Tax Act, 1961 on 21.01.2014, which does not indicate any sort of pressure or coercion but alert presence of mind and clarity of thought of the deposing assessee. By this statement, it was categorically and unequivocally stated that the concern was not maintaining proper stock of goods. These facts were within the exclusive knowledge of the appellant, who voluntarily stated the same. Therefore, with these facts in exclusive knowledge domain, once disclosed voluntarily in full consciousness, were binding on the assessee, as the contrary could not be proved. Further, the Hon'ble ITAT, Pune Bench, in the case of Chander Mohan Mehta v. ACIT(Inv.) [1999] 65 TTJ (Pune) 327, has come to the conclusion that seized documents along with the statement recorded under section 133A constituted valid piece of evidence, which could be used in assessing undisclosed income. However, the two taken together have to be read as a whole. In the instant case, the assessee has clearly linked the unaccounted stock of concern to undisclosed income in statement u/section 133A of the Income Tax Act, 1961 and hence, such statement is binding on the assessee. Subsequently, the return filed, without showing the full disclosure made during the course of survey. This is the first time the appellant has retracted from his statement given during the course of survey on 21.01.2014, after a gap of nearly two years and two months.

These claims are baseless as no efforts were made by the assessee to inform of any such stance during post survey inquiries. This shows that the assessee is taking a plea to get away from his voluntary statement, as an after-thought. Claims have to be discarded as the assessee has not produced any evidence in that behalf. Once the statement of the assessee is voluntary and there has been no pressure, the same is binding on the assessee.

In the case of Council of Institute of Chartered Accountants of India vs. Mukesh R. Shah (2004) 186 CTR (Guj) 579, the High Court of Gujarat has held that "a retraction, so as to dislodge the admission made, should come about at the earliest point of time. It goes without saying that a retraction made after a considerable length of time, would not have the same efficacy in law as a retraction made at the earliest point of time from the day of admission. A belated retraction would fall in the category of afterthought instead of being retraction. That apart, for a retraction to be effective so as to dislodge the admission made earlier in point of time, the retraction has to be supported by contemporaneous evidence and the onus is on the person making such admission and retraction." Thus the legal position about the assessee's

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belated retraction is clear that it is an after-thought.

Thus, from the above analysis it emerges that:

- i. The retraction was made after a period of two years and two months;*
- ii. It was never communicated to the Departmental authorities, merely not disclosed with the return of income;*
- iii. From record it is impossible to hold that any threat or coercion has been exerted during the confession statement of the assessee.*
- iv. Irrespective of the form or validity of the voluntary disclosure statement or of the deposition taken from the assessee on 21.01.2014, the evidence of testimony cannot be wiped out and does not become non-existent and this evidence can well be utilised to frame the assessment on that basis.*

In view of the above position, the appellant's unsuccessful attempt to retract from the disclosure is untenable being an afterthought and is rejected. Therefore, the addition made by the AO amounting to Rs.3,85,09,545 / - is Confirmed. Therefore, this ground of appeal is Dismissed."

9. Now, the assessee has come in this appeal before us assailing the orders of lower authorities.

10. Ld. AR appearing on behalf of assessee argued at length referring to the orders of lower authorities, the documents placed in a Paper-Book and a Written-Synopsis filed by him. He critically analysed line by line the orders of lower authorities as re-produced above and strongly contested that a bare perusal of the orders of both of lower authorities make it very clear that the addition has been made / confirmed merely on the basis of confessional-statement of Shri Neeraj Goyal, one of the directors of assessee and that too, without any evidence, direct or corroborative, found by authorities. Ld. AR submitted that the CBDT has repeatedly said in its Circulars that no confessional-statement shall be obtained, therefore any addition made on the basis of confessional-statement is illegal and unsustainable:

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

Instances have come to the notice of the Board where assessees 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 assessees while filing returns of income. In these circumstances, on confessions during

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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 & 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.

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

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.

11. Ld. AR also submitted that there are innumerable decisions of Hon'ble Courts where it has been categorically held that the statements recorded

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during survey do not have any evidentiary value and cannot be a basis of addition. Id. AR has submitted an analysis of several decisions in his Written-Synopsis holding this proposition which we re-produce below:

1.	Pullangode Rubber Produce Co. Ltd. 91 ITR 18 (SC)	Held that (a) An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. b). Retraction from admission was permissible in law and it was open to the person who made the admission to show that it was incorrect.
2.	CIT vs. Chandrakumar Jethmal Kochar [2015] taxmann.com 292 (Gujarat)	Merely on basis of admission that few benami concerns were being run by assessee, assessee could not be subjected to addition when assessee retracted from such admission and revenue could not furnish any corroborative evidence in support of such admission
3.	CIT vs. Ramanbhai B Patel (Gujarat high Court)	Held that admission of undisclosed income by assessee is not conclusive if no evidence is found to support the admission. A retraction, though belated, is valid.
4.	CIT vs. Sunil Aggarwal (2015) 64 taxmann.com 107(Delhi)/ (2016) 237 Taxmann 512 (Delh)/ (2015) 379 ITR 367(Delhi)	Held that a retracted statement u/s 132(4) would require some corroborative material for the Id AO to make addition on basis of such statement.
5.	CIT vs. O. Abdul Razak 350 ITR 71 (Ker)	Initial Burden to show that confession was voluntary and not obtained by resorting to coercive means is on the department.
6.	TDI Marketing P Ltd. 28 SOT 215 (Del.)	Held that since basis of addition was statement of assessee rather than actual investment having been made, provisions of sec 69 were not attracted to such a situation.
7.	M. Narayanan & Bros. v. ACIT, SIC, Salem[2011] 13 taxmann.com 49 (Madras)	It was held that when assessee had explained his statement as not correct in context of materials produced, same could not be added to assessee's income.
8.	CIT vs Dhingra Metal Works 196 Taxman 488	Held that when assessee had been able to explain discrepancy in stock found during course of

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	(Del.)	survey, then addition solely on basis of statement made by partner on behalf of assessee could not be sustained.
9.	DCIT v.Narendra Garg & Ashok Garg [2016] 72 taxmann.com 355 (Gujarat)	It was held that where assessee retracted from disclosure made in statement under section 132(4) which was not accepted by revenue, and if no undisclosed income was found during search, revenue could not make addition on bare suspicion and presumption
10.	Basant Bansal v ACIT (2015) 63 taxmann.com 199 (Jaipur Trib.)	Held that neither any worthwhile incriminating material, information, and evidence was discovered as a result of impugned multiple search operations nor the additions sustained are based on any such material. The sole basis of additions is the disclosure which we have held to be involuntary. Consequently the additions do not conform to the mandate of sec. 153A.
11.	CIT v. Balaji Wire (P) Ltd. [2008] 304 ITR 393/[2007] 164 Taxman 559 (Delhi),	Statement made by any third party after the date of search is of no consequence; assessee has a right of its cross-examination. This having not been done the additions cannot be made
12.	CIT v.Harjeev Aggarwal [2016] 70 taxmann.com 95 (Delhi)	A statement recorded u/s. 132(4) can form basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search.
13.	Vinod Solanki v. UOI [2009] ELT 157(SC).	It is the burden of the Department that material brought on record including retracted statement must be substantially corroborated by other independent and cogent evidences.
14.	Krishan v. Kurukshetra University AIR 1976 SC 376.	Admission made in ignorance of supporting record and legal rights or under duress cannot bind such statement or disclosure.
15.	CIT v. Vikas Electronics (International) (P.) Ltd. [2007] 166 Taxman 137 (Delhi)	Whatever be the merits or demerits of statements of 'assessee, unless they could be directly connected with the recovery of any incriminating material during the search, they could not be used against the assessee.
16.	CIT Vs. Bhanwar Lal Murwatiya 39 TW 214	Department should bring on record sufficient evidence before making addition u/s 69 of the Income Tax Act, 1961 and the retreated statement cannot be made the sole basis for

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		making addition as it cannot be said to be conclusion.
17.	Kalishaben Manharlal Chokshi Vs. CIT (2008) 220 CTR (Guj) 138 : (2010) 328 ITR 411 : (2008) 174 TAXMAN 466 : (2008) 14 DTR 257	Addition on the basis of retracted statement u/s 132(4) - statement retracted by assessee after two months on the ground that it was recorded under coercion and duress cannot be basis of addition.
18.	Shree Ganesh Trading Co. v. CIT [2013] taxmann.com 170 (Jharkhand)	Held that the statement recorded u/s. 132(4) without corroborative evidence could not fasten liability
19.	Smt. Ranjnaben Mansukhlal Shah v. ACIT [2004] 2 881 (RAJKOT)	Held that AO could not make addition only on basis of disclosure statement without corroboration and evidence in support of disclosure statement.
20.	ACIT V. Jorawar Singh M. Rathod [2005] 148 Taxman 35(Ahd.) (MAG.)	Held that the surrender was under pressure as no such evidence or asset/evidence were found in movable or immovable property from the search premises, thus addition is unsustainable.
21.	Naresh Kumar Verma vs. ACIT, Central Circle, Patiala [2013] 32 taxmann.com 280 (Chandigarh – Trib.)	Held that addition in respect of job work charges merely on basis of statement was not sustainable as no evidence was found in possession of assessee to support the admission.
22.	DCIT, Circle 6(1), Ahmedabad vs. Pramukh Builders [2008] 112 ITD 179 (Ahm.) TM	Held that when the assessee retracted the statement and no other evidence was on record to show the undisclosed income baring statement, addition is unsustainable.
23.	Arun Kumar Bhansali V. DCIT [2006] 10 SOT 46 (Bang.) (URO)	Held that the Id AO should take cognizance of such correct income as depicted in books of accounts as well as seized material and should not adopt figures merely as per admission of assessee.
24	Shree Chand Soni V. DCIT [2006] 101 TTJ 1028 (Jodh.)	Held that where the addition was based on statement alone and no such income was disclosed in return filed for the block period but admitted and no incriminating document was found to support the impugned addition, the addition was to be deleted.

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25.	Rajesh Jain V. DCIT [2006] 100 TTJ 929 (Delhi)	Confessional statement should be corroborated with some material evidence to show that assessment was just and fair.
26.	Jyotichand Bhaichand Saraf & Sons P. Ltd. V. DCIT [2013] 86 DTR (Pune) 289	It was held that no addition can be made merely on the basis of statement recorded u/s 132(4) in absence of corroborative evidence.
27.	CIT vs S. Ajit Kumar 300 ITR 152 (Mad.)	Where no material was found during search in respect of amount allegedly paid by assessee to a builder, material found in course of survey in premises of builder could not be used in block assessment of assessee to make addition
28.	Abdul Quyme v CIT (1990) 184 ITR 404 (All)	An admission or an acquiescence cannot be a foundation for an assessment. A finding in this regard is a condition precedent and where no such finding is recorded, the action of the authority concerned cannot be upheld.
29.	CIT vs Radhe Associates (2013) 37 taxmann.com 336 (Guj.)	Held that the addition by assessee construction firm, only on basis of partner's statement which was later retracted, was not sustainable
30.	CIT vs M.P. Scrap Traders (2015) 60 taxmann.com 205 (Guj.)	Held that except statement, there was no other material or corroborative material with Assessing Officer to justify said addition – hence addition is unjustified

12. Then, Ld. AR carried also placed a heavy reliance on Page No. 1 to 8 of his Written-Submission to demonstrate that no evidence/material was available to the survey-team with regard to various items of addition, they have done only a table-exercise in an arbitrary, imaginary and hurried manner and just obtained confessional-statement of the director. It is noteworthy that the assessee has also taken such pleadings strongly before the Ld. CIT(A) as well as in the grounds of appeal raised before us.

13. With aforesaid submissions, Ld. AR argued that the addition made by lower-authorities are totally illegal as well as baseless, and deserves to be deleted.

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14. Per contra, the Ld. DR apart from relying on the findings of both of the lower authorities also submitted that the statements given by director of assessee-company have an important value and cannot be brushed aside. Ld. DR further submitted that the sheet of statements does not demonstrate that they were given under any duress or coercion. He further submitted that the assessee has not made any separate retraction, it is only so that the assessee has not disclosed income in the return of income. Hence, according to Ld. DR, the retraction is not acceptable. With these submissions, Ld. DR strongly argued that the orders of lower authorities cannot be said to faulty and no interference is required. Ld. DR prayed to uphold the addition.

15. We have considered rival contentions of both sides and perused the records placed before us. Before proceeding further, we would like to deal with a primary issue, which is of course a legal aspect, as to whether the revenue-authorities can obtain confessional-statements during survey and whether such statement, if not corroborated by any evidence, can be a basis for addition or not?

16. We have given a mindful thought and find as under:

- (i) In Circular dated 10.03.2003 (supra), the CBDT has categorically stated *“Such confessions, if not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search & seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income.”* Same view was re-iterated again in subsequent Circular dated 18.12.2014 (supra).

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- (ii) In the case of **CIT V/s S. Khadar Khan Son (2012) 25 taxmaan.com 413 (SC)**, Hon'ble Apex Court has dismissed the SLP filed by the Department observing the same to be without any merit which was filed against the judgment of Hon'ble High Court of Madras in the case of **CIT V/s S. Khadar Khan Son (2008) 300 ITR 157 (Mad.)**. The findings of Hon'ble High Court of Madras affirmed by Hon'ble Apex Court which are very much relevant in the instant case of the appellant are reproduced hereunder:

“7. From the foregoing discussion, the following principles can be culled out:-

(i) 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 and that the assessee should be given a proper opportunity to show that the books of accounts do not correctly disclose the correct state of facts, vide decision of the Apex Court in [Pullangode Rubber Produce Co. Ltd. v. State of Kerala](#) [(1973) 91 I.T.R. 18];

(ii) In contradistinction to the power under [section 133A](#), [section 132\(4\)](#) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the [Income-tax Act](#). On the other hand, whatever statement is recorded under [section 133A](#) of the Income-tax Act it is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law, vide [Paul Mathews and Sons v. Commissioner of Income-tax](#) [(2003) 263 I.T.R. 101];

(iii) XXX

(iv) XXX

(v) Finally, the word "may" used in [Section 133A\(3\)\(iii\)](#) of the Act, viz., "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act, as already extracted above, makes it clear that the materials collected and the statement recorded during the survey under [Section 133A](#) are not conclusive piece of evidence by itself.

8. For all these reasons, particularly, when the Commissioner and the Tribunal followed the circular of the Central Board of Direct Taxes dated 10.3.2003, extracted above, for arriving at the conclusion that the materials collected and the statement obtained under [Section 133A](#) would not automatically bind upon the assessee, we do not see any reason to interfere with the order of the Tribunal.”

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- (iii) Hon'ble jurisdictional High Court of Madhya Pradesh in the case of **Commissioner of Income Tax Vs. Digambar Kumar Jain (HUF) (2013) 84 DTR 0365** held thus:

"We have perused the record and found that merely on the basis of statement under [Section 133A](#) of the Income Tax Act, which was recorded during the survey, such addition could not have been made. To make such addition, some corroborating evidence against undisclosed income was required, which could not be found by the Assessing Officer. The Assessing Officer had made an addition merely on the basis of a statement recorded during survey under [Section 133A](#) of the Income Tax Act. The CIT (A) and the Tribunal had deleted it by holding that merely on the basis of such statement without corroboration, such addition could not be made.

Shri Lal learned counsel for the appellant also submitted that these authorities have not recorded any findings that the statement recorded under [Section 133A](#) of the Income Tax Act, was unbelievable, but considering the legal position as has been found by the CIT (A) and the Tribunal, the aforesaid contention has no merit. The view is supported by the judgments of various High Courts in (a) CIT Vs. Ms Dhingra Metal Works in ITA No.1111/2010 and (b) [CIT vs. S. Khader Khan Son](#) (2008) 300 ITR 157 (Mad), in which it has held thus :-

"In the instant case, there was a survey operation conducted under [s. 133A](#) in the assessee's premises and a statement was recorded from one of the partners. Assuming there were discrepancies and irregularities in the books of accounts maintained by the assessee, an offer of additional income for the respective assessment years was made by the partner of the firm. But, such statement, in view of the scope and ambit of the materials collected during the course of survey action under [s. 133A](#) shall not have any evidentiary value, as rightly held by the CIT(A) and the Tribunal, since such statement was not attached to the provisions of [s. 133A](#). It could not be said solely on the basis of the statement given by one of the partners of the assessee firm that the disclosed income was assessable as lawful income of the assessee. Since there was no material on record to prove the existence of such disclosed income or earning of such income in the hands of the assessee, it could not be said that the Revenue had lost lawful tax payable by the assessee. A power to examine a person on oath is specifically conferred on the authorities only under s.132(4) in the course of any search or seizure. Thus, the [IT Act](#), whenever it thought fit and necessary to confer such power to examine a person on oath, has expressly provided for it, whereas s.133A does not empower any ITO to examine any person on oath. Thus, in contradistinction to the power under s.133A, s.132(4) enables the authorized officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the [IT Act](#). On the other hand, whatever statement recorded under [s. 133A](#) is not given an evidentiary value. What is more relevant, in the instant case, is that the attention of the CIT(A) and the Tribunal was rightly invited to the circular of the CBDT dt. 10th March, 2003 with regard to the confession of additional income during the course of search and seizure and survey operations.- [Pullanquote](#)

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Rubber Produce Co. Ltd. vs. State of Kerala 1972 CTR (SC) 253 : (1973) 91 ITR 18 (SC), Paul Mathews & Sons vs. CIT (2003) 181 CTR (Ker) 207 : (2003) 263 ITR 101 (Ker) and CIT vs. G.K. Senniappan (2006) 203 CTR (Mad) 447 : (2006) 284 ITR 220 (Mad) relied on."

In view of the settled law of various High Courts as are referred in the order, we find that there was no error in the order passed by the CIT (A) and the Tribunal. This appeal does not involve any substantial question of law for our consideration. This appeal is accordingly dismissed."

17. Clearly, therefore, in view of the CBDT Circulars and the judgments of Hon'ble Supreme Court as well as jurisdictional High Court, there can hardly be any dispute that the statement given during the course of survey does not have evidentiary value, unless corroborated by sufficient evidences/materials. That also brings us to conclude that any addition made by revenue-authorities without credible evidence/materials is unlawful and unsustainable.

18. In the present case, a careful scrutiny of the assessment-order as well as first-appellate order reveals that the lower authorities have not based the addition made/confirmed by them on any evidence/material; they have made/confirmed addition solely by relying upon the statement of director. Needless to mention that in Para No. 8 of the assessment-order, the Ld. AO has gone to mention *"The Director by making surrender during survey, has induced the survey team/Assessing Officer to abstain from collecting incriminating evidences against the assessee."* This narration by Ld. AO, in itself, speaks everything without saying anything and is clearly against the mandate given by the CBDT in aforesaid Circulars. Therefore, the addition made by Ld. AO is contrary to the CBDT Circulars as well as **CIT V/s S. Khadar Khan Son (supra)** and **Commissioner of Income Tax Vs. Digambar Kumar Jain (HUF) (Supra)**. Since the lower authorities have not based the addition made/confirmed by them on any kind of evidence/material, nor the learned DR appearing on behalf of revenue could force the same before us during hearing, we are not persuaded to go into the details of same, if any. We are also aware that time and again, it is well-settled that the Revenue has to prove undisclosed income beyond doubt but this is totally absent in

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the present case. Thus, being enlightened and inspired by the CBDT Circulars and the decisions of judicial forums including those cited hereinabove, we find no merit in the addition of Rs. Rs. 3,85,09,545/- made by revenue-authorities. We, therefore, delete the same. With this, all grounds of this appeal are allowed.

19. In the result, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 22/12/2022.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 22.12.2022

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	10.12.22
2.	Date of typing & draft order placed before the	10.12.22

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	Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	10.12.22
4.	Date on which the approved draft is placed before other Member	19.12.22
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	