

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**IT(SS)A No. 85/Ind/2021**  
**Assessment Year: 2012-13**

DCIT, Central-II, Bhopal	<b>बनम/</b> Vs.	Shri Sudhir Kumar Agarwal, E-2/4, Arera Colony, Bhopal
(Appellant / Revenue)		(Respondent / Assessee)
<b>PAN: AASPA9450A</b>		
Assessee by	Shri Sumeet Neema, Sr. Advocate Shri Gagan Tiwari, Advocate, Ld. AR	
Revenue by	Shri P.K. Mishra, Ld. CIT-DR	
Date of Hearing	17.11.2022/22.02.2023	
Date of Pronouncement	18.05.2023	

**आदेश / O R D E R**

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

Feeling aggrieved by appeal-order dated 25.08.2020 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["Ld. CIT(A)"], which in turn arises out of a consolidated assessment-order dated 27.02.2014 passed by learned DCIT, Central, Bhopal ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"], to the extent it concerns Assessment-Year ["AY"] 2012-13, the revenue has filed this appeal on following grounds:

- “1. On the facts and in the circumstances of the case, the ld. CIT(A) erred in law in deleting the addition of Rs. 4,71,000/- made by the A.O. on account of unexplained cash.*

2. *On the facts and in the circumstances of the case, the ld. CIT(A) erred in law in deleting the addition of Rs. 2,50,00,000/- made by the A.O. on account of retraction from surrendered income.*
3. *On the facts and in the circumstances of the case, the ld. CIT(A) erred in law in deleting the addition of Rs. 10,00,000/- made by the A.O. on account of cash loan given to Sh. Vishal Chouhan.*
4. *On the facts and in the circumstances of the case, the ld. CIT(A) erred in law in deleting the addition of Rs. 3,50,000/-, Rs. 3,50,000/-, Rs. 17,04,000/- & Rs. 8,52,000/- made by the A.O. on account of on money payment against land purchase.”*

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

3. The registry has informed that the present appeal is filed after a delay of 151 days and therefore time-barred. Ld. DR prayed that the delay has occurred due to Covid-19 Pandemic. Ld. DR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted Ld. AR who agreed to the submission of Ld. DR. In view of this, the appeal is proceeded for hearing, there being no delay.

4. Brief facts leading to present appeal are such that a search u/s 132 was conducted on 21.10.2011 upon one "Sagar Group" of Bhopal and the assessee is also clubbed as a part of that group. Pursuant to search, assessments of six years from AY 2006-07 to 2011-12 were framed u/s 153A/143(3) and AY 2012-13 was framed u/s 143(3). Present appeal relates to AY 2012-13 for which the AO made assessment u/s 143(3) at a total income of Rs. 5,65,65,450/- after making several additions. The assessee carried matter in appeal, contested those additions and succeeded. Now, the revenue has come in next appeal before us assailing the order of first appellate authority. We shall proceed to decide various grounds in seriatim one by one.

**Ground No. 1:**

5. In this ground, the revenue claims that the CIT(A) has erred in deleting the addition of Rs. 4,71,000/- made by AO on account of unexplained cash.

6. During the course of search proceeding, the authorities found physical cash of Rs. 4,71,000/- available with the assessee, out of which cash of Rs. 4,00,000/- was seized. Thereafter, during assessment-proceeding, when the AO asked the assessee to explain the source of physical cash, it was submitted that the impugned cash was the residual amount of cash withdrawn from firm against imprest account for expenses. The assessee also filed cash-book of firm. But, however, the AO did not accept reply of assessee for the reason that during the course of search proceeding, no such explanation was given and moreover the cash-book of firm was not produced. During first-appeal, Ld. CIT(A) deleted addition by accepting assessee's explanation after examination of cash-book produced by assessee which showed available cash balance of Rs. 13,50,334/-.

7. Before us, Ld. DR supported the order of AO as against which the Ld. AR defended the order of CIT(A). On a careful consideration, we find that the assessee has made an identical explanation before both of the lower-authorities i.e. the impugned physical cash was out of withdrawals made from firm for imprest a/c of expenses. Further, the assessee has also placed on record the copy of cash-book of firm which has been verified by Ld. CIT(A) according to which the firm had a total cash balance of Rs. 13,50,334/- on the date of search. This finding given by Ld. CIT(A) could not be controverted by revenue. We find that the balance of Rs. 13,50,334/- shown by cash-book is sufficient to cover the imprest cash of Rs. 4,71,000/-. Thus, there is no infirmity in the explanation given by assessee to lower-authorities. Therefore, in our view, the CIT(A) is fully justified in deleting the

addition. We do not find anything wrong in the action of CIT(A). This ground is, thus, dismissed.

**Ground No. 2:**

8. In this ground, the revenue claims that Ld. CIT(A) has erred in deleting the addition of Rs. 2,50,00,000/- made by AO in respect of income surrendered by assessee.

9. Apropos to this ground, Ld. DR submitted that the AO was right in making this addition because in the statement recorded u/s 132(4) on 24.10.2011 and 08.11.2011, the assessee himself admitted/surrendered undisclosed income of Rs. 12.75 crore in the hands of himself/his family members/business concerns and subsequently vide letter dated 08.11.2011, the assessee again confirmed the said surrender of Rs. 12.75 crores. Despite such admission/surrender, the assessee-group declared only Rs. 10.25 crores of income in their returns and did not offer differential of Rs. 2.50 crores. Ld. DR submitted that in the case of **ACIT vs. Hukum Chand Jain (2010) 191 Taxmann.com 319 (Chhatisgarh)**, the Hon'ble High Court has held that the admission is one important piece of evidence but it cannot be said that it is conclusive. Ld. DR submitted that in that case, the Hon'ble High Court considered the judgement of Hon'ble Rajasthan High Court in the case of **Ramjas Naval vs. CIT 183 CTR (Raj) 144** where it was held that if the assessee admits undisclosed income at his free will without any threat and expresses his inability to submit any documentary evidence during search- proceeding, then subsequent contention of assessee that the income found during search is genuine, is an afterthought. Therefore, the AO was right in making addition in this regard and the Ld. CIT(A) had deleted the same without any cogent reason. Therefore, the order of first appellate may kindly be set aside by restoring that of the AO.

10. Replying to above. Ld. AR strongly supported the first appellate order and submitted that the AO has made addition which was not sustainable

and that is why it was rightly deleted by Ld. CIT(A). Ld. AR drew our attention towards relevant part of the first appellate order and submitted that during the course of search-proceeding itself, the assessee submitted brief details/working of various unexplained investments/assets aggregating to Rs. 10.25 crores, which is mentioned in assessment-order. Ld. AR submitted that in addition to such calculated investments/assets of Rs. 10.25 crore, the assessee also declared an additional sum of Rs. 2.50 crore as “miscellaneous surrender” with a condition that the same shall be confirmed after study of all loose-papers; that is how the revenue authorities are insisting on Rs. 12.75 crore [Rs. 10.25 crore + Rs. 2.50 crore] of undisclosed income. Ld. AR submitted that subsequently while filing returns of assessee-group u/s 153A, on study and examination of loose-papers, the assessee found nothing linking with the said “miscellaneous surrender” of Rs. 2.50 crores and therefore the assessee declared only Rs. 10.25 crores as undisclosed income; the miscellaneous surrender of Rs. 2.50 was deducted and not declared.

11. Ld. AR, supporting the first appellate order, vehemently pointed out that the AO has failed to bring on record any positive or adverse evidence having nexus with the assessee or any asset/investment/transaction carried out by assessee or by pointing out anything incriminating in assessee’s name or otherwise which could be linked with the “miscellaneous surrender” of Rs. 2.50 crore; still the AO has made addition of Rs. 2.50 crore without considering that the surrender by assessee to that extent was purely conditional or contingent. Therefore, it was rightly concluded by Ld. CIT(A) that the addition of Rs. 2.50 crore made by the AO was not on the basis of any incriminating material found during the course of search but only on the basis of statement of assessee. Ld. AR also pointed out that during post-search enquiries no irregularity or adverse material has been brought on record *qua* the impugned “miscellaneous surrender”. Ld. AR placed reliance on following decisions:

- i. ACIT (1) vs. Sudeep Maheshwari ITA No. 524/Ind/2013
- ii. Kailasben Mangarlal Chokshi Vs. Commissioner of Income Tax (2008) 14 DTR 257 (Guj.)
- iii. Shree Ganesh Trading Co. Vs. Commissioner of Income Tax, Tax Case No. 8 of 1999
- iv. M/s Ultimate Builders vs. ACIT Central-II, Bhopal ITA No. 134/Ind/2019 5. Kailashben Manharlal Choksi 328 ITR 411
- v. CIT vs. Jaya Lakshmi Ammal (2017) 390 ITR 189 (Mad.)
- vi. ACIT vs. Shri Yogesh Kumar Hotwani 30 ITJ 353/380 (Ind-trib)

12. Ld. AR submitted that without making any reference to any incriminating material found during search-proceeding suggesting of unaccounted income, Ld. CIT(A) was right in deleting the addition by following the order of ITAT Indore Bench in the case of **M/s Ultimate Builders (supra)** and other judgments including judgment of Hon'ble Gujarat High Court in the case of **Kailash Ben Manharlal Choksi (supra)**.

13. On careful consideration of the above submissions of both sides, first of all we note that the AO made addition on the basis of statement of assessee recorded on 24.10.2011 and 08.11.2011 and the assessee's letter dated 08.11.2011. On perusal of letter dated 08.11.2011, which is scanned by AO on Page No. 10 of the assessment-order, we find the submission made by assessee as under:

<i>Particular</i>	<i>Amount (Rs. in crores)</i>
<i>Work in progress of Agrawal Builder's at site "Sagar Royal Vilas"</i>	4.50
<i>Work in progress of Agrawal Builder's &amp; Colonizers at site "Sagar Lake View Homes"</i>	1.25
<i>Advance given to parties for land purchase</i>	1.71
<i>Cash kept of Agrawal Builder's at site "Sagar Royal Vilas"</i>	0.90

<i>Cash kept of Agrawal Builder's &amp; Colonizers at site "Sagar Lake View Homes"</i>	<i>0.94</i>
<i>Cash kept at farm house situated at Chan</i>	<i>0.95</i>
<b><i>Miscellaneous surrender [shall be confirmed after study of all papers]</i></b>	<b><i>2.50</i></b>
<i>Total Amount</i>	<i>12.75</i>

***The above disclosure of income is subject to revision / correction upon analysing of seized documents."***

The highlighted portion (in bold terms) of the letter of assessee clearly demonstrates that the assessee made a surrender of Rs. 2.50 crore with a clear condition/reservation that it shall be confirmed after study of all papers. Therefore, as submitted by Ld. AR, the surrender of Rs. 2.50 crore is not absolute; it was conditional and contingent upon study of all papers. Ultimately, when the assessee found nothing coming out of loose papers, the same was not offered for taxation.

14. Turning to the relevant part of the first appellate order, we note that the learned first appellate authority after extensively considering the statements, letter, reply and explanation of the assessee concluded that the assessee has made the deduction of Rs. 2.50 crores by submitting that no such undisclosed income was earned and therefore no such income was required to be offered to tax. For the sake of completeness, we find it appropriate to reproduce the relevant operative part of the first appellate order which reads as follows:-

*"4.4 Ground No. 5: Through this ground of appeal, the appellant has challenged the addition of Rs. 2,50,00,000/- on account of voluntary*

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surrender of undisclosed income. During the course of search vide statement u/s 132(4) dated 24.10.2011, the appellant has admitted undisclosed income of Rs. 12.75 Crores on behalf of himself, his family members and his business concerns. Various documents were found and seized containing details of undisclosed cash and undisclosed expenditure incurred by the assessee in his various projects by the month of April 2011. The relevant extract of loose paper are scanned on page no 7 & 8 of the assessment order. Therefore, the appellant was required to furnish explanation regarding surrender made during the course of search. The assessee in reply furnished bifurcated details of surrender made including sum of Rs. 10.25 crores made on account of miscellaneous surrender on account of loose papers. The further, brief details are as under:-

Name of Assessee	PAN	Amount reflected in seized Document (Rs.)	Amount declared in Income Tax Return (Rs.)
<b>M/s Agrawal Builders</b>	<b>AAEFA8222A</b>		<b>54000000</b>
(1)Payment of Materials at SRV (Sagar Royal Villas) site		20000000	
(2)Payment of Labour for SRV (Sagar Royal Villas) site		25000000	
(5)Cash at SRV		9000000	
<b>Mr .Sudhir Kumar Agrawal</b>	<b>AASPA9450A</b>		<b>26600000</b>
(7)Cash kept at Chhan House		9500000	
(8)Advance to site & Party for land (Kailash Narayan Patidar 0.21 cr.)		17100000	
<b>Mrs .Archana Agrawal</b>	<b>AASPA9447R</b>		<b>9400000</b>
(6)Cash at SLVH(HathaiKheda)		9400000	

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<b>M/s Agrawal Builders &amp; Colonizers</b>	<b>AATFA1630P</b>		<b>12500000</b>
(3)Material at Sagar Lake View Homes (SLV)		5000000	
(4)Labour at SLV HathaiKheda		7500000	
<b>Total Amount</b>			<b>102500000</b>

The AO after considering reply of the assessee did not find the same acceptable for the following reason:-

- a. On perusal of the reply it is evident that Shri. Sudhir Agrawal has surrendered amount of Rs.12,75,00,000/- in the hands of himself, his family members and his business concerns. However the assessee has offered for taxation of Rs. 10,75,00,000/- only in the hand of following assessee's :-

Name of Assessee	PAN	Amount declared in Income Tax Return (In Rs.)
M/s Agrawal Builders	AAEFA8222A	5,40,00,000/-
Mr .Sudhir Kumar Agrawal	AASPA9450A	2,66,00,000/-
Mrs .Archana Agrawal	AASPA9447R	94,00,000/-
M/s Agrawal Builders & Colonizers	AATFA1630P	1,25,00,000/-
<b>Total Amount</b>		<b>10,25,00,000/-</b>

- b. During the course of statement recorded u/s 132(4) of the I.T.Act, 1961 on 22/10/2011, Shri. Sudhir Agrawal has offered total undisclosed income to the tune of Rs. 12,75,00,000/- in the hands of himself, his family members and his business concerns. This undisclosed income was again confirmed by Shri Sudhir Agrawal during the course statement recorded u/s 132(4) dated 08/11/2011.
- c. Vide letter dated 08/11/2011 before the then DDIT-(Inv.)-I, Bhopal Shri. Sudhir Agrawal has again confirmed the above surrender.
- d. In the case of ACIT vs Hukum Chand Jain (2010) 191 Taxman 319 (Chhatisgarh), the Hon'ble Chhatisgarh High Court has held that admission is one important piece of evidence but it cannot be said that it is conclusive. It is rebuttable. It is open to the assessee who made admission to establish that confession was involuntary and the same was extracted under duress and coercion. The burden of proving that the statement was obtained by coercion

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*or intimidation lies upon the assessee. In this it was held by the Hon'ble Chhattisgarh High Court that where the assessee had voluntarily surrendered the undisclosed income during the course of search in the statement recorded u/s 132(4) to avoid the dispute with the I.T. Department and for mental peace, the onus of proving that confession made by him u/s 132(4) was a result of intimidation, duress and coercion or that the same was made as a result of mistaken belief of law or facts was on the assessee; assessee having failed to discharge his burden the AO was justified in not accepting the retraction and assessing the income of the assessee on the basis of surrender of undisclosed income made by the assessee u/s 132(4) of the I.T.Act,1961.*

- e. *The Hon'ble Chhattisgarh High court has also referred to the judgment of the Hon'ble Rajasthan High Court in the case of Ramjas Naval vs. CIT 183 CTR (RAJ) 144. Relevant portion is reproduced as under:*

*"In the matter of Ramjas Naval's case (supra) also, the Rajasthan High Court observed that the assessee admits that he is disclosing undisclosed income at his free will without any threat and expresses his inability to submit any documentary evidence during search proceedings, the subsequent contention of the assessee that the income found during the search proceedings is genuine is an afterthought."*

- 4.4.1 During the course of search at various premises of appellant various incriminating material/documents were found and seized. These documents were also confronted to appellant and the appellant in reply made voluntary surrender of Rs. 12.75 crores on various accounts. The brief details of additional income offered during the course of search are as under:-

Particulars	Amount Rs. in Crores
Work in Progress of Agrawal Builder's at site "Sagar Royal Vilas"	4.50
Work in Progress of Agrawal Builder's & Colonizers at site "Sagar lake view Homes"	1.25
Advances given to parties for land purchase	1.71
Cash kept of Agrawal Builders at site "sagar Royal Vilas"	0.90
Cash kept of Agrawal Builders &	0.94

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Colonizers at site "Sagar lake view Homes"	
Cash kept at farm house situated at Chan	0.95
Miscellaneous Surrender (Shall be confirmed after study of all loose papers)	2.50
<b>Total Amount</b>	<b>12.75</b>

The appellant after filing return of income u/s 153A did not find any investment linking with Rs. 2.50 Crores. However, has offered the sum of Rs. 10.25 crores in his tax return and return of his wife as under the head "Income from Other Sources" as other income. The details of additional income offered by appellant in return of income are under:-

Name of Assessee (PAN)	Amount Rs.	Remarks
M/s Agrawal Builders (AAEFA8222A)	54000000	Disclosed in the return of income & accepted in the assessment
Mr. Sudhir Agrawal (AASPA9450A)	26600000	Disclosed in the return of income but in assessment enhanced by Rs. 2.50 cores.
Mrs. Archana Agrawal (AASPA9447R)	9400000	Disclosed in the return of income & accepted in the assessment
M/s Agrawal Builders & Colonizers (AATFA1630P)	12500000	Disclosed in the return of income & accepted in the assessment
<b>Total Amount Rs.</b>	<b>10,25,00,000</b>	

The appellant on ad-hoc made voluntary surrender of Rs. 17.25 crores which was reduced to Rs. 10.25 crores and the balance amount of Rs. 2.50 crores was retracted. The appellant has strongly contended that no corroborative evidence on record to corroborate the conclusion of the AO, the assessee had earned income from undisclosed sources at Rs. 2.50 crores over and above Rs. 2.66 crores disclosed in the return.



**4.4.2** I have considered the facts of the case, plea of the appellant, case laws relied upon by the appellant and AO and findings of the AO. During the assessment proceedings u/s 143(3)/153A of the Act, assessee made the retraction by submitting that no such undisclosed income was earned and therefore no such income was required to be offered to tax. However, the A.O giving reference to the statement of appellant and also giving reference to the seized documents found during the search, made addition for undisclosed income. However, no specific reference was made to any incriminating material having its bearing on the surrendered income. During the course of appellate proceedings, appellant has contended that during the course of search no cash or unrecorded assets was found, no incriminating material was found and no income was offered to tax in the statement recorded u/s 132(4) of the Act of the person found to be in the possession and control of the books of premises. Relevant questions asked about the loose paper found were duly replied in the statement. Further, Id AR of the appellant has also contended that search in the case of appellant was started on 21.10.2011 and concluded on 22.10.2011. The statement of appellant was recorded on 24.10.2011 and cannot be utilized against assessee without having any corroborative evidence on record.

**4.4.3** The AO on page 7 & 8 of the assessment order has given specific reference of loosepaper mentioning details of payment of Rs. 10.25 crores which has been considered as incriminating documents by him based on which the addition has been made. I have gone through the said loose papers/observations and it has been observed that the said loose paper does not mention any amount more than Rs. 10.25 crores and appellant has already made voluntary disclosure of Rs. 10.25 crores in return filed by various concerns. All these facts have been accepted by the AO during the assessment proceedings and none of these facts have been disputed by

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the AO. Thus, the assessee has successfully explained that the seized paper and declared amount mentioned therein in return filed u/s 153A/139(1) of the Act. Accordingly, the papers (except one) referred to in the assessment order, no other incriminating document was found suggesting unaccounted income. The A.O has also failed to bring on record any positive evidence having nexus with the assessee or business transaction carried out by the assessee or by pointing out assessee's connection with the seized document in name or otherwise. Thus, it can be safely concluded that the addition made by the A.O was not on the basis of the incriminating material found during the course of search but only on the basis of statement of appellant only. Even in post search enquiries no irregularity has been brought on record and the only addition made is towards income declared in the statement recorded u/s 132(4). Hon'ble ITAT Indore in the case of ACIT(1) VS. Sudeep Maheshwari ITA No 524/Ind/2013 dated 13.02.2019 has held as under:-

*"6. It is the case of the assessee that during the course of search & seizure, no incriminating material or undisclosed income or investments were found. It is stated that the assessee was under mental pressure and tired. Therefore, to buy peace of mind, he accepted and declared Rs.3 crores in personal name. It is also stated that the case laws as relied by the A.O. are not applicable on the facts of the present case. The assessee has relied on the decision of the Hon'ble Supreme Court rendered in the case of Pullangode Rubber Produce Co. Ltd. 91 ITR 18 (SC), wherein the Hon'ble Court has held that admission cannot be said that it is conclusive. Retraction from admission was permissible in law and it was open to the person who made the admission to show that it was incorrect. However, reliance is placed on the judgement of the Hon'ble Gujarat High Court rendered in the case of CIT Vs. Chandrakumar Jethmal Kochar (2015) 55 Taxmann.com 292 (Gujarat), wherein it has been held that merely on the basis of admission that few benami concerns were being run by assessee, assessee could not be basis for making the assessee liable for tax and the assessee retracted from such admission and revenue could not furnish any corroborative evidence in support of such evidence. It was further urged by the assessee that admission should be based upon certain corroborative evidences. In the absence of corroborative evidences, the admission is merely a hollow statement. We have given our thoughtful consideration to the rival contentions of the parties. It is undisputed*

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*fact that the statement recorded w/s 132(4) of the Act has a better evidentiary value but it is also a settled position of law that the addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the contents of the statement. In the case in hand, revenue could not point out as what was the material before the A.O., which supported the contents of the statement. In the absence of such material, coupled with the fact that it is recorded by the Ld. CIT(A) that the assessee himself had surrendered a sum of Rs.69,59,000/- and Rs.75,00,000/- in A.Y. 2008-09 and 2009-10 respectively. The A.O. failed to co-relate the disclosures made in the statement with the incriminating material gathered during the search. Therefore, no inference is called for in the finding of the Ld. CIT(A) and is hereby affirmed. Ground raised by the revenue is dismissed."*

**4.4.4** Hon'ble Gujarat High Court in the case of **Kailashben Mangarlal Chokshi vs. CIT - (2008) 14 DTR 257 (Guj.)** has held that merely on the basis of admission, the assessee could not have been subject to additions, unless and until some corroborative evidence is found in support of such admission.

**4.4.5** Hon'ble Jharkhand High Court **Shree Ganesh Trading Co. V/s Commissioner of Income-tax**, Tax Case No.8 of 1999 order dated 03.01.2013 held as under;

*"4. We considered the submissions of the learned counsel for the parties and perused the reasons given in the impugned orders as well as reasons given in the case of Kailashben Manharlal Chokshi (supra).*

*5. It appears from the statement of facts that there was a search in the business premises of the petitioner's firm as well as in the residential premises of its partner, Shri Sheo Kumar Kejriwal, on 24th September, 1987. During the course of search, the statement of Shri Sheo Kumar Kejriwal had been recorded under section 132(4) of the Income Tax Act and in the statement, he stated that he was partner in the Ganesh Trading Company, i.e. the present assessee-firm in his individual status and that he surrendered Rs. 20 lacs for the assessment year 1988-89 as income, on which tax would be paid. He further stated that other partners would agree to the same; otherwise it would be his personal liability. However, in the returns filed after search, the income of Rs. 20 lacs surrendered by Shri Sheo Kumar Kejriwal was not declared by the assessee-firm. On being*

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asked to explain the reason for not showing the surrendered amount in the returns, it was submitted by the assessee that declaration made by the partner was misconceived and divorced from real facts. It was contended that the declaration was made after persuasion, which, according to the learned counsel for the assessee, Shri Binod Poddar, in fact, was because of coercion exerted by the search officers. In explanation, it was submitted that the firm or the individual had no undisclosed income. The assessee's said retraction was not accepted by any of the authorities below on the ground that the statement given by the assessee appears to be voluntarily given statement disclosing undisclosed income of Rs. 20 lacs. According to the learned counsel for the assessee, Shri Binod Poddar, the Assessing Officer had full jurisdiction to proceed for further enquiry and could have collected evidence in support of alleged admission of undisclosed income of the assessee.

6. We are of the considered opinion that statement recorded under section 132(4) of the Income Tax Act, 1961 is evidence but its reliability depends upon the facts of the case and particularly surrounding circumstances. Drawing inference from the facts is a question of law. Here in this case, all the authorities below have merely reached to the conclusion of one conclusion merely on the basis of assumption resulting into fastening of the liability upon the assessee. The statement on oath of the assessee is a piece of evidence as per section 132(4) of the Income Tax Act and when there is incriminating admission against himself, then it is required to be examined with due care and caution. In the judgment of Kailashben Manharlal Chokshi (supra), the Division Bench of Gujarat High Court has considered the issue in the facts of that case and found the explanation given by the assessee to be more convincing and that was not considered by the authorities below. Here in this case also, no specific reason has been given for rejection of the assessee's contention by which the assessee has retracted from his admission. None of the authorities gave any reason as to why Assessing Officer did not proceed further to enquire into the undisclosed income as admitted by the assessee in his statement under section 134(2) in fact situation where during the course of search, there was no recovery of assets or cash by the Department. This fact also has not been taken care of and considered by any of the authorities that in a case where there was search operation, no assets or cash was recovered from the assessee, in that situation what had prompted the assessee to make declaration of undisclosed income of Rs. 20 lacs.

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*Mere reading of statement of assessee is not the assessment of evidentiary value of the evidence when such statement is self-incriminating. Therefore, we are of the considered opinion that in the present case, a wrong inference had been drawn by the authorities below in holding that there was undisclosed income to the tune of Rs. 20 lacs.*

*7. In view of the above reasons, without answering the question about retrospective operation of the proviso to section 134(4), we are holding that the authorities below have committed error of law in drawing inference from the materials placed on record, i.e. admission of the assessee coupled with its retraction by the assessee. The Revenue may now proceed accordingly”.*

**4.4.6** Further, Hon'ble ITAT in the case of **M/s Ultimate Builders vs ACIT Central-II, Bhopal ITA No 134/Ind/2019** dated 09.08.2019, wherein it has been held that the statement given by the assessee was without any specific reference to any incriminating material therefore, addition on account of undisclosed income offered in statement was deleted. Besides this, decision of Hon'ble Gujarat High Court in the case of **Kailashben Manharlal Choksi 328 ITA 411 (2008)** also supports the contention that merely on the basis of admission, the assessee could not be subjected to addition unless & until some corroborative evidences is found in support of such addition.

**4.4.7** In the case of **CIT vs Jaya Lakshmi Ammal (2017) 390 ITR 189 (Mad.)** Hon'ble Madras High Court ha held as under:

*“we are of the considered view that, for deciding any issue, against the assessee, the authorities under the IT Act, 1961 have to consider, as to whether there is any corroborative material evidence. If there is no corroborating documentary evidence, then statement recorded under s. 132(4) of the IT Act, 1961, alone should not be the basis, for arriving at any adverse decision against the assessee. If the authorities under the IT Act, 1961, have to be conferred with the power, to be exercised, solely on the basis of a statement, then it may lead to an arbitrary exercise of such power. An order of*

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Sudhir Kumar Agrawal,  
Appeal No. CIT(A)-3/BPL/IT-10124/2014-15

A.Y 2012-13,

*assessment entails civil consequences. Therefore, under Judicial review, courts have to exercise due care and caution that no man is condemned, due to erroneous or arbitrary exercise of authority conferred."*

*The court further held that "if the assessee makes a statement under s. 132(4) of the Act, and if there are any incriminating documents found in his possession, then the case is different. On the contra, if mere statement made under s. 132(4) of the Act, without any corroborative material, has to be given credence, than it would lead to disastrous results. Considering the nature of the order of assessment, in the instant case characterised as undisclosed and on the facts and circumstances of the case, we are of the view that mere statement without there being any corroborative evidence, should not be treated as conclusive evidence against the maker of the statement."*

**4.4.8** Hon'ble Jurisdictional Tribunal Indore in the case of **ACIT Vs. Shri Yogesh Kumar Hotwani 30 ITJ 353/380** (Ind-Trib) has held that no addition can be made merely based on statement u/s.132(4) without linking to the seized books of accounts, other documents, money, bullion, jewellery or other valuable articles or things. In para 18 of the order, at page 380, the Tribunal held as under :-

*We also find that disclosure was not made by the assessee hence it is not binding on him. We also rely on the decision in the case of CIT v. Chandra Kumar Jethmal Kochar, (2015) 230 Taxman 78 (Guj), Asstt. CIT v. Kunwarjeet Finance Pvt. Limited, (2015) 61 Taxmann.com 52 (Ahm.-Trib.), CIT v. Jagdish Narayan Ratan Kumar, (2015) 61 taxmann.com 173 (Raj), wherein it was held that when addition of disclosure made by the assessee in statement recorded u/s 132(4), it cannot be sustained despite retraction, when Revenue could not furnish any positive evidence in support of such addition. Therefore, we are unable to uphold the findings of the AO and inclined to agree with Ld. CIT(A). Further, the Hon'ble Rajasthan High Court in the case of Jagdish Narayan Ratan Kumar (supra) has held that statement made during search must be correlated with records, which are found and if there is no ambiguity, explanation given by the assessee should be taken into consideration before making assessment. Thus, based on these decisions, we are of the opinion that the addition made by merely based on statement u/s 132(4) without linking to the seized books of accounts, other documents, money, bullion, jewellery, other valuable articles or things is not sustainable in law*

**4.4.9** In view of the above discussion & facts stated above, I come to unescapable conclusion that the AO was not justified in making addition

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*of Rs. 2,50,00,000/- as unaccounted income based on disclosure made during the search because no specific reference has been made by the AO to any incriminating material found during the course of search suggesting earning of such unaccounted income. Therefore, judiciously following the decision of Hon'ble ITAT, Indore in the case of Sudeep Maheshwari, Yogesh Kumar Hotwani & M/s Ultimate Builders (supra), the addition made by the AO amounting to Rs. 2,50,00,000/- is Deleted. Therefore, appeal on this ground is Allowed."*

15. On being asked by Bench, the Ld. DR, except taking basis of the statements of assessee recorded during the course of search and seizure operation on 24.10.2011 & 08.11.2011 and the letter dated 08.11.2011, could not show us any positive, adverse or cogent documentary evidence or incriminating material to show that the remaining amount of surrender of Rs. 2.50 crores, which was not included in the return of income was, in fact, earned by the assessee from undisclosed sources. That brings us to find that the AO has made impugned addition solely on the basis of statement of the assessee alongwith his whims, wrong assumptions and presumption by arising suspicion and doubt over the statements and explanation of the assessee. At this juncture, we take respectful cognizance of the judgment of Hon'ble Supreme Court in the case of **Umacharan Shaw & Bros. Company vs CIT (supra)** wherein it was held that the suspicion, however, strong cannot take a place of proof. In the subsequent judgment in the case of **K.P Verghese vs. ITO (supra)**, the Hon'ble Supreme Court again held that the assessee must be shown to have received more than what is disclosed by him.

16. On careful consideration of stand of the AO and basis taken by the Ld. CIT(A) for deleting the addition, we may point out that the Hon'ble High Court of Gujarat in the case of **Kailasben Mangarlal Choksh vs. CIT(supra)** held that merely on the basis of admission of assessee, the assessee could not have been subjected to addition, unless and until some collaborative evidence is found in support of such admission. Meaning thereby addition on the standalone basis of statement of assessee u/s 132(4) of the Act cannot be held as sustainable in absence of collaborative evidence found in

support of such addition. Further, the Hon'ble Jharkhand High Court in the case of **Shri Ganesh Trading Company vs. CIT(supra)** held that mere reading of statement of assessee is not the assessment of evidentiary value of the evidence when such statement is self-incriminating. In this case the Hon'ble High Court noted that the authorities below have not considered a fact that in a case where there was a search operation, no asset or cash was recovered from the assessee, in such a situation what had prompted the assessee to make declaration of undisclosed income of Rs. 20 lakhs.

17. In the present case also the assessee during the course of search operation in the statement and subsequently by way of letter dated 08.11.2011, as has been reproduced above, was sure about the surrender of Rs. 10.25 crores under various heads, however regarding remaining Rs. 2.50 crore, the assessee in the said letter clarified that the said amount pertaining to miscellaneous surrender shall be confirmed after study of all papers. Subsequently at the time of filing return u/s 153A of the Act, the assessee-group included Rs. 10.25 crore leaving the amount of Rs. 2.50 crore for the precise reason, which has been clearly accepted by Ld. CIT(A), that the assessee right from search and seizure operation till filing of return could not find any substantive material or investment which could be considered for supporting the surrender of remaining amount Rs. 2.50 crore. Therefore the Ld. CIT(A) was right in deleting the unsustainable addition made by the AO by relying various judicial rulings as narrated by him. We are unable to see any ambiguity, perversity or any other valid reason to interfere with the findings arrived by the Ld. CIT(A) in this regard. Therefore, we uphold the same. Accordingly, this ground of Revenue is dismissed.

**Ground No. 3:**

18. In this ground, the revenue claims that the CIT(A) has erred in deleting the addition of Rs. 10,00,000/- made by AO on account of cash loan given to Mr. Vishal Chouhan.

19. During search proceeding, a document inventorised as "LPS-4/51-Page No. 164" was seized which is scanned by AO on Page No. 85 of the assessment-order. This document is a "Receipt" signed by one Mr. Vishal Chouhan in which Mr. Vishal Chouhan has acknowledged having taken a loan of Rs. 10,00,000/- from assessee on 05.07.2011 with a promise to return back within a week. During assessment-proceeding, when the AO confronted assessee *qua* this document, the assessee submitted following reply dated 17.02.2014 which is re-produced by AO in Para No. 31.2 of assessment-order:

*"Regarding the receipt of Vishal Chouhan the submission of the assessee is that the assessee had given temporary loan to Mr. Vishal Chouhan and as mentioned in the receipt itself it was returned by him after one week."*

However, the AO was not satisfied with the submission of assessee mainly for the reasons that (i) the assessee had not submitted any evidence regarding source of cash-loan made to Vishal Chouhan; and (ii) the cash-loan was not recorded in the books of account of assessee.

20. During first-appeal, Ld. CIT(A) deleted addition by observing as under:

*"1.5.1 I have considered the facts of the case, plea raised by the appellant and finding of the AO. The appellant before me has claimed that Mr. Vishal Chouhan is one of the business associates and has assisted appellant many time. Shri Vishal Singh was in need of sum of Rs. 10 lacs and appellant promised him for any help. Therefore, the appellant kept aside sum of Rs. 10 lacs available in cash book of its firm as on 05.07.2011. For safety and remembrance, an acknowledgement was made. Subsequently, Shri Vishal came to meet appellant and signed the receipt and stated that he will collect the amount in evening. In the evening, the appellant received call from Shri Vishal Chouhan and he stated that the said amount was never taken by Shri Vishal Chouhan and no entry was made in books of account. In support appellant has filed copy of cash book as on 05.07.2011. On perusal of the copy of the cash book it is evidently clear that appellant was having total cash of Rs. 26,40,918/-. **I find strong force in the plea raised by the appellant that he was having sufficient cash in hand out of which***

**sum of Rs. 10 lacs was proposed to be handed over to Shri Vishal Chouhan, however, the same was never handed over to Shri Vishal Chouhan therefore, no book entry was passed. The AO on other hand failed to bring on record any evidence showing the said amount was actually paid by the appellant. Further, no enquiry was made by the AO from Shri Vishal Chouhan. Therefore, in absence of any cogent evidence and statement of the beneficiary, the addition made by the AO amounting to Rs. 10,00,000/- is Deleted. Therefore, appeal on this ground is Allowed.”**

**[Emphasis supplied]**

21. Before us, Ld. DR representing the revenue strongly opposed the order passed by CIT(A). He argued that the assessee has himself admitted before AO in his reply dated 17.02.2014 that a temporary loan was given to Mr. Vishal Chouhan which was returned after one week. But the assessee has taken a totally opposite stand before CIT(A) that the said amount was never taken by Shri Vishal Chouhan and hence no entry was made in books of account. Ld. DR submitted that the assessee has cooked this new theory just to come out of categorical finding made by AO in assessment-order that the impugned loan was not recorded in the books of assessee. Ld. DR strongly argued that such grossly opposite stand of assessee is, without saying anything more, sufficient enough to demonstrate that the entire explanation given by assessee is deceptive/false. Ld. DR submitted that the CIT(A) has simply recorded in his order the assessee's version and granted relief which is absolutely perverse. In nutshell, Ld. DR argues that, irrespective of the cash-balance shown by assessee's cash-book as on 05.07.2011, the assessee does not deserve any relief for twin-reasons, namely (i) the assessee's explanation to CIT(A) is deceptive/false; and (ii) it is a fact that the loan given to Mr. Vishal Chouhan is not recorded in books of account. Therefore, Ld. DR argued, the assessee has given loan from undisclosed sources and the AO has rightly made addition u/s 69.

22. Per contra, Ld. AR strongly supported the order of CIT(A). He submitted that the assessee has given sufficient explanation for non-recording of the impugned loan in cash-book. He submitted that even otherwise the assessee was having cash balance of Rs. 26,40,918/- as on

05.07.2011 which is more than enough to cover the impugned cash loan of Rs. 10,00,000/- in any case. Therefore, Ld. CIT(A) has rightly deleted the addition made by AO and his action must be upheld.

23. We have considered rival submissions of both sides and perused the orders of lower-authorities. On a careful consideration, we find that in the seized-document which is in the form of a "Receipt", Mr. Vishal Chouhan has clearly acknowledged having received a loan of Rs. 10,00,000/- from assessee. Further, in his reply dated 17.02.2014 submitted to AO, the assessee himself admitted that he has given a loan to Mr. Vishal Chouhan which was returned back after one week. However, during first appellate proceeding, the assessee has taken a grossly deviating stand that no loan was given to Mr. Vishal Chouhan and therefore no entry was made in the books of account. On perusal of order of first-appeal, we observe that the CIT(A) has concluded *"The AO on other hand failed to bring on record any evidence showing the said amount was actually paid by appellant"*. We are unable to understand how such irresponsible conclusion blaming the AO has been noted by CIT(A) when the AO has categorically re-produced assessee's own submission in Para No. 31.2 of assessment-order which reads thus *"The assessee vide reply dated 17/02/2014 stated that – Regarding the receipt of Vishal Chouhan the submission of the assessee is that the assessee had given temporary loan to Mr. Vishal Chouhan and as mentioned in the receipt itself it was returned by him after one week."* Be that as it may, we are confined to adjudicate the controversy. For that, in the scenario before us, we are certainly in agreement with Ld. DR that the assessee's explanation before CIT(A) is deceptive/false/contradictory to assessee's own explanation before AO and hence the same cannot be given any credence. From the aforesaid reply dated 17.02.2014 filed by assessee to AO, we find that the assessee has himself admitted having given a loan of Rs. 10,00,000/- to Vishal Chouhan. Further, it is also an undisputed fact that the impugned loan was not recorded in cash-book of assessee. Faced with these categorical facts, we are of the considered view that the AO has

rightly taken a conclusion that impugned loan was given out of unexplained sources. Therefore, the addition made by AO is very much legal and justified. Ld. CIT(A) has wrongly given relief to assessee; we reverse his action and uphold the addition made by AO. The revenue succeeds in this ground.

**Ground No. 4:**

24. In this ground, the revenue claims that the CIT(A) has erred in deleting the addition of Rs. 3,50,000/-, Rs. 3,50,000/-, Rs. 17,04,000/- and Rs. 8,52,000/- made by AO on account of on-money payment against land purchase.

25. Taking lead in the matter, Ld. AR instantly pointed out that these additions were made in the hands of assessee on protective basis and the same were substantively added in the assessment of M/s Sagar Manufacturers Pvt. Ltd. However, on appeal by M/s Sagar Manufacturers Pvt. Ltd, the CIT(A) has already deleted all these additions fully and the order of CIT(A) has also been upheld by **ITAT Indore in IT(SS)A No. 112/Ind/2019 dated 31.08.2022**; therefore the protective additions made in the hands of assessee cannot survive. Ld. DR could not object to this submission of Ld. AR.

26. On perusal of the order in **IT(SS)A No. 112/Ind/2019 (supra)**, we find that the impugned additions made substantively in the hands of M/s Sagar Manufacturers Pvt. Ltd. stand fully deleted by Hon'ble Co-ordinate Bench of ITAT, Indore. For the sake of immediate reference, we re-produce below the said order:

**“Revenue’s IT(SS)A No. 112/Ind/2019:**

5. *This appeal relates to assessment-year 2012-13 whose assessment has been made u/s 143(3) of the act. Precisely stated the facts relevant to this appeal are such that the assessee-company has not commenced its business activities and hence filed Income-tax Return [“ITR”] declaring a total income of*

Rs. Nil. The Ld. AO, however, completed assessment u/s 143(3) after making a total addition of Rs. 3,55,71,190/- as per details given below:

<i>On-money payment against purchase of land</i>	3,50,000
<i>On-money payment against purchase of land</i>	3,50,000
<i>On-money payment against purchase of land</i>	17,04,000
<i>On-money payment against purchase of land</i>	8,52,000
<i>On-money payment against purchase of land</i>	3,23,15,190

6. Aggrieved by order of assessment, the assessee filed appeal to Ld. CIT(A). During appellate-proceeding, the Ld. CIT(A) deleted all additions. Now, the revenue has come in appeal before us challenging the action of Ld. CIT(A), on the following Grounds:

“(1) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.3,50,000/- made by Assessing Officer on account of on-money payment of against land of the Income Tax Act, 1961

(2) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.3,50,000/- made by Assessing Officer on account of on-money payment of against land of the Income Tax Act, 1961

(3) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.17,04,000/- made by Assessing Officer on account of on-money payment of against land of the Income Tax Act, 1961

(4) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.8,52,000/- made by Assessing Officer on account of on-money payment of against land of the Income Tax Act, 1961.

(5) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.3,55,71,190/- made by Assessing Officer on account of on-money payment of against land of the Income Tax Act, 1961

(6). The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date, the appeal is finally heard for disposal.”

10. **Ground No. 1 to 4:** In these Grounds, the revenue has claimed that the Ld. CIT(A) has erred in deleting of the addition of Rs. 3,50,000/-, 3,50,000/-, 17,04,000/- and 8,52,000/- made by Ld. AO on account of on-money payments against purchase of lands. The facts relating to all these additions are very simple and almost identical, hence need a brief mention only. In all cases, initially the DDIT(Inv), Bhopal recorded statements of the sellers. In cases of addition of Rs. 3,50,000/- and 3,50,000/-, the Ld. AO too recorded the statements of the sellers. During statements, the sellers admitted to have received on-money from the assessee which was not disclosed in the registry of lands. Based on these oral-statements of sellers, the Ld. AO made additions. Ld. CIT(A), however, observed significant shortcomings, viz. (i) no opportunity of cross-examination was given to the assessee, (ii) there are contradictions in the replies given by the sellers in the statements, (iii) the sellers have not given corroborative evidences to support their replies in the

statements, and (iv) Ld. AO did not make any independent enquiry and solely relied upon the oral-statements without any supportive evidence to prove that the assessee has really paid on-money. Based on these findings, the Ld. CIT(A) has deleted all additions. Ld. AR submitted that the order of Ld. CIT(A) is self-explanatory and does not require much deliberation. We have given mindful consideration to the shortcomings observed and conclusions noted by Ld. CIT(A) in his order and do not find any infirmity. Therefore, we agree that the Ld. CIT(A) has rightly deleted these additions made by Ld. AO. Accordingly, we dismiss Ground No. 1 to 4 of the Revenue.”

27. Clearly, therefore, the Hon'ble Co-ordinate Bench has deleted the substantive additions after considering the factual as well as legal position. Consequently, the protective additions relating to those transactions made in the hands of assessee cannot survive. Therefore, we do not find any merit in this ground of revenue and the same is hereby dismissed.

**28. Resultantly, this appeal of revenue is partly allowed in terms indicated above.**

Order pronounced in the open court on 18/05/2023.

Sd/-

(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 18.05 .2023  
Patel/Sr. PS

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

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore