

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM**  
**आयकर अपील सं./ITA No.145/RPR/2018**  
(Assessment Years: 2014-2015)

ACIT, Circle-2(1), Raipur	Vs	PSA Construction, 24B, South Avenue, Choubey Colony Raipur
<b>PAN No. :AAHFP 3578 K</b>		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
निर्धारिती की ओर से /Assessee by	:	Shri Veekaas S Sharma, CA
राजस्व की ओर से /Revenue by	:	Shri Piyush Tripathi, Sr. DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	01/05/2023
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	17/07/2023

**आदेश / O R D E R**

**Per Arun Khodpia, AM :**

The department has filed this appeal against the order passed by the CIT(A)-I, Raipur, dated 27.04.2018 for the assessment year 2014-2015, on the following grounds :-

1. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,32,59,204 made by the AO by estimating the income @ 8% of gross receipts, after rejecting the books of accounts u/s 145(3) of the I. T. Act, 1961?"
2. Whether on points of law and on facts & circumstances of the case, the Hon'ble ITAT was justified in confirming the order of Ld. CIT(A) having concurrent powers of the AO u/s 250(4) of the Act, was justified in deleting the addition of Rs. 2,32,59,204/- made by the AO in the absence of satisfaction of documentary proof regarding maintenance of books of account as per accounting standard AS-1?"
3. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in giving a finding which is contrary to the ratio of the decisions of Hon'ble Allahabad High Court in the case of Awadhesh Pratap Singh Abdul Rehman & Bros Vs. CIT 201 ITR 406 (All.) regarding parameter of satisfaction for rejection of books of account?"
4. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in accepting fresh evidence produced by the assessee, if any without allowing the AO, proper opportunity to examine the same, thereby violating the provisions on law under Rule 46A of the I.T. Rules?"
5. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in giving a decision in favour of the assessee and against the revenue though there is no nexus between

*the conclusion of fact and primary fact upon which conclusion is based?*

6. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,32,59,204/- by giving a finding which is contrary to the evidence on record, as the Ld. CIT(A) has accepted the profit result of the assessee after relying on the submission produced before him by the assessee without appreciating the content of the statement of Sh. Sanjay Singhal and other circumstantial evidences gathered during the survey proceedings which were also confronted in the statements, a finding which is factually incorrect thereby rendering the decision, which is perverse?"*
7. *"The order of Ld. CIT(A) is erroneous both in law and on facts."*
8. *"Any other ground that may be adduced at the time of hearing."*

2. Brief facts of the case are that the assessee is a partnership firm engaged in the activity of civil construction (construction of roads) and filed its return of income electronically on 03.09.2014 declaring total income at Rs.77,71,280/-. The case of the assessee was selected for scrutiny through CASS and on issuance of statutory notices by the AO, the assessee appeared and filed tax audit report in Form No.3CB and 3CD along with Balance Sheet and Capital Account for the assessment year under consideration along with two preceding assessment years and also filed books of accounts, which were verified by the AO. A survey u/s.133A of the Act was conducted on 08.03.2016 and during the course of survey, various incriminating documents like books of accounts, loose papers etc. were found. It was also noted by the AO that some documents were also found which mentions the cash transaction. It was further found by the AO that the assessee could not produce the books of accounts during the survey proceedings, however, the assessee during the course of assessment proceedings, produced books of accounts, bills and vouchers, which were not accepted by the AO stating that the same have been prepared by the assessee after the survey proceedings, which is an

afterthought. Therefore, the AO rejected the books of accounts u/s.145(3) of the Act and estimated the net profit @8% on the total gross receipt and made addition of Rs.2,32,59,204/-.

3. Against the said order of AO, the assessee preferred appeal before the CIT(A) and the CIT(A) deleted the addition made by the AO and allowed the appeal of the assessee. Now, the revenue is in appeal before the Tribunal.

4. Ld. Sr. DR filed his written submissions, which read as under :-

*Sub:- Appeal filed under section 253 by the Revenue in the case of  
PSA construction For the A.Y. 2014-15-- request regarding –*

<i>Appellant</i>	<i>The revenue</i>	<i>Partnership firm</i>
<i>Assessment year</i>	<i>2014-15-</i>	<i>Trading of tractors, trolley and parts</i>
<i>ITR us 139</i>	<i>03-09-2014</i>	<i>Rs.77,71,280/-</i>
<i>Assessed income us 143(3)</i>	<i>24-12-2016</i>	<i>Rs.3,10,30,484/-</i>
<i>Addition</i>	<i>Rs.2,32,59,204/-</i>	<i>8% on cash payment of Rs.4,09,06,963/- calculated at Rs.,3,34,49,568/-, reduced declared NP of Rs. 1,01,90,365/- and net NP of Rs.2,32,59,204/- added, based qu.no 14 page 8 of statement of Shri Sanjay Singhal (Para-6 page-3)</i>
<i>Revenue effect</i>	<i>97,56,280/- (aprox.)</i>	<i>It is Assesee's appeal, hence, CBDT Circular no 17/2019 dated 08-08-2019 and does not fall under exceptional cases vide CBDT circular no 03/2018 dated 11-07-2018, is <b>applicable</b> in the case .</i>
<i>AO is observation</i>		<i>Based on survey finding and statement and various discrepancies, the AO was in view that books of accounts is not reliable. (Para-03 Page-01)</i> 1. <i>AO show caused the assessee for rejection of books of account (para-4 page-2)</i> 2. <i>AO adjudicated assessee explanation on production of books of account para-4 page-2)</i> 3. <i>Based on reply of the partner, the AO rejected the explanation on production of books of account</i>

		and rejection of books of accounts us 145(3) of the Act.(para4.1 page-28c3 ) 4. Books of accounts produced during the assessment proceedings is after thought and manipulated ( para-4.1 page-3) 5. The AO rejected books of accounts and estimated income at the 8% of Rs.3,34,49,568/ allowed disclosed NP and assessed addition at Rs.2,32,59,204/-
Part-B-Appellate proceedings		
Ground of appeal before CIT appeal		GR-1-books of account rejected under section 145(3) is bad in law. GR-2- AO errored in applying 8% under section 44AD on gross receipt for determining income. GR-3- AO errored in not allowing depreciation of Rs.2,38,23,872/-. GR-4- AO errored in not allowing deduction us 40(b) GR-5- AO errored in not allowing deduction on hire purchase charges GR-6 General in nature
Date of order of CIT appeal CIT appeal observation	27-04-2018 Served on 08- 09- 2022	GR-1-books of account rejected under section 145(3) is bad in law . Allowed  GR-2- AO errored in applying 8% under section 44AD on gross receipt for determining income. Allowed  GR-3- AO errored in not allowing depreciation of Rs.2,38,23,872/-. Infructuous hence dismissed  GR-4- AO errored in not allowing deduction us 40(b) GR-5- AO errored in not allowing deduction on hire purchase charges Infructuous hence dismissed  GR-6 General in nature Infructuous
Observation of CITA		• Statement recorded under unsound mind, and commitment by the assesee without material

		facts before survey authority is an admissible affirmation or commitment. ( para-1 page-12) 6. Prolonged detention of books of accounts and statement recorded after that is coercion and pressure on despondent and is not valid.(para-3 page 12) 7. Addition based on unsound mind, not supported with material facts is legally not justified and hence addition deleted( para-3 page 13)

<b>PART-C Appeal before Hon'ble ITAT</b>	20-07-2018	GR-1 CIT erred in deleting addition of Rs.2,32,59,204/- GR-2 CIT failed trigger section 250(4) while deleting Rs.2,32,59,2024. GR-3CIT appeal Ignored decision held in the case of Awdhesh Pratap sing vs Vs CIT 201 ITR 406( All) on rejection of books of account Gr-4 CIT A violated rule 46 by admit ding additional evidences. Gr-5 CIT A erred in ignoring contradictory facts stated by the Shri Sanjay Singhal and facts on records.
<b>Due date Grounds of appeal</b>	27-06-2018-	Filed on 20-07-2018.
<b>Evidences on records</b>	Reasons for applying section 145(3)	<p>• <b>Statement of Shri.U.S.N. Murty,accountant, recorded on 08-03-2018, *Entries the vouchers which given to him by the partners. And for other vouchers denied to be aware of them Reply-4&amp; page 1</b></p> <p>* expenses vouchers for 5 different place was confronted to the assesee to verify form regular books of account, Shri. Murty categorically, accepted that vouchers were not entered in regular books of account. (Reply 6 page 2)</p> <p>* The vouchers pertains to 13-02-2016 and date of survey is 08-03-2016. The assesee failed to verify expenses vouchers in regular books of account. The books are with the assesee in computers and was not properly recorded and was complete. Hence ,there is sufficient cause to doubt books result and rejection us 145(3).</p> <p>The accountant categorically re affirm that enters only those vouchers, which are given to him for accounting entry. He also admitted that there are some more vouchers which has been left for entry( reply 9 page-3)</p> <p>The facts above, reveals that the assesee is routine practicing pick and choose method to entered expenses in account and many more vouchers were left unentered in account. Preliminary Statement of Shri. Sanjay Singhal Reply -07, page 02,the assesee denies to maintained stock register and muster roll register and labor bill payment registers Three other firms also running in the same premise and sets of books of accounts of firms was kept in the same premise.(reply 7 page 3 &amp;4)</p> <p>The assesee denied categorically that there is no subcontract for labor supply.f reply-10 page 5)</p> <p>No fix agreement for payments to labours the rate fluctuate and no records maintained. Reply 12 page-08-03. Based on the above statement of</p>

	<p><b>accountant and the assessee, the authorised officer rightly doubted the authenticity of books of account in view of section 145(3) of the act.</b></p> <p><b>Final Statement of Shri. Sanjay Singhal</b></p> <p>Reply no 3 page 2, shortage of cash was also used for personal expenses and no petty cash books maintained, no records of expenses maintained, hence shortage of cash could not be explained.</p> <p>Reply no -05 page-2 stock register not maintained.</p> <p>Reply 6 page -02 No records for stock, and stock position cannot verifiable</p> <p>Reply 7 &amp; 8 page-02, labour's payment through subcontractor, no agreement for sub labor contract.</p> <p>Reply 8 page-02, The assessee kept some labor vouchers in house and was not produced before AO</p> <p>Un recorded cash payment to Labours accepted by the assessee of Rs.62,00,000/- and put of that Rs.41,00,000/- is kachha payment (reply 10 page- 4)</p> <p>Cash payment out books for expenses are recorded in impounded material, calculated at Rs.4,09,06,963/- was found and was asked to explain. The assessee admitted unexplained cash, not recorded in books and earned from undisclosed sources. ( Reply 10 page-5)</p> <p>The admitted that he is unable to explain and verify it from his books of account. ( reply-11 page-5)</p> <p>Specific query doubting the authenticity of books of account in view of section 145(3) was asked to explain. The assessee admitted that books result GP/NP are not reliable and income may be calculated at 8% on turnover of Rs.48,04,39,999/- at Rs. 3,84,39,999/- was calculated as income during the year, reply - 12 page-6</p> <p>Based on survey finding on spot ,the assessee also disclosed income at the rate of 8% of turnover of previous three years.</p> <p>The survey operation closed peacefully after 27 hours.</p> <p><b>From the statement and facts collected from incriminating material, the books of accounts was found not reliable and results was disturbed. The assessee voluntary disclosed income at the rate of 8% of income. Reasons for rejection of books of accounts is based on facts on the spot and not on presumption or surmise.</b></p> <p><b>Retraction from statement</b></p> <p>The assessee filed affidavit to retract his admission from his statement recorded during the time of survey operation.</p> <p>Para-8 and 9 of the affidavit the assessee claimed to be in depression, a patient under treatment of depression and was under disturbed mental state(para-13),lost</p>
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	<p>equilibrium of mind(para-14) loss of memory (para-16), under treatment of cervical problem in 04-06-2014.( para-10)</p> <p><b>Not reliable for the reasons as under</b></p> <p>*The assessee was a patient of cervical problem some where 2014 and two years was elapsed on the date of survey .The medical report furnished categorically denies that parenchyma, i.e. outer membrane made of cell, is found intact and no significant abnormally detected. The problem is connected only with bone problem in vertebra. The has self-made claim of loss of memory, depression and of affected brain not verifiable from medicine prescribed for treatment.</p> <p>*The medicine prescribed for treatment is restricted to dislocated vertebra and not for mental depression.</p> <p>8. The flow of reply in the statement from nowhere reflects that assessee is in depressed mental statement.</p> <p>9. The assessee is a partnership firm, and has good team and number of tax consultant employed in his organisation. He never requested survey team to be in depressed mental status and need the help of partners. The accountant was there to assist him in verification of books of account, but he also admitted that the expenses voucher are not recorded properly.</p> <p>10. it is unimaginable the person under mental depression perusing hard to obtain copies of survey material by three consecutive letter dated 08-04- 2016,21-04-2016 and 28-04-2016 and paid bank chalan.</p> <p>11. <b>The facts on reattraction is misleading and subject to verification. It is unreliable and worth to be rejected.</b></p> <p>summon under section 131 was issued and served On 09-03-2016 to produce books of account, not complied by the assessee.</p> <p>*CIT Vs Jansampark Advertising &amp; Marketing (P.) Ltd 56 taxmann.com 286, 231 Taxman 384, 375 ITR 373</p> <p>In case of unaccounted entries found in books of account of assessee, though it is obligation of Assessing Officer to conduct proper scrutiny of material, in event of Assessing Officer failing to discharge his functions properly, obligation to conduct proper inquiry shifts to Commissioner (Appeals) and Tribunal and they cannot simply delete addition made by Assessing Officer on ground of lack of inquiry</p> <p>*Pradeep Kumar Biyani Vs ITO [2019] 101 taxmann.com 131 (SC)/[2019] 260 Taxman 298 (SC)</p> <p>Where High Court upheld Tribunal's order confirming addition made to assessee's income in respect of unaccounted business receipts having regard to fact that gross profit declared by assessee was much lesser than</p>
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	<p>profit in said line of business and, moreover assessee had failed to provide stock register despite several opportunities, SLP filed against said decision was to be dismissed ALLAHABAD Kaveri Rice Mills* v. Commissioner of Income-tax, Kanpur2006] 157 TAXMAN 376 (ALL.) HIGH COURT OF Section 143 of the Income-tax Act, 1961 - Assessment - Additions to income - Assessment year 1984-85 - Whether purchases made by assessee had been found by all lower authorities to be bogus and not genuine, Assessing Officer was justified in adding amount of purchases towards its income - Held, yes</p> <p>The facts on records extracted from survey and assessment proceedings and is apparent. The apparent is real. The facts and surrounding information on records, and statement disclosed the truth the paid in cash many expenses and there is no agreement with subcontract. The assessee denied to have maintained stock register and also to have maintain muster roll. These are surrounding facts and valid reasons for rejection of books of account. The reliance is placed on decisions held as under</p> <p>♦CIT Vs Durga Prasad More 82 ITR 540 [SC] ( Page -1 to 3)</p> <p>It was held that the apparent must be considered real until it is shown that there are reasons to believe that the apparent is not real and that the taxing authority are entitled to look into the surrounding circumstances <b>and find out the reality and the matter has to be considered by applying the test of human probability.</b></p> <p>♦Sumati Dayal Vs CIT [1995] 125 CTR 124 (SC) (Page 3 to 5)</p> <p><b>It was held that although apparent must be considered real but if there is reason to believe that apparent is not realas the case under consideration, then the apparent should be ignored to unearth harsh reality.</b></p> <p>* CIT Vs NR Portfolio ITA No. 1018/2011 HC of Delhi(Page 41 to 47)( emphasis)</p> <p>Para-14</p> <p><b>When an assessee does not produce evidences or tries to avoid appearance before the assessing officer, it is necessarily creating difficulties and prevents ascertainment of true and correct facts as the assessing officer is denied advantage of the contention or factual assertion by the assessee before him. In case the assessee deliberately and intentionally fails to produce evidences before the assessing officer with the desire to prevent enquiry or investigation, an adverse view should be taken.</b></p> <p>Para -31</p> <p><b>What is unmistakably visible and apparent,cannot be spurred by formal but unreliable pale evidences ignoring the patent and what is plain and writ large on current finding of the Facts. Held Yes.</b></p> <p>The AO demonstrated principle of natural justice and discharge his onus. The assessee failed to</p>
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	<p>prove authenticity of his books of account and GP result hence, rejection of books of account us 145(3) and profit determined at the rate of 8% on undisclosed cash payment against expenses is justified.</p> <p>In view of the above, and the decisions held by the Hon'ble CIT is bad in law and facts, the income assessed by the AO is sustainable.</p>
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5. Apart from the above written submissions, Id. Sr. DR drew our attention to the observations of the Id.AO in the assessment order, wherein the statements were reproduced, according to the copy of the statement, question Nos.13 & 14 along with answer to the questions are reproduced as under :-

प्रश्न-13 आपके व्यवसायिक लेख से आज सर्वेक्षण की कार्यवाही के दौरान AY 2012-13, AY 2013-14, AY 2014-15 तथा AY 2015-16 से संबंधित लेखा पुस्तकें computer पर पायी गयीं। इन लेखा पुस्तकों से संबंधित bills/voucher नहीं मिले हैं

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प्र. क्रम 13 वाली

कृपया बतायें कि bills/vouchers न पाये जाने की दशा में क्यों न इन निर्धारित वर्षों से संबंधित Net Profit भी प्राप्त विलेव वर्ष की भांति आमकर अधिनियम की धारा 145(3) के अंतर्गत 8% सकल प्राप्तियों के 8% की दर से गणना किया जाये। कृपया स्पष्ट करें?

उत्तर - जी, वर्तमान में मैं आपको bills, Voucher जो AY 2012-13, AY 2013-14, AY 2014-15 तथा AY 2015-16 से संबंधित हैं वे प्रस्तुत नहीं कर पा रहा हूँ। मैं इस परिस्थिती में इन निर्धारित वर्षों से संबंधित Net Profit की धारा 145(3) के अंतर्गत करायान देणु सिम्पानुसार समर्थित करता हूँ।

AY	Turnover	NFB 3%	NF shown	Difference in NP
2015-16	68,41,91,293	5,47,35,303	95,55,385	4,51,79,418
2014-15	41,81,19,598	3,34,49,568	1,01,90,365	2,32,59,204
2013-14	29,42,13,181	2,35,85,054	1,32,21,894	1,03,63,160
2012-13	19,15,01,238	1,53,20,099	1,03,16,372	50,03,287
				8,38,05,069

इस प्रकार में AY 2012-13 देणु रु 50,03,287/-, AY 2013-14 देणु रु. 1,03,63,160/-, AY 2014-15 देणु रु. 2,32,59,204/- तथा AY 2015-16 में देणु रु. 4,51,79,418/- जो कि कुल रु. 8,38,05,069/- की Net Profit करायान देणु अधिले करता हूँ।

प्रश्न में पूछे गये प्रश्न क्रम 12 व 13 के उत्तर में आपने कुल रु. 12,22,45,068/- की आय धारा 145(3) में करायान देणु अधिले की है। इसके पूर्व प्रश्न 10

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AO जारी है

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प्रश्न (13) से जारी.....

के उत्तर में आपने Annexure-X के अनुसार संग्रह भुगतानों के आधार पर रु. 4,09,06,963/- की आय कराधान हेतु समर्पित की थी, क्या आप इसे पुनः स्वीकारते हैं, छपया इसके इस पर लगने वाला कर किस प्रकार दिया जायेगा छपया विवरण में।

उत्तर:- जी हाँ, मैंने पूर्व में प्रश्न क्रमांक 10 के उत्तर में संग्रह भुगतानों की वजह से ~~रु. 4,09,06,963/-~~ की आय कराधान हेतु चालू वित्त वर्ष में इस समर्पित की थी। इसी चालू वित्त वर्ष में मैंने आयकर अधिनियम की धारा 145(3) के अंतर्गत रु. 3,84,39,999/- की आय कराधान हेतु समर्पित की है। इस प्रकार चालू वित्त वर्ष में मैंने कुल रु. 3,93,46,962/- की आय कराधान हेतु समर्पित की है। आपके प्रश्न (13) के उत्तर में मैंने AY 2012-13 में रु. 50,03,284/-, AY 2013-14 में रु. 1,03,63,160/-, AY 2014-15 में रु. 232,59,204/- तथा AY 2015-16 में रु. 4,51,41,81/- की आय आयकर अधिनियम की धारा 145(3) के अंतर्गत कराधान हेतु समर्पित की है। इस प्रकार AY 2012-13 से AY 2015-16 के लिये मैंने कुल रु. 8,38,05,069/- की आय आयकर अधिनियम की धारा 145(3) के अंतर्गत कराधान हेतु समर्पित की है। इस प्रकार मैंने कुल रु. 16,31,52,031/- की कुल आय कराधान हेतु समर्पित की है तथा इस पर आने वाले कर की अंतिम समय से कर देगा।

Dm 11/16

6. Ld. Sr-DR after referring to the aforesaid statement of the assessee submitted that the assessee himself while making the statement u/s.133A of the Act has admitted and accepted to surrender its income following the provisions of Section 145(3) of the Act showing net profit @8% of the total turnover. It was the observation of the Id. AO that during the survey proceedings, the assessee was provided with sufficient opportunity/time to produce the books of accounts supporting with vouchers and other documents but the assessee was failed to comply with the same. During the assessment proceedings, the assessee has produced books of accounts, bills and vouchers but the same were not accepted by the AO with an observation that the same have been prepared by the assessee as an after thought after the survey proceedings. Ld. AO has observed that the assessee has manipulated the books of accounts and other documents, hence, the same cannot be relied upon. Finally, the addition

of Rs.2,32,59,204/- for the assessment year 2014-2015 was made by the assessee.

7. It was also submitted by the Id. Sr-DR that the assessee has submitted a correct statement by way of an affidavit of the partners Mr. Sanjay Singhal on 08.04.2016 before the Id.AO taking shelter of his disturbed statement of mind, great medical stress and strain, the assessee in the said affidavit has said that, he forgot completely that the return filed by the assessee-firm M/s PSA Construction for the assessment year 2013-2014 was subject to scrutiny under scrutiny assessment u/s.143(3) of the Act. During the course of assessment proceedings for AY 2013-14, the books of accounts along with bills and vouchers were duly produced and verified by the Id. AO and has made a retraction from the statements recorded u/s.133A of the Act on 09.03.2016. The partner of the assessee has submitted in the said affidavit that he must have agreed to offer income of 8% of the gross receipt subject to allowance on account of remuneration and interest to partners. The assessee has also taken the rescue of his disease as neck cervical commonly known as depression. All such medical reasons based on which the partner of the assessee has retracted are just to cover up the new story and after thoughts offered by the assessee during the assessment proceedings, therefore, the same could not be considered and the findings of the AO which was purely based on the spontaneous and immediate statements of the partner of the assessee should be considered as final in the present case. Ld. Sr-DR further drew our

attention to the operating para of the order of the Id. CIT(A) and submitted that the Id. CIT(A) has gross erred in deciding the issue stating that the rejection of books of accounts and estimation of profit is based on merely the statement of assessee's director u/s.133A of the Act, there are several facts on consideration of which such action based on no material and only on the basis of statement u/s.133A of the Act cannot be sustained. Such an observation of Id.CIT(A) deserves to be set aside for the reason that the AO has very meticulously discussed the issue and has made the addition on the basis of statement of partners of the assessee, therefore, merely on the basis of retraction of the assessee totally based on after thought, should not be accepted. It was, thus, the prayer of the Id. Sr DR that the order of the Id. CIT(A) shall be set aside and the addition made by the Id. AO should be restored.

8. Contrary to the submissions of the Id.Sr. DR, the Id.AR of the assessee drew our attention to the written submissions, which read as under :-

**1. Facts in Brief;**

1.1 *The assessee is a Government Contractor. .*

1.2 *The books of accounts have been maintained as required under Section 44AA and audited under Section 44AB. ,*

1.3 *The assessee was visited with Survey operation u/s 133A on 08.03.2016 relevant to the A.Y 2016-17.*

**1.4 Chronology of events;**

S. No.	Date	Events	Remarks
1.	24.09.2012	<i>Return of Income filed u/s 139(1) along with Audited Balance Sheet and Tax Audit Report for A.Y 2012-13.</i>	<i>All these events took place much before the date of Survey u/s 133 A on 08.03.2016. The Return of income based on audited financial statements had already been filed not only for the</i>

			<i>year under consideration but also for the immediately preceding and succeeding year.</i>
2.	10.09.2013	<i>Return of Income filed u/s 139(1) along with Audited Balance Sheet, and Tax Audit Report for A. Y 2013-14.</i>	
3.	07.05.2014	<i>Tax Audit Report in Form 3CD uploaded electronically along with Audited Balance Sheet and Profit &amp; Loss Account for A. Y 2014-15. (Placed on Page No.192 to 204 of the PB and Letter filed before AO is placed on Page No. 220 to 221 of the PB)</i>	
4.	03.09.2014	<i>Return of Income filed u/s 139(1) for A. Y 2014-15. (Placed on Page No. 67 of PB)</i>	
5.	08.09.2015	<i>Return of Income filed u/s 139(1) for A. Y 2015-16.</i>	

6.	17.12.2015	Assessment Order passed u/s 143(3) for A.Y. 2013-14 vide order dated 17.12.2015	The then Learned DCIT-2(1), Raipur had accepted book results of the assessee and the factum of having maintained the books of accounts and bills and vouchers was also affirmed by the then Learned DCIT-2(1), Raipur. Assessment got completed much before the date of Survey u/s 133A on 08.03.2016.
7.	08.03.2016 to 09.03.2016	Survey operation u/s 133 A conducted on business premises of the assessee.	Statement of partner was recorded u/s 133A thrice, copies of statements are <b>placed on Page No.86 to 106 ofPB.</b>

8.	10.03.2016	Books of accounts along with bills and vouchers for F.Y 2011-12 to 2015-16 were produced vide letter dated 10.03.2016 in response to summon u/s 131 dated 09.03.2016. <b>(Placed on Page No.70 of PB)</b>	<b>Learned AO did not dispute this fact in the assessment order despite reproducing the contention of the assessee.</b>
9.	08.04.2016	Corrected statement by way of affidavit was filed by Shri Sanjay Singhal vide letter dated 08.04.2016. <b>(Placed on Page No.107 to 114 of PB)</b>	The correction in the statement was duly made within a reasonable period of time.
10.	17.10.2016	Notice u/s 142(1) was issued by the Learned AO.	
11.	07.11.2016	Assessee had duly submitted the reply in response to Notice u/s 142(1). 12. Ledger of expenses duly filed. 13. Name, address and PAN of Sub Contactors were filed alongwith amount and TDS deducted. 14. TDS Returns along with challans were duly submitted.	<b>Placed on Page No.229 to 234 of PB</b>

		15. Details of Vehicle, Plant running & maintenance expenses were duly filed. 16. Confirmation of Accounts of Sundry Creditors was duly submitted. List of new fixed assets acquired was filed.	
12.	29.11.2016	Learned AO had issued Show cause Notice and required the assessee to show cause against estimation of net profit @ 8% of the Gross Contract Receipts. <b>Placed on Page No.69 of PB</b>	Only reason mentioned in SCN was Returned income is not 8% of the total turnover as voluntarily disclosed during the survey.
13.	01.12.2016	Assessee filed reply to show cause notice and interalia Books of accounts along with bills and vouchers were duly produced during the course of assessment proceedings.	<b>Placed on Page No.708 to 710 of PB</b>

**2. Vital facts and documents:**

- a) Survey team was informed about books of accounts maintained- kind attention invited to **Question No.7 on Page 87 of PB.**
- b) Final statement recorded on 09.3.2016 u/s 133A, - kind attention invited to **Page 99 of PB.**
- c) Survey team was informed about books of accounts maintained- kind attention invited to **Question No.5 on Page 100 of PB.**
- d) **Survey team acknowledged that books of accounts along with bills and vouchers have been maintained- kind attention invited to Question No.11 on Page 103ofPB.**
- e) Survey team **acknowledged that books of accounts have been maintained- kind attention invited to Question No.13 on Page 104 of PB.**
- f) Surrender was made due to non availability of bills and vouchers during survey. -
- g) The Learned AO himself recorded his finding of fact that the books of accounts along with bills and vouchers were produced by the assessee in Para No. 1 on Page No. 1 and Para 4.1 on Page No. 5 of the Assessment Order.

**Arguments:**

Nothing prevents the assessee to produce the books of accounts along with bills and vouchers during the course of assessment proceedings before the AO even if the same were not produced before the survey team owing to any reason and the Learned AO was duty-bound to examine the books of accounts.

17. **Statement recorded u/s 133A has no evidentiary value:** as has been held by the **Hon'ble Supreme Court** in the case of **CIT vs. S Khader Khan Son** (2012) 82 CCH357.

18. **Non production of books of accounts at the time of survey cannot be a ground for rejecting books of account:**

Mere non production of books of accounts during the course of survey proceedings cannot be a sole reason for rejection of the books of accounts as has been held in the following judicial pronouncement:

S. No.	Title	Citation	Authority	CLC reference
1.	ITO vs. <b>Vijay Kumar Kesar</b>	(2010) 327 ITR 497	High Court of Chhattisgarh	<b>Page 136</b>
2.	<b>Mahesh Coal Traders vs. CIT</b>	976, 977 of 2013	High Court of Allahabad	<b>Page 90</b>
3.	<b>Evergreen Bar &amp; Restaurant vs. Ad. CIT</b>	(2008) 27 CCH 170	Bombay Tribunal	<b>Page 240</b>

19. **Explanation furnished during the course of assessment proceedings cannot be ignored merely because explanation was not furnished during the course of survey:**

Where an explanation is not furnished to the survey team but later on the explanation is furnished during the course of assessment, then the same cannot be brushed aside if there is no material based on which books can be rejected. Reliance is placed on the following judicial pronouncement:

S. No	Title	Citation	Authority	CLC Reference
1.	<b>Yadurish Rai Jhunjunwla vs. CST</b>	(1987) 67 STC381	High Court of Allahabad	<b>Page 120</b>
2.	<b>Ramdas Jugani vs. CIT</b>	(2006) 282 ITR 356	High Court of Madhya Pradesh	<b>Page 121</b>

5.1 **No specific defect or discrepancy or infirmity pointed out in the books of accounts;**

Reliance is placed on following judicial pronouncements in support of contention that rejection of books of accounts without pointing out **specific defects is bad in law:**

S. No.	Title	Citation	Authority	CLC Reference
1.	<b>CIT vs. Padamchand Ramgopal</b>	(1970) 76 ITR 719 (SC)	Supreme Court of India	—
2.	<b>ACIT vs. M/s Sanjay Agrawal</b>	ITA No. 82/RPR/ 2018 CO No. 05/ RPR/2018	ITAT, Raipur Bench	—
3.	<b>ACIT vs. M/s Radheshyam Agrawal</b>	ITA No. 42/RPR /2018	ITAT, Raipur Bench	--
4.	<b>CIT vs. Om Overseas</b>	(2009) 315 ITR 185	High Court of Punjab & Haryana	<b>Page 1</b>
5.	<b>Dr. Prabhudayal vs. CIT</b>	(2018) 162 DTR 0012	High Court of Allahabad	<b>Page 10</b>

**6. Allegation of the Learned AO that Books of Accounts have been prepared as an afterthought is baseless:**

**7. Statement of assessee or surrender cannot be sacrosanct or decisive:**

It is open for the person who gave the statement to prove that the statement was incorrect or otherwise unreliable.

Reliance is placed on the following judicial pronouncement:

S. No.	Title	Citation	Authority	CLC Referen<
1.	<b>Pullangode Rubber Produce Co. Ltd. vs. State of Kerala</b>	(1973) 91 ITR 18	Hon'ble Supreme Court	<b>Page 12</b>
2.	<b>ITO vs. Vijay Kumar Kesar</b>	(2010) 327 ITR 497	High Court of Chhattisgarh	<b>Page 1;</b>

**8. Statement of the assessee was not voluntary:**

Reliance is placed on the following judicial pronouncement:

S. No.	Title	Citation	Authority	CLC Reference
1.	<b>Kailashben Manharlal Chokshi vs. CIT</b>	(2008) 76 CCH 1026	High Court of Gujarat	<b>Page 181</b>
2.	<b>DCIT vs. Vipin Aggarwal</b>	(2016) 46CCH 291	Chandigarh Tribunal	<b>Page 190</b>

**9. CBDT has laid emphasis on collection of evidences vide CBDT circular dated 10.03.2003 and 18.12.2014:**

The copy of CBDT Circular dated 10.03.2003 and 18.12.2014 is placed on **Page 711 to 714 of the Paper Book.**

**Prayer:**

It is humbly prayed that the rejection of books of accounts may kindly be declared as bad in law and order passed by the Learned CIT(A) may kindly be confirmed.

**10. Alternate Plea: Manner of Assessment of Total Income in A.Y 2012-13, 2013-14 and 2015-16;**

The total income for the A.Y 2012-13, 2013-14 and 2015-16 was computed in the following manner:

S. No.	Particulars	A.Y 12-13	A.Y 13-14	A.Y 15-16
1.	Copy of Assessment Order is placed on following page No. of Paper book.	Page 117 to 133	Page 134 to 149	Page 150 to 167
2.	Contractual Receipts	19,15,01,238/-	29,48,13,181/-	68,41,91,293/-
3.	Add: Interest on FDR	8,09,290/-	9,55,020/-	20,12,360/-
4.	<b>Gross Receipts</b>	<b>19,23,10,528/-</b>	<b>29,57,68,201/-</b>	<b>68,62,03,653/-</b>
5.	Net profit (a> 8%)	1,53,84,842/-	2,36,61,456/-	5,48,96,292/-
6.	Add: Interest on IT Refund	1,99,656/-	-	-
7.	<b>Less: Depreciation</b>	1,10,27,495/-	1,78,16,666/-	3,16,24,345/-
8.	<b>Profit after Depreciation</b>	<b>45,57,003/-</b>	<b>58,44,790/-</b>	<b>2,32,71,927/-</b>
9.	<b>Less: Partner's Remuneration &amp; Interest</b>	32,22,460/-	37,38,360/-	33,34,895/-
10.	<b>Computed Income as per the Direction u/s 144A (Learned AO had deducted Depreciation, Partner's Remuneration &amp; Interest after considering N.P @ 8%)</b>	<b>13,34,543/-</b>	<b>21,06,430/-</b>	<b>1,99,37,032/-</b>
11.	Returned Income	1,49,39,900/-	1,34,82,630/-	1,06,83,770/-
12.	Assessed Income	1,49,39,900/-	1,34,82,630/-	1,99,37,032/-

The Teamed JCIT, Range-2, Raipur had issued direction u/s 144A dated 20.12.2017 for the A.Y 2012-13, 2013-14 and 2015-16 and had directed the Learned AO to allow depreciation, partner's remuneration and interest separately after estimating the Net Profit @ 8% of the Gross Receipts with a condition that assessed income should not be less than returned income.

**Computation of Net profit as per the Modus Operand! applied by the Learned AO in the assessment of A.Y 2012-13, 2013-14 and 2015-16 following the directions issued u/s 144A:**

S. No.	Particulars	Amount	%
1.	Contractual Receipts	41,81,19,598/-	
2.	Add: Interest on FDR	14,32,553/-	
3.	<b>Gross Receipts</b>	<b>41,95,52,151/</b>	
4.	N.P @ 8%	3,35,64,172/-	8%
5.	<b>Less:</b> Depreciation	2,38,23,872/-	5.68%
6.	N.P before Partner Remuneration & Interest	97,40,300/-	2.32%
7.	<b>Less:</b> Remuneration to Partners	10,00,000/-	0.24%
8.	<b>Less:</b> Interest to Partners	26,05,935/-	0.62%
9.	<b>Net Profit computed as per the modus operand! which was applied for A.Y 2012-13, 2013-14 &amp; 2015-16.</b>	<b>61,34,365/-</b>	<b>1.46%</b>
10.	Returned Income	77,71,280/-	Note-1

**Note:** Returned income is higher than the income computed based on the direction u/s 144A given in other assessment years, therefore, no adverse view is warranted.

Thus, by applying the same modus operand! which was applied by the Learned AO in the assessment of A.Y 2012-13, 2013-14 and 2015-16, the Net Profit after deducting depreciation, partner's remuneration and interest works out to Rs.61,34,365/- which is less than the Returned income of Rs.77,71,280/-, thus, the returned income of the assessee deserves to be accepted even on this score.

**11. Rule of consistency does apply to Income Tax Proceedings:**

Reliance is placed on the following judicial pronouncements:

S. No.	Title	Citation	Authority	CLC Reference
1.	<b>RadhasaomiSatsan g vs. CIT</b>	(1992) 193 ITR321	<b>Hon'ble Supreme Court</b>	<b>Page 207</b>
2.	<b>CIT vs. Godavari Corporation Ltd.</b>	(1985) 156 ITR 835	High Court of Madhya Pradesh	<b>Page 220</b>
3.	<b>ITO vs. Tejmalbhai &amp; Co.</b>	(2006) 99 ITD 399	Rajkot Tribunal	<b>Page 227</b>
4.	<b>Indian Herbs Research &amp; Supply vs. ACIT</b>	(2006) 25 CCH 0091	Delhi Tribunal	<b>Page 230</b>

**Prayer:**

It is humbly prayed that the order passed by the Learned CIT(A) may kindly be confirmed and appeal of the revenue may kindly be dismissed.

9. It was also submitted by the Id. AR that the partner of the assessee has informed to the survey team regarding the books of accounts

maintained by the assessee firm. He drew our attention to the question No.7 of the statements recorded u/s.133A of the Act, dated 08.03.2016, wherein in answer to a query by the survey team, the partner of the assessee has submitted the books of accounts, like cash book, bank book, purchase book, sell book etc. and computer data are maintained in this office. Ld. AR further drew our attention to page 99 of the paper book wherein also at question No.5 the partner of the assessee Mr. Sanjay Singhal has answered that in their Shankar Nagar office, cash book, cash register, sale register, ledger, journal etc. are kept in computer, stock register are not maintained, attendance register/salary register, check register, bank guarantee file, income tax file, LIC file etc. Ld. AR further submitted that the survey team has duly acknowledged that the books of accounts along with bills and vouchers have been maintained to support this contention. Ld. AR drew our attention to question No.11 of the statement dated 09.03.2016, wherein in question No.11, survey team itself has framed the question that during the survey proceedings, books of accounts, cash book ledger, which was found in computer regarding expenditure, bills and vouchers were demanded and the assessee was questioned to answer regarding certain bills and vouchers that on verification of such vouchers it was found that payments were made in cash. Ld. AR submitted that such question was put up by the survey team, this shows that bills and vouchers were available before them. Ld.AR further drew our attention to question No.13 of the statement, wherein it was the question of survey team that the books of accounts

were found on computer but the bills and vouchers were not found at the premises of the assessee, therefore, it was proposed by the survey team that in absence of bills and vouchers, why the net profit should not be calculated @ 8% under the provisions of Section 145(3) of the Act. The assessee has submitted that as stated in the affidavit of partner of the assessee firm was under mentally stress having certain medical issues and accepted the proposal of the survey team in order to buy peace. Ld.AR further submitted that the Id. AO himself in the latter part of his assessment order has recorded that the books of accounts along with bills and vouchers were submitted by the assessee during the assessment proceedings and the same were not accepted inferring that books are manipulated and prepared by the assessee as an afterthought, no adverse finding regarding the contents of the books, bills and vouchers was produced by the assessee, was observed by the AO.

10. Here the arguments of the Id. AR that the assessee cannot be prevented by any law to produce the books of accounts along with bills and vouchers during the course of assessment proceedings before the AO even if the same were not produced before the survey proceedings owing to any reason and the AO was duty bound to examine the books of accounts. Ld. AR also submitted that statement recorded u/s.133A of the Act has no evidentiary value and has placed his reliance on the judgment of the Hon'ble Supreme Court in the case of CIT vs. S. Kader Khan Son, reported in [2012] 25 taxmann.com 413 (SC)/[2012] 210 Taxman 248 (SC). Another contention raised by the Id.AR that non-production of the

books of accounts at the time of survey cannot be a ground of rejecting the books of accounts on this issue. Ld. AR relied on the following judgments :-

i) *ITO Vs. Vijay Kumar Kesar, [2010] 327 ITR 497, wherein the jurisdictional High Court has held as under :-*

*Section 69 of the Income-tax Act, 1961 - Unexplained investments - Assessment year 2000-01 - Where addition was based solely on assessee's confession during survey which was later retracted and Commissioner (Appeals), after considering material produced by assessee during assessment proceedings and on due appreciation thereof, had accepted explanation of assessee for retraction of his admission as bona fide and further accepted books of account prepared by assessee on basis of duly verified primary evidence and Tribunal had confirmed order of Commissioner (Appeals), in view of retraction of admission by assessee, deletion of addition was justified [In favour of assessee]*

ii) *Mahesh Coal Traders Vs. CIT, ITA No.976&977 of 2013, order dated 13.04.2020 (Allahabad High Court), wherein the Hon'ble High Court has held as under :-*

*14. In the instant case, it seems that the books of accounts were tallied and there is no mention of any deficiency in the books of accounts, but they have been rejected solely on the ground that the same were not found in the premises during the survey. The tribunal has also not considered any other reason for accepting the rejection of books of accounts which, in my opinion, is based on apprehension, rather than due consideration of the facts of the present case. It is also borne from the record that for the financial year 2008-09 tax invoice No. 467 dated 05.02.2009 relating to 63.225 metric tons of Coal was found where the coal was sold at the rate of Rs.3750/- per MT. It has also been observed that during the same period other traders have sold coal at the rate of Rs.6200/-per MT while the brick kiln is at the Ghaziabad and appellants have purchased coal for Rs.5800/- to Rs.6400/-. It is interesting to note that no details of any trader has been specifically mentioned nor the source of the information has been disclosed or verified while observing the above.*

*15. The Tribunal has not given any independent finding for accepting the order of the assessing officer in rejecting the books of accounts, but has only said that the same has also been upheld by the First Appellate Authority and no interference is required without taking into consideration the grounds taken by the assessee. It was the duty of the Tribunal, which is the final fact finding authority, to have considered the grounds raised by the assessee and to have returned a finding after considering the same. Though the Tribunal*

*has recorded that the books of accounts were duly presented when the show cause notice was given to the assessee, and no discrepancy was found in the same, but non-presentation of the books of accounts at the time of survey cannot be the sole reason for rejection of the books of accounts. The order of the Tribunal in this regard deserves to be set aside and be remanded to it for fresh adjudication.*

*iii) Evergreen Bar & Restaurant Vs. Ad.CIT [2008] 27 CCH 170 (Mumbai Tribunal), wherein the Tribunal has held Assessee's books of account being regularly audited, returns of income being filed along with balance sheets and P&L a/c, and sales-tax assessment having been made on the basis of such books, CIT(A) was not justified in his conclusion that assessee was not maintaining any books of account merely because no books of account were found during survey; AO taking sales figures of liquor of 5 days and extrapolating the same so as to arrive at the annual sales of 5 consecutive years, that too without any incriminating evidence was not justified in his action and additions made on that basis could not be sustained.*

11. Ld. AR also contended that explanation furnished during the course of assessment proceedings cannot be ignored because the explanation was not furnished during the course of survey. On this aspect, Id. AR relied on the following judgments.

- i) Yadurish Rai Jhunjunwala (1987) 67 STC 381 (Allahabad High Court)*
- ii) Ramdas Jugani (2006) 282 ITR 356 (Madhya Pradesh High Court)*

12. The next contention of the assessee with regard to issue in hand that no specific defect or discrepancy or infirmity pointed out in the books of accounts submitted by the assessee during the course of assessment proceedings. In support of his contention, Id. AR relied on the following case laws :-

- i) *Padamchand Ramgopal, (1970) 76 ITR 7196 (SC)*
- ii) *M/s Sanjay Agrawal, ITA Nos.82/RPR/2018(ITAT Raipur Bench)*
- iii) *M/s Radheshyam Agrawal, (2009) 315n ITR 185; (Punjab & Haryana High Court)*
- iv) *Dr. Prabhudayal, (2018) 162 DTR 0012 (Allahabad High Court)*

13. It was the submission of the Id.AR that allegation of the Id. AO that books of accounts have been prepared as an afterthought is baseless, the statement of assessee for surrender cannot be considered as sacrosanct or decisive. In support of this, Id. AR relied on the following case laws :-

- i) *Pullangode Rubber Produce Col Ltd. (1973) 91 ITR 18*
- ii) *ITO Vs. Vijay Kumar Kesar (2010) 327 ITR 497 (High Court of Chhatisgarh)*

14. It was also the contention of the Id.AR that the statements of the assessee were not voluntarily to substantiate its contentions, following the case laws relied upon. Ld.AR further submitted before us the copy of the CBDT Circular dated 10.03.2003 & 18.12.2014 available at page Nos.711 to 714 of the paper book, wherein the Circular No.F.No.286/2/2003-IT(Inv), dated 10<sup>th</sup> March, 2003, it is directed that in respect of pending assessment proceedings also, the assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders. In Circular No.F.No.286/98/2013-IT(Inv.II), dated 18<sup>th</sup> December, 2014, it has specifically been directed that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceedings 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. Ld.AR

submitted that such directions/guidelines of the CBDT through its Circulars are binding on the revenue authorities, therefore, the conduct of the AO in not accepting books of account and the supporting documentary evidence during the assessment was against such guidelines. Based on such argument and contention, Id, AR prayed that rejection of books of accounts may kindly be declared as bad in law and the order passed by the Id. CIT(A) deserves to be confirmed. The Id.AR also requested to accept one alternative plea in the present case, wherein the assessment year 2012-2013, 2013-2014 & 2015-2016, which were also covered by the same survey proceedings, wherein the assessments were completed u/s.143(3) of the Act on the basis of directions issued by the JCIT, Range-2, Raipur u/s.144A of the Act dated 20.12.2017 and had directed the AO to allow depreciation, partner's remuneration and interest over and above the estimated net profit @8% of the gross receipts, in case the return of income is higher than the income computed under the direction of Id. JCIT u/s.144A of the Act then the returned income will be considered as assessed income. Therefore, it was the submission of the Id. AR that the same proposition should be applied for assessing the income for the assessment year 2014-2015 i.e. the year under consideration in the present appeal. Id. AR further submitted that under the rule of consistency when the department has taken a stand in one year, the same modus operandi in calculating the taxable income of the assessee should be applied in the other years also. In support of such contention Id. AR has relied upon the following case laws :-

- i) *Radhasaomisatsang Vs. CIT, (1992) 193 ITR 321 (SC)*
- ii) *CIT Vs. Godavari Corporation Ltd, (1985) 156 ITR 835 (Madhya Pradesh High Court)*
- iii) *ITO Vs. TEjmalbhai & Co., (2006) 99 ITD 399 (ITAT Rajkot Tribunal)*
- iv) *Indian Herbs Research & supply vs. ACIT, (2006) 25 CCH 0091.*

15. We have considered the rival submissions, perused the material available on record and the case laws placed before us to support the contentions by the parties. On perusal of the order of the Id. AO, it is discernible that the assessee has produced the books of accounts, bills and vouchers during the assessment proceedings, however, since the same could not be provided to the survey team during the survey proceedings, the AO has not accepted the same with the observations that such books and documents prepared were an afterthought and are manipulated. Assessee's claim that the survey team has not provided them with sufficient time to produce the documents, was not found convincing by the Id. AO. When the issue was assailed before the Id.CIT(A) after going through the facts of the case and the relevant case laws, Id. CIT(A) has decided the matter in favour of the assessee deleting the addition made by the AO with the observations that rejection of books and estimation of profit is based on merely the statement of assessee's partner u/s.133A of the Act, there are several facts which were discussed in the appellate order, considering the same, the action of the Id.AO based on no material, cannot be sustained. Ld. CIT(A) while discussing the issue has taken support from the judgment of the Hon'ble Jurisdictional High Court of Chhattisgarh in the case of ITO Vs. Vijay

Kumar Kesar, reported in 327 ITR 497, wherein Their Lordship had held that the addition based on mere confession and not based on any document during survey cannot be sustained. The issue was addition of unexplained investment u/s.69B of the Act, where the addition was based solely on assessee's confession during the survey which was later retracted and Commissioner (Appeals), after considering material produced by assessee during assessment proceedings and on due appreciation thereof, had accepted explanation of assessee for retraction of his admission as bona fide and further accepted books of account prepared by assessee on the basis of duly verified primary evidence and Tribunal had confirmed order of CIT(A), in view of retraction of admission by the assessee, deletion of addition was held to be justified by the Hon'ble High Court. Ld. CIT(A) has further relied on the decision of ITAT Mumbai Bench of the Tribunal in the case of Chawla Brothers (P) Ltd., reported in [2011] 43 SOT 651 (Mum), wherein it is held that the declaration in survey u/s.133A of the Act is subject to explanation and reconciliation by the assessee and if explained, it has to be considered.

16. On a thoughtful analysis of the factual matrix of the present case, apparently the assessee has provided its books of accounts maintained on computer, however, supporting documents and vouchers were not produced before the survey team during the survey proceedings u/s.133A of the Act but all the books of accounts, bills and vouchers with supporting evidences were submitted by the assessee before the AO during the assessment proceedings but the same were summarily rejected by the Id.

AO stating that it seems that assessee has manipulated the books of accounts and other documents, hence, the same cannot be relied upon. Such an observation of the Id.AO shows that Id. AO has made an observation on his own preconceived notion, without taking into the documents i.e. books of accounts etc. submitted by the assessee, which is against the principle of law laid down by the Hon'ble Jurisdictional High Court in the case of Vijay Kumar Kesar (supra) as well as against the settled principle of law laid down by the Hon'ble Supreme Court in the case of S Kader Khan Son (supra), wherein it was held that undue emphasis should not be given to confessional statement without material on the same. The settled position of law was further supported by the CBDT Circular No.F.No.286/2/2003-IT(Inv), dated 10<sup>th</sup> March, 2003 and Circular No.F.No.286/98/2013-IT (Inv.II), dated 18<sup>th</sup> December, 2014, thereby issuing guidelines to the revenue authorities to be observed/overseen and to be followed by collecting the evidence during the course of search/survey operations.

17. In view of the aforesaid observations on the first contention of the assessee that merely on the basis of confessional statement of the assessee which were recorded u/s.133A of the Act which could not be considered as sacrosanct or decisive having no supporting evidence to substantiate such confession, any addition made by the AO is subjected to be set aside. This contention of the assessee is worth acceptance in terms of judicial pronouncements by the Hon'ble Apex Court and Hon'ble Jurisdictional High Court as referred to supra. Ld. CIT(A) has accepted

the said contention of the assessee under the situation when books of accounts and bills and vouchers along with supporting evidence etc. were submitted by the assessee, however, the same were summarily rejected by the AO without examining the same on the basis of presumption, surmises and having a preconceived notion. Therefore, the Id.CIT(A) has rightly reversed the finding of the Id. AO by deleting the addition made in the assessment order. Since the observation of the Id. CIT(A) was based on the facts, settled position of law and on proper appreciation of submissions along with material on record, respectfully following the judicial pronouncements which are binding to decide the issue in hand, we find no interference in the findings of the Id. CIT(A) in this regard and, therefore, without hesitation, the same is upheld. Thus, the controversy raised by the revenue in its grounds of appeal is dismissed.

18. Regarding other grounds raised by the revenue in the nature of legal grounds, no arguments were advanced by the revenue, therefore, the same are considered as infructuous.

19. Since, we have decided the issue raised in the present appeal by the revenue on its merits in favour of the assessee upholding the findings of the Id. CIT(A), the alternative plea of the assessee, which are not arising out of the order of the Id. CIT(A) and the assessee has not filed any appeal raising this ground, are hereby rejected.

20. In the result, appeal of the revenue is dismissed.

Order pronounced in the court on 17/07/2023.

**Sd/-**  
**(RAVISH SOOD)**

**Sd/-**  
**(ARUN KHODPIA)**

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 17/07/2023

*Prakash Kumar Mishra, Sr.P.S(on tour)*आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,  
Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur