

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 40/Asr/2018**  
Assessment Year: 2014-15

Assistant Commissioner of  
Income Tax, Phagwara Circle,  
Phagwara

Vs.

Sh. Chuni Lal Gaba  
S/o Sh. Mehnga Ram  
Dilbagh Colony, Goraya,  
Tehsil Phillaur, Jalandhar  
[PAN: AAGPL 8510L]

**(Appellant)**

**(Respondent)**

**I.T.A. No. 41/Asr/2018**  
Assessment Year: 2014-15

Assistant Commissioner of  
Income Tax, Phagwara Circle,  
Phagwara

Vs.

Sh. Gurmesh Kumar  
S/o Sh. Chuni Lal, G.T.  
Road, Dilbagh Colony, Bada  
Pind Road, Goraya,  
Jalandhar  
[PAN: AGSPK7044E]

**(Appellant)**

**(Respondent)**

**I.T.A. No. 42/Asr/2018**  
Assessment Year: 2014-15

Assistant Commissioner of  
Income Tax, Phagwara Circle,  
Phagwara

Vs.

Sh. Harmesh Kumar  
S/o Sh. Mehnga Ram,  
Dilbagh Colony, Goraya,  
Tehsil Phillaur, Jalandhar  
[PAN: AGSPK 6452E]

**(Appellant)**

**(Respondent)**

Appellant by : None (Written submission)  
Respondent by : Sh. Dr. Vedanshu Tripathi, CIT DR

Date of Hearing : 05.10.2023  
Date of Pronouncement : 10.11.2023

### **ORDER**

#### **Per Bench:**

The captioned appeals have been filed by the Revenue against the separate orders of the Id. Commissioner of Income Tax (Appeals)-2, Jalandhar dated 28.11.2017 & 29.11.2017 in respect of Assessment Year: 2014-15.

2. The revenue has raised the following grounds of appeal in ITA No. 40/Asr/2018:

- “1. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts in the case deleting the addition of **Rs.4,52,32,700/-** made on the basis of voluntary surrender, made during the course of survey, without appreciating that the surrender was further reaffirmed by the assessee and was never retracted.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts of the case in holding that the addition will amount to double taxation, as, separate additions have been made in Asstt. Years 2008-09 & 2009-10, based on the impounded documents ignoring the fact that the surrendered amount has never been assigned by the assessee to those years.*

3. *It is prayed that the order of the Ld. Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.*
4. *The appellant requests for leave to add or amend or alter the grounds of appeal before the appeal is heard and disposed off."*

**3. Grounds of appeal in ITA No. 41/Asr/-2018:**

- “1. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts in the case deleting the addition of **Rs.5,12,20,000/-** made on the basis of voluntary surrender, made during the course of survey, without appreciating that the surrender was further reaffirmed by the assessee and was never retracted.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts of the case in holding that the addition will amount to double taxation, as, separate additions have been made in Asstt. Year 2008-09, based on the impounded documents ignoring the fact that the surrendered amount has never been assigned by the assessee to those years.*
3. *It is prayed that the order of the Ld. Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.*
4. *The appellant requests for leave to add or amend or alter the grounds of appeal before the appeal is heard and disposed off."*

**4. Grounds of appeal in ITA No. 42/Asr/2018:**

- “1. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts in the case deleting the addition of **Rs.4,91,70,000/-** made on the basis of voluntary surrender, made during the course of survey, without appreciating that the surrender was further reaffirmed by the assessee and was never retracted.*

2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts of the case in holding that the addition will amount to double taxation, as, separate additions have been made in Asstt. Year 2008-09, based on the impounded documents ignoring the fact that the surrendered amount has never been assigned by the assessee to those years.*
  3. *It is prayed that the order of the Ld. Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.*
  4. *The appellant requests for leave to add or amend or alter the grounds of appeal before the appeal is heard and disposed off."*
5. The department has raised common issues in all the 3 appeals on identical facts and therefore, these 3 appeals were heard together and adjudicated by this consolidated order for the sake of brevity.
6. The facts of the case are taken from ITA No. 40/Asr/2018 in respect of assessment year 2014-15 as a lead case. A search u/s 133A of the Income Tax Act was conducted at the business premises of the assessee on 18.02.2014 and the assessee had surrendered undisclosed income of Rs. 5 lacs at the time of survey. The AO has stated that based on the document found and impounded and cash found during the course of survey of statement of the assessee was recorded on 18.02.2014 wherein the appellant assessee on behalf of the entire group has confirmed the disclosure of undisclosed income and offered total additional income of

Rs.16 crores over and above to the normal income, for the year under consideration, i.e., financial year 2013-14. Relevant part of the Assessment Order in this regards, reads as under:

*“b. Subsequently the assessee on behalf of all the entire group, confirmed the disclosure and offered Total additional income of Rs.16 Cr, in addition and over and above the normal income, for the year under consideration ie FY 13-14, as under, as per letter dated 18.02.2014 filed:*

|           |                               |   |
|-----------|-------------------------------|---|
| <b>1.</b> | <b><i>Sh. Chuni Lai</i></b>   | <b><i>Rs.5.00 Cr including Cash of 8.25 lacs.</i></b> |
| 2.        | <i>Sh. Gurmehsh Kumar</i>     | <i>Rs.5.20 Cr including Cash of 7.80 lacs..</i>       |
| 3.        | <i>Sh. Harmesh Kumar</i>      | <i>Rs.5.00 Cr including Cash of 8.30 lacs..</i>       |
| 4.        | <i>M/s Shiva Cold Storage</i> | <i>Rs.30 lacs including Cash of 9.00 lacs.</i>        |
| 5.        | <i>M/s Shiva Agri. Farm</i>   | <i>Rs. 50 lacs including Cash of 5.20 lacs.</i>       |
|           | <b><i>TOTAL</i></b>           | <b><i>Rs. 16 Cr.</i></b>                              |

7. The AO has discussed that the aforesaid disclosure was made in various entities on the basis of various documents seized/impounded during the course of survey proceedings, and on the facts that the proper books of accounts were not maintained, nor the same were completely written to explain the said discrepancies found during the survey, including the unaccounted cash of Rs.8.25 lacs found in the premises of the assessee and thus, the undisclosed income computed based on the

impounded documents as above. The AO stated that disclosure of income was made by the appellant over and above the regular income of the year under consideration which had no bearing on the income determined for the earlier years, however, the assessee has claimed the credit for the same in its return of income. The AO being not satisfied with the reply of the assessee regarding the not declaration of the surrendered income in the return of income without corroborative documentary evidences and even without any retraction, he held it as attempt to suppress the undisclosed income offered for tax as additional income over and above the regular income for the year under consideration during the search and survey action and accordingly, he has made addition of the surrendered income of Rs.4,60,57,700/- to the return income of the assessee.

8. Being aggrieved with the assessment order, the appellant assessee went in appeal before the Id. CIT(A) who has granted relief to the appellant assessee by observing as under:

4.6 I have gone through the assessment order passed by the AO and the submissions filed by the appellant, remand report of the AO, counter comments of the appellant and find that an addition of Rs. 4,60,57,700 has been made by the AO on the ground that income declared in the return of income at Rs.42,68,500 was less than the surrender of income of Rs. 5 crores made by the

appellant at the time of survey u/s 133A of the IT Act at the business premises. In this case a survey was conducted on 18.02.2014 at the business premises of the appellant and an amount of Rs. 5 crores was disclosed as income on account of documents found at various premises of the appellant family/firms and to cover up any other discrepancy on account of all the documents with a intention to buy piece of mind and avoid litigation by the department.

4.7 The AO has stated in the order that appellant was bound by the surrender made in the course of his statement recorded on 18.02.2014 at the time of survey and it was clearly admitted as his additional income. The disclosure was made in the hands of various entities based on documents found and seized in the course of survey. It is stated that proper books of accounts were not maintained nor were they found to be completely written. The unaccounted cash of Rs. 8.25 lacs was also found from the possession of appellant. The letter filed by the appellant that surrender was made on the condition that no proceedings will be reopened for earlier years is not correct as no such condition was made at the time of surrender.

4.8 It is further stated in the order that appellant has even paid some taxes after the survey on account of disclosure of income made. The appellant has not produced any proper documentary evidence to substantiate the transactions recorded in the impounded documents. The appellant is not maintaining proper books of accounts as the same were neither found at the time of survey nor have been produced after the survey. Accordingly, AO has treated the balance amount of Rs.4,60,57,700 as the additional income which has not been disclosed in the return of income despite having been surrendered.

4.9 The appellant has submitted that there is no justification in the addition made by the AO as no evidence of undisclosed income earned for this year has

been brought on record. It is a well settled law which has been decided by a number of authorities that addition cannot be made on the basis of disclosure during survey without bringing out any cogent material in support of such disclosure. The appellant stated that additional income of Rs. 41,18,500 has been declared in the return of income for the period under consideration based on the documents found and seized in the course of survey. The total surrender of Rs. 5 crore was disclosed on the condition that no other case for any other period will be reopened. Since, the proceedings for all the years and in the case of all other family members and concerns have been reopened then there is no justification in making an addition in the current year.

4.10 The appellant has stated that assessment proceedings for A.Y. 2008-09 and 2009-10 have been completed in which AO has made additions of Rs. 1,97,08,128 and of Rs. 93,67,668 based on the documents found in the course of survey. It is stated that making an addition again in this year of total amount of Rs. 5 crore would lead to making a double addition of the same amount on the basis of same material, which is against the principles of taxation. The appellant has placed reliance on the instructions of the CBDT dated 10.03.2003 on the issue of confession of additional income without any credible evidence.

4.11 The appellant has further placed reliance on the decisions of Hon'ble Gujarat High Court, Madras High Court and Hon'ble ITAT Amritsar Bench wherein it is stated that no addition could be made only on the basis of statement recorded at the time of search/survey without any corroborating material on record.

4.12 The AO as well as the appellant have reiterated their contentions in the remand report and in the counter comments. I have carefully considered the

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material available on record and find that following letter of surrender of income was made at the time of survey, which is reproduced as under:-

Jeller  
Annexure - A 6C  
Date: 18.02.2014 (32)

The Joint Commissioner of Income Tax,  
Phagwara Range, Phagwara

Sub: Voluntarily surrender of Rs. 16 crore during the course of survey operation u/s 133A of the Income Tax Act, 1961.

Respected Madam,

During the course of survey operation conducted on 18.02.2014, several discrepancies in books of accounts, stocks, advances and cash are found. Therefore as a group to cover up these discrepancies I/we voluntarily surrender of Rs. 16 crore as follows:

1. Sh. Chuni Lal --- Rs 5 crore including Rs. 8.20 lacs cash
2. Sh. Gurmeh Kumar --- Rs 5.20 crore including Rs. 7.80 lacs cash
3. Sh. Harmesh Kumar --- Rs 5 crore including Rs. 8.30 lacs cash
4. M/s Shiva Cold Storage --- Rs 30 Lacs including Rs. 9.00 lacs cash
5. M/s Shiva Agri Farm --- Rs 50 Lacs including Rs. 5.20 lacs cash

I/me make surrender of Rs. 16 crore on behalf of all others including me. Further I make this surrender without any pressure, threat or coercion. This surrender of Rs. 16 crore is in addition to my normal income subject to no penal action.

Yours faithfully,  
Chuni Lal  
(Chuni Lal)  
18/2/14



4.13 It is seen from the record that re-assessment proceedings have been initiated in the case of the appellant for A.Y. 2008-09 and additions of Rs. 1,97,08,128 were made and for A.Y. 2009-10 additions of Rs. 93,67,668 have been made by the AO on the basis of specific discrepancies found in the

documents impounded at the time of survey. These facts have not been denied by the AO in the remand report. Further, re-assessment proceedings for other years have also been initiated based on the documents found at the time of survey.

4.14 It is further seen from the record that additional income of Rs. 41,18,500 was declared by the appellant in the return of income filed for the period under consideration. AO has failed to bring on record any material evidence, point out any controverting material in the documents, loose papers impounded during the course of survey either at the stage of assessment or in the course of remand proceedings.

4.15 I have also considered the instructions issued by the CBDT vide F. No. 286/2/2003-IT (Inv.II) dt. 10-03-2003 and find force in the contentions of the appellant as no adverse material or documents or other incriminating material has been referred to at the time of survey or in the course of assessment proceedings on the basis of which surrender of additional income has been correlated. Further, I find that CBDT has recently in its instructions issued vide No. 286/98/2013-IT (Inv.II) to the field offices has stated , the relevant text of which is as under:-

*"It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light*

*2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence. "*

4.16 I have also gone through a copy of the statement of the appellant recorded at the time of survey and the relevant text, wherein the surrender of income of Rs. 5 crore was made is as under:-

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Q. 11. I am showing you various loose slips on which various names & amounts received are mentioned. Please comment on it.

Ans:- These slips, names & amounts pertain to various persons, which I have given in lieu of proposed projects.

Q. 12. Please elaborate proposed projects.

Ans:- Proposed projects means the land which I planned to buy & similar activities.

Q. 13. Please explain the source of advances you have given & where you have entered in your books of accounts. ?

Ans:- These advances were made out of books.

Q. 14. Did you reflect these advances in your return of income or did you pay any tax. ?

Ans:- I did not reflect these advances neither in books of accounts nor in income tax return. Therefore, I voluntarily surrendered Rs. 5 crore (including Rs. 8.2 lacs cash) for taxation & this amount is in addition to my normal income.



4.17 Further, I have gone through the catena of judgments cited by the appellant as well as which are available on the issue of validity of income disclosed in the course of a statement recorded at the time of survey/search. In this case the appellant has not been able to bring on record any material to submit that any undue influence, coercion or pressure or influence was exercised at the time of recording of statement in which disclosure of additional income was made. AO has further relied upon certain judicial decisions on the issue that surrender on the basis of a voluntary statement made by the appellant is valid. The issue raised by the appellant both at the assessment as well as at the appellate stage is that no adverse material for the year under consideration has been brought on record by the AO on the basis of which additional income could be disclosed other than what has already been declared in the return of income.

4.18 In view of the above facts, I find that as regards the surrender of Rs. 5 crore as additional income is concerned the onus is to correlate the additional income sought to be taxed in the hands of the appellant in each year with the

incriminating documents, material found in the course of survey. In this year additional income of Rs. 41,18,500/- has been disclosed by the appellant and AO has failed in the remand report to bring on record any other material evidence other than relying upon the statement recorded at the time of survey. Further, AO has not disputed the fact that separate additions have been made in the earlier years 2008-09 & 2009-10 based on the documents impounded which pertain to those years and therefore, making again an addition of Rs 5 crore on lump sum basis would amount to double taxation of the same income, which is against the basic principle of taxation that same income cannot be taxed twice.

4.19 Accordingly, considering the instructions of the CBDT on this issue where it is categorically stated that surrender of income has to be backed with credible evidence, I hold that there is no justification in the action of the AO in making an addition of Rs 4,60,57,700 merely on the basis of a statement recorded at the time of survey. However, I find that cash of Rs. 8.25 lacs which was found at the time of survey and was offered for taxation as additional income has not been added to the income of the appellant for the year under consideration. Therefore, I confirm the addition of Rs. 8,25,000 out of the total addition of Rs. 4,60,57,700 made by the AO under this head.”

9. Per contra, the Id. DR vehemently supported the assessment order. He contended that the Id. CIT(A) has erred in law and facts in deleting the addition of Rs.4,60,57,700/- made on the basis of voluntary surrendered in view of the incriminating documents impounded during the course of survey without appreciating that surrender was further reaffirmed by the assessee and was never retracted. He further contended that the Id. CIT(A) was not justified in holding that the said addition will amount to double taxation as a separate additions have been made in assessment years 2008-09 and 2009-10 based on the impounded documents ignoring the fact that the

surrendered amount has never been assigned by the assessee to those years and the Id. CIT(A) has not substantiated while allowing the claim of the assessee. He contended that CIT(A) has not considered the incriminating documentary evidences being impounded and forming the basis for the disputed disclosure of the surrendered amount over and above, the income declared and shown in the regular return of income filed by the assessee. The Id. DR placed reliance on the decision of Hon'ble Court of Allahabad in the case of Sanjeev Agarwal v. Income Tax Settlement Commissioner [2015] 56 taxmann.com [2014] (Alld.) wherein the Hon'ble High Court has observed that even those the statement by the assessee during the survey regarding undisclosed investment was not given oath, same could not be retracted on whims and fancy. The relevant para of the judgment is reproduced as under:

*"9. We are of the opinion that a statement made voluntarily by the petitioner under Section 133A of the Act can form the basis of assessment. The mere fact that the petitioner retracts his statement could not make his statement unacceptable. The burden lay upon the petitioner to establish that the statement made by him at the time of survey was wrong and in fact there was no additional income. In our opinion, this burden has not been discharged since no cogent evidence has been brought on record.*

*10. In Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 18 ITR 18 (SC) the Supreme Court held that an admission is a piece of evidence though it is not conclusive. Consequently, a statement made voluntary under Section 133A of the Act cannot be retracted unless the assessee files evidence to show*

*that the admission made in the statement at the time of survey was wrong and against the material on record. The mere fact that the Commissioner of Income Tax in his report has held that the statement given by the petitioner was on oath and therefore, it cannot be retracted is immaterial in the context of what we have said aforesaid.*

11. *No doubt, Sections 132(4) and 133A of the Act are distinct and different. Under Section 133A of the Act, there is no provision to administer oath and to take a sworn statement whereas under Section 132(4) of the Act there is no provision to examine a person on oath. But it does not mean that a statement under Section 133A of the Act can be retracted at the whim and fancy of the assessee. In the light of the aforesaid, the assertions made by the learned counsel for the petitioner cannot be accepted.”*

The learned DR prayed that either the assessment order be restored or the matter may be remanded back to the CIT appeal for fresh adjudication in view of the statement of surrender of undisclosed income given by the appellant during the course of search and later affirmed by written submission viz~a~viz seized incriminating material, as above.

10. None appeared for the defendant appellant, however, the learned counsel has submitted a written synopsis which reads as under:

***Brief Synopsis in ITA No. 40/Asr/2018.....***

*“This is the case of an assessee, individual, wherein a survey u/s 133A of the Act was conducted at the business premises of the assessee. Assessee filed return of income declaring net taxable income of Rs. 42,68,500/- on 31.03.2016. During the course of survey, assessee offered additional income amounting to Rs. 5.00 Crore, but later on at the time of filing return of income, assessee considered all the material & documents impounded during survey and declared his true and*

correct income in his return of income. The disclosure was made with the understanding that the cases for the previous year will not be reopened but since all the cases of assessee's firm/family was reopened and separate addition on account of various income/sale/purchase has been separately are been made, so, considering the document found and seized in the year under consideration i.e A.Y 2014-15 assessee disclosed an income of Rs. 41,18,500/- as additional income over and above normal income and filed return paying tax thereon along with interest. But the Ld. Assessing Officer ignoring the submission of assessee framed assessment at an income of Rs. 5,03,26,200/- thus made an addition of Rs.4,60,57,700/- in the hand of assessee on account of declaration made during survey. Aggrieved by the order, assessee preferred appeal before Worthy CIT(A), wherein the Worthy CIT(A) partly allowed the appeal of the assessee and made addition of only Rs.8,25,000/- out of the total addition of Rs. 4,60,57,700/- made by the AO under this head. Aggrieved by this order, revenue filed the present appeal.

**Our submission:**

Sir, on the basis of document found & seized Ld. Assessing Officer issued notices u/s 148 for the A.Y 2008-09 onwards and stated reassessment proceedings. The reassessment proceedings for the A.Y 2008-09 and onwards has been completed wherein the following additions are made on the basis of document found & seized:

| <b>ASSTT. YEAR</b> | <b>ADDITION MADE</b> |
|--------------------|----------------------|
| 2008-09            | 1,97,08,128/-        |
| 2009-10            | 93,67,668/-          |

Sir, the disclosure was specifically made to cover up the several discrepancies found during survey on the basis of seized material and since separate additions have been made on the basis of seized material in the different assessment year, so, taxing again in this year amounts to double taxation which is against the principal of natural justice.

Sir, in our case addition was purely made on the basis of disclosure made during the course of survey. The Ld. Assessing Officer framed assessment by

*making addition of difference between the income declared in return and income offered during the course of survey. The Ld. Assessing Officer has not brought on record any evidence proving the undisclosed income earned during the year except declared by the assessee in his return of income. It is well settled proposition of law and has been decided by the number of authorities that addition made on the basis of disclosure made during survey without putting any cogent material in support of such disclosure is not justified in the eyes of law.*

*Sir, it is submitted that during the course of survey statement of assessee recorded and assessee disclosed additional income amounting to Rs. 5,00,00,000/- on the basis of document found and seized during the course of survey including cash amounting to Rs. 8.20 lacs but while framing assessment the Ld. Assessing Officer framed assessment in separate year on the basis of said seized material.*

*Sir, while filing return of income assessee consider all the facts and disclosed its true and correct income on the basis of seized material but the Ld. Assessing Officer while framing assessment made addition on the basis of disclosure made during the course of survey by relying upon the statement recorded during survey on 18.02.2014 and offered Rs. 5,00,00,000/- on account of **“several discrepancies in books of accounts , stocks, advances and cash are found.....”***

*Sir, there is no evidence with the Assessing Officer in the year under consideration to make the huge addition of Rs. 5.00 Crore except the statement of assessee. The addition made by the Ld. Assessing Officer during the course of assessment proceedings was merely only on the basis of statement recorded u/s 133A of the Act, which is having no evidentiary value in the eyes of law as decided by the hon'ble supreme court of India. Even in the appeal before the Worthy CIT(A), the Appellate Officer deleted the addition made by the Ld. Assessing Officer and made addition of only Rs.8,25,000/- out of the total addition of Rs. 4,60,57,700/- made by the AO under this head.*

**Worthy CIT(A) held as under:**

*"4.17 Further, I have gone through the catena of judgments cited by the appellant as well as which are available on the issue of validity of income disclosed in the course of a statement recorded at the time of survey/search. In this case the appellant has not been able to bring on record any material to*

*submit that any undue influence, coercion or pressure or influence was exercised at the time of recording of statement in which disclosure of additional income was made. AO has further relied upon certain judicial decisions on the issue that surrender on the basis of a voluntary statement made by the appellant is valid. The issue raised by the appellant both at the assessment as well as at the appellate stage is that no adverse material for the year under consideration has been brought on record by the AO on the basis of which additional income could be disclosed other than what has already been declared in the return of income.*

*4.18 In view of the above facts, I find that as regards the surrender of Rs. 5 crore as additional income is concerned the onus is to correlate the additional income sought to be taxed in the hands of the appellant in each year with the incriminating documents, material found in the course of survey. In this year additional income of Rs. 41,18,500 has been disclosed by the appellant and AO has failed in the remand report to bring on record any other material evidence other than relying upon the statement recorded at the time of survey. Further, AO has not disputed the fact that separate additions have been made in the earlier years 2008-09 & 2009-10 based on the documents impounded which pertain to those years and therefore, making again an addition of Rs 5 crore on lump sum basis would amount to double taxation of the same income, which is against the basic principle of taxation that same income cannot be taxed twice.*

*4.19 Accordingly, considering the instructions of the CBDT on this issue where it is categorically stated that surrender of income has to be backed with credible evidence, I hold that there is no justification in the action of the AO in making an addition of Rs 4,60,57,700 merely on the basis of a statement recorded at the time of survey. However, I find that cash of Rs. 8.25 lacs which was found at the time of survey and was offered for taxation as additional income has not been added to the income of the appellant for the year under consideration. Therefore, I confirm the addition of Rs. 8,25,000 out of the total addition of Rs. 4,60,57,700 made by the AO under this head.*

*5. In the result, appeal is partly allowed."*

*Sir, as per the above order, it is clear that no adverse material was brought on record by the Ld. AO and addition has been merely made on the basis of the statement recorded at the time of survey.*

*In this regard, the law is very clear in this respect and CBDT has issued instruction with regard to confession of additional income during the course of search and seized and survey operations. **Instruction no. F.No. 286/2/2003-IT (Inv.II), dated 10.03.2003** give some reflection about such confession of additional income without any credible evidence during the course of survey/search & seizure which is quoted as under:*

*“Instances have come to the notice of the board where assessee have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confession, if not based upon credible evidence, are letter retracted by the concerned assessee while filing return of income. In these circumstances, such confession during the course of search & seizure and survey operations do not serve any useful purpose. It is therefore, advised that there should be focus and concentration on collection of evidence of income which leads to the information on what has not been disclosed or is not likely to be disclosed before the income tax department. Similarly, while recording statement during the course of search & seizure and survey operation no attempt should be made to confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.*

*Further in respect of pending assessment proceedings also, Assessing Officer should rely upon the evidence/ materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders.”*

**Further, assessee also relying upon the CBDT instruction no. F.No. 286/98/2013- IT(Inv.-II), dated 18.12.2014.**

*Further reliance is being placed upon the following decisions:*

**ACIT Vs. Janak Raj chauhan (2006) 102 TTJ (Asr) 316**, wherein it is held that“.....The AO has mainly relied on the statement recorded by the AO under s. 132(4). It is settled position in law that admission made by the assessee under s. 132(4) is an important piece of evidence, but the same is not conclusive. It is open to the assessee who made the admission to show that it is incorrect and the same was made under a mistaken belief of law or facts. Apart from disclosing income of Rs.3.50 lakhs in the asst. yrs. 1991-92 and 1992-93 on behalf of R, his son, the assessee again disclosed income of Rs. 1.5 lakhs being income earned in the name of R in the past assessment years. The assessee was being assessed to tax right from asst. yr. 1984-85. If the income was earned

*in the earlier assessment years relating to 1984-85 to 1990-91, the assessee could have disclosed such income in those assessment years rather than disclosing the same for the asst. yr. 1991-92. Moreover, the Department has not brought any evidence on record to show which particular transaction of land in the name of minor sons resulted in income disclosed by the assessee under s. 132(4). This only shows that the assessee was indeed in a confused state of mind. Further, the Revenue has not placed any material or evidence to show that income disclosed in the names of minor sons was based on positive evidence found during the course of search. Thus, in the absence of evidence, the CIT(A) was justified in referring to the investments made in the names of minor sons during the relevant assessment years and restricting the addition to the amounts equal of such investment. In fact, the assessee had even contested these additions before the CIT(A), but such submission of the assessee was rejected. In the light of these facts and circumstances of the case and in the absence of any supportive material, CIT(A) was justified in reducing the additions made by relying on the statement recorded under s. 132(4). The income disclosed under s. 132(4) in respect of remaining amount was not based on any evidence or material and, therefore, the same was rightly deleted by the CIT(A).— (1973) 91 ITR 18 (SC) relied on....”*

**ACIT Vs. Jagdish Raj chouhan (2006) 99 TTJ (Asr) 153**, wherein it is held that “.....Income from undisclosed sources—Addition under s. 69—Unexplained investment in plot—AO made addition on the basis of disclosure made by the assessee in his statement under s. 132(4)—Assessee has later explained that he had purchased one property in the name of his wife, and the other property was purchased by his wife—However, he disclosed the amount of Rs. 1,35,000 in respect of both the properties and also disclosed a further amount of Rs. 65,000 pertaining to the property purchased by his wife, on account of confused state of mind—Admissions are not conclusive proof of matter—A party is entitled to show and prove that the admission made by him was, in fact, not correct and true—Assessee has been able to prove with the help of his cash flow statement that the surrender of the sum of Rs. 1,35,000 was not correct—Therefore, CIT(A) was justified in reducing the addition to the extent of actual investment in the property.....”

**ACIT Vs. Anoop Kumar (2005) 94 TTJ (Asr) 288**, wherein it is held that “.....Income disclosed under s. 132(4) was subsequently retracted by the assessee. It was also not disclosed in the returns of income filed. Based on the seized documents and material, the AO has computed total income, which is

*below the income disclosed under s.132(4). In fact all the additions made by the AO based on the documents and evidence found during the search stand confirmed. It is also a fact that total income so computed by the AO falls below the income disclosed under s. 132(4). It is not the case of the Department that difference in the income assessed and income disclosed under s.132(4) represents some other concealed income. Therefore, it is clear that there is no material available with the Department to justify the addition so far as the difference between the income computed by the AO and income disclosed under s. 132(4). In other words, the so-called disclosure under s. 132(4) is bald and has no legs to stand and in such a case retraction is justified. Thus, the view that emerges is that ultimate addition to be made in a case would depend on the facts and circumstances of the case and not purely on the disclosure made under s. 132(4), which also stood retracted subsequently. There could be a case where income disclosed under s. 132(4) was on the lower side than the income based on material and evidence found during the course of search or post-search enquiry. In such a case, the AO would be fully justified in completing the assessment on higher income, as such additions would be backed by evidence and material on record. The only implication would be that the assessee would not be entitled to immunity from penalty and prosecution in respect of income, which was not disclosed under s. 132(4). In the light of these facts and circumstances of the case, no addition could be made merely by relying on the statement recorded under s. 132(4) when there is no evidence or material to justify such addition.....”*

Sir, further the same view has been affirmed by the **Hon’ble Supreme Court of India** that is as follows:

**CIT Vs. S.Khader Khan Sons (2013) 352 ITR 480 (SC)**, wherein the hon’ble supreme court of India affirmed the above stated view of madras high court and held that“.....Sec. 133A does not empower any IT authority to examine any person on oath and, therefore, any admission made in a statement recorded during survey cannot, by itself, be made the basis for addition...”

Sir, further reliance is being placed upon the following decisions:

**DCIT Vs. PREMSONS (2010) 130 TTJ 159**, wherein the hon’ble Mumbai bench held that“.....Income from Undisclosed Sources—Addition—Stock physically found not tally with books of account—Addition on the basis of surrender—In order to make an addition on the basis of surrender during search or survey, is

*sine qua non that there should be some other material to correlate the undisclosed income with such statement—There being nothing on record which could correlate such additional.*

*Sir, since assessment in the present case is framed on the basis of statement recorded at the time of survey/search, which has no evidentiary value in the eyes of law, the cases cited above are squarely applicable to the present case and Hon'ble CIT(A) has decided the issue in the favour of the assessee by following the CBDT Circular dated 10.03.2003 and 18.12.2014 and following the directions laid down by Hon'ble Supreme Court in the case of CIT Vs. S. Khoder Khon Sons (2013) 352 ITR 480 (SCr. It is therefore requested that considering the facts and circumstances of the present case and case laws cited above, including the decision of Hon'ble Supreme Court, addition made by the Ld. Assessing Officer may kindly be deleted.”*

11. We have heard the learned DR, perused the material on record, written submission filed by the council for the assessee and the impugned order. Admittedly, the appellant has made a surrender of undisclosed income over and above the regular return income, during the course of survey conducted on 18.02.2014 at the business premises of the appellant and an amount of Rs. 5 crores was disclosed as income on account of documents found at various premises of the appellant family/firms to cover up any other discrepancy on account of all the documents with an intention to buy piece of mind and avoid litigation by the department. However, he has not mentioned that this income was disclosed over and above to the regular income shown by him in its returns of income and later the same was affirmed in the light of the incriminating documents found and

impounded from the premises of the appellant. The learned CIT(A) failed to discuss and address the magnitude of surrendered income based on quantification, in the light of the incriminating documents found during the course of survey from the premises of the appeal and assessed by the AO.

12. It is noted that the disclosure was made in the hands of various entities based on documents found and seized in the course of survey as no proper books of accounts were maintained by the appellant. The observation of the Ld. CIT(A) that a letter was filed by the appellant that surrender was made on the condition that no proceedings will be reopened for earlier years is factually incorrect as no such condition was made at the time of surrender as per assessment record. The appellant was not maintaining proper books of accounts as the same were neither found at the time of survey nor have been produced after the survey. Accordingly, AO has treated the balance undisclosed amount of Rs.4,60,57,700/- as the additional undisclosed income over and above to the return of income despite having been shown in the return filed despite surrender during survey.

13. We find that the observations of the Id. CIT(A) as regards to double taxation of the same income based on the same documents found in the

survey in the reassessment proceedings in respect of Assessment Years: 2008-09 and 2009-10 has not been substantiated with corroborative documentary evidences by referring to a particular document forming the basis for the income considered by the Id. CIT(A), being subject to double addition and as against the principal of double taxation. In our view, the Id. CIT(A)'s finding are self-contradictory as on the one hand, he has stated considering same documents as credible evidence that in respect of Assessment Years 2008-09 and 2009-10, the AO has made addition of Rs.1,97,08,128/- and Rs.93,67,668/- respectively based on the said impounded incriminating documents found during the course of survey and on the other hand he observed that the issue of confession of additional income/surrender income was without any creditable evidence. Such type of observation of the Id. CIT(A) per se proves that he has not gone through the material evidence, incriminating document found and seized/impounded and not analyzed the actual facts of the case in the light of incriminating documents impounded during the course of survey which is forming basis of the surrender of the undisclosed income by the appellant over and above the regular return of income which is further followed by letter rather any retraction. The case law relied by the CIT(A) and reiterated

in the written submission by the AR are distinguishable on peculiar facts of the instant case

14. In the case of *Banna Lal Jat Construction Pvt. Ltd. v. Asstt. Commissioner of Income Tax* [2019] 107 taxmann.com 128 (SC); SLP filed against the decision of the Hon'ble Rajasthan High Court was dismissed. In the said Judgment of the Hon'ble Rajasthan High Court, it has observed vide para 20 as under:

“20. Subsequently, on 04.12.2014 during the post-search proceedings, statement of Shri Bannalal Jat was again recorded under Section 131 of the IT Act, wherein he was again confronted with the various documents seized and cash found during the course of search and the consequent surrender made by him in respect of his two concerns and in response thereto, he again confirmed the surrender of undisclosed income amounting to Rs.1,21,43,210/- and Rs.1,35,00,000/-. It is in this background that we have to view his reply to the show-cause notice submitted on 02.12.2016. This show-cause notice was issued to him by the assessing officer when the appellant-company offered the said undisclosed income to tax. The reliability, importance and sanctity of admission made during search could be refuted only by cogent and convincing evidence. We may in this connection refer to earliest judgment of the Supreme Court in *Pullangode Rubber Produce Co. Ltd., (supra)* wherein it was held that admission is an extremely important piece of evidence but it can't be said that it is conclusive. It is open to the person, who made admission to show that it is incorrect. The assessee should be given proper opportunity to show the correct state of affairs. The law with regard to this has developed much thereafter. There is no gainsay the fact that admission made during the search can be disputed by the assessee and at the same time however it is equally well settled that the statement made voluntarily by the assessee could form the basis of assessment. Mere fact that the assessee retracted the statement at later point of time could not make the statement unacceptable. **The burden lay on the assessee to show that the admission made by him in the statement earlier at the time of survey was wrong. Such retraction, however, should be supported by a strong evidence stating**

**that the earlier statement was recorded under duress and coercion, and this has to have certain definite evidence to come to the conclusion that indicating that there was an element of compulsion for assessee to make such statement.** However, a bald assertion to this effect at much belated stage cannot be accepted. The assessee indulged in maintaining transaction on diaries and loose papers which was not permissible in any of the method of accounting. The assessee, while filing the return of income, has not disclosed any undisclosed income and hence, retracted from the admission made by him during the course of search. Subsequent retraction from the surrender without having evidence or proof of retraction is not permissible in the eyes of law. The statement recorded during the course of search action which was in presence of independent witnesses has overriding effect over the subsequent retraction.”

15. In another case of Commissioner of Income Tax v. Mak Public Charitable Trust [2022] 144 taxmann.com 54 (Madras), it was observed that the statement was given to the Assessing Officer u/s 132(4) have legal force and unless retractions are made within a short span of time, supported by an affidavit swearing that contents are incorrect and it was obtained under force, coercion and lodging by a complaint with higher officials, same cannot be treated as retracted. In the present case, even there has been no retraction of surrendered income but it was affirmed by the appellant.

16. From the above, thus, it is evident that it was not a case of even retraction but backed by incriminating documents viz~a~viz irregular and incomplete books written by the appellant where many discrepancies was

found by the Assessing Officer and unexplained cash balance as on 31.03.2015 has been accepted by the appellant before the department coupled with the fact that in the statement recorded under Section 133A of the IT Act during the course of survey, the appellant himself stated the cash found was unexplained. The Ld. CIT(A) has accepted all the arguments without objectively dealing with the same as being unduly influenced and swayed by the notion of appellant and he has wrongly believed the explanation of the appellant although not being supported by even any corroborating documentary evidence. In our view, the appellant cannot be allowed to retract the statement at this stage. The findings of the CIT(A) that the addition made by the AO based on statement of surrender of undisclosed income is not based on any material are infirm and perverse to the facts on record. Further, the argument of the assessee relating to statutory presumption under Section 292C of the IT Act was also based on the statement recorded during the course of survey under Section 133A of the IT Act and same was affirmed later in writing as above, in the hands of Shri Chunni Lal Gaba, the appellant and not entirely on the factum of business of Shri appellant, where the amount was found. The Ld. CIT(A) has not dealt with the contentions raised by the AO in the Assessment

Order and in the remand report neutrally and without taking cognizance of the fact of admission recorded under Section 133A of the IT Act.

17. Considering the factual matrix of the case and the judicial precedent, we are of the considered view, that the appellant should get one more opportunity to present its case before the CIT appeal with supporting corroborative evidences to rebut the contentions raised by the assessing officer in the support of the additions made based on the deposition/statement given by the appellant while making surrender of the undisclosed income over and above to its regular return income during the course of survey. Thus, in view principles of natural justice, we consider it deem fit to remand back the matter to the file of the Ld CIT appeal to adjudicate the appeal afresh after granting proper opportunity of being heard to the appellant assessee and the assessing officer as per law in the light of the latest judicial pronouncements quoted as above. Accordingly, the appeal is restored to the file of the Ld. CIT(A), to par speaking order as per law.

18. The facts and issues in ITA No. 41/Asr/2018 and I.T.A. No. 42/Asr/2018 are identical to the facts and issues involved in I.T.A. No. 40/Asr/2018 and therefore, our observation and finding given in I.T.A. No.

40/Asr/2018 shall be applicable to the I.T.A. No. 41/Asr/2018 and I.T.A. No. 42/Asr/2018, in mutatis mutandis, ordered accordingly.

19. In the result, these appeals are allowed for statistical purposes.

*Order pronounced in the open court on 10.11.2023*

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**Sd/-  
(Dr. M. L. Meena)  
Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT (Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy

By Order